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# BLENDING SURNAMES AT MARRIAGE

Hannah Haksgaard\*

*In most states, marrying couples are severely limited in their surname choices at the time of marriage. While recent scholarship has focused on men's limited surname choices, other important problems with the marital surname process exist. For example, the increasingly popular decision to blend surnames—taking parts of both current surnames to create an entirely new surname—is generally not allowed. Four states explicitly allow for surname blending on the marriage license, and three more allow for any surname to be adopted. This article argues the remaining states should follow suit by allowing surname blending and other surname options. In addition to providing too few surname options, in most states the current system creates ambiguities and problems because marriage licenses fail to reflect the married surname of either spouse. This article argues that states should update marriage licenses to include the surname a marrying couple chooses to adopt as the marital name.*

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\* Assistant Professor of Law, University of South Dakota School of Law. I thank everyone who read and commented on this article at the 2018 Chicagoland Junior Scholars Work in Progress Conference. I also thank Thomas E. Simmons and Kyle Velte for their meaningful comments, Jordyn Bangasser and Brianna Haugen for excellent research and editorial assistance, and the editors of the Stanford Law & Policy Review who improved this article through their suggestions and detailed editing. Finally, my husband deserves a lot of credit for this article. Not only did he inspire the article by blending surnames with me, but his constant and unwavering support provides me the ability to continue writing during this busy time in our lives.

## INTRODUCTION

Marriage is momentous,<sup>1</sup> and of all the important decisions involved with entering marriage—who, when, where, and on what terms—there is also the question of what surname. Surnames are important to individuals and take a particular level of importance at the time of marriage when a couple forges a new family unit.<sup>2</sup> For a time there was no question: a bride adopted her groom's surname. Then there was a question: should the bride keep her maiden name,<sup>3</sup> take her groom's surname, or perhaps hyphenate the two? And now, the question is complex: in different-sex and same-sex marriages should both parties keep their names? Should one party take the other's name? Should one party hyphenate? Should both parties hyphenate? Or, perhaps, should a new blended name—a portmanteau of sorts—be created?

This article addresses the last option—blending names—which is the option my husband and I chose when we married in 2015. A five-hour car ride was sufficient time for my husband and me to decide to blend our names: I declined his invitation to become a Hackey; he declined my invitation to become an Alsgaard; we both were opposed to any hyphenated surnames; yet we both had a strong desire to share a common surname. Hence, we would become the world's first Haksgaard family.<sup>4</sup> Making the decision to blend our surnames was only the first step—doing it was actually quite a challenge.

With a wedding planned at my parents' home in South Dakota, I started investigating the legal process of blending surnames. After finding no information in South Dakota's codified laws, I spent a morning making phone

1. See *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 955 (Mass. 2003) ("Because it fulfils yearnings for security, safe haven, and connection that express our common humanity, civil marriage is an esteemed institution, and the decision whether and whom to marry is among life's momentous acts of self-definition.").

2. See, e.g., Michael Mahoney Frandina, *A Man's Right to Choose His Surname in Marriage: A Proposal*, 16 DUKE J. GENDER L. & POL'Y 155, 168 (2009) ("Today, [choosing a surname at marriage] affects profound issues of personal autonomy and the ability to write one's own story.").

3. In this article, I use the terminology "maiden name" if I am referring specifically to women's surnames before marriage. In situations where I address men's and women's surnames before marriage, I use the terminology "current name." I avoid the use of "birth name" because many people who marry do not actually bear their birth name because of adoption or a prior surname change. For a discussion of the term "maiden name," see Deborah J. Anthony, *A Spouse by Any Other Name*, 17 WM. & MARY J. WOMEN & L. 187, 206-07 (2010) [hereinafter Anthony, *A Spouse*].

4. Or, acknowledging the difficulty of proving a negative, we were unable to find any other use of the surname Haksgaard, or its use as a word in any other context. Google turned up no results for Haksgaard. We also considered spelling the name as Hacksgaard in order to preserve the first part of Hackey, but thought the "c" was superfluous. My husband Jesse reports the hardest part of the name change was learning to write his name without the "c." Although, as far as we know, Haksgaard has never been a surname before, most individuals are quick to think of it as a Nordic name, which is appropriate considering both Hackey and Alsgaard were inherited through Norwegian forefathers. We also checked the Norwegian farm database and could not locate Haksgaard or Hacksgaard there.

calls to South Dakota—where the wedding would occur—and North Dakota—our then state of residence. South Dakota had no mechanism for a groom to change his surname at marriage and definitely no mechanism for a couple blending surnames. North Dakota would, of course, recognize the marriage performed in South Dakota, but would then require a civil name change petition once we returned home. Sensing far more of a hassle than I wanted, I started jurisdiction shopping for a state where we could marry and blend our surnames simultaneously. Luckily, North Dakota was one of four states that allowed just that.<sup>5</sup> With little more complication and an unannounced courthouse wedding, we obtained a North Dakota marriage license which changed our surname to Haksgaard. Then a month later the South Dakota wedding ceremony occurred, but our guests never knew we had already legally wed.<sup>6</sup>

I count myself and my husband lucky—we were able to easily jurisdiction shop to the state where we already lived and were able to get married in the building where I worked. But most American residents are not so fortunate. Only four states allow for surname blending at the time of marriage, rendering surname blending difficult or impossible to obtain for most of the population. If you cannot wed in the four states that allow surname blending (North Dakota, California, New York, or Kansas) or in the three states that allow a married couple to adopt any surname (Iowa, Minnesota, or Massachusetts) you have to file a name change petition in court, which takes substantially more effort than indicating your new surname on a marriage license.<sup>7</sup> This article advocates for legislative adoption of a surname-blending option in the forty-six remaining states and the District of Columbia.

This article is the first to specifically address the American laws<sup>8</sup> on surname blending at marriage.<sup>9</sup> While name-change at marriage has been

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5. The four states allowing surname blending at marriage are California, Kansas, New York, and North Dakota. The marital name-change laws in those four states are detailed below in Part II.

6. The wedding officiant—a federal judge from South Dakota—knew we were already married before he conducted the ceremony. South Dakota does not appear to allow federal judges to conduct weddings, so one of the members of our band, who happens to be a pastor, was going to authorize the federal judge to conduct our wedding. Turns out getting married in North Dakota was just simpler. See S.D. CODIFIED LAWS § 25-1-30 (2018) (“Marriage may be solemnized by a justice of the Supreme Court, a judge of the circuit court, a magistrate, a mayor, either within or without the corporate limits of the municipality from which the mayor was elected, or any person authorized by a church to solemnize marriages.”).

7. Michael Rosensaft, *The Right of Men to Change Their Names Upon Marriage*, 5 U. PA. J. CONST. L. 186, 205-09 (2002). See also Yury Kolesnikov, *Chapter 567: Saying “I Do” to Name Changes by Husbands and Domestic Partners*, 39 MCGEORGE L. REV. 429, 429-33 (2008); Michael Slade, *Who Wears the Pants? The Difficulties Men Face When Trying to Take Their Spouse's Surname After Marriage*, 53 FAM. CT. REV. 336, 336 (2015).

8. This article is limited to the United States. I have found no scholarship addressing the topic of blending surnames in any other country, but did find some popular press publications. See, e.g., Emma Barnett, *Couples fuse surnames in new trend: ‘I now*

widely discussed in the academic literature, information about surname blending is not widely available and has not yet been analyzed.<sup>10</sup> This article begins by providing a short history of surnames and surname changes at marriage in Part I. Part II reviews and analyzes the legislation in four states where couples are specifically authorized to blend surnames at marriage. Part III argues that every state should adopt a surname-blending option for marrying couples. The legislative proposal in Part III is followed by analysis which addresses any potential downsides, articulates various benefits, and addresses a

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*pronounce you Mr and Mrs Puffin*, THE TELEGRAPH (Nov. 9, 2012, 7:00 AM), <https://www.telegraph.co.uk/women/womens-life/9664227/Couples-fuse-surnames-in-new-trend-I-now-pronounce-you-Mr-and-Mrs-Puffin.html> (discussing Britain). There is substantial literature addressing marital surnames outside of the United States. See, e.g., Heather MacClintock, *Sexism, Surnames, and Social Progress: The Conflict of Individual Autonomy and Government Preferences in Laws Regarding Name Changes at Marriage*, 24 TEMP. INT'L & COMP. L.J. 277, 278 (2010) (discussing Japan, Switzerland, Turkey, Great Britain, France, and the United States); Esther Suarez, *A Woman's Freedom to Choose Her Surname: Is It Really A Matter of Choice?*, 18 WOMEN'S RTS. L. REP. 233, 240-41 (1997) (discussing Iceland, Spain, Morocco, and Japan); Yofi Tirosh, *A Name of One's Own: Gender and Symbolic Legal Personhood in the European Court of Human Rights*, 33 HARV. J.L. & GENDER 247, 249 (2010) (discussing European countries as litigated through the European Court of Human Rights); Joseph Zand & Bahar Öcal Apaydin, *The Myth of Gender Equality in Turkey: Her Name or Sir-Name?*, 22 CARDOZO J.L. & GENDER 253, 254 (2016) (discussing Turkey).

9. The closest any legal analysis has come is Elizabeth F. Emens' proposal that couples adopt what she terms "biphenation," meaning that couples each enter marriage with a hyphenated name received from their parents and each contributes one half of their hyphenated name to form a new family name that passes onto the children. Each person, under her idea, could have several different hyphenated names during a lifetime. Elizabeth F. Emens, *Changing Name Changing: Framing Rules and the Future of Marital Names*, 74 U. CHI. L. REV. 761, 804-09 (2007) [hereinafter Emens, *Changing Name Changing*]. A student note by Meegan Brooks advocates for allowing "nontraditional naming" approaches, which she defines as "includ[ing] the husband taking his wife's surname, hyphenating the husband's and wife's surnames, merging the two surnames into a single name, and choosing a new surname altogether." Meegan Brooks, *For Nontraditional Names' Sake: A Call to Reform the Name-Change Process for Marrying Couples*, 47 U. MICH. J.L. REFORM 247, 248 n.4 (2013).

10. During my research, I found no legal sources discussing surname blending at marriage. The few media pieces I found discussing blended marriage identified California or New York as the place where those wanting to blend name could easily do so. See Liz Susong, *Dispatches From a Feminist Bride: What is Name Blending, and Why are Couples Doing it?*, BRIDES (Jul. 20, 2017), <https://www.brides.com/story/dispatches-from-a-feminist-bride-last-name-blending> (discussing California); Allie Volpe, *More Couples Are Combining Their Last Names and Creating New Family Identities*, GLAMOUR (Jul. 18, 2017, 9:30 AM), <https://www.glamour.com/story/couples-new-last-names> (identifying California and New York as easy states); Tim Sweet Potato & Annie Chickpea, *Sweetpea FAQs*, [https://docs.google.com/document/d/1w2YTYdRQPQy6-NGM9zb\\_HSjmjd0GXXiS975Y7lB0lw/edit](https://docs.google.com/document/d/1w2YTYdRQPQy6-NGM9zb_HSjmjd0GXXiS975Y7lB0lw/edit), at 4 (discussing California and noting (incorrectly) that "it is not as easy [to blend surnames] in most (maybe all?) other states and requires petitioning for a name change as you would do if you were changing any other aspect of your name"); mrrscash, *Combining two last names into one new, mixed last name: my story*, WEDDINGBEE: NAMES, <https://boards.weddingbee.com/topic/combining-two-last-names-into-one-new-mixed-last-name-my-story/> (telling personal story of easily blending surnames in New York after a year of failing to do so in North Carolina and Maryland).

potential Constitutional challenge for states that do not adopt the legislative proposal.

#### PART I: A BRIEF HISTORY OF SURNAME CHANGES AT MARRIAGE

Since the thirteenth century, women in England have been changing their surnames to their husbands' at marriage.<sup>11</sup> American women adopted this custom, but surname change at marriage was never a requirement of the common law.<sup>12</sup> Even without any legal requirement in place, it was assumed that a woman's surname legally changed at the time of her marriage.<sup>13</sup> Although adopting a husband's surname began as custom, by the 1800s several American states were conditioning various rights on a woman using her husband's name.<sup>14</sup> Those laws stayed on the books for over a century. In the 1960s and 1970s women increasingly retained their maiden names after marriage,<sup>15</sup> but they still faced problems—in 1972 the United States Supreme Court affirmed without comment the constitutionality of an Alabama statute

11. UNA STANNARD, *MRS MAN I* (1977) [hereinafter, STANNARD, *MRS MAN*]; see also Anthony, *A Spouse*, *supra* note 3, at 192 ("English custom developed such that women tended to adopt the surnames of their husbands."). For a discussion of surnames in England before the thirteenth century, see Deborah Anthony, *In the Name of the Father: Compulsion, Tradition, and Law in the Lost History of Women's Surnames*, 25 J. JURIS. 59, 61 (2015) [hereinafter Anthony, *In the Name of the Father*] (discussing surnames in England from 1000 until 1600); Mahoney Frandina, *supra* note 2, at 161-62 (discussing surnames in England before the thirteenth century).

12. Shirley Raissi Bysiewicz & Gloria Jeanne Stillson MacDonnell, *Married Women's Surnames*, 5 CONN. L. REV. 598, 599-601 (1973) (discussing surnames under the common law); Anthony, *A Spouse*, *supra* note 3, at 190 ("American legal and social custom on names was handed down from the common law of England."); Emens, *Changing Name Changing*, *supra* note 9, at 771 ("[W]omen plainly adopted their husbands' names by custom but not by legal mandate.").

13. *Chapman v. Phx Nat'l Bank*, 85 N.Y. 437, 449 (1881) ("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."); Raissi Bysiewicz & Stillson MacDonnell, *supra* note 12, at 602 (noting no legal requirement, but a "statutory presumption of a woman's name change").

14. STANNARD, *MRS MAN*, *supra* note 11, at 124 (noting laws in Massachusetts, Kentucky, and Vermont); see also Omi, *The Name of the Maiden*, 12 WIS. WOMEN'S L.J. 253, 256 (1997) ("Several states compelled the married woman to register to vote under her husband's name."); Emens, *Changing Name Changing*, *supra* note 9, at 772 ("Custom became law by a series of cases in the late-nineteenth and early-twentieth century. These cases built dicta upon dicta until many states had plainly declared in case law or by statute that married women's ability to engage legally in certain activities—such as driving or voting—was dependent on her bearing her husband's name.").

15. Courtney G. Joslin, *Discrimination In and Out of Marriage*, 98 B.U. L. REV. 1, 45 (2018) ("Accordingly, during the late 1960s and 1970s, increasing numbers of women began retaining their maiden names after marriage. This action was viewed as a powerful rejection of the long-standing principle that wives merged into their husbands upon marriage.").

requiring married women to use their husbands' names on drivers licenses.<sup>16</sup> Other than Hawaii,<sup>17</sup> states never required women to legally change their surnames at marriage. However, women were essentially required to do so by a legal and social system that assumed they would take their husbands' name.<sup>18</sup>

Women challenged the laws by bringing lawsuits and proposing legislation that would allow married women to retain maiden names.<sup>19</sup> Feminists alleged various constitutional violations, including violations of the First Amendment and the Fourteenth Amendment Equal Protection and Due Process Clauses.<sup>20</sup> In particular, feminists argued that conditioning women's rights on their use of a husband's name—such as the right to vote or obtain a drivers license—was unequal treatment and intruded on fundamental rights.<sup>21</sup> Initially, the male-dominated legislatures and courts failed to make legal changes that would allow women greater surname choice. Particularly noteworthy is that several states debated—and unanimously rejected—legislation in the 1970s that would have allowed broad surname choice at the time of marriage, both for women and men. For example:

During the 1973 Legislative Session a bill was introduced in the New York State Assembly which would amend the Domestic Relations Law to allow a husband and wife to declare on their marriage license the name each chooses to use after marriage. The bill offered the married couple three options: to retain their own names, to choose the name of one spouse or to choose a combination of both names. . . . The bill died in committee.<sup>22</sup>

Similar legislation was proposed in a number of other states in the early 1970s. In 1971 the Washington legislature rejected a bill that allowed a bride to adopt a combined name and provided "the option for both [husband and wife]

16. *Forbush v. Wallace*, 341 F. Supp. 217, 219 (M.D. Ala. 1971), *aff'd without comment*, 405 U.S. 970 (1972). Omi Morgenstern Leissner (publishing under the name "Omi") argues that "[f]eminist support for maiden-name rights was galvanized as a result of the 1971 ruling in *Forbush v. Wallace*." Omi, *supra* note 14, at 258.

17. Only Hawaii actually required a woman to adopt her husband's name at marriage. HAW. REV. STAT. § 574-1 (1968). UNA STANNARD, *MARRIED WOMEN V. HUSBANDS' NAMES: THE CASE FOR WIVES WHO KEEP THEIR OWN NAME* 13 (1973) [hereinafter, STANNARD, *MARRIED WOMEN*]. See also Kelly Snyder, *All Names Are Not Equal: Choice of Marital Surname and Equal Protection*, 30 WASH. U. J.L. & POL'Y 561, 564 n.16 (2009) ("Hawaii was the only state to ever statutorily require women to change their last names to their husbands' upon marriage. This was apparently for reasons of westernization, and the law has since been superseded.").

18. Raissi Byziewicz & Stillson MacDonnell, *supra* note 12, at 598 ("There are numerous state statutes and administrative provisions that act to discourage a married woman from retaining her maiden name by reflecting a presumption that upon marriage she will 'naturally' assume her husband's surname.").

19. Joan S. Kohout, *The Right of Women to Use Their Maiden Names*, 38 ALB. L. REV. 105, 105-06 (1973).

20. Lois B. Gordon, *Pre-Marriage Name Change, Resumption and Reregistration Statutes*, 74 COLUM. L. REV. 1508, 1511-13 (1974); Kohout, *supra* note 19, at 119.

21. Gordon, *supra* note 20, at 1511-13.

22. Kohout, *supra* note 19, at 118.

to choose any name.”<sup>23</sup> That same year California rejected a similar bill that also allowed a bride to adopt her mother’s maiden name.<sup>24</sup> Although these bills with more expansive choices were uniformly rejected, by the 1970s feminists achieved a number of legislative and litigative victories, and a marrying woman had earned a choice: she could keep her maiden name after marriage or take that of her husband.<sup>25</sup> A third option—hyphenating the two surnames—also became a popular option for women during the 1970s and 1980s.<sup>26</sup>

Despite these hard-won options, modern American brides strongly favor adopting a groom’s name, doing so between seventy-three percent<sup>27</sup> and ninety percent<sup>28</sup> of the time. In contrast, only three percent of American men change their surname at marriage.<sup>29</sup> Scholar Elizabeth F. Emens explains the continuation of the “traditional” naming scheme by saying the changes in the 1970s turned “a *mandatory* regime” into “a *default* regime.”<sup>30</sup> Popular culture reflects this default regime by using the idea of a bride adopting her groom’s

23. *Id.* at 118 (citing S.B. 503, 1971 Leg., 42d Sess. (Wash. 1971)). Wash. S. B. No. 503, §1 (42d Reg. Sess. 1971)).

24. *Id.* (citing Assem. 729, 1971 Leg., Reg. Sess. (Cal. 1971)).

25. Suzanne A. Kim, *Marital Naming/Naming Marriage: Language and Status in Family Law*, 85 IND. L.J. 893, 910 (2010) [hereinafter Kim, *Marital Naming*] (“To the extent that the goal of the marital-names battles was gaining state recognition of women’s equality, the popular wisdom is that this goal has been reached because women now formally have the power to choose.”); Omi, *supra* note 14, at 265–67 (discussing reforms which occurred because of feminist activism in the 1970s); Rosensaft, *supra* note 7, at 186 (“Since the early 1970s, feminist groups have, for the most part, successfully fought the male dominated practice of women being forced to adopt their husband’s name upon marriage.”). *See also* Joslin, *supra* note 15, at 46–47 (discussing feminist arguments and victories in the 1970s).

26. Rachel R. Stoiko & JoNell Strough, ‘Choosing’ the Patriarchal Norm: Emerging Adults’ Marital Last Name Change Attitudes, Plans, and Rationales, 34 GENDER ISSUES 295, 295–96 (2007) (noting that a key part of second-wave feminism was women keeping or hyphenating maiden names).

27. Google Consumer Survey, *What did you do with your last name when you married your first (or only) spouse?*, <https://surveys.google.com/reporting/question?hl=en&survey=tpjh7dfv56ff2&question=2&raw=false&transpose=false&filter=gen%3AFemale&tab=chart&synonyms=true> (last visited Feb. 18, 2019). *See also* Claire Cain Miller and Derek Willis, *A Question of Identity: Maiden Names, on the Rise Again*, N.Y. TIMES (June 27, 2015), <https://www.nytimes.com/2015/06/28/upshot/maiden-names-on-the-rise-again.html> (citing the Google Consumer Survey).

28. Suzanne A. Kim & Katherine A. Thurman, *Social Rites of Marriage*, 17 GEO. J. GENDER & L. 745, 753 (2016) (“By some accounts, some ninety percent of married American women adopt their male spouses’ last names upon marriage.”); Kim, *Marital Naming*, *supra* note 25, at 911.

29. Emily Fitzgibbons Shafter & MacKenzie A. Christensen, *Flipping the (Surname) Script: Men’s Nontraditional Surname Choice at Marriage*, 39 J. FAMILY ISSUES 3055, 3063 (2018); *see also* Elizabeth Aura McClintock, *Should Women Change Their Name When They Get Married?*, PSYCHOLOGY TODAY (Sept. 6, 2018), <https://www.psychologytoday.com/us/blog/it-s-man-s-and-woman-s-world/201809/should-women-change-their-name-when-they-get-married>.

30. Emens, *Changing Name Changing*, *supra* note 9, at 763. And this default regime is strong. *See* Stoiko & Strough, *supra* note 26, at 297–98 (collecting studies about college women’s intentions to adopt their future husbands’ names).



name as a reference to marriage. A 2016 love song asks “what if” a number of times, ending with “what if one of these days baby I’d go and change your name” as a reference to marriage.<sup>31</sup> In the last several years an astounding number of wedding-related products include the phrase, “He stole my heart, so I’m stealing his last name.”<sup>32</sup>

While most Americans continue to follow traditional surname choice at marriage and are likely happy with the surname options available to them, it is clear that many other Americans are seeking expanded surname options. Grooms are increasingly choosing to adopt their wives’ surnames as their own,<sup>33</sup> and denying that option to men raises a Fourteenth Amendment equal protection issue. In addition, same-sex couples are now legally able to wed and rarely follow the traditional practice of one spouse adopting the other’s surname at marriage.<sup>34</sup> Society is now demanding more options for marital surnames, but the laws have not kept pace.<sup>35</sup>

State laws that explicitly grant women an opportunity to change surnames at the time of marriage, but deny that opportunity to men violate the Fourteenth Amendment’s equal protection clause. Originally, the feminist fight was for women to have the choice to maintain a maiden name, yet as the laws changed to allow women options—maintaining a maiden name, adopting a groom’s name, or even combining the two names through hyphenation—men began

31. KANE BROWN, *WHAT IFS* (Sony Music 2016).

32. Search Results for “He Stole My Heart So I’m Stealing His Last Name.” ETSY, <https://www.etsy.com/> (search for “he stole my heart so I’m stealing his last name.”) Equivalent results can be found on Pinterest; <https://www.pinterest.com/search/pins/?q=he%20stole%20her%20heart%2C%20she%20stole%20his%20last%20name&rs=typed>.

33. Rosensaft, *supra* note 7, at 187 (“The trend of men giving up their own names and taking their wives’ surnames has been growing in recent years in the United States.”). See also Harry Yorke, *One in Ten Grooms Now Takes Their Wife’s Surname, Study Finds*, THE TELEGRAPH (Nov. 1, 2017), <https://www.telegraph.co.uk/news/2017/11/01/one-ten-grooms-now-take-wives-surname-study-finds/> (discussing the findings of a study of British couples wherein ten percent of grooms report adopting their bride’s surname).

34. Kim & Thurman, *supra* note 28, at 750 (“In the group of sixty-nine individuals comprising thirty-five married same-sex couples interviewed, name-changing has seldom occurred and, interestingly, the transition to legal marriage has generally failed to occasion serious discussion of whether to make surname changes.”). See also Caroline Kitchener, *Why Don’t More Men Take Their Wives’ Last Names?*, THE ATLANTIC (July 25, 2018), <https://www.theatlantic.com/family/archive/2018/07/why-dont-more-men-take-their-wives-last-names/565898/> (“While many straight couples fall back on the option of a woman taking her husband’s last name, same-sex couples have no analogous default.”).

35. Suzanne Schlosberg, *COMMITMENTS: In the Name of Love: Should a newly married woman change her last name? Should he take her name? Couples can’t wait for society to catch up, so they’re making their own rules*, L.A. TIMES (May 22, 1995), [http://articles.latimes.com/print/1995-05-22/news/ls-4738\\_1\\_married-woman](http://articles.latimes.com/print/1995-05-22/news/ls-4738_1_married-woman) (“These days, a married woman might remain Jane Doe or become Jane Doe Snow, or Jane Doe-Snow. Her husband might change his name, too, becoming Joe Snow-Doe, Joe Doe-Snow—or even Joe Doe. Some couples are choosing to merge their last names, becoming Jane and Joe Snowdoo.”).

wanting those same options.<sup>36</sup> Even in the 1970s, feminists recognized that their fight for choice left men with fewer choices.<sup>37</sup> Today, scholarship on the topic exhibits a general—but not unanimous—view that the current marriage surname change laws discriminate against men.<sup>38</sup>

Despite advocacy efforts on behalf of a man's rights to adopt a wife's name, at the present only nine states explicitly allow men to change their surnames at marriage.<sup>39</sup> For the remaining forty-one states, some allow men to change their surname at marriage even without statutory authorization, but others do not.<sup>40</sup> In those states, men must go through a more intensive name-change process by petitioning a court.<sup>41</sup> Scholars correctly argue that requiring men to go through a court name-change procedure to hyphenate or adopt a spouse's name is an equal protection violation because women can simply adopt a new name at the time of marriage.<sup>42</sup> This was the argument made by Mike Buday, a California groom who sued the state in 2007 after he was unable to adopt his bride's name through the marriage license.<sup>43</sup> Buday argued that although he could have gone through the statutory name-change process to adopt his wife's name, being required to go through that expensive and time-

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36. Rosensaft, *supra* note 7, at 187.

37. See, e.g., Raissi Byziewicz & Stillson MacDonnell, *supra* note 13, at 599 ("It should be noted that women have a wider choice of the use of name than men have").

38. At least one recent publication has rejected men's decreased choice as discrimination against men and rather articulates it as discrimination against women. Anthony, *A Spouse*, *supra* note 3, at 207 ("In essence, women are still denied what men have always enjoyed: the right to have a spouse adopt their name at marriage.").

39. CAL. FAM. CODE § 306.5(b)(1) (West 2016) ("One party or both parties to a marriage may elect to change the middle or last names, or both[.]"); GA. CODE ANN. § 19-3-33.1 (West 1996) (allowing "[a] spouse [to] use as a legal surname his or her" current, former, or spouse's surname); HAW. REV. STAT. § 574-1 (2011) (allowing "each of the parties to a marriage" surname options); KAN. STAT. ANN. § 23-2506(a) (West 2014) ("At the time of marriage, a person may designate a new legal name"); LA. CIV. CODE ANN. ART. 100 (1987) (allowing "a married person [to] use the surname of either or both spouses as a surname"); MASS. GEN. LAWS CH. 46, § 1D (West 2003) ("Each party to a marriage may adopt any surname"); N.H. REV. STAT. § 5-C:41(II-a.(a)) (2005) (allowing surname change for "either party" and using language of "his or her"); N.Y. DOM. REL. LAW § 15(1)(b)(3) (West 2013) ("One or both parties to a marriage may elect to change the surname by which he or she wishes to be known"); N.D. CENT. CODE ANN. § 14-03-20.1(3) (West 1995) ("One party or both parties to a marriage may elect to change the surname by which that party wishes to be known").

40. See, e.g., KY. REV. STAT. § 402.230, n.1 ("County court clerk has no authority to change the name of the groom as indicated in the marriage license records, even though a court in a foreign jurisdiction has directed the name change; but the affected groom can petition the local circuit court for such marriage records change of name."); See also Mahoney Frandina, *supra* note 2, at 162 (discussing his ability to change legal documents to a new last name in Ohio, a jurisdiction that does not officially recognize the right of a man to change his name at marriage).

41. Mahoney Frandina, *supra* note 2, at 162-63 ("[M]any states do not allow a man to change his name without statutory authorization and require a man to go through the statutory name change process.").

42. See, e.g., Rosensaft, *supra* note 7, at 195-97.

43. Kolesnikov, *supra* note 7, at 430.

intensive process because he was a man was an equal protection violation.<sup>44</sup> Before Buday's claim could be adjudicated, California passed its gender-neutral law.<sup>45</sup> Yet in the remaining states that provide no way for grooms to change surnames at the time of marriage, constitutional violations continue.

The surname options currently provided by many states discriminate against men, and are inadequate for same-sex couples.<sup>46</sup> Although same-sex marriage is available in all fifty states, states have failed to update marriage licenses and marriage laws. Many marriage licenses continue to have a line for a "groom" and a line for a "bride."<sup>47</sup> Most states either have sex-specific statutory language about marital name change, or sex-based norms based on tradition. In both instances, states need to make surname change at marriage easy for both different-sex and same-sex couples. The little data that exists shows that most same-sex couples do not think sharing a surname is important to a marriage.<sup>48</sup> And for same-sex couples who do want to share a surname, non-traditional options—like blending surnames—may feel more appropriate.<sup>49</sup>

The now-standard sex-based system is inadequate for any couple who wants to blend their surnames at marriage. Couples may be driven to blend surnames for a variety of reasons. For many a woman, choosing between her husband's name and her father's name is not satisfactory: no matter what she chooses, she will be bearing a name passed patrilineally through many generations,<sup>50</sup> but by blending surnames a woman is able to pass her own name to her children. Other couples want to avoid traditional gender norms, want to drop surnames that are burdensome, or simply want to forge a new identity together. For all of these couples, greater options for surname change at marriage are needed; in particular, the option to blend surnames. What follows

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44. *Id.*

45. CAL. FAM. CODE § 306.5 (West 2016); Kolesnikov, *supra* note 7, at 430.

46. Elizabeth F. Emens, *Marriage Options: A Simple Hyphen Will Do*, N.Y. TIMES (Jul. 3, 2011, 7:00 PM), [hereinafter "Emens, *Marriage Options*"], <https://www.nytimes.com/roomfordebate/2011/07/03/marriage-the-next-chapter/marriage-options-a-simple-hyphen-will-do> (noting that the sex-based and patrilineal transmission of surnames "doesn't provide any guidance for same-sex couples"); McClintock, *supra* note 29 ("This tradition [of brides adopting grooms' names] is also profoundly heterosexist, leaving same-sex couples with no clear norms regarding surname choice.").

47. See, e.g., North Dakota Marriage License, Jesse Hackey and Hannah Alsgaard, July 14, 2015, *infra* Appendix A.

48. Kim & Thurman, *supra* note 28, at 759-60.

49. Susong, *supra* note 10 ("Many same-sex couples are leading the way on name meshing, as it feels more representative of their approach to marriage."); see also Kim, *Marital Naming*, *supra* note 25, at 941 ("To the extent that marital name change is currently gendered, same-sex marital naming presents the possibility of disrupting the assumption that men keep and women change.").

50. STANNARD, MARRIED WOMEN, *supra* note 17, at 49 ("When Lucy Stone died in 1893, an obituary noted that 'In becoming a married woman, Miss Stone entered a protest against the convenient practice of adopting the husband's name, and continued to wear to the end the name imposed by her father on her mother.'").

is a survey of current laws on surname blending and a legislative proposal which would make surname blending available for all marrying couples.

## PART II: CURRENT LEGISLATION ALLOWING SURNAME BLENDING AT MARRIAGE

Four states: California,<sup>51</sup> Kansas,<sup>52</sup> New York,<sup>53</sup> and North Dakota<sup>54</sup>—currently provide a surname-blending option at the time of marriage. This Part describes the law in California, Kansas, New York and North Dakota, the four states that clearly provide a surname blending option and discusses the legislative history of each statute.

Three other states—Iowa,<sup>55</sup> Massachusetts,<sup>56</sup> and Minnesota<sup>57</sup>—allow marrying couples to adopt any name. The statutes in those states allow surname blending, but do not explicitly make that option clear to marrying couples. Iowa's statute allows a marrying person to adopt any name at the time of marriage, but does not provide a list of options to those marrying.<sup>58</sup> Minnesota law requires the marriage license to reflect "the full names the parties will have after the civil marriage is entered into" and does not restrict what that name may be.<sup>59</sup> Yet much like Iowa, despite allowing any surname to appear, the law neither prompts blended surnames nor provides specific guidance to couples wishing to blend their names. More concerning are the Massachusetts statutes which allow "[e]ach party to a marriage to adopt any surname," but follow up with examples that do not include a blending option.<sup>60</sup> The code provides the following examples: "the present or birth-given surname of either party, may retain or resume use of a present or birth-given surname, or may adopt any hyphenated combination thereof."<sup>61</sup> Although not misleading, the Massachusetts law directs marrying couples to more traditional surname options, not including blending. I applaud all three states for providing surname options to marrying couples and reflecting those choices on the marriage license, but I think California, Kansas, New York, and North Dakota have

51. CAL. FAM. CODE § 306.5 (West 2016).

52. KAN. STAT. ANN. § 23-2506 (West 2014).

53. N.Y. DOM. REL. LAW § 15 (West 2013).

54. N.D. CENT. CODE § 14-03-20.1 (West 1995).

55. IOWA CODE ANN. § 595.5 (West 1988).

56. MASS. GEN. LAWS ANN. ch. 46, § 1D (West 2003).

57. MINN. STAT. ANN. § 517.08 (West 2001).

58. IOWA CODE ANN. § 595.5 (West 1995) ("A party may indicate on the application for a marriage license the adoption of a name change. The names used on the marriage license shall become the legal names of the parties to the marriage. The marriage license shall contain a statement that when a name change is requested and affixed to the marriage license, the new name is the legal name of the requesting party."); *see also* IOWA ADMIN. CODE r. 641-98.4 (2010) (noting requirements for a marriage license application, but not providing a list of surnames).

59. MINN. STAT. ANN. § 517.08 (West 2001).

60. MASS. GEN. LAWS ANN. CH. 46, § 1D (West 2003).

61. *Id.*

statutes that most clearly communicate the freedom to blend surnames. Accordingly, what follows is an in-depth discussion of the laws in those four states.

California, Kansas, New York, and North Dakota provide a similar list of options for marrying couples. Each state allows for both marrying individuals to keep their own surnames, to adopt the surname of the other spouse, to combine both surnames (whether or not they are hyphenated), or to blend parts of each surname into a new surname. Different language is employed to describe the last option. California allows a marrying couple to adopt “[a] name combining into a single last name all or a segment of the current last name or the last name of either spouse given at birth.”<sup>62</sup> Kansas allows a person to designate a new legal surname at the time of marriage, and “[s]uch name may include a combination of the person’s prior existing name and the prior existing name of such person’s spouse, or derivative versions thereof.”<sup>63</sup> New York and North Dakota have identical language allowing a marrying couple to adopt “a name combining into a single surname all or a segment of the premarriage surname or any former surname of each spouse.”<sup>64</sup>

The rest of this Part is dedicated to an in-depth statutory history for the four states that specifically authorize surname blending on the marriage certificate. The statutory history is arranged by state in chronological order of initial passage. New York first passed a law in 1985,<sup>65</sup> which was largely mirrored by North Dakota in 1993.<sup>66</sup> Kansas and California adopted very similar statutes in 2007 within months of one another.<sup>67</sup>

### A. *New York Legislative History*

The first state to adopt a surname-blending statute was New York in 1985 with Senate Bill 110 and Assembly Bill 30005,<sup>68</sup> which passed into law and became effective on September 1, 1985.<sup>69</sup> Senate Bill 110 included a number of changes to New York’s Domestic Relations Code. It required the use of a uniform marriage license that needed to include a blank line to indicate the surname to be used after marriage.<sup>70</sup> It also required the marriage license application to notify marrying couples of their naming options, which include

62. CAL. FAM. CODE § 306.5(b)(2)(C) (West 2016).

63. KAN. STAT. ANN. § 23-2506(a) (West 2014).

64. N.Y. DOM. REL. LAW § 15(3)(iii) (West 2014); N.D. CENT. CODE § 14-03-20.1(3)(c) (West 1995).

65. S. Res. 110, 1985 Leg., 208th Sess. (N.Y. 1985).

66. H. R. 1306, 53rd Leg. Assemb., Reg Sess. (N.D. 1993).

67. S. 88, 82d Leg., Reg. Sess. (Kan. 2007); A. B.102, 2007 Cal. Assemb., Reg. Sess. (Cal. 2007).

68. S. 110, 1985 Leg., 208th Sess. (N.Y. 1985). *See also* Emens, *Marriage Options*, *supra* note 46.

69. LEGIS. DIGEST—BILL SUMMARIES IN SENATE, S. 110, 208th Sess. (N.Y. 1985)

70. S. 110, 1985 Leg., 208th Sess. (N.Y. 1985).

keeping individual prior surnames, adopting the current or former surname of either spouse, blending surnames, or combining surnames if separated by a hyphen.<sup>71</sup> The bill stated that the marriage license itself provided proof of the legal name change, but adopting a new surname at marriage did not take away the right to change names through the common law at a later date.<sup>72</sup> Finally, Senate Bill 110 specifically authorized men to revert to a prior name at divorce and annulment.<sup>73</sup>

Senate Bill 110 was proposed by Republican Senator John J. Marchi who wrote a memorandum in support of the bill.<sup>74</sup> His "Reasons for Support" statement explained:

The Common Law clearly provides that anyone may change his or her name so long as there is no fraud, and that the change is accomplished simply by usage or habit. Article 6 of the Civil Rights Law provides a statutory procedure for name changes which supplements, but does not abrogate, the Common Law right to change one's name. The advantage of the statutory method is that it is speedy and definite and makes the name change a matter of public record.

Most people are unaware of their rights regarding name changes and, more specifically, of their right to change or not change their name upon marriage. Although there exists in this country a custom that women assume their husband's name upon marriage, many people no longer follow this practice—women often wish to keep their premarriage names, and some men desire to change their name when they get married. In light of these changing social customs, this legislation is necessary to inform people of their rights. It also allows men to resume the use of a former surname through the divorce decree—a right which women already have.

This legislation also provides a simple and speedy way to record and verify the name change (or lack thereof) without having to resort to the costly and inconvenient statutory procedure of obtaining a court order. Men who change their names upon marriage, and women who do not, must often deal with bureaucracies who require verification. With this legislation, the public record and verification are provided by the marriage certificates and divorce decree, and there will be no need to pay filing fees, court costs, attorn[ey's] fees, make court appearances, etc. (§240-a of the Domestic Relations Law already provides for this type of mechanism upon divorce. This legislation simply creates a marriage analogue to §240-A).<sup>75</sup>

Senator Marchi did not explain how he came up with the list of four name options, nor did he explain why the blended surname option was included. The

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71. *Id.*

72. *Id.*

73. *Id.*

74. S. B. 110 (N.Y. 1985), LEGISLATIVE HISTORY, MEMORANDUM IN SUPPORT.

75. *Id.* (citations omitted).

legislative history also includes letters of support from the New York State Council of Churches, Inc.<sup>76</sup> and the New York Civil Liberties Union.<sup>77</sup>

### B. *North Dakota Legislative History*

In 1993, North Dakota first adopted a surname-blending option with House Bill 1306.<sup>78</sup> The bill was introduced by Representative James A. Berg of Fargo "at the request of a constituent who work[ed] as a drivers license examiner."<sup>79</sup> The drivers license examiner had come to Representative Berg reporting "a recurring situation of not being able to record license applicants' names in the manner they desire[d] because of a lack of adequate documentation."<sup>80</sup> From Representative Berg's testimony, it appears that the most common problem was women wanting hyphenated surnames to appear on their licenses, but being unable to do so under state law without "court documentation of name change."<sup>81</sup> Representative Berg's testimony concluded House Bill 1306 "would allow persons wishing to be known by a particular name after marriage to have legal proof of this name choice without incurring the inconvenience and expense of seeking a name change by court order."<sup>82</sup> During the senate committee meeting, the New York statute was explicitly discussed,<sup>83</sup> though there is no recorded history of the exact role the New York statute played in the drafting of House Bill 1306. Senator Jane Summers was the sole nay vote on the bill and spoke against it as discriminatory against women.<sup>84</sup> Senator Summers acknowledged "[t]here may be an occasional male who wishes to change his name," but she described House Bill 1306 as "[o]ne more burden on the female" because it "forces the woman who is marrying to make decisions about her name that a male is never called on to make."<sup>85</sup>

As enacted, House Bill 1306 amended §14-03-07, North Dakota's marriage licenses statute, to include a surname-adoption section that was labeled as a

76. S.B. 110, LEGIS. HISTORY, LETTER FROM JON L. REGIER, EXEC. DIR. OF N.Y. COUNCIL OF CHURCHES, INC., TO THE HONORABLE GERALD C. CROTTY, COUNSEL TO THE GOVERNOR (July 3, 1985), (N.Y. 1985).

77. S.B. 110, LEGIS. HISTORY, LETTER FROM MADELINE KOCHEN, LEGIS. COUNSEL FOR THE N.Y. CIVIL LIBERTIES UNION, TO THE HONORABLE GERALD C. CROTTY, COUNSEL TO THE GOVERNOR (June 27, 1985), (N.Y. 1985).

78. H.B. 1306, 1993 Leg., 53rd Assemb. (N.D. 1993).

79. Testimony by Rep. James A. Berg (March 2, 1993) (part of 1993 N.D. H.B. 1306 Legislative History).

80. *Id.*

81. *Id.*

82. *Id.*

83. N.D. S., *Standing Committee Minutes on H.B.1306* (March 3, 1993) (part of 1993 N.D. H.B. 1306 Legislative History) (indicating that Senator Wayne Stenehjem said: "I agree that common law is sufficient, but both departments and people won't follow it. Perhaps a notice requirement similar to New York's could be used, which indicates that the common law method is acceptable.").

84. *Hearing Testimony by Jane Summers: Hearing on N.D. H.B. 1306* (1996).

85. *Id.*

“notice to applicants” and would be attached to each marriage application.<sup>86</sup> This notice began by acknowledging the common law rule that “[e]very person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud.”<sup>87</sup> The bill then specified that marriage does not automatically change a person’s surname and that a married couple can have different surnames.<sup>88</sup> Then, the “notice to applicants” provided the exact same list of surname options from New York’s 1985 Law, including the option to blend surnames.<sup>89</sup> The last several provisions of House Bill 1306 specified that a North Dakota marriage license needed to contain a blank line for entering a new surname, stated that filling out the “new surname” line “constitutes proof that the use of the new surname . . . is lawful,” and noted that even parties adopting a new surname at marriage could later adopt a “different surname through usage” under the common law.<sup>90</sup>

Two years later, in 1995, the North Dakota legislature enacted House Bill 1069, which moved the 1993 surname “notice to applicants” to a new code section.<sup>91</sup> Senator Wayne Stenehjem proposed several amendments, including one that created a new section of the North Dakota Century Code.<sup>92</sup> This new section, ultimately codified at § 14-03-20.1, was titled “Surname options” and was nearly identical to the surname options added under the 1993 “notice to applicants” provision.<sup>93</sup> Section 14-03-20.1 has been amended once since its creation. In 2011 House Bill 1084 amended the list of surname options to allow a combination name separated by a space,<sup>94</sup> whereas the 1993 and 1995 statutes only allowed combination names separated by a hyphen.<sup>95</sup> This “new” space option was included in the 2011 amendments because counties already generally allowed it; this amendment simply brought the law up-to-date with what was actually happening with marriage licenses.<sup>96</sup>

86. 1993 N. D. LAWS 143 (amending N.D. CENT. CODE § 14-03-17).

87. *Id.* at 3(a).

88. *Id.* at 3(b).

89. *Id.*, see also 1985 N.Y. Laws 283 at 2(b)(3).

90. 1993 N. D. LAWS 143 at (3)(c)-(e).

91. House Bill 1069 was introduced to amend state law “relating to residency requirements for marriage licenses.” LEGIS. HISTORY 21, H.B. 1069, 54th Assemb., Reg. Sess. (N.D. 1995).

92. LEGISLATIVE COUNSEL STAFF FOR SENATOR W. STENEHJEM PROPOSED AMENDMENTS TO ENGROSSED H. NO. 1069 (Feb. 22, 1995).

93. H.B. 1069, 54th Assemb., Reg. Sess. (N.D. 1995). The only major addition was subsection (6) which reads: “Compliance with the surname provisions of this section is sufficient to meet the satisfactory evidence requirements of [obtaining a drivers license].”

94. H.B. 1084, 62nd Assemb., Reg. Sess. (N.D. 2011). No changes have occurred in North Dakota since 2011. North Dakota is due to update its marriage license to remove “bride” and “groom” in the wake of *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604-05 (2015), but has yet to make the license gender-neutral.

95. See 1993 N.D. Laws 143 (H.B. 1306) (amending N.D. CENT. CODE § 14-03-17); H.B. 1069, 54th Assemb., Reg. Sess. (N.D. 1995).

96. N.D. S. Jud. Comm., Minutes on H.B. 2084 at 9 (March 2, 2011) (Written Testimony by Darin Meschke, 15, 17, January 5, 2011) (“The first change we are requesting



### C. *Kansas Legislative History*

Kansas authorized surname blending in 2007 through Senate Bill 88.<sup>97</sup> Senate Bill 88 was originally introduced to ease the restoration of a spouse's prior surname after divorce<sup>98</sup> by allowing a court to change a divorcee's name back to a prior surname even after the divorce action had been closed. The Senate Judiciary Committee approved this version of Senate Bill 88,<sup>99</sup> but the House Judiciary Committee made a major amendment.<sup>100</sup> Republican Representative Kevin Yoder<sup>101</sup> proposed an amendment that would create a blank line on the marriage license where a marrying individual could indicate the name to be used after marriage.<sup>102</sup> Representative Yoder made that amendment because of his personal experience in surname change at marriage.<sup>103</sup> When Representative Yoder married in 2005, his wife was unable to adopt her middle name as her first name through the marriage license because the DMV thought that change did not follow the allowed "custom" of name changes generally approved by the DMV.<sup>104</sup> Representative Yoder "found it odd that [his] wife's name choice was based upon a custom of the person who was helping her at the counter [and that] the DMV really had any role in the name change process. It didn't seem like an official or proper way to get that done."<sup>105</sup> This experience inspired Representative Yoder to propose the amendment that would have the name change occur on the official marriage license and remove that decision from the DMV.<sup>106</sup>

Representative Yoder's amendment also provided the following list of surname options: "a combination of the person's prior existing name and the

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... would allow individuals getting married to combine their last names and separate those names with a space. Current state law requires the use of a hyphen exclusively; however, the common practice in most of our counties has been to allow the use of a space. This change in the law would allow individuals a bit more flexibility when combining their names after marriage.").

97. S.B. 88, 2007 Sen. (Kan. 2007).

98. KAN. S. JUD. COMM., MINUTES ON S.B. 88, S.B. 88 Leg. Sess. (2007) (Jan. 31, 2007).

99. *Id.*

100. *Id.*

101. Representative Yoder served in the United States House of Representative from 2011 until 2019. He represented the 3<sup>rd</sup> District of Kansas. Before representing Kansas's 3<sup>rd</sup> congressional district, Representative Yoder served as a State Representative for the 20<sup>th</sup> District from 2003-2011. CONGRESSMAN KEVIN YODER, yoder.house.gov (last visited Nov. 11, 2018).

102. KAN. H. JUD. COMM., MINUTES ON S.B. 88, S.B. 88 Leg. Sess. (2007) (Mar. 19, 2007).

103. Email from Kevin Yoder, Partner at HHQ Ventures, to Author (March 13, 2019, 12:33 AM CDT) (on file with author).

104. *Id.*

105. *Id.*

106. *Id.*

prior existing name of such person's spouse, or derivative versions thereof."<sup>107</sup> Although North Dakota and New York had similar laws at the time, and California was considering one, Representative Yoder does not recollect consulting any particular state in drafting the legislation. He also did not contemplate that the language of "derivative versions thereof" being used for a blended surname, but acknowledges the law should cover blended surnames.<sup>108</sup> The official legislative history does not include any opposition to the bill, and Representative Yoder only notes there was some concern that individuals would change names to avoid creditors.<sup>109</sup> However, he "felt it was unlikely that someone would go through the legal process of getting married for that purpose so felt [the creditor avoidance] was not a compelling argument."<sup>110</sup> The version of Senate Bill 88 with Representative Yoder's amendment was ultimately approved by the full legislature, and then approved by the governor on April 20, 2007.<sup>111</sup>

#### D. California Legislative History

California adopted its current law with Assembly Bill 102, known as the Name Equality Act of 2007.<sup>112</sup> At the time the Name Equality Act was introduced, the ACLU was in the midst of litigating a Fourteenth Amendment equal protection lawsuit against California on behalf of Michael Buday, a groom who was unable to use his marriage license to adopt his wife's surname,<sup>113</sup> because before 2007, only brides could change surnames on a California marriage license<sup>114</sup> and each county drafted its own marriage licenses.<sup>115</sup> While the actual legislation was broad, the case was repeatedly billed as an issue of gender equality.<sup>116</sup>

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107. KAN. S. JUD. COMM., MINUTES ON S.B. 88, *Proposed Amendment by Representative Yoder* at 25, S.B. 88 Leg. Sess. (2007) (Mar. 6, 2007). ("Such name shall include a combination of the person's prior existing name and the prior existing name of such person's spouse, or derivative versions thereof").

108. *Id.*

109. *Id.*

110. *Id.*

111. Kan. S. Actions Report at 1, S.B. 88 Leg. Sess. (2007).

112. Name Equality Act of 2007, 567 CAL. STAT. § 1 (2007).

113. *Buday v. California Dep't of Health and Services*, No. 2:06-CV-08008 (C.D. Cal. June 25, 2008); *Name Equality Act: Hearing on A.B. 102 Before the Assemb. Comm. on the Judiciary*, 2007 Assemb. 2007-2008 Sess. 3 (Cal. 2007).

114. Kolesnikov, *supra* note 7, at 443 ("Before Chapter 567, although only women could change their names on a marriage license form, other groups could accomplish the same result through either a common law or a statutory name change.").

115. *Name Equality Act: Assemb. Floor Analysis of A.B. 102*, 2007 Assemb. 2007-2008 Sess. at 3 (Cal. 2007) ("It is up to the discretion of each county to create its marriage license form. Therefore, variations of the marriage license form exist, with different requirements for a name change.").

116. *See, e.g., Name Equality Act: Hearing on A.B. 102 Before the Assemb. Comm. on Appropriations*, 2007 Assemb. 2007-2008 Sess. 1-2 (Cal. 2007).

The Name Equality Act accomplished several tasks, including allowing individuals entering marriages or domestic partnerships to indicate a new surname on their marriage license or registration for domestic partnership and allowed that document to serve as indication of a legal name change.<sup>117</sup> The Name Equality Act also listed four options for surnames applicable in both the domestic partnership and marriage contexts—the current surname of either spouse, the surname at birth of either spouse, a hyphenated combination of both surnames, or a blended surname.<sup>118</sup> Originally, the proposed law would have allowed a marrying couple to adopt any new surname—even if unrelated to either’s surname;<sup>119</sup> however, amendments made in the senate removed that option.<sup>120</sup>

The Name Equality Act also allowed the marriage license or registration of domestic partnership to serve as sufficient evidence to change names with other governmental agencies, including the Department of Motor Vehicles.<sup>121</sup> Importantly, the Name Equality Act updated the marriage licenses in California to require a blank line where marrying spouses would indicate the surname to be used after marriage.<sup>122</sup>

The voting records reflect that there was a fair amount of opposition to the Name Equality Act,<sup>123</sup> but the legislative record only reflects opposition because it encompassed domestic partnerships, which were seen as a threat to traditional marriage.<sup>124</sup> In the Senate Floor analysis, the “Arguments in Opposition” section includes only the criticism by Concerned Women for America<sup>125</sup> that the act “is simply another attempt to legislative equivalence

117. A.B. 102, 2007 Leg., 2007-2008 Sess. (Cal. 2007).

118. *Id.*

119. *Name Equality Act: Hearing on A.B. 102 Before the S. Judiciary Comm.*, 2007 Leg., 2007-2008 Reg. Sess. 1 (Cal. 2007) (“The new name could include a new middle name, the other party’s last name, a hyphenated name combining the two last names of the parties, or even an unrelated name that does not use any of the existing middle or last names of the parties.”).

120. *Name Equality Act: S. Rules Comm. Third Reading of A.B. 102*, 2007 Leg. 2007-2008 Sess. 2 (Cal. 2007) (“Senate Floor Amendments of 9/4/07 eliminate the choice of using a brand-new name, not derived from either party’s birth or current name, for either party or both parties, and incorporate changes to certain sections that have already been enacted in 2007.”).

121. A.B. 102, 2007 Leg., 2007-2008 Sess. (Cal. 2007).

122. *Id.* at § 8 (“The forms for the marriage license shall contain spaces for either party or both parties to indicate a change in name pursuant to Section 306.5.”).

123. *AB-102 Marriage: domestic partnerships: name*, CALIFORNIA LEGISLATIVE INFORMATION, 2007-2008, [http://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill\\_id=200720080AB102](http://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=200720080AB102) (last accessed Oct. 18, 2018). The Name Equality Act passed the Assembly 46 to 26 and the Senate 24 to 15.

124. *Name Equality Act: Senate Floor Analysis for A.B. 102*, 2007 Leg., 2007-2008 Sess. 6 (2007).

125. Concerned Women for America is “the nation’s largest public policy women’s organization” and focuses on bringing “[b]iblical principles into all levels of public policy.” *About Us*, CONCERNED WOMEN FOR AMERICA, <https://concernedwomen.org/about/> (last accessed Feb. 18, 2019).

between marriage and domestic partnership—an equivalence that does not exist.”<sup>126</sup> Outside of the legislature, there was similar opposition from groups worried that allowing domestic partners to change names was “another step toward legalizing same-sex marriage.”<sup>127</sup> Non-legislature opposition also came from those who were concerned about traditional leadership roles of husbands and fathers.<sup>128</sup> For example, Randy Thomasson, president of the Campaign for Children and Families decried the act because: “Government needs to encourage men to be stronger fathers who provide for and protect their families, not to be sissy men who abdicate their masculine leadership role because they’re confused.”<sup>129</sup> Despite this opposition, final approval of the Name Equality Act occurred in October 2007.<sup>130</sup>

### PART III: A LEGISLATIVE PROPOSAL AND ITS JUSTIFICATIONS

This Part puts forth a proposal on how states should update their marital surname-change laws and their marriage licenses in order to allow surname blending at marriage. Following the proposal in subpart A, I discuss potential ramifications of my proposed laws: fraud,<sup>131</sup> administrative ease,<sup>132</sup> and changing social norms.<sup>133</sup> This Part ends with a discussion of the potential constitutional claim states could face if they fail to adopt my proposal.<sup>134</sup>

#### A. *The Proposal*

Most states need to draft new marital surname-change legislation and update marriage license forms. Although this article focuses on the blending of surnames, which I argue is an important option for marrying couples, the following legislation is broader than just authorizing the blending of surnames at marriage. The starting point for states adopting this legislation is believing that marrying couples should have the ability to easily choose a marital

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126. *Name Equality Act: Senate Floor Analysis for A.B. 102*, 2007 Leg., 2007-2008 Sess. 6 (2007).

127. Dan Walter, *Gay rights groups pursue legislation*, MERCURY NEWS (Sept. 5, 2007), <https://www.mercurynews.com/2007/09/05/gay-rights-groups-pursue-legislation>.

128. Edwin Garcia, *Bill Passed Simplifying Name Changes for Husbands, Same-Sex Couples*, MERCURY NEWS (May 8, 2007), <https://www.mercurynews.com/2007/05/08/bill-passed-simplifying-name-changes-for-husbands-same-sex-couples>.

129. *Id.* (quoting Randy Thomasson, president of The Campaign for Children and Families).

130. *AB-102 Marriage: domestic partnerships: name*, CALIFORNIA LEGISLATIVE INFORMATION, 2007-2008, [http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=200720080AB102](http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=200720080AB102) (last accessed Oct. 18, 2018) (noting the Governor approved the bill and the Secretary of State chaptered the bill on October 12, 2007).

131. *See infra* Part III.B. Fraud.

132. *See infra* Part III.C. Administrative Ease.

133. *See infra* Part III.D. Tradition and Social Change.

134. *See infra* Part III.E. Avoiding Constitutional Challenge.

surname during the marriage process. States should acknowledge that they have been making marital name change readily available for brides who wish to adopt a groom's name, but have unfairly denied all others the ability to easily change surnames. Accordingly, I propose every state do the following four things.

First: Every state should have a marital name-change statute that clearly lays out every surname option available to marrying couples. As described in Part II, California, Kansas, New York, and North Dakota do this well.<sup>135</sup> Each state lists—in their domestic relations code—the surname options available at marriage.<sup>136</sup> Six other states also list surname options in their codes, but do not include enough options.<sup>137</sup> The available options should be clearly codified, and they should be made readily available to couples wanting to marry. As such, following the model of New York, the information on surname options should be available on the marriage application.<sup>138</sup> And in our current age, the various surname options should be easily searchable online. Although state legislation is publicly available, it is not necessarily readily findable to non-lawyers. Each state's webpage that hosts information on obtaining a marriage license should also provide the surname options. All of these things—writing legislation, updating marriage applications, and posting information online—are necessary to make the surname-change options transparent to those wanting to marry. When I planned to marry in South Dakota, I could find no information about the name-change process at marriage online—even though I had the benefit of legal research databases—and had to call government offices. I spoke with several clerks in South Dakota and North Dakota, and the clerks were caught off guard by my husband's plan to change his last name, and their immediate responses were neither relevant nor helpful to me. Surname options

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135. CAL. FAM. CODE § 306.5; KAN. STAT. ANN. § 23-2506; N.Y. DOM. REL. LAW § 15; N.D. CENT. CODE § 14-03-20.1.

136. CAL. FAM. CODE § 306.5; KAN. STAT. ANN. § 23-2506; N.Y. DOM. REL. LAW § 15; N.D. CENT. CODE § 14-03-20.1.

137. GA. CODE ANN. § 19-3-33.1 (stating a spouse may use a given surname, a surname from a prior marriage, a spouse's current or former surname); HAW. REV. STAT ANN. § 574-1 (stating "the last name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse or partner, or any combination of such names, which may, but need not, be separated by a hyphen"); LA. CIV. CODE ANN. Art. 100 (stating "a married person may use the surname of either or both spouses as a surname"); MASS. GEN. LAWS ANN. ch 46, § 1D (stating "each party to a marriage may adopt any surname, including but not limited to the present or birth-given surname of either party, may retain or resume use of a present or birth-given surname, or may adopt any hyphenated combination thereof"); N.H. REV. STAT. ANN. § 5-C:41 (stating "either party may retain his or her surname prior to the marriage or change his or her surname to the surname of the other party or change the surname to a hyphenated combination of the full surnames of both parties").

138. N.Y. DOM. REL. LAW § 15(b) (laying out the information that the marriage license application must contain, including surname options). Elizabeth F. Emens points out that despite this legislative mandate not all New York counties have application forms with this information. Emens, *Marriage Options*, *supra* note 46.

should not be filtered through potentially-biased civil servants, and the options should be transparent.<sup>139</sup>

Second: Blending surnames should be an option available to all marrying couples. As discussed below, there are many reasons why a couple may choose to blend their surnames into a new marital surname.<sup>140</sup> This is not to say that surname blending should be the only, or even primary, option for marrying couples. The surname option lists in each state's legislation should include all of the following:

1. One or both spouses can keep their own surname or revert to a prior surname
2. Either spouse can adopt the surname or a prior surname of the other spouse
3. One or both spouses can combine both surnames as a new surname, this can occur with or without a hyphen connecting the two names
4. Both spouses can blend all or part of their surnames to create a new blended surname

These four options are the basic options that each state should provide. States may opt to provide additional options, but should not provide fewer. Other possibilities might include both spouses adopting a family surname that neither party has ever had<sup>141</sup> and both spouses adopting a brand new name with no relation to their family.<sup>142</sup>

Third: The surname a marrying individual intends to use should be clearly reflected on the marriage license. Most states do not have a blank line for the marital name on their marriage licenses, and this creates problems for individuals wanting to change their names. If couples either each retain their own surnames or a wife adopts the surname of her husband, these blank lines would not be needed. But, once more options are available, the marriage license should function as a mechanism to indicate actual name change,

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139. Elizabeth F. Emens writes about the problem of civil servants providing incorrect or biased information and uses the term "desk-clerk law" to refer to "what the person at the desk tells you the law is." Emens, *Changing Name Changing*, *supra* note 9, at 765. See also Brooks, *supra* note 9, at 260-61 (discussing the problems with desk clerk law with marital surname changes). Emens called clerks in different states to ask about surname options at marriage, many clerks gave incorrect or incomplete information or gave the impression that a nontraditional name change should not be undertaken. Emens, *Changing Name Changing*, *supra* note 9, at 824-25.

140. See *infra* Part III.D. Tradition and Social Change.

141. The most common choice here may be the decision to adopt one person's mother's maiden name. See, e.g., Susong, *supra* note 10 ("In the end, we both felt excited about the idea of sharing a name, so we tested out some combinations of our last names, which all amounted to a bunch of nasty sounding desserts. Instead, we decided to take his mom's last name. It felt like the perfect choice to honor her role in both of our lives.").

142. Email from Megan Wildhood, writer, to Author (April 30, 2019, 2:27 CDT) (on file with author) (noting that the couple adopted a brand new surname at the time of marriage that was unrelated to any family surname and that the couple "thought briefly about combining our given last names but couldn't come up with anything non-ridiculous sounding").

obviating the need to go through the formal name-change process in the state's court system. North Dakota's marriage license serves as an example, it provides lines for each spouse to identify the "names after marriage."<sup>143</sup>

Fourth: States should contemplate how blended names will be dealt with at the time of divorce. There are substantial issues with surname changes at divorce already,<sup>144</sup> and allowing couples to take blended names will only complicate the issue. The issues associated with surname change at divorce are outside the scope of this article, but in order to prevent additional problems, states should authorize each party to the marriage the option to either keep the blended surname or revert back to any prior surname at the end of the marriage. This is the model followed in New York where the statute allows "each party [to] resume the use of his or her premarriage surname or any other former surname" during the divorce proceeding.<sup>145</sup> Every state should adopt clear legislation allowing for name reversion in the divorce action without requiring a second court action.<sup>146</sup>

The suggested changes to state statutes and forms should be neither difficult nor problematic.<sup>147</sup> However, there are sure to be detractors.<sup>148</sup> The

143. North Dakota Marriage License, Jesse Hackey and Hannah Alsgaard, July 14, 2015, *infra* Appendix A.

144. At the time of divorce there are two major name-change issues that arise. First is whether a spouse (generally a wife) who took the other spouse's surname may revert to a prior surname. For general discussions of that topic see Raissi Byziewicz & Stillson MacDonnell, *supra* note 12, at 603-06. Second is whether a divorcing spouse may change the surname of a child. For a general discussion of child surname changes after divorce see Comment, *In the Name of the Father: Wisconsin's Antiquated Approach to Child Name Changes in Post-Divorce and Paternity Proceedings*, 83 MARQ. L. REV. 279 (1999).

145. N.Y. DOM. REL. LAW § 240-a. Other states do this as well, including Iowa. See, e.g., IOWA CODE ANN. § 598.37 (stating "either party to a marriage may request as a part of the decree of dissolution or decree of annulment a change in the person's name to either the name appearing on the person's birth certificate or to the name the person had immediately prior to the marriage").

146. Any state that still has gender-specific rules on post-divorce surnames will have to change that legislation in light of same-sex divorces. A new Illinois statute—which went into effect in 2018—creates the exact change that all states must contemplate. Public Act 100-0520 changed the laws governing surname change at marriage and made the ability to revert to a prior surname gender neutral, which allows men—whether they adopted a husband's name or a wife's name—to revert back to a prior surname at the time of divorce. Public Act 100-0520 (Ill. 2017) (codified at ILL. COMP. STAT. CH. 750 § 5/413(c)). See also Matthew Hector, *New Family-Law Act Eases Name Changing, Revises Maintenance Calculation*, 105 ILL. B.J. 16 (2017) (discussing changes made by Public Act 100-0520 (Ill. 2017)).

147. The most recent legal scholarship on marital name change is focused on men wanting to change their names at marriage. That literature identifies custom and tradition, preservation of the family unit, administrative convenience, prevention of fraud, and change is unnecessary because the injury sustained by men is minimal as reasons states should not create a gender-neutral scheme. Kolesnikov, *supra* note 7, at 437; Slade, *supra* note 7, at 341-43; Snyder, *supra* note 17, at 575; Anthony, *A Spouse*, *supra* note 3, at 214-20.

148. The only opposition was in California. See *Senate Floor Analysis for A.B. 102*, at 5-6 ("AB 102 is simply another attempt to legislate equivalence between marriage and domestic partnership – an equivalence that does not exist."). The legal changes should not be controversial because they only provide *choice* for marrying couples and do not require any

remainder of this Part analyzes potential problems as well as potential benefits with my proposal. In particular, I address four topics. First, I argue that although states should be concerned with fraud, having marrying couples indicate their surnames on the marriage license itself will prevent fraudulent name changes.<sup>149</sup> Second, I address the increased administrative burden that may come from more name changes, but again argue that having the name indicated on the marriage license will actually decrease the administrative burden.<sup>150</sup> Third, I discuss whether America's strong marital-surname tradition should be a reason to reject these changes and, assuming my proposal is adopted, what social change may come.<sup>151</sup> Finally, I end this Part with a discussion of a potential constitutional argument—based on substantive due process or privacy<sup>152</sup>—that a marrying couple blending their names could make if states fail to adopt my proposal.<sup>153</sup>

### B. *Fraud*

Preventing fraudulent name-changes is a legitimate concern.<sup>154</sup> Even under the common law—where anyone could assume any name—that choice was still limited in instances of fraud.<sup>155</sup> Fraud—particularly in relation to creditor avoidance—is frequently listed as the main argument against increasing the ease of an individual changing names. Accordingly, the concern with allowing marrying couples to blend their surnames is that more individuals will change

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particular surname choice for anyone. However, it is worth noting that individuals who do choose to blend their surnames may face personal criticism. With any non-traditional surname choice at marriage, a couple risks alienating or angering family members. See Susong, *supra* note 10 (“To this day, I sometimes receive mail from my husband’s family addressing me with my husband’s original last name. Unfortunately, when we are willing to challenge patriarchal traditions and expectations, dads can take our choices personally and end up feeling hurt.”); Sarah Von Bargen, *My Husband and I Created a New Last Name*, YES AND YES: TRUE STORY (Sep. 1, 2014), <https://www.yesandyes.org/2014/09/true-story-my-husband-and-i-created-new.html> (“We knew [that because of blending our surnames] there would be fallout on both sides of the families.”); Wildhood email, *supra* note 142 (noting negative reactions from family and church members when a marrying couple adopted an entirely new last name). After reading a draft of this article, my father made a special note that he did not have any issues with my choice of surname.

149. *Infra* Part III.B. Fraud.

150. *Infra* Part III.C. Administrative Ease.

151. *Infra* Part III.D. Tradition and Social Change.

152. The substantive due process clause, which protects—among other things—a generalized right to privacy, is located in the Fourteenth Amendment. U.S. CONST. amend. XIV, § 1.

153. *Infra* Part III.E. Avoiding Constitutional Challenge.

154. Snyder, *supra* note 17, at 577 (“Prevention of fraud, in contrast, does seem like a legitimate state interest.”).

155. Kim, *Marital Naming*, *supra* note 25, at 916 (“Common law established that all persons had the right to use and be known for all legal and social purposes by surnames they chose as long as they did not do so for fraudulent purposes.”).



their surnames during their lifetime. Although this increase may occur, there is little to no risk for an increase in fraud.

To understand why fraud would likely decrease under my proposal, it is worth starting with how most states currently handle the marital name-change process for women. The states without name-change statutes follow common law and tradition, and generally limit surname change at marriage to three options: both parties to a marriage retain their prior names; a woman takes the surname of her husband; or a woman hyphenates her name with that of her husband. In these states, the marriage license does not ask either party their naming intentions because it is assumed the man's name will not change and it is assumed the woman has limited options. The marriage license application includes blanks for the current names of the spouses, but it does not have a blank for the surnames the couple intends to use after marriage. If a woman wants to change her surname, she takes that marriage license to government agencies and private companies who allow her to assume her husband's surname.

A married woman, then, never has an official document that "changes" her surname. She does not indicate on the marriage license what her surname will be. She does not go to a court to legally change her name. Just like under the common law she just assumes—or does not assume—the surname of her husband. The states that follow this approach only allow women, not men, to change their surnames at marriage.<sup>156</sup> And the surname choice is limited—only to adopt the husband's surname or to hyphenate. To the extent that only half the population ever has the opportunity to change surnames and few options are available, these states may allege that the risk of fraud is low. However, these states do not know when they issue a marriage license if and when a woman may change her surname—and that woman may use her maiden name in some circumstances and her husband's surname in another.<sup>157</sup> Remember that under the common law, a person could simply assume a new surname.<sup>158</sup> That basic rule continues today, and many women take advantage of the ambiguity of their surname at marriage.<sup>159</sup> Some women travel through life using two different

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156. See Mahoney Frandina, *supra* note 2, at 163 ("Seventeen states give the judiciary nearly complete discretion with respect to male name changes. Others among the remaining thirty-three states have also rejected male name changes based on judicial discretion.").

157. See Katie Roiphe, *The Maiden Name Debate: What's Changed Since the 1970s?*, SLATE (Mar. 16, 2004, 12:32 PM), [http://www.slate.com/articles/arts/culturebox/2004/03/the\\_maiden\\_name\\_debate.html](http://www.slate.com/articles/arts/culturebox/2004/03/the_maiden_name_debate.html) ("You can keep your name professionally and socially, change your name for the purposes of school lists, or airline tickets, or your husband's presidential run—in short, you can maintain an extremely confusing relation to your own name (or names). There is, at least for me, an element of play to the whole thing.").

158. Kim, *Marital Naming*, *supra* note 25, at 916 (noting the common law allowed name change through usage except when there was fraud).

159. Louisiana law explicitly allows women this flexibility. LA. STAT. ANN. § 9:292 (2004) ("Notwithstanding any other law to the contrary, a woman, at her option, may use her maiden name, her present spouse's name, or a hyphenated combination thereof. If widowed, divorced, or remarried, a woman may use her maiden name, the surname of her deceased or

surnames in different situations, and some adopt their husband's name only when it is convenient to do so.<sup>160</sup> My own mother is a good example of this. Born Arlene Day, she married right out of high school and became Arlene Bowling. After being widowed in her early twenties, she reverted to Arlene Day. Then in her late twenties she married, becoming Arlene Alsgaard, or perhaps Arlene Day Alsgaard, depending on the context (and her mood). And although she never legally goes by Arlene Day, she uses that name whenever she has to spell her name (for example making restaurant reservations) or whenever she is mad at her husband (my father).

States can decrease the risk of fraud by requiring a marrying couple to indicate their new marital surname on the marriage license. This is as easy as updating the marriage application and license to include a blank line that reflects the surname(s) parties intend to adopt.<sup>161</sup> If the marriage license states the marital surname—like my marriage license did—states will know immediately what surname will be used after the marriage.<sup>162</sup> To the extent that states are concerned about multiple name changes, requiring marrying couples to declare the chosen surname will prevent fraudulent name changes years after marriage.

Another benefit of having the surname change occur at marriage—rather than sometime in the future when the wife decides to adopt the new surname—is that there is a level of governmental oversight at the time of the surname change. The clerk in North Dakota who accepted my marriage application

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former spouse, the surname of her present spouse, or any combination thereof.”). One writer—who is critical of name blending—praises this flexibility: “the beauty of the contemporary name change is that you don't have to formally decide.” Roiphe, *supra* note 157.

160. See Roiphe, *supra* note 157 (“In the end, many mothers I've encountered since becoming one myself have decided to change their names in line at the passport office, or in the post office, or in a doctor's waiting room. They are not inspired to do it out of a nostalgic affection for tradition, or some cozy idea of family, or anything so charged or esoteric; they do it because giving in to bureaucratic pressures is easier than clinging to their old identity.”).

161. The states that allow surname blending already allow for this: CAL. FAM. CODE § 306.5(b)(1) (“One party or both parties to a marriage may elect to change the middle or last names, or both, by which that party wishes to be known after solemnization of the marriage by entering the new name in the spaces provided on the marriage license application without intent to defraud.”); KAN. STAT. ANN. § 23-2506(b) (2007) (“A person's name, as designated pursuant to subsection (a), shall be recorded on the marriage license issued to such person, along with such person's name at the time of the person's application for such license, which shall be described thereon as the person's former name.”); N.Y. DOM. REL. LAW § 15 Notice to Applicants (3) (2011) (“One or both parties to a marriage may elect to change the surname by which he or she wishes to be known after the solemnization of the marriage by entering the new name in the space below.”); N.D. CENT. CODE ANN. § 14-03-20.1(3) (“One party or both parties to a marriage may elect to change the surname by which that party wishes to be known after the solemnization of the marriage by entering the new surname in the space provided on the marriage license application.”).

162. North Dakota Marriage License, Jesse Hackey and Hannah Alsgaard, July 14, 2015, *infra* Appendix A.

looked over the document in detail to ensure we had properly filled it out. When we informed her that we would be blending our names to create Haksgaard, she paused to look at her copy of the rules on surname change at marriage. She was able to verify at that point we were adopting an allowed surname, and could have inquired as to our reasons, much like judges inquire into reasons for name changes in court.<sup>163</sup>

The civil servants accepting marriage applications—and the officiants conducting weddings—can be instructed to disallow blended names if done fraudulently. Like California, New York, and North Dakota, legislation in the other states could limit marital surname changes to those that are “without intent to defraud.”<sup>164</sup> In addition, all fifty states already prohibit individuals from changing names for fraudulent purposes.<sup>165</sup> Between general laws that prohibit fraudulent name changes and a specific prohibition on blending names for fraudulent purposes, states should be able to prevent any potentially-fraudulent name changes under my proposal.

### C. Administrative Ease

Names are important: to individuals, to families, to society, and to the government.<sup>166</sup> Surnames were introduced in England in order to identify citizens and maintain social order.<sup>167</sup> Names—both given names and surnames—continue to play an important role in how the government identifies

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163. Jodi Rudoren, who blended names with her husband, wrote about her name-change process which happened in court and says: “The judge, Sophia H. Hall, was baffled. ‘Why do you want to do that?’ she demanded, inquiring whether we might be trying to escape creditors.” Jodi Rudoren, *Meet Our New Name*, N.Y. TIMES: FASHION & STYLE (Feb. 5, 2006), <https://www.nytimes.com/2006/02/05/fashion/sundaystyles/meet-our-new-name.html>. This is not to say that clerks will perfectly execute this job. However, to the extent that desk clerks give the wrong information to marrying couples, it is only that much more important for states to clearly write out—in their code, the application, and on their websites—the surname options. For a discussion of how desk clerks create problem see Emens, *Changing Name Changing*, *supra* note 9, at 823-27.

164. CAL. FAM. CODE § 306.5(b)(1) (2017); N.Y. DOM. REL. LAW § 15(1); N.D. CENT. CODE § 14-03-20.1(1) (2011).

165. Brooks, *supra* note 9, at 269 (“All fifty states have rules stating that a person cannot change his or her name for fraudulent purposes—at marriage or any other time.”).

166. See, e.g., *In re Marriage of Gulsvig*, 498 N.W.2d 725, 730 (Iowa 1993) (Snell, J., dissenting) (“One’s name is a signboard to the world. It is one of the most permanent of possessions; it remains when everything else is lost; it is owned by those who possess nothing else. A name is the only efficient means to describe someone to contemporaries and to posterity. When one dies it is the only part that lives on in the world.”); *Jech v. Burch*, 466 F. Supp. 714, 719 (D. Haw. 1979) (“The common experience of mankind, whether parents, agonizing over a name for their newborn child, or grandparents trying to participate in the naming process, or grown children living with the names their parents gave them, points up the universal importance to each individual of his own very personal label. Every society has developed a special folklore around a person’s name. One’s name becomes a symbol for one’s self.”).

167. Anthony, *A Spouse*, *supra* note 3, at 191-92.

and tracks citizens.<sup>168</sup> Administrative burden has long been a state justification to maintain the status quo regarding marital surname changes, including when women were fighting for the right to maintain maidens name after marriage.<sup>169</sup> A similar argument—that more individuals changing names will increase administrative burden—can be made about my proposed surname-blending legislation. However, states have managed to maintain records for women who changed their surnames at marriage and there is no reason to think the state could not do so for couples who decided to blend surnames. In fact, if states were to adopt my proposal that every marriage license indicate surnames prior to marriage and any surname change at marriage, the administrative burden of tracking *all* marital surname changes should actually decrease.<sup>170</sup> The few states that allow various surname changes have been using this approach for decades and there is no indication the system is administratively untenable.<sup>171</sup>

Indicating surname change on the marriage license is a move away from the common law where anyone could change names merely by adopting and consistently using that name. But this movement away from the common law system has been going on in America for over a century.<sup>172</sup> Because immigrants in the early twentieth century were so likely to change surnames within the first five years of residing in the United States, Congress authorized courts to officially change the names of immigrants during the naturalization proceedings.<sup>173</sup> The government and private companies require official

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168. MacClintock, *supra* note 8, at 295 (“Governments have an arguable interest in the tracking and identification of their citizens, and of non-citizens who visit or reside within their borders.”). The reasonable limits of government tracking and identification are for others to debate, but suffice it to say that mere identification by the government is .not nefarious. A government must be able to identify citizens in order to operate, including the collection of taxes and the provision of government benefits. *Contra* MICHEL FOUCAULT, “SOCIETY MUST BE DEFENDED”: LECTURES AT THE COLLEGE DE FRANCE 35-36 (*translated by* David Macey, 2003), [http://rebels-library.org/files/foucault\\_society\\_must\\_be\\_defended.pdf](http://rebels-library.org/files/foucault_society_must_be_defended.pdf) (criticizing government surveillance and the exercise of direct government power over individuals).

169. Omi, *supra* note 14, at 263 (discussing the state justification of administrative efficiency in early litigation over retaining maiden names); Kohout, *supra* note 19, at 120-21 (discussing the same).

170. *See supra* Part III.A.

171. *See* Brooks, *supra* note 9, at 258-59 (“In both Iowa and Minnesota, th[e] approach [of indicating names on the marriage license] has been used for years, showing that such a system is administratively possible.”).

172. To be clear, the two ways to change names are not mutually exclusive. The statutory history in New York and North Dakota make clear that those legislatures meant to only add a new way to change names, not replace the common law system. 1993 N.D. Laws Ch. 143 (H.B. 1306) at (3)(c)-(e); 1985 N.Y. Senate Bill 110 Legislative History, Memorandum in Support.

173. Naturalization Act of 1906, H.R. 15442, 59th Cong. Ch. 3592 (1st Sess. 1906) (“It shall be lawful, at the time and as a part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.”). *See also* Alicia Ault, *Did Ellis Island Officials Really Change the Names of Immigrants?*, SMITHSONIAN MAG. (December 28, 2016), <https://www.smithsonianmag.com/smithsonian->

documentation of name changes.<sup>174</sup> Currently, most states do not require a marrying couple to indicate what surnames each will use after marriage; in those states, it is unclear from the face of the marriage license what surname will be used. This ambiguity currently allows married women to operate with two different official surnames. But if a marriage license indicated the surname to be used in the future, all government agencies (and private companies) would know the legal name of the individual.<sup>175</sup> To the extent that adopting a blended surname option would actually encourage more couples to share a last name, the administrative burden could be lessened.<sup>176</sup> Institutions would be working with married couples with a common surname, and children would share the same surname with both of their parents.<sup>177</sup>

My proposed changes will not only improve administrative record-keeping for the government, those changes will simplify the name-change process for individuals. In a study of marrying same-sex couples, some couples who each maintained their prior surname cited administrative burden as a reason to avoid a surname change.<sup>178</sup> In contrast, women entering different-sex marriages cite administrative burden (particularly as it relates to dealing with children) as a reason to adopt a husband's surname.<sup>179</sup> Men are, at times, specifically

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institution/ask-smithsonian-did-ellis-island-officials-really-change-names-immigrants-180961544.

174. After I married, I set about changing my surname on all of my accounts. Some services, for example my utility providers, never needed to see a document indicating a name change. Other services did require the marriage certificate. I had to provide my marriage license in order to update my name on bank accounts, credit cards, my drivers license, and my frequent flyer accounts. *See also* Suarez, *supra* note 8, at 238 ("The Social Security Administration, the Internal Revenue Service, the Division of Motor Vehicles, insurance companies and all banking agencies require a court document before they will agree to accept a name change.").

175. Administrative ease cannot be discussed without mention of how advancing technologies should be increasing the government's ability to track citizens, including through name changes. As technology progresses and states can more easily track citizens electronically, states should be able to easily incorporate any additional name changes that occur when blended surnames are allowed. *See* O'Brien v. Tilson, 523 F. Supp. 494, 497 (E.D.N.C. 1981) ("In this age of electronic data processing, the Court cannot conclude that permitting plaintiffs to do as they wish [and assign a different surname on a birth certificate] would render it impossible or even minimally more costly or difficult for the State of North Carolina to keep track of its new citizens.").

176. A 2011 study asked Americans why they thought women *should* adopt a husband's name. One group of responses focused "on pragmatic concerns—the smooth running of day-to-day interactions and even society." Laura Hamilton, et al., *Marital Name Change as a Window into Gender Attitudes*, 25 GENDER & SOCIETY 145, 164 (2011). It appears from the example given ("As one respondent joked, women's name change 'keeps the mailman from getting confused.'") that this is really about the sharing of a family name and not about women necessarily having to adopt the husband's name. *Id.*

177. *See, e.g.,* Suarez, *supra* note 8, at 238 ("In some cases, society is simply not equipped for husbands and wives to have different names. Couples often have difficulties with mortgage applications, bank credit cards and other financial records.").

178. Kim & Thurman, *supra* note 28, at 761.

179. *Id.*

burdened with the name change process. As just one example, in Kentucky a county clerk “has no authority to change the name of the groom as indicated in the marriage license records, even though a court in a foreign jurisdiction has directed the name change.” Accordingly, a groom in Kentucky—regardless of where he marries—must go through a civil name change process, while a bride may simply use her marriage license from any state.<sup>180</sup>

Yet there is an easy solution: simply allow the marriage certificate itself to reflect and legally change surnames. The process for my husband and me was easy because—despite our non-traditional surname—that name was reflected on our marriage license.<sup>181</sup> I simply kept a copy of my marriage license handy and submitted it to the Social Security Office, the DMV, my mortgage broker, my credit card companies, my frequent flier accounts, and the list goes on.<sup>182</sup> When the blended surname is not reflected on the marriage license, chaos (or a court appearance and name change order) will ensue.<sup>183</sup> Iowa’s statute goes so far as to require that when a name change at marriage occurs, “[t]he marriage license shall contain a statement that . . . the new name is the legal name of the requesting party.”<sup>184</sup> Thus signaling to the marrying couple and everyone else that the marital name change is official.<sup>185</sup> A marriage license that clearly

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180. KY. REV. STAT. ANN. § 402-230 (note 1). Kentucky’s civil name change procedure can be found at KY. REV. STAT. ANN. § 401.010.

181. North Dakota Marriage License, Jesse Hackey and Hannah Alsgaard, July 14, 2015, *infra* Appendix A.

182. Anyone who has been through a surname change would never call the process “easy,” even if it only requires showing the marriage license. Even if the marriage license legally changes the name “it is only the first of many steps. A woman must then use the marriage certificate to register her new name with the Social Security Administration (SSA) and with her state’s Department of Motor Vehicles, re-register to vote, and apply for a new passport.” Brooks, *supra* note 9, at 255. Then there are all private records, including “credit card accounts, mailing addresses, bank accounts, insurance policies, leases, and titles to property.” *Id.* Ultimately, “[b]y the end of this process, most women [or men] will have contacted at least thirty-three different types of entities about their new name.” *Id.* I have been married for over three years and I still keep a PDF of my marriage license handy in order to change my name with private companies.

183. Compare how easy it was for me to flash my marriage license to the case of a couple in Washington, D.C., who decided to adopt the groom’s mother’s maiden name as their own:

After a year of raging against the machine in ye old District of Columbia and spending literally weeks on the phone with various bureaucrats who actually said to my husband, “If you were a woman, this would be different,” we conceded and petitioned the court for a legal name change. While I don’t regret fighting the system tooth and nail, I wish someone had told us to go to court first. If only we had known, I wouldn’t have found myself in the DMV hearing the clerk tell me that I had “two options: keep your name or take his,” and once she conceded, refused to accept my credit card for payment because it had a “different name” on it. This is our government, people.

Susong, *supra* note 10. A journalist who blended her name with her husband explained: “Since Rudoren did not appear on our marriage certificate, change meant a court order, a six-week process that costs \$389 (plus \$143 for 15 certified copies).” Rudoren, *supra* note 163.

184. IOWA CODE ANN. § 595.5(1).

185. *Id.*

indicates a surname choice will save the time and resources of the couple, the courts, and the agencies who monitor our population.<sup>186</sup>

#### D. Tradition and Social Change

In most states, the current laws governing surname change are based on a series of flawed assumptions: they assume a gender binary, that a marrying couple will be one woman and one man, and that all couples will follow traditional gender roles. With the advent of same-sex marriage and the fact that couples are less likely to follow traditional gender-based roles in marriage,<sup>187</sup> the presuppositions of the current state laws do not reflect the major societal changes that have occurred. This section discusses the social constraints and social meaning of family surnames and argues that because the choice of surname has social meaning, blended surnames can truly signal sex equality.<sup>188</sup>

Marital surnames hold significance in modern American society.<sup>189</sup> In a 2011 study, about seventy-five percent of respondents asserted it is better for a bride to adopt her groom's surname.<sup>190</sup> Even more astounding is the study's finding that fifty percent of respondents thought a woman should be *legally required* to change her surname at marriage.<sup>191</sup> Sex-based marital naming norms are strong in America,<sup>192</sup> yet the norms of marital surnames have

186. Perhaps the most time-intensive and frustrating narrative I came across in my research was from the chatboard at weddingbee.com. A bride (username mrscash) and her husband intended to blend their surnames at marriage. Yet they failed to do so in the year after their marriage, so they actually remarried in New York in order to finally adopt the blended name. mrscash, *supra* note 10.

187. For a discussion of the division of labor within a marriage, and how it has shifted with changing gender roles, see Frederic Neuman, *Changing Gender Roles in Marriage*, PSYCHOLOGY TODAY (Jan. 4, 2013), <https://www.psychologytoday.com/us/blog/fighting-fear/201301/changing-gender-roles-in-marriage>.

188. Emens, *Changing Name Changing*, *supra* note 9, at 803 (“[T]he solution [of blending surnames] is thus egalitarian and, in some ways, parsimonious.”).

189. Deborah Anthony, *Analyzing the Disappearance of Women's Surnames and the Retrenchment of Their Political-Legal Status in Early Modern England*, 29 HASTINGS WOMEN'S L.J. 7, 8 (2018) [hereinafter Anthony, *Analyzing the Disappearance*] (“Names function as representations of one's individuality, lineage, family beliefs, religion, and community, and they are central to the ways in which the law interacts with and mediates politics and culture.”).

190. Hamilton, et al., *supra* note 176, at 156.

191. *Id.* at 157. This study did not ask respondents *why* they believed that women should be legally required to adopt a husband's name. “The question was: In the past, some states legally required a woman to change her name to her husband's name. Do you strongly agree, somewhat agree, somewhat disagree, or strongly disagree that this was a good idea?” *Id.* But see Brooks, *supra* note 9, at 273-74 (noting that societal expectations on this matter are changing and that “[o]ne study found that 70 percent of male college students and almost 85 percent of female college students believe a man ‘should’ take his wife's last name in some circumstances”).

192. Kim & Thurman, *supra* note 28, at 753 (“Name-changing in different-sex marriage is a particularly prominent and sticky marital norm, with defaults set along gender lines.”).

changed over time.<sup>193</sup> The brief history of surname change in Part I shows that although certain practices appear strongly-entrenched, society is constantly shifting its naming practices.<sup>194</sup>

Today's marital surname changes operate under strong social constraints, including strong gender norms and family pressure.<sup>195</sup> Today, most women marrying men adopt the surname of their groom, and it is considered a "choice."<sup>196</sup> But with up to ninety percent of today's brides assuming a husband's surname, the gender hierarchy of marriage is reinforced: the adoption of the husband's surname can communicate that the husband is the head of the household.<sup>197</sup> There is no valid justification to reject my proposal on the grounds of tradition. Maintaining the traditional marital surname regime simply for the sake of tradition is direct state support of a family structure where the husband is seen as the head of household.<sup>198</sup> Using marital surname change laws to recognize men as family leaders is an unconstitutional sex-

193. Anthony, *Analyzing the Disappearance*, *supra* note 189, at 8 (noting that women adopting the surnames of their grooms does not have a longstanding tradition); Anthony, *In the Name of the Father*, *supra* note 11, at 60 ("What we consider to be 'traditional' when it comes to naming practices was not so consistent or unyielding historically; in fact, the contemporary status quo is a relatively recent phenomenon and is not actually 'traditional' at all.").

194. *See supra* Part I.

195. Kim, *Marital Naming*, *supra* note 25, at 924 ("Decisions about names do not arise against a blank slate of equal options, but operate within the confines of social forces that construct our options and our understanding of those options. In other words, women's name change operates within the structure of gender hierarchy that initially limits the options from which women are able to choose."). *See also* Emens, *Changing Name Changing*, *supra* note 9, at 763-64 (discussing how the default system of surname change influences the choices made by individuals).

196. Suzanne A. Kim critiques the assumption that marital surnames are now truly an individual choice. She argues that although perceived as individual choice, women are constrained by societal and gender norms in their decisions of what surname to assume. Kim, *Marital Naming*, *supra* note 25, at 922. *See also* Stoiko & Strough, *supra* note 26, at 296-97 (discussing the role of choice and post-feminism with surname choice).

197. Kim, *Marital Naming*, *supra* note 25, at 937 ("While the individual reasons for women's adoption of their husbands' names may vary, the ultimate result—that of most American women taking men's names—reinforces gender hierarchy in marriage by communicating the message that men are the head of the household[.]"); Omi, *supra* note 14, at 257 (noting women's adoption of husbands' surnames "was regarded as an agent for preserving the present social structure"); Stoiko & Strough, *supra* note 26, at 297 ("[T]he patrilineal naming norm in the US reinforces the male privilege of continuous identity, which in turn increases 'social capital' such as recognition within social and professional communities."). As one blogger (who adopted a husband's name at the age of 22 then later took back her maiden name) explains this view: "A marriage should be a marker of an egalitarian partnership, not a succession of one party behind the other. Your name should reflect that." Joni Erdmann, *Why are Women Still Changing Their Last Names?*, HUFFINGTON POST (Nov. 10, 2016), [https://www.huffingtonpost.com/joni-erdmann/why-are-women-still-chang\\_b\\_8486370.html](https://www.huffingtonpost.com/joni-erdmann/why-are-women-still-chang_b_8486370.html).

198. *See, e.g.*, Garcia, *supra* note 128 (noting opposition to California's Name Equality Act of 2007 because it threatened the leadership role of husbands and fathers).



based justification under the Fourteenth Amendment equal protection clause.<sup>199</sup> Some lawmakers may fear the adoption of my proposed surname-blending statute has the potential to effectuate social change by challenging the patriarchal name-change norm.<sup>200</sup> And I can agree that by removing barriers my proposal may encourage couples to actually adopt the surname they want.<sup>201</sup> But I would argue breaking down the strong gender-based marital naming norm and the patrilineal passing of surnames to children would be a good thing.

In most states there are still only two name-change options at the time of marriage: both parties keep their prior surnames, or the wife adopts the husband's surname either on its own or as part of a hyphenated name. While there is nothing wrong with those two options, more options should be available on the marriage certificate—limiting surname change options on the marriage certificate decreases the chance that men will ever change their surnames and takes away an important decision from everyone who married.<sup>202</sup> If states adopt clear surname-change statutes, couples may be more willing to opt out of the traditional system of wives assuming their husbands' surnames and children always receiving that same surname.<sup>203</sup> Surnames have long reflected the structure of families,<sup>204</sup> and if states allow for greater flexibility in surname choice at marriage, the state is signaling that men are not necessarily operating as the traditional head of household and that children are not traced primarily through patrilineal lines. For some couples, choosing a blended or other non-traditional surname can signal important social beliefs, including a rejection of traditional gender roles in marriage and gender as binary.<sup>205</sup>

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199. U.S. CONST. amend. XIV § 1.

200. Anthony, *A Spouse*, *supra* note 3, at 189 (“The law—especially family law—serves the function of channeling people into certain socially preferred institutions and practices, while discouraging those that are viewed as less acceptable. As such, the law reinforces and encourages behavior considered desirable by society—or, perhaps, behavior once considered desirable but not subjected to recent critical examination.”). For a discussion of the expressive power of the law see Kyle C. Velte, *Obergefell's Expressive Promise*, 6 HOUS. L. REV. 157, 160-62 (2015).

201. See Emens, *Changing Name Changing*, *supra* note 9, at 763 (advocating that names should be a matter of choice).

202. Snyder, *supra* note 17, at 562.

203. *Id.* (arguing that gender-neutral name change statutes—that allow a husband to adopt a wife's name—would encourage more couples to seriously consider which last name to adopt); Suarez, *supra* note 8, at 142 (arguing that if it were easier for women to choose to keep their maiden names at marriage societal views of women's names will change).

204. Anthony, *A Spouse*, *supra* note 3, at 193 (“Surnames today reflect both how the family is structured, and how we believe it should be structured.”); Omi, *supra* note 14, at 258 (“Over time, a woman's use of her husband's name came to symbolize acquiescence to a culture that viewed women as accessories to men, devoid of independent dignity and status.”).

205. See, e.g., Anthony, *A Spouse*, *supra* note 3, at 194 (“In the context of surname choice at marriage, this may also reveal the type of relationship a couple has or desires: independence, equality, and a rejection of traditional gender roles may all be reflected by a non-traditional last name choice.”).

For some couples, choosing a blended name is a way to subvert the patriarchy,<sup>206</sup> but it is a mistake to think that every couple adopting a blended surname does so to create societal change. For others, it is a way to honor both families.<sup>207</sup> Some couples may want to shed a cumbersome family name.<sup>208</sup> For my husband and myself, it was a way for us each to carry on our identities while simultaneously adopting a shared identity as a family.

It is unlikely that there will be a wave of couples choosing to blend surnames, and that is not the goal—blending surnames in and of itself is not inherently beneficial to society.<sup>209</sup> Couples deciding to marry have different motivations and goals and they should be able to express those goals through surname choices that are appropriate to their own situation. Surname blending was the best option for my husband and myself, but a different option will be better for others. Some couples will decide that each member should retain their own surname for personal and professional continuity,<sup>210</sup> other couples may have a reason to choose one surname over the other—for example, for the continuation of a family name.<sup>211</sup> And for any couple contemplating the

206. See, e.g., Sweet Potato & Chickpea, *supra* note 10, at 2 (“The downside [of the wife taking the husband’s surname] is that, to us, it follows a patriarchal tradition of elevating the man’s lineage over the woman’s, which does not symbolically align with our relationship values.”).

207. See, e.g., Volpe, *supra* note 10 (noting that a couple who blended their surnames at marriage did it “as a way to honor both of their families”).

208. Cf. Kitchener, *supra* note 34 (profiling a man who adopted his wife’s surname, partially because his last name was pronounced ‘phallic.’).

209. Cf. Emens, *Changing Name Changing*, *supra* note 9, at 802 (“Embracing a social practice [i.e. blending surnames] that would end the passing of names across generations may seem disconcerting, even sad.”).

210. Byziewicz & MacDonnell, *supra* note 18, at 598 (noting two reasons why women may want to retain maiden names at marriage: (1) continuity in an established career; and (2) feminist consciousness); Anthony, *A Spouse*, *supra* note 3, at 189 (noting five reasons why women may want flexibility in surname choice: (1) professional accomplishments; (2) gender-neutral name; (3) maintaining identity; (4) strong connection with current name; or (5) children who have current name); Kim & Thurman, *supra* note 28, at 760-62 (noting five reasons same-sex couples choose to keep their prior surnames: (1) identity or individualism; (2) connection to prior name; (3) administrative burden; (4) advanced age; and (5) feminism).

211. Snyder, *supra* note 17, at 538 (“Continuity of a family’s last name over time and within the family is a concern because many people want to be connected to their family histories[.]”). See also, Rosensaft, *supra* note 7, at 186 (citing Weddings, Jodi Rosensaft, Michael Savere, N.Y. TIMES (Aug. 11, 2002), <https://www.nytimes.com/2002/08/11/style/weddings-jodi-rosensaft-michael-savere.html>); Slade, *supra* note 7, at 345 (“Increasingly more men are taking their wives’ surname upon marriage in order to construct an identity atypical of the common marriage name between a husband and wife. For example, Michael Mahoney Frandina took his wife’s last name upon marriage in order to ensure her surname would survive another generation, as there were no more men to carry the name on in the normative way. Another reason Mr. Frandina did this was because of the trouble his wife’s grandfather went through in order to ensure the name was not changed upon entry at Ellis Island.”). Continuation of a family name can also be a reason for each member of a marriage to retain his or her prior surname. Kim & Thurman, *supra* note 28, at 762 (noting that some same-sex couples who kept their prior surnames noted that “family wishes (fear of family

adoption of a blended surname, the social cost of doing so should be considered: strong negative reactions from family and society can be expected.<sup>212</sup> Yet having a surname-blending option easily accessible will help couples make more informed and individualized choices about surnames at marriage.<sup>213</sup>

In the long-run, once blended surnames become more frequently used, society may see a change in how children are named. Despite more women keeping their maiden names after marriage, children are still overwhelmingly given the surname of their father.<sup>214</sup> Yet the decision of what surname to give a child is of fundamental importance to many parents.<sup>215</sup> The fight by feminists to have control of choosing whether to keep a maiden name has never been only about a woman keeping her surname; it was also about whether women would be able to pass on their surnames to children.<sup>216</sup> Yet historically, and today, children overwhelmingly receive the surname of their father. A few

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response from name-changing or a desire to respect family wishes to “carry on” the family name)” was a reason to retain prior surnames).

212. See Brooks, *supra* note 9, at 262 (“Studies have specifically researched peoples’ opinions about each others’ naming choices, and there is evidence that many people have negative reactions to couples who choose nontraditional names.”).

213. Suarez, *supra* note 8, at 241 (“Were it easier for couples to choose their surnames upon marriage, an increasing number would consider the various options.”).

214. STANNARD, MARRIED WOMEN, *supra* note 17, at 49 (“The majority of women who keep their own name . . . accept the custom of children carrying on the father’s name.”); Omi, *supra* note 14, at 298 (noting that “the patrilineal tradition of naming children” has not dissipated as more women have maintained their own names in marriage); Kim, *Marital Naming*, *supra* note 25, at 930-31 (“A strong tradition exists by which children are given their father’s name. Even children of women who keep or hyphenate their names usually bear their father’s name.”); Emens, *Changing Name Changing*, *supra* note 9, at 764 (“[S]ince men almost never change their names, and since children typically take their father’s name even when their mother makes an unconventional naming choice for herself, women lack a naming option that creates continuity among their parents, their spouses, and their children.”). But see Rebecca Tuhus-Dubrow, *Children of the Hyphens, the Next Generation*, N.Y. TIMES (Nov. 23, 2011), <https://www.nytimes.com/2011/11/24/fashion/babies-surnames-to-hyphenate-or-not.html> (“By the mid-1970s more women were keeping their maiden names, so hyphenating the names of the children seemed like the next logical raspberry to blow at the patriarchy, a stand against the family’s historical swallowing up of women’s identity.”).

215. The parents who challenged state laws in *Henne v. Wright*, 904 F.2d 1208 (8th Cir. 1990), provide representative samples of how important the child surname choice is.

216. See, e.g., STANNARD, MARRIED WOMEN, *supra* note 17, at 2 (“Now that woman’s equal role in generation is at least understood, she eventually will not have to produce children under the name of a man, nor will children be given only the name of the father.”); Omi, *supra* note 14, at 298 (“The women’s rights activists of that earlier struggle assumed that by attaining for women the right to name themselves, the patrilineal tradition of naming children would eventually dissipate. Reality has shown that the opposite might be true. In order to test this hypothesis, it is necessary that the women’s movement embark upon a concerted campaign and develop an effective strategy regarding the right of women to name their children.”). See also Snyder, *supra* note 17, at 538 (“Women have as much family history as men, and consistently choosing the man’s last name respects only half of the family tree.”).

notable exceptions exist. For example, children born to American enslaved women were referred to by their mother's names, not their father's names.<sup>217</sup> Other individual exceptions exist, for example after Elizabeth Oakes married Seba Smith in the 1830s she went by Elizabeth Oakes Smith, and their six sons were given the blended surname of Oaksmith.<sup>218</sup> But the anticipated change in how children are named has not borne out—children still receive their surname from their father, which continues to signal men as the head of household and ensures that family identity is passed patrilineally through generations.<sup>219</sup> And, the current marital surname norm allows a husband and father to have continuity with ancestors<sup>220</sup> and descendants, but a wife and mother must choose to share a name with either her ancestors or her descendants.<sup>221</sup> This fact may lead parents to have a preference for sons who will pass on the family name.<sup>222</sup> But blended surnames offer a legitimate path to changing the patrilineal surname norm.

The choice of a marital surname is frequently tied to what name children will be given.<sup>223</sup> That is true in my marriage. When my husband and I were

217. Omi, *Naming the Unheard Of*, 15 NAT'L BLACK L. J. 109, 134-45 (1997-1998). This was true not out of respect for mothers, but because the status of being enslaved passed through the women giving birth, not the men who fathered children.

218. STANNARD, MRS MAN, *supra* note 11, at 137. *See also* Joy Wiltenburg, *Excerpts from the Diary of Elizabeth Oakes Smith*, 9 SIGNS 534, 534-35 (1984).

219. Kim, *Marital Naming*, *supra* note 25, at 938 ("The labeling of wives and children with men's last names conveys the message that men are the heads of their households, reinforcing through language what has historically been true in law and social custom.").

220. Of course, for many Americans the surname connection with ancestors extends only to when family members passed through Ellis Island while immigrating. At the Chicagoland Junior Scholars Conference on October 5, 2018, Natalie Banta, Associate Professor of Law at Drake Law School, shared that her family's surname—Dutch in origin—was created upon her ancestor entering the country in the mid-1600s. For a general discussion of surname change and Ellis Island see Ault, *supra* note 139.

221. Emens, *Marriage Options*, *supra* note 46 ("So a woman can either share a name with her past life and family, or share a name with her children. In other words, men get to have continuity with both past and future; women have to choose.").

222. Emens, *Changing Name Changing*, *supra* note 9, at 803 (arguing that the practice of blending surnames could aid in "breaking any preference for sons that might result from patrilineal naming"). In modern day American society, the preference for sons appears to be disappearing and there is even evidence showing a preference for daughters over sons. Claire Cain Miller, *Americans Might No Longer Prefer Sons Over Daughters*, N.Y. TIMES, (Mar. 5, 2018), <https://www.nytimes.com/2018/03/05/upshot/americans-might-no-longer-prefer-sons-over-daughters.html>.

223. Kim, *Marital Naming*, *supra* note 25, at 925 ("A leading pragmatic rationale offered for women's name change is the desire to avoid the confusion of having a different last name from one's children."); Kim & Thurman, *supra* note 28, at 766 ("The prospect of children seemed to influence couples' narratives about their surname choices."). Schlosberg provides two examples where the future surname of children play a role. In Japan, a husband will sometimes take a wife's name if he has brothers and she does not and that is seen as "kind of a gift that the groom's family gives to the bride's family" because the surname of the bride's family can continue even absent a male child. Schlosberg, *supra* note 35. She also provides a specific example of a married couple in America where the wife "Cathie Whittenburg of Portland, Me., was determined that her last name would be passed down. Her

discussing our surname options neither one of us expressed an affirmative desire to change our surname; rather, we both wanted to reach a consensus on a surname that we would both have and, importantly, that we would share with our children. If I had not wanted children, I would have happily maintained Alsgaard as my professional and social surname, but like many other parents I wanted to have the same surname as any children I bore.<sup>224</sup> As Elizabeth F. Emens notes, the current default regime leaves women without “a naming option that creates continuity among their parents, their spouses, and their children.”<sup>225</sup> A blended surname can maintain these connections for men and women. I feel connected to my ancestors because I have part of their surname, and of course I share my entire surname with my husband and child. And even though I changed my surname at marriage, I have experienced some name recognition because my married name is so close to my maiden name.<sup>226</sup>

For married couples who are less concerned with sharing the exact surname of ancestors and are more concerned with sharing a common family name with their children—a name that equally respects both partners to the marriage—a blended surname can be the solution. Out of all of the proposed marital surname options, common availability and acceptance of blended surnames has the greatest chance of creating change in American society’s patrilineal naming structures. Now is the perfect time to give marrying couples more options. With same-sex marriage newly available nationwide,<sup>227</sup> there is an opportunity to reexamine the institution of marriage for all couples,<sup>228</sup> and that reexamination can and should include surname-changing practices.

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daughter, born first, has the last name of her husband, Lenny Shedletsky. But her son is a Whittenburg.” *Id.* In a study of married same-sex couples, one woman kept her name and added her new wife’s name so there would be a shared name with the “contemplated children.” Kim & Thurman, *supra* note 28, at 764.

224. See Sweetpea FAQs, *supra* note 10, at 3 (“We see marriage as coming together to create a new family unit, and we like the idea of having a family name that we share with each other and our future child (and dog).”); Volpe, *supra* note 10 (“For many couples who planned on having children, taking a single family name was about creating family unity. Lisa Wongchenko wanted their future family to share a name rather than the children taking either hers, Boychenko, or her husband’s, Wong.”).

225. Emens, *Changing Name Changing*, *supra* note 9, at 764.

226. For example, about two years after marrying, I judged a high school debate tournament at my former high school. A coach from a different school (who was a coach when I was in high school over a decade ago) prepared his students for my judging style because he “guessed” that I was the same person even though my name had changed.

227. *Obergefell v. Hodges*, 135 S.Ct. 2584, 2604-5 (2015) established the constitutional right for same-sex couples to marry. Elizabeth F. Emens argues one benefit of blending surnames is that the practice “applies to same-sex couples as well as different-sex couples.” Emens, *Changing Name Changing*, *supra* note 9, at 803.

228. Suzanne A. Kim, *Mapping Gender and Social Norms in Same-Sex and Different-Sex Marriage*, 38 WOMEN’S RTS. L. REP. 355, 356 (2017) (“With nationwide marriage access to same-sex couples, an unprecedented opportunity has been created to disentangle the relationship between formal law, gender norms, and marriage.”).

### E. *Avoiding Constitutional Challenge*

For states that decline to adopt my proposed legislation, future constitutional challenges are likely. While New York, North Dakota, and Kansas adopted surname-blending legislation without being under threat of a lawsuit, California only adopted the Name Equality Act of 2007 after a lawsuit was brought challenging the constitutionality of the prior statute.<sup>229</sup> Even if otherwise unconvinced of the practicality of my proposed legislation, states should adopt it to avoid a constitutional challenge and the attending financial burden.<sup>230</sup>

Unlike other sex-based rules about surname change at marriage, blending surnames is truly gender-neutral. In the 1970s, feminists—before the modern-day structure of the Fourteenth Amendment—argued the sex-specific prohibition that banned only women from maintaining a pre-marriage surname violated the equal protection clause.<sup>231</sup> Similarly, equal protection arguments are currently being made to support men's right to adopt a wife's surname at marriage.<sup>232</sup> While the equal protection arguments are persuasive when states have gender-based distinctions for surname choice at marriage, no equal protection argument arises in the context of surname-blending statutes. The four states that allow for surname blending do so on a gender-neutral basis,<sup>233</sup>

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229. Name Equality Act of 2007, 2007 Cal. Stat. ch. 567, § 1 (codified in scattered sections of CAL. CIV. PROC. CODE, CAL. FAM. CODE, CAL. HEALTH & SAFETY CODE); Kolesnikov, *supra* note 7, at 429 (discussing lawsuit).

230. In addition to paying its own lawyers, states may end up paying legal fees if litigants win. *See, e.g.,* Steve Friess, *States That Fought Same-Sex Marriage Owe Millions in Legal Fees*, AL JAZEERA AMERICA (Sept. 10, 2015), <http://america.aljazeera.com/articles/2015/9/10/states-that-fought-same-sex-marriage-charged-millions-in-attorney-fees.html> (discussing attorneys' fees owed by states to litigants after the decision in *Obergefell v. Hodges*).

231. This argument was made in court, but before the advent of intermediate scrutiny for sex and gender. For a discussion of early lawsuits raising an equal protection claim see Raissi Byziewicz & Stillson MacDonnell, *supra* note 12, at 609-11, and Omi, *supra* note 14, at 261-62. And of course there were law review articles making the same Fourteenth Amendment equal protection clause argument on behalf of women's right to maintain a maiden name after marriage. *See, e.g.,* Gordon, *supra* note 20, at 1511.

232. This argument has been made in court, including in California (in the lawsuit leading to the Name Equality Act of 2007) and South Carolina. Kolesnikov, *supra* note 7, at 429; Paul Bowers, *SCDMV denies married man's name change request*, CHARLESTON CITY PAPER (Oct. 5, 2012, 3:00 pm), <https://www.charlestoncitypaper.com/TheBattery/archives/2012/10/05/dmv-denies-newlywed-mans-name-change-request> (noting an Equal Protection challenge in South Carolina). Law review articles making a Fourteenth Amendment equal protection clause argument on behalf of men's right to adopt a wife's surname include: Slade, *supra* note 7, at 339-44; Snyder, *supra* note 17, at 573; and Brooks, *supra* note 9, at 264-69. One scholar conducts the same Fourteenth Amendment analysis, but from the angle that it is women who suffer discrimination because husbands cannot take women's names. Anthony, *A Spouse*, *supra* note 3, at 222. *See also* Snyder, *supra* note 17, at 583 (arguing that a lack of choice for men harms women).

233. CAL. FAM. CODE § 306.5(b)(1) (allowing "one party or both parties to a marriage" to change surnames); N.D. CENT. CODE § 14-03-20.1(1) (allowing the same); KAN. STAT.

as do the three states that allow for the adoption of any surname.<sup>234</sup> The remaining states do not allow any spouse—male or female—to blend surnames through a marriage license. Accordingly, there is no sex-based distinction. There is also no sexual-orientation based distinction in any of the state laws and policies. With no distinction drawn between groups, there is no viable Fourteenth Amendment equal protection claim.<sup>235</sup> Marrying couples may be able to draw from cases about naming children to make a substantive due process argument.<sup>236</sup>

States are potentially violating the privacy and substantive due process rights of citizens by denying the right to blend surnames at marriage.<sup>237</sup> In order to make a Fourteenth Amendment substantive due process claim, litigants would have to prove choosing a marital surname is a fundamental right.<sup>238</sup> Courts<sup>239</sup> and commentators<sup>240</sup> agree that surname choice is important: both for marrying couples and for parents giving surnames to children. But, it is difficult to reach the all-important conclusion that the right to blend surnames at the time of marriage is fundamental.<sup>241</sup> Because blending surnames is a relatively

ANN. § 23-2506 (allowing “a person” to designate a name at marriage); N.Y. DOM. REL. LAW § 15(3) (allowing “one or both parties to a marriage” to change surnames).

234. IOWA CODE ANN. § 595.5(1) (allowing “a party” or “the parties” of a marriage to adopt a new surname); MASS. GEN. LAWS ANN. ch. 46, § 1D allowing “[e]ach party to a marriage may adopt any surname”); MINN. STAT. ANN. § 517.08 (allowing “the parties” to indicate new surnames on the marriage license).

235. The hallmark of an equal protection claim is an instance where the government draws distinctions between classes of individuals. Without a distinction between groups, there will be no constitutional violation. *See Dusch v. Davis*, 387 U.S. 112, 115 (1967) (holding there was no equal protection violation because there was “no distinction on the basis of race, creed, or economic status or location”).

236. *See generally* Carlton F.W. Larson, *Naming Baby: The Constitutional Dimensions of Parental Naming Rights*, 80 GEO. WASH. L. REV. 159, 172-75 (2011) (discussing substantive due process issues with parents naming children).

237. *See, e.g.*, Brooks, *supra* note 9, at 270-73 (arguing current marital surname changing laws violate the due process clause).

238. ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW* 764 (2d ed. 2002) (“If a right is deemed fundamental, the government usually will be able to prevail only if it meets strict scrutiny; but if the right is not fundamental, generally only the rational basis test is applied.”).

239. Mahoney Frandina, *supra* note 2, at 157 (“Judges have even come close to calling the ability to name one’s child a fundamental right under the Constitution.”).

240. *See, e.g.*, Anthony, *In the Name of the Father*, *supra* note 11, at 94 (“Names are central to our lives and our identities[.]”); *id.* at 85 (“As discussed above, the importance of names cannot be overstated; they play a central role in the construction of individual personhood and legal identity. Today they operate at the cornerstone of one’s life, and serve as a symbol of individuality, religion, community, lineage, and family structure, making them central to one’s identity.”); Shannon J. Kennedy-Sjodin, *Keegan v. Gudahl: The Child’s Surname As A New Bargaining Chip in the Game of Divorce*, 41 S.D. L. REV. 166, 166 (1996) (“An individual’s surname is important because it symbolizes familial lineage and heritage and represents one’s legal identity.”); Anthony, *A Spouse*, *supra* note 3, at 194 (“The use and regulation of names is clearly anything but trivial.”).

241. For a discussion of how “[c]ontrol over one’s name . . . should be protected as a fundamental privacy right,” but in the context of statutory name change, not name change at

new<sup>242</sup> and relatively rare<sup>243</sup> practice, it will be difficult to argue surname blending on its own should be a fundamental right. Yet, it is possible to make the argument by focusing on choice and the right to avoid the complications of the statutory name-change process.

Although blending surnames is not a long-held practice, recent Supreme Court precedent establishes that the rights protected by the due process clause are not decided merely by history, but instead change with society.<sup>244</sup> A substantive due process claim would rest on the presupposition that marriage and parental rights are entitled to constitutional protection under the substantive due process clause.<sup>245</sup> Just like married couples should have rights to contraception,<sup>246</sup> privacy,<sup>247</sup> and divorce,<sup>248</sup> couples should have the right to choose a blended surname at the time of marriage. A state's argument that any harm is *de minimis* because the couple can blend surnames through the statutory name-change process must fail. The statutory name-change process is burdensome, expensive, and time-consuming.<sup>249</sup> This choice of surname

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marriage, see Julia Shear Kushner, *The Right to Control One's Name*, 57 UCLA L. Rev. 313, 342-51 (2009).

242. The earliest published example I could find of a couple blending surnames occurred in 1987. Rudoren, *supra* note 163 ("The mayor of Los Angeles, Antonio Villaraigosa, was Mr. Villar before he married Connie Raigosa in 1987."). At the Chicagoland Junior Scholars Conference in Chicago, Illinois, on October 5, 2018, Mark C. Weber, the Vincent de Paul Professor at DePaul University School of Law, shared with me that he had a cousin who blended surnames with his wife in the 1960s.

243. Emens, *Changing Name Changing*, *supra* note 9, at 801 (noting that despite popular media coverage of blended surnames, "all indications suggest that merging is still rare").

244. Velte, *supra* note 200, at 162 ("A central theme in [*Obergefell v. Hodges*] is that our collective ideas about freedom, liberty, and dignity have not been, and should not be, stagnant.").

245. See generally CHEMERINSKY, *supra* note 238, 768-83 (discussing constitutional protections for family autonomy).

246. See *Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965) (locating a right to privacy in the marital relationship and noting intervention into that relationship "is repulsive to the notions of privacy surrounding the marriage relationship."). See also Anthony, *A Spouse*, *supra* note 3, at 221 (arguing that the "the adoption of a family name is [as] fundamental and personal" as procreative choice).

247. See *Griswold*, 381 U.S. at 485-86 (holding the marital bedroom is protected by a constitutionally-protected privacy interest).

248. *Boddie v. Connecticut*, 401 U.S. 371, 383-84 (1971) (holding states must make divorce available under the due process clause).

249. A prime example of the difficulty comes from the ongoing saga a student shared with me regarding changing her name in South Dakota. She married a man with a hyphenated name (his mother's maiden name hyphenated with his father's name). When they filled out the South Dakota marriage license, he wrote down his hyphenated name, although the couple planned to both begin using only his father's surname after marriage. No government offices would allow the new wife or husband to change names to just one-half of his hyphenated name. In order to legally change names in South Dakota, the couple then had to file an official name-change petition, wait four weeks, and publish. Email from Jacquelyn A. Bouwman to Hannah Haksgaard (Sept. 21, 2018, 20:48 DST) (on file with author). Another student shared the story of his brother and sister-in-law's saga. The couple



implicates the liberty interests and dignity of the marrying couple.<sup>250</sup> And because parents should have the right to give their children a blended surname at birth and share that surname, those parents should be able to assume the blended surname at marriage.<sup>251</sup>

States would be wise to avoid a potential Fourteenth Amendment constitutional challenge by adopting the legislation I propose. Merely allowing couples to blend surnames through a name-change petition in court is an inadequate solution. All marrying couples should be able to choose a marital surname at the time of marriage, including a blended surname if they so choose.

### CONCLUSION

The ability to blend surnames should be one of several options available to couples when they marry. Although surname blending was the best choice for my husband and me, it will not be the right choice for everyone. Like the feminist fight to choose between retaining a maiden name or taking a husband's surname at marriage, the fight for the right to blend surnames is not about

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got married in Chicago in July 2018 and planned to blend their names (his surname is Conlon, and her surname is Tornquist, so they wanted to both be "Conquist"). The marriage license had no option to blend their names, but they changed their last names to Conquist on Facebook and planned to go Cook County Court to formalize the change legally. When they finally went to court, in March 2019, they were told that they had failed to follow the newspaper publication requirements for an Illinois name change and so they couldn't get their names changed that day. As of now, they still have yet to officially make the change or begin publishing their name change announcements in a newspaper as required by law. Email from William Conlon to Hannah Haksgaard (May 1, 2019, 17:20 PST) (on file with author). *See also* Rosensaft, *supra* note 7, at 205-09 (discussing why the court name-change process is not a *de minimis* injury for men wanting to change names at marriage); Kolesnikov, *supra* note 7, at 429-30 (telling story of Mike Buday and the costs associated with changing his name at marriage); *id.* at 432-33 (describing the statutory name-change procedure in California and detailing the various steps and costs to the process) and; Slade, *supra* note 7, at 336 ("This process requires paying a substantial court filing fee, dealing with drawn out court proceedings and, in some cases, being required to post in newspapers personal information (such as financial information) as well as the petition to change one's name.").

250. For a discussion of the connection between dignity and people's constitutional rights (in the same-sex marriage context) see Velte, *supra* note 200, at 163-64.

251. *See* Anthony, *A Spouse*, *supra* note 3, at 208-09 (noting courts have used fundamental rights language to discuss fathers' rights to name children); Sydney v. Pingree, 564 F. Supp. 412, 413 (S.D. Fla. 1982) ("[T]he due process clause of the Fourteenth Amendment protects the plaintiffs' right to choose the name of their child from arbitrary state action."); Jech v. Burch, 466 F. Supp. 714, 719 (D. Haw. 1979) (holding "parents have a common law right to give their child any name they wish, and [] the Fourteenth Amendment protects this right from arbitrary state action"). *But see* Henne v. Wright, 904 F.2d 1208, 1213 (8th Cir. 1990) (holding parents have no fundamental right to give a child a surname that does not already belong to a parent).

forcing that option on everyone, it is about the availability of choice for couples forging their identities together in the momentous decision to marry.<sup>252</sup>

There will be those adamantly opposed to blended surnames. Family members may feel hurt when both names are rejected—my brother-in-law was upset with my husband for getting rid of Hackey as a last name, and I suspect he will never forgive me for it.<sup>253</sup> Members of society—who have no personal connection to those blending names—will also criticize the practice. The fifty percent of Americans who think that a bride should be legally required to adopt her groom's name will likely object to marital surname blending on principle.<sup>254</sup> And it is not just those who adhere to "tradition" that dislike surname blending. Katie Roiphe opined that blended surnames are not only "impractical" and "fake-sounding," but they also "defeat the main functions of the surname."<sup>255</sup> I disagree with Roiphe. Haksgaard is imminently practical for me—it guarantees that I will have the same name as my husband and children. Although it is a new name, no one has ever suspected it was made up—it is clearly identifiable as Nordic, which is appropriate because both Hackey and Alsgaard were inherited through Norwegian ancestors. And for me the function of the surname has not been defeated—I feel connected via surname with my family, my husband's family, my Norwegian ancestors, and my child.<sup>256</sup> The choice I made should be available to all Americans who want to blend surnames.

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252. See Rosensaft, *supra* note 7, at 187 ("It was, however, the choice most feminists were fighting for, not a requirement that women retain their own name.").

253. Thankfully my father-in-law never objected to the choice, for which I am thankful. For examples of other individuals who have faced family criticism, see sources cited in note 148. See also Emens, *Changing Name Changing*, *supra* note 9, at 764 (noting that "social costs accompany unconventional choices" with surname choice at marriage). But see Emily Fitzgibbons Shafer, *Hillary Rodham Versus Hillary Clinton: Consequences of Surname Choice in Marriage*, 34 GENDER ISSUES 316, 328 (2017) (finding that, except for low educated men, Americans did not find a wife less dedicated to her marriage simply for failing to adopt her husband's surname).

254. See Hamilton, et al., *supra* note 176, at 157 (2011 study of opinions on surname changing).

255. Roiphe, *supra* note 157.

256. See Sweetpea FAQs, *supra* note 10, at 3 (discussing how a blended name meets the same goals for the authoring couple); Rudoren, *supra* note 163 (discussing the same).

APPENDIX A: North Dakota Marriage License, Jesse Hackey and Hannah  
Alsgaard, July 14, 2015.

Cass County License No. 09 - 15 - L - 494007

State File No. 494007

**State of North Dakota  
Marriage License**

To any person authorized by law to perform the marriage ceremony:

You are hereby authorized to join in marriage

Name of  
GROOM: Jesse Vincent Hackey Age 30  
of Fargo, ND who has not been divorced, and

Name of  
BRIDE: Hannah Callie Alsgaard Age 28  
of Fargo, ND who has not been divorced.

No marriage may be solemnized under this license unless so solemnized by 6/30/2015

Date: July 02, 2015

County Official

Cindy Risk

**Certificate of Marriage**

I hereby certify that the persons named in the foregoing license,  
whose names after marriage are (groom) Jesse Vincent Hackey

and (bride) Hannah Callie Alsgaard, were joined by me in

marriage at Fargo County of Cass.

State of North Dakota, on July 14, 2015

\* Please type names below signature \*

In the presence of

Nick Datzov  
\* Witness Nick Datzov

Katie Stearns  
\* Witness Katie Stearns

Hermit Edward Bye  
Judge - U.S. Court of Appeals 8th Circuit  
Official Title

Ecclesiastical Body

655 1st Ave N, Suite 330  
Address Fargo ND 58103

The Original and Duplicate A copies of the certificate shall be returned to the county who issued the license within  
FIVE DAYS after solemnization of the marriage. Duplicate B copy shall be immediately delivered to the persons  
married.

NOTE: This portion to be completed by the county after License and Certificate returned to that office.

I hereby certify that the within Marriage Certificate was filed with the county, in and for said county.

Date July 14, 2015

County Official

Cindy Risk

Original