GATE(S) KEEPING OR SCOT(T) FREE? THE LEGAL ENVIRONMENT OF MARITAL SURNAME USE, POST-DIVORCE

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Abstract

In virtually all states, individuals who adopt their spouse's surname in marriage do not have clear statutory guidance on the right to use that surname following marital dissolution. Because of the ongoing, pervasive practice of surname-taking in marriage, society has long placed the burden on women, not men, to make a choice upon divorce—one at the core of identity—to decide again on a name. The overwhelming majority of state statutes provide women the option to readopt a surname used before marriage; some even allow the adoption of any new surname. But what if a divorced woman wishes to continue using her marital surname? What if she contributed to the value of that surname during the marriage? What if her personal and social identity came to align with the marital surname? Should she not be able to continue using it on firm legal grounds, beyond mere custom? In a purely legal sense, is the name hers?

This Article seeks to establish a firm legal foundation for a divorced individual's use of their former spouse's surname following marital dissolution. Part I presents a brief history of surnames, the genesis of hereditary surnames, and the development of patriarchal institutions, such as coverture, that shape a woman's naming rights. This account includes a history of marital surname usage in the United States, which borrowed from the English common law up to the advent of ostensibly egalitarian protection in a series of 1970s

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court decisions. Part II examines the social factors driving women to continue using a marital surname and discusses how these matters have shaped the current legal framework of surname usage during a marriage. Part III turns to the law of surname options at the time of divorce and thereafter, detailing the vast differences in the state law governing the area, particularly: what naming options are available in state statutes, when the name change must happen, and who may raise the issue. This section also addresses the legacy of gendered language in these statutes. Part IV proposes a model law on marital surname use post-divorce, establishing guidance and predictability in this area. The model law would allow divorced individuals the statutory ability to confirm their rights in a marital surname for all purposes under a clear, explicit framework.

INTRODUCTION

Names identify us; they are the core of our being, and there is an intimate relationship between name and self.[1] There are given names, which are those informal or familiar names we go by, and there are last names, family names, or surnames, which represent heritage and familial connections. Surnames give us a "personal identity and self-awareness."[2] The law is rarely involved in decisions regarding these most personal of matters.[3] When the law does get involved, states allow almost any name that individuals have asked the courts to entertain; this can be referred to as a naming autonomy principle.[4] Derived from English common law, naming autonomy allows individuals to be called what they would like to be

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1 Gregory S. Alexander, *Name Takings*, 19 NW. J.L. & SOC. POL'Y 40, 49 (2023).

2 Roe v. Conn, 417 F. Supp. 769, 782 (M.D. Ala. 1976).

3 Omi, *The Name of the Maiden*, 12 WIS. WOMEN'S L.J. 253, 260 (1997) ("Each person has the right to use and be known for all purposes by the surname of his or her choice, without use of judicial proceedings, so long as fraudulent intentions are not involved.").

4 The phrase "naming autonomy" refers to the ability of an individual to go by any name they choose without the necessity of a legal name change, provided the use does not constitute fraud or cause confusion (or a few other standards that states have established for their formal change-of-name procedures). It is a phrase that represents the amalgamation of naming freedoms borrowed from English common law and imported into the American legal system. As this work describes, despite the right's unclear origins, states now accept the general proposition of naming autonomy. "At common law any adult or emancipated person was at liberty to adopt any name as his legal name except for fraudulent or criminal purpose, without resort to any court." Egner v. Egner, 337 A.2d 46, 48 (N.J. Super. Ct. App. Div. 1975); *see also* Roslyn G. Daum, *The Right of Married Women to Assert Their Own Surnames*, 8 U. MICH. J.L. REFORM 63, 66 (1974); Esther Suarez, *A Woman's Freedom to Choose Her Surname: Is It Really a Matter of Choice?*, 18 WOMEN'S RTS. L. REP. 233, 233 (1997).

called. This freedom has extended to standards in formal state name-change processes,[5] as well as in taking the name of another in marriage.[6]

The individual's motive in using a new name is presumed legitimate. In an ever-diversifying, pluralistic society, courts are "more sensitive to cultural differences and individual rights"[7] and tend to liberally grant name change requests made under formal state name-change processes.[8] While courts consider the public interest in a name change,[9] overriding the individual's interest in a request is often difficult.[10] With respect to married individuals, naming autonomy likewise extends into, through, and after the traditional social institution of marriage.[11] In opposite-sex marriages, however, women have for much (if not all) of this country's history bowed to societal pressures to adopt their male spouse's surname, rather than the other way around.[12]

As a result, the law seems to take a *laissez-faire* approach to marital surname use.[13] It likewise appears indifferent as to whether, following marital dissolution, a woman can keep her husband's surname or reacquire the surname she used before her marriage.[14] Many

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5 *See In re* Porter, 31 P.3d 519, 521 (Utah 2001) (reversing the denial of petitioner's request to change their name to Santa Claus). "Statutes similar to sections 42–1–1 and–2 [Utah's name-change statutes] are recognized to merely provide a codified process to aid an individual's common law right to adopt another name at will. The statutory procedure benefits the petitioner and society by producing a record of the change. Consequently, applications under the statute should be encouraged and should generally be granted unless sought for a wrongful or fraudulent purpose." *Id.*

6 *See* Sec'y of Commonwealth v. City Clerk of Lowell, 366 N.E.2d 717, 723–24 (Mass. 1977); Malone v. Sullivan, 605 P.2d 447, 450 (Ariz. 1980) (en banc).

7 *In re* Ferner, 685 A.2d 78, 83 (N.J. Super. Ct. Law. Div. 1996).

8 *In re* Boardman, 166 A.3d 106, 110 (Me. 2017).

9 Generally speaking, the purpose for a name change is considered to ensure the new name is not being used to commit fraud (so as to cause public confusion or harm to others). *See, e.g.*, *In re* Serpentfoot, 646 S.E.2d 267, 269 (Ga. Ct. App. 2007) (denying name change when stated purpose was to disparage surname of local newspaper editor).

10 *See, e.g.*, *In re* Ferner, 685 A.2d at 81.

11 *Sec'y of Commonwealth*, 366 N.E.2d at 723.

12 Kelly Snyder, *All Names Are Not Equal: Choice of Marital Surname and Equal Protection*, 30 WASH. U. J.L. & POL'Y 561, 586 (2009).

13 *See, e.g.*, Egner v. Egner, 337 A.2d 46, 48 (N.J. Super. Ct. App. Div. 1975).

14 *Sec'y of Commonwealth*, 366 N.E.2d at 723.

local courts have formulaic ways to predetermine the surnames used in the pleadings and in documents associated with a divorce proceeding.[15] In these instances, once a particular surname is requested at the time of a divorce, and a judge signs off on it, that is the end of the story.[16] That is your name from here on out. Or is it? What if, alternatively, nothing is said in the divorce decree about the use of a surname, or if a party asking to revert to a former surname later decides they want the one used during the marriage?

Some social science scholars would describe naming autonomy in marital surnames as related to third-wave feminism.[17] Popular culture writers have referred to a divorced woman keeping her former husband's surname as "a flex."[18] Recently, this new social

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15 *See State of New Hampshire Certificate of Divorce, Civil Union, Dissolution, Legal Separation or Annulment*, N.H. JUD. BRANCH (Dec. 2010), https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2021-04/vsform_divorc_cu.pdf [https://perma.cc/M23B-ABF8]; *State of Alabama Divorce Complaint*, ALA. ADMIN. OFF. OF COURTS (Oct. 2008), https://eforms.alacourt.gov/media/lmgc2trw/divorce-complaint.pdf [https://perma.cc/7GTZ-4HBE].

16 *See How Do I File a Change of Name for an Adult? When You Don't Need to File a Name Change in Court*, MASS. CT. SYS., https://www.mass.gov/info-details/how-do-i-file-a-change-of-name-for-an-adult [https://perma.cc/BP7D-WCW8] ("If you're getting divorced and want to resume a name you have legally had in the past, you can ask to resume this former name in your Complaint for Divorce, Joint Petition for Divorce form, or Counterclaim for Divorce.").

17 Scholars refer to a "third wave of feminism" replacing a rejection of government and regulatory constraints on women's choice with a perception of not choosing what is expected of the modern woman. *See, e.g.*, Suzanne A. Kim, *Marital Naming/Naming Marriage: Language and Status in Family Law*, 85 IND. L.J. 893, 914 (2010) ("Current attitudes about naming may also reflect a greater sense of personal choice, which resonates with an increased sense that feminism means being able to do as one pleases, regardless of whether and how it comports with earlier versions of feminism. . . . '[T]hird wave' feminism, mostly comprised of women who came of age after the second wave of feminism, seeks women's 'freedom to live life as they choose.'" (footnote omitted) (quoting Harold P. Southerland, *"Love for Sale"—Sex and the Second American Revolution*, 15 DUKE J. GENDER L. & POL'Y 49, 117 (2008))). Some scholars of feminist studies posit that we are currently in a fourth-wave period of feminism that began in the early 2010s, embracing intersectionality, the use of technology to promote women's rights, and broader and more diverse interpretations of empowerment beyond the third wave. *See, e.g.*, Ealasaid Munro, *Feminism: A Fourth Wave?*, PSA BLOG: POL. STUD. ASSOC. (Sep. 5, 2013), https://www.psa.ac.uk/psa/news/feminism-fourth-wave [https://perma.cc/FUG9-Y87Z].

18 Kayla Kibbe, *Melinda French Gates is Keeping Bill Gates's Last Name*, INSIDE HOOK (Aug. 3, 2021), https://www.insidehook.com/culture/melinda-gates-keeping-last-name [https://perma.cc/D35S-89KN]. Kibbe's piece would likely resonate with younger generations' perception of feminism: "Melinda French Gates has ushered in a new trend in post-divorce feminism. Refusing to take your husband's name? Old news, your grandma's feminism. Holding onto that shit and reclaiming it for your own is the new feminist flex." *Id.*

phenomenon has played out in two high-profile divorces: Jeff Bezos[19] and MacKenzie Scott[20] in 2019, and Bill Gates and Melinda French Gates[21] in 2021. In both of these billion-dollar asset divisions, the woman was faced with the customary albatross of what to do with her surname.[22] Would she keep her marital surname, or would she return to the one she used before the marriage (or use another altogether)? In a divorce, American society has long placed the burden of this choice on women, not men.[23]

As explained below, because of the still extreme social (and other extralegal) pressures that many women feel to adopt a man's surname when entering into an opposite-sex marriage, the law disproportionately burdens women, especially in formalizing protections in surname use after a marriage ends. As the table of laws appended to this Article demonstrates, naming rights at the end of a marriage are muddled in a web of custom, common law, and inconsistent statutory guidance.[24] State statutes on naming rights post-divorce are not unified and rarely give clear guidance on naming options, and some states (such as Florida, Idaho, Mississippi, and Missouri) do not even have a statute addressing the matter. Very few of the statutes could be construed to confirm a baseline right to use the

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19 *À propos* of this study, "Bezos" was not even Jeff Bezos's birth surname; he was adopted by his mother's second husband, Miguel (Mike) Bezos, at age four, and his surname was legally changed from Jorgensen to Bezos. RICHARD L. BRANDT, ONE CLICK: JEFF BEZOS AND THE RISE OF AMAZON.COM 21–22 (2011).

20 Lucy Pavia, *Triumph of the Former Mrs. Amazon: What Mackenzie Scott Did Next*, THE STANDARD (Mar. 23, 2022), https://www.standard.co.uk/lifestyle/celebrity/mackenzie-scott-success-jeff-bezos-divorce-a4512601.html [https://perma.cc/7YEF-E8AM]. Scott kept using the Bezos surname for some months after their divorce in 2019, but as she began her philanthropy, that changed. As Pavia writes, "Scott donated over $4.1 billion during 2020 to food banks and emergency relief funds amid the Covid-19 pandemic. That followed donations of $1.7 billion to causes including racial equality, LGBTQ rights, public health and climate change announced earlier in 2020, when she also revealed she would be dropping Bezos as a surname." *Id.*

21 Greg Bordelon, *What's a Last Name Worth in Divorce? If It's Gates, a Lot*, BLOOMBERG LAW (May 12, 2021), https://news.bloomberglaw.com/us-law-week/whats-a-last-name-worth-in-divorce-if-its-gates-a-lot [https://perma.cc/27NG-BZ3J].

22 Omi, *supra* note 3, at 255–56.

23 Michael Rosensaft, *The Right of Men to Change Their Names Upon Marriage*, 5 U. PA. J. CONST. L. 186, 192 (2002). Rosensaft frames his argument as a constitutional equal protection concern as to men being restricted in using their wives' surname during marriage as well as changing to a surname other than their own if a marriage terminates. The reference to the article simply indicates that the surname decision is one that has been, and continues to be, a sex-based concern that women must deal with.

24 *See infra* Table 1.

borrowed, marital surname, but really do nothing beyond stating such.[25] As a result, women may feel an uncertain sense of identity in their name following divorce. State statutes should be explicit about naming options upon divorce and should remedy this uncertainty by formalizing custom in positive law, thereby protecting a divorced woman's right to use a marital surname.

No statutes yet enacted in this area detail the parameters of an unfettered *right* in a surname, either during or after marriage, inasmuch as anyone has a right to any "legal" name.[26] Commercial protections provided by the law, such as trademark infringement claims[27] and tortious right of publicity actions[28] could conceivably determine the rights of use to a marital surname, but "the ubiquity of some names makes it almost "an 'impossibility' for anyone 'to arrogate to himself the exclusive use of a name which he shares in common with many other persons.'"[29] Likewise, there is a presumption that statutes do not intend to "displace 'bedrock' features of the common law"[30] (like naming autonomy), so trademark and tort protections likely do not secure rights in the use of a

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25 Louisiana's Code of Civil Procedure seems to confirm that a divorced woman may take her husband's name under LA. CIV. CODE art. 100 (Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.) ("Marriage does not change the name of either spouse. However, a married person may use the surname of either or both spouses as a surname."). *See* LA. CODE CIV. PROC. ANN. art. 3947(B) (Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.). As discussed in more detail below, Illinois and Rhode Island's statutes are the only other two that seem to confirm rights in marital surnames for divorced individuals.

26 Austin A. Baker & J. Remy Green, *There Is No Such Thing as a "Legal Name"*, 53 COLUM. HUM. RTS. L. REV. 129, 133–34 (2021) ("[T]here is a deep irony to this near-universal insistence on using legal names: *legally speaking*, there is no agreement about what a 'Legal Name' is. Many people have several legal names—e.g., the name on their birth certificate, the name on their driver's license, the name on their Social Security card, the name on their green card, the name they are referred to by in their community, etc.—depending on the definitions used, all of which might be different." (emphasis in original)).

27 The United States Supreme Court recently held that a person does not have a First Amendment right to obtain a trademark in another living person's name without that person's consent. Vidal v. Elster, 602 U.S. 286, 310 (2024).

28 *See generally* Alexander, *supra* note 1, at 74 ("The right of publicity prevents the unauthorized use of a person's name, likeness, or other aspects of one's identity and gives the individual the exclusive right to license the commercial use of these personal features.").

29 Jennifer E. Rothman, *Navigating the Identity Thicket: Trademark's Lost Theory of Personality, the Right of Publicity, and Preemption*, 135 HARV. L. REV. 1271, 1300 (2022) (footnote omitted) (quoting LEWIS BOYD SEBASTIAN ET AL., THE LAW OF TRADE MARKS AND THEIR REGISTRATION AND MATTERS CONNECTED THEREWITH 39 (5th ed. 1911)) (regarding the inability to trademark an individual's name).

30 Dewberry Grp., Inc. v. Dewberry Eng'rs, 604 U.S. 321, 327 (2025) (citing United States v. Bestfoods, 524 U.S. 51, 62 (1998)).

surname. And the vast majority of women who take a man's surname in an opposite-sex marriage, often in response to strong extralegal pressures, are likely unaware of the legal protections around their (perhaps even commercial) use of that surname.

If a man were to contest a woman's right to a name, what legal grounds would she have to defend it? In this intersection of custom and law with a "right" that is not clearly a property interest or a constitutional liberty interest, coupled with broad judicial discretion in post-marital naming, firmer and more predictable rules are warranted. Courts need guidance on how to adjudicate surname usage disputes between divorced individuals. Considering how long, when, to what degree, and for what purpose a surname is used during a marriage can aid in establishing this legal framework.[31] Federal statutory law abutting surname usage must also be considered: this includes federal employment discrimination law, federal voting rights laws (like the recently proposed Safeguard American Voter Eligibility "SAVE" Act), and the REAL ID Act.[32]

Throughout this work, I refer to two types of surnames: a former surname and a marital surname. A "former surname" can refer to any surname an individual used before a marriage; it can include one that is given at birth and registered on an official state document, such as a birth certificate, or one that an individual used from a previous marriage or formal name change.[33] "Marital surname" refers to a surname used by an individual that is not their former surname and is the surname of the individual's current or former spouse.

As a preliminary matter, it is important to describe the limits of this Article's scope. Though the analytical framework and legal proposals herein can be applied to both opposite-sex and same-sex divorced individuals, the Article discusses how claims for a statutory right in the use of a marital surname post-divorce exists more strongly for women leaving opposite-sex marriages than it does for individuals leaving a same-sex marriage (at

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31 *See infra* Part III, addressing these elements within the existing statutes dealing with marital surname options for usage upon divorce.

32 *See infra* Part II.C.3.b, addressing the federal statutes that touch on considerations of surname usage and incidentally, potentially those used (and the documentation required therefor) by an individual after a marriage terminates.

33 The law (primarily through administrative documents) still has some elements of the patrilineal hierarchy of marital surnames by frequently using the term "maiden name." The term itself implies that an unmarried woman, a "maiden," will take a new surname upon marriage. *See, e.g.*, Deborah J. Anthony, *A Spouse by Any Other Name*, 17 WM. & MARY J. WOMEN & L. 187, 206 (2010) [hereinafter Anthony, *A Spouse*].

least for now).[34] As time passes, states will likely see naming disputes between same-sex couples as well. Furthermore, for reasons explained below, a man does not traditionally take a woman's surname in an opposite-sex marriage. While there is scholarship analyzing this possibility and discussing how state laws and local marriage license applications can facilitate it, the social forces driving women to adopt their male spouse's surnames mean that a woman taking a man's name is far more common than the inverse.[35]

This Article focuses on the law of surname usage in the United States. Comparative and international surname law is highly varied, with numerous cultural, historical, and social customs influencing how positive laws are enacted and enforced.[36] Some of these phenomena may exist in the United States, but many will differ. Although the Article references system-based legal theories (common law systems and civil law systems) to aid in classifying naming rights, reference to specific contemporary non-U.S. laws will be sparse.

Though this Article analyzes and ultimately proposes a legal framework for predictable and unrestricted use of a marital surname by a divorced woman, decisions regarding children's surname choices are discussed as an analytical ancillary to the law of divorced women's surname options.[37]

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34 As discussed in Part II.B, *infra*, the constitutional right to same-sex marriage was established relatively recently, so there are few cases analyzing surname usage disputes between divorcing same-sex couples. However, the analysis herein and the protections of the statute proposed at the conclusion of this article would apply equally to both opposite-sex divorcing couples and same-sex divorcing couples.

35 According to a 2023 study by the Pew Research Center, 92% of men in opposite-sex marriages kept their last names. Five percent took their spouse's last name, and only one percent hyphenated both last names. 79% of women took their husband's last name upon marriage. Luona Lin, *About 8 in 10 Women in Opposite-Sex Marriages Say They Took Their Husband's Last Name*, PEW RSCH. CTR. (Sep. 7, 2023), https://www.pewresearch.org/short-reads/2023/09/07/about-eight-in-ten-women-in-opposite-sex-marriages-say-they-took-their-husbands-last-name/ [https://perma.cc/Q9PQ-YUHG].

36 *See*, *e.g.*, Motoko Rich & Kiuko Notoya, *A Litmus Test in Japan: Should Spouses Be Able to Have Different Surnames?*, N.Y. TIMES (Sep. 25, 2024), https://www.nytimes.com/2024/09/25/world/asia/japan-election-surnames.html [https://perma.cc/W3N3-X4PY]; Sharon Shakargy, *You Name It: On the Cross-Border Regulation of Names*, 68 AM. J. COMP. L. 647, 655 (2020) (analyzing the need for firm choice-of-law rules regarding naming because "[t]he regulation of names presents unique challenges due to the disparity of outlooks on the matter among different jurisdictions").

37 When state court judges face child surname disputes, they determine "good cause" to decide whether a name change to the child should occur. UNIF. PARENTAGE ACT § 622(e) (UNIF. L. COMM'N 2017). State courts are linking the "best interest" test (frequently used in child custody determinations) to this provision in the Uniform Parentage Act to determine whether a surname change of a child should be granted. *See, e.g.*, E.R.J.

Lastly, this Article's analysis applies to marriages terminated by means other than divorce.[38] However, given that marriages terminate by divorce in a greater proportion than annulment, the analysis has the most practical effect in the realm of divorce.[39] The immediate practical application of this research is to help formalize a legal right in the use of a marital surname for a divorced woman without fear of legal action by her former husband. Future research will explore, once that right to use the surname is better established (preferably by statute), the financial utility of the name's use as a commodity and how it might be valued it in a business context, as well as how the right could be further supported by the law of trademark and the right of publicity cause of action in tort.

This article proceeds in four parts. Part I presents a brief history of surname usage, tracing the development of marital surname usage in the United States from the English common law to the advent of ostensible gender egalitarian surname protection through a series of court decisions in the 1970s. Part II examines the significant reasons, beyond the law, why women in opposite-sex marriages still choose to take their husband's surname before addressing the state of marital surname taking for same-sex couples. Part II also assesses the existing legal environment of marital surnames, identifying how case law

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v. T.L.B., 990 N.W.2d 570, 572, 575–76 (N.D. 2023) (interpreting North Dakota's analogous provision to §622(e), found in N.D. CENT. CODE ANN. § 14-20-57 (West 2022)). Though some of these cases' analyses may be helpful by comparison, the "best interest" test is inapplicable to courts' determinations involving naming rights of adults.

38 As a general matter, state law governing marriage indicates that a marriage terminates by one of three primary ways: divorce, annulment, or death (or judicial declaration of death) of either party to the marriage. *See, e.g.*, 27 FED. PROC., L. ED. § 61:540. For all intents and purposes, a marriage that is terminated by annulment results in the same dilemma for the use of a marital surname as this article postulates. A marriage that ends in death of one of the parties presents a very interesting question regarding *who* can enforce rights analyzed here. To the extent a state trial or probate court would entertain the question of continued use of a marital surname, could it do so in the context of an estate administration? If so, could the heir(s) or legatee(s) enforce such a right on behalf of the deceased "original" holder of the surname? Could the use of a marital surname be called for in a will or as a condition in a trust? At least one court has ruled that when a husband dies during the pendency of a divorce action, and the wife requests to change her name back to a former surname, his death does not abate her request provided she is not seeking to change the name for fraudulent purposes (such as avoiding creditors). Hesson v. Hesson, 919 A.2d 907, 910 (N.J. Super. Ct. Ch. Div. 2007).

39 Comprehensive data on the specific way marriages end, as between divorce and annulment, are not centralized, as many states archive these records at the county or otherwise local level. In 2022, according to the U.S. Centers for Disease Control and Prevention, the provisional marriage rate was 6.2 per 1,000 total population, and the provisional number of divorces and annulments was 2.4 per 1,000 total population. *National Marriage and Divorce Rate Trends for 2000–2022*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/nchs/data/dvs/marriage-divorce/national-marriage-divorce-rates-00-22.pdf [https://perma.cc/B5N3-TXJ4].

shapes this legal landscape. Part III analyzes how state statutes inform the use of surnames following marital dissolution, particularly what options are expressly provided, who may raise the issue, how, and when. Part III also addresses the residual legacy of gendered language in some of the statutes. Part IV proposes a model statute on post-divorce surname options and analyzes its constituent parts. The model statute would provide clear guidance and predictability in this area, allowing divorced individuals the option to continue using the name of their former spouse, including the ability to make commercial use of it.

I. The Origins of Surnames in Marriage and Divorce

The use of names to identify individuals has been "ubiquitous in both primitive and modern society."[40] Surname usage increased in formality alongside the advancement of wealth in land[41] and, later, governments' need for keeping administrative records on their citizens.[42] When property was involved, it was not uncommon for children to even adopt the surname of their mother if she owned the majority of wealth or possessed a larger estate than her husband.[43]

The identity purpose of naming is well analyzed in the scholarly literature of psychology and sociology.[44] In the English tradition, from which American common law developed, surname usage was a "highly variable and fluid cultural practice" before the Norman Conquest of 1066.[45] Surname usage, through a hereditary naming convention, became customary in mid-sixteenth-century England under Elizabeth I.[46] As a second identifier to supplement given names, surnames developed in ways that referenced the individual's

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40 Alistair Berg, An Institutional Analysis of the Economics of Identity 100 (Aug. 20, 2021) (Ph.D. dissertation, Royal Melbourne Institute of Technology) (on file with author).

41 Deborah J. Anthony, *To Have, To Hold, and To Vanquish: Property and Inheritance in the History of Marriage and Surnames*, 5 BRIT. J. AM. LEGAL STUD. 217, 236 (2016) [hereinafter Anthony, *To Have*].

42 Berg, *supra* note 40, at 103.

43 Dunn v. Palermo, 522 S.W.2d 679, 681 (Tenn. 1975).

44 *See* Berg, *supra* note 40, at 101. *See generally, e.g.*, Kenneth L. Dion, *Names, Identity, and Self*, 31 J. ONOMASTICS 245 (1983); Peter N'diang'ui, *Is Peter Your Real Name? An Autohistoria-Teoría Exploration of Self-Identity Conflict Through Cultural Naming and Colonial Renaming Among the Kikuyu People of Kenya*, 8 J. CULTURE VALUES EDUC. 64 (2025).

45 Anthony, *To Have*, *supra* note 41, at 218.

46 Julia Shear Kushner, *The Right to Control One's Name*, 57 UCLA L. REV. 313, 325 (2009).

place in society and aided government actors in recordkeeping.[47] However, flexibility in realms outside these government functions remained.[48]

Surnames developed to fulfill a variety of functions, including connecting individuals to places (locational naming) and to their physical characteristics (like height).[49] They also connected individuals to professions and businesses (occupational naming) and to other individuals (relational naming), helping document long-term social and economic growth.[50] Historical and etymological studies bear out these functions.[51] For example, the *-son* suffix in a surname like "Richardson" initially meant "son of Richard";[52] the same patronymic relational derivatives exist for common American surnames such as "Johnson."[53] Surnames ending in suffixes like *-berg* (derived from *borough*), *-wick* (abode or village), and *-leigh* or *-ley* (meadow), to name a few, are locationally or geographically grounded.[54] Occupationally, surnames such as "Taylor" evoke the old-English clothes trades, and the common surname of "Smith" takes its origins from the variety of historical occupations[55] connected to local commerce and community needs.

Historically, surnames have been used for nefarious reasons in furtherance of governments' political agendas.[56] Surname regulation has been used to oppress and control by stripping groups of rights to self-determination and self-identification.[57] When used as

47 Berg, *supra* note 40, at 103–04.

48 Anthony, *To Have*, *supra* note 41, at 239.

49 Jonathan Herring, *The Power of Naming: Surnames, Children, and Spouses*, *in* LAW AND LANGUAGE 310, 311 (Michael Freeman & Fiona Smith eds., 2013).

50 Berg, *supra* note 40, at 87–88, 105. Many names are likely derived from a historical connection to an occupation—Brewer, Miller, and Carpenter to name just a few—and, as integrated into American culture, morphed from other languages (e.g., Schumacher—shoemaker).

51 Berg, *supra* note 40, at 104.

52 Deborah J. Anthony, *In the Name of the Father: Compulsion, Tradition*, *and Law in the Lost History of Women's Surnames*, 25 J. JURIS. 59, 64 (2015) [hereinafter Anthony, *In the Name*].

53 Anthony, *A Spouse*, *supra* note 33, at 192.

54 Anthony, *In the Name*, *supra* note 52, at 64–65.

55 Deborah J. Anthony, *Eradicating Women's Surnames: Law, Tradition, and the Politics of Memory*, 37 COLUM. J. GENDER & L. 1, 5 (2018) [hereinafter Anthony, *Eradicating Women's Surnames*].

56 Berg, *supra* note 40, at 105–06.

57 Anthony, *A Spouse*, *supra* note 33, at 194.

a way to differentiate between families, ethnic groups, or other formal classifications of individuals, "surnames [could] be imposed by a state to ensure standard naming practices, including as a way of pursuing a political agenda."[58] Name changes have been used as a measure of cultural oppression and social dominance.[59]

Surnames have also functioned as a marker for the transfer of ownership and to define property rights,[60] which could then influence lawmakers' decisions on who is entitled to the use of a particular surname. This relationship becomes very clear in the context of the heritability of surnames and claims on property,[61] which operated initially as a marker to indicate familial relationships in wealth and property transfer without sovereign intervention.[62] For a long stretch of history, before the practice of surname borrowing in marriage was brought over to the United States, this focus on inheritance of property was not necessarily patrilineal. Before the advent of coverture and the patrilineal surname preference, married individuals often used the birth surname of the spouse with more wealth, which could have been the woman as well as the man.[63] Laying claim and proving title to property, however, was far more difficult in practice for women than men.[64]

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58 Berg, *supra* note 40, at 105–06. Berg's research points out historical examples of governments using lists of "approved names" and "standardized naming practices" as a means of preferring certain ethnic groups or classes of individuals over others. In some governmental regimes, surnames were changed for some by legal decree. *Id.* at 106.

59 Elizabeth F. Emens, *Changing Name Changing: Framing Rules and the Future of Marital Names*, 74 U. CHI. L. REV. 761, 770 (2007).

60 *See, e.g.*, Anthony, *A Spouse*, *supra* note 33, at 192–93. Historically, if a woman's family's wealth was greater than that of her husband's, and he took her name, "*property ownership became tied to surnames*, but neither property nor surnames had yet come to inhere solely in the male." Anthony, *Eradicating Women's Surnames*, *supra* note 55, at 7 (emphasis added).

61 Berg theorizes that after the Norman Conquest of 1066, different parts of a larger family tended to adopt different surnames to diffuse and spread out the influence of the root and branch surnames to stake claims on property, mostly land. Berg, *supra* note 40, at 90–91.

62 Governmental rules evidencing an interest in surname usage wouldn't develop formally in England until the reign of Henry VIII and the enactment of the *Statute of Wills* in 1540. *Id.* at 93–96.

63 Michael Mahoney Frandina, *A Man's Right to Choose His Surname in Marriage: A Proposal*, 16 DUKE J. GENDER L. & POL'Y 155, 159 (2009).

64 Berg, *supra* note 40, at 92 ("[T]he ability for females to successfully lay claim to property was substantially more difficult compared to their male counterparts.").

Eventually, the heritable use of a surname would give way to the government's ostensible need for recordkeeping; the surname proved useful to the state beyond merely indicating hereditary wealth transfer.[65] Scholars believe this was a façade, though, for governments were simply restricting women's rights by moving towards the system of coverture.[66] Individuals with little or no wealth were swallowed up by this legal regime and mandated to follow it.[67]

Coverture created a property system of marital assets that slowly eroded any gains in financial and social independence for married women. Under the coverture system, married women lost property rights over both land and movable assets and could neither sue nor be sued in their own name.[68] At this time, the law recognized one person in a marriage of the union of two, and that "person" was represented in all dealings by the husband.[69] The law gave the husband a "superior legal status as head of household and gave him legal dominion over his wife and children and all marital labor and property,"[70] morphing the husband's surname into the default "title" of "control and ownership"[71] of the "covered" unit. That concept of the marriage as a "single marital entity"[72] persisted as a legal concept well into the 1800s. But the English common law that developed from the law of coverture did not require that the wife use the husband's surname in all cases; if she did, it remained

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65 *Id.* at 95 ("[The] process was later adopted as a nationwide institution, whereby state authorities used the identity technology to unambiguously identify individuals from all classes for the purposes of taxation, legibility . . . as well as the legal enforcement of claims over landed property.").

66 *See, e.g.*, Anthony, *To Have*, *supra* note 41, at 218 ("As women's property ownership became more severely restricted over time, these variable surname practices also disappeared. The operation and function of property, especially as applied to women, is connected to the operation of surnames as a socio-legal function.").

67 Berg, *supra* note 40, at 99–100 ("[W]hat is apparent is that surnames as an identity technology emerged endogenously from [the Norman Conquest of] 1066, and were subsequently recognized through legal-centric means when the technology was used by, or forced upon, less wealthy individuals. . . . [T]hose from the lower classes tended to adopt surnames as the incentive to do so arose, and often as a result of some interaction with a state authority who demanded it for reasons of taxation, conscription and so forth.").

68 Lenore J. Weitzman, *Legal Regulation of Marriage: Tradition and Change: A Proposal for Individual Contracts and Contracts in Lieu of Marriage*, 62 CALIF. L. REV. 1169, 1172 (1974).

69 *In re* Reben, 342 A.2d 688, 691 (Me. 1975).

70 Anthony, *To Have*, *supra* note 41, at 237.

71 *Id*.

72 *In re* Reben, 342 A.2d at 692.

a matter of custom or practice, not a legal requirement.[73] Other U.S. state courts have not only acknowledged the antiquity of the coverture model but have shown, within it, that property and asset singularity was not necessarily the same as compelled surname taking.[74]

Nineteenth-century and early twentieth-century court decisions dealt inconsistently with the tension between common law naming autonomy for women and the single-unit property system of coverture. During this time, courts applied custom if it was convenient, but not in a way that would impede states' interest in cataloging and administratively organizing assets under the husband as head of a marital household.[75] When in doubt, these institutions would remain beholden to patrilineal structures of coverture and related legal principles that subsumed women's rights into the patrimony of her husband.

One of the first American state court cases addressing naming rights in this context involved a woman who purchased shares of bank stock using her name, Verina S. Moore.[76] She then married a Rev. Dr. Chapman. The shares of stock were later seized by the United States government under allegations that Verina was using funds to support the Confederacy during the Civil War. When the notice of the seizure "to all interested parties" (sent to her in the name of "Ver. S. Moore") was returned to the federal court approving cancellation of the stocks, she challenged for lack of notice. The court found the notice unacceptable by acknowledging that since her marriage to Chapman, her "legal" surname changed from Moore to Chapman.[77] Although she won the case on procedural grounds, the court's assumption that her name had legally changed to that of her husband's resulted in a coverture-esque rule of patrilineal surname preference in marriage. Shortly after this

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73 Kruzel v. Podell, 226 N.W.2d 458, 463 (Wis. 1975).

74 *See In re* Natale, 527 S.W.2d 402, 405 (Mo. Ct. App. 1975) ("The concept that the husband and wife are one, the 'one' being the husband, has been abandoned. Insistence that a married couple use one name, the husband's, is equally outmoded.").

75 Emens, *supra* note 59, 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.").

76 Chapman v. Phoenix Nat'l Bank of N.Y., 85 N.Y. 437, 445 (1881).

77 *Id.* at 449 ("[A]t the time this information was filed, the name of the plaintiff was not even Verina S. Moore. Her name was then, and for more than three years had been, Verina S. Chapman. 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.").

decision was the famous case of Lucy Stone, who refused to use the name of her husband, Blackwell, to vote in a local Massachusetts school board election, having consistently used the Stone surname for more than half of a century prior.[78]

In 1897, also in a New York court, a divorced husband asked to enjoin and hold in contempt his former wife for using his surname of Blanc after they divorced.[79] He had asked for her to not use the name as part of his divorce decree (suing on the grounds of her adultery), but she continued going by "Baroness Blanc" thereafter, even after remarrying.[80] She alleged that she used the surname only in her professional life as an actress.[81] The court reasoned that the decree governed the use of the surname, and traced the history of marital surnaming custom through coverture, reasoning that her continued use of the surname tarnished his reputation and noting the concern it could cause his second wife if he were to remarry. The court ultimately held the former wife in contempt for not abiding by the divorce decree, but also apparently decided not to enjoin her from continued use of the Blanc surname in her acting career.[82]

It would take a judicial decision back across the Atlantic to slowly turn the tide in American courts. That seminal English case, much like *Blanc v. Blanc* in New York a few years earlier, involved an action by a divorced husband to enjoin his former wife from using his surname, Cowley.[83] Earl Cowley was concerned about his former wife's use of the Cowley title once she planned remarriage to someone outside of his peerage:[84]

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78 Una Stannard, *Manners Make Laws: Married Women's Names in the United States*, 32 NAMES 114, 115 (1984). Subsequently, in 1921, a group of women, led by Ruth Hale, who experienced hardships as a result of refusing to take their husbands' surname in registering to vote, formed the Lucy Stone League. *Id.* at 118.

79 Blanc v. Blanc, 47 N.Y.S. 694 (N.Y. Sup. Ct. 1897).

80 *Id.* at 695.

81 *Id.*

82 The court did reiterate the ongoing injunction from the original divorce decree even though its punishment in the instant case seemed to permit the continued use of the Blanc surname. "[A]s she has acted under the advice of counsel, with some show of plausibility for her reasons of belief that she might have the right to use the name in the way she did, a light fine may be sufficient punishment for the present occasion. . . . The judgment for divorce, continuing in its effect as to the injunctive clause, does not require any assistance from a second injunction issuing in another action. On this ground, therefore, the motion is denied." *Id.* at 696.

83 Cowley (Earl) v. Cowley (Countess) [1901] AC (HL) 450.

84 The term "peerage" refers to relationships within an aristocracy. *Peerage*, CAMBRIDGE ADVANCED LEARNER'S DICTIONARY & THESAURUS (4th ed. 2013). It was particularly used in the British monarchy.

a commoner. Seeking to maintain the integrity of the Cowley name,[85] he sued her "to restrain . . . his former wife . . . from bearing the name and arms of [Cowley]."[86] Earl Cowley's legal argument was premised on a property theory of ownership in names, as he alleged the former wife's use was a "trespass . . . amounting to a legal wrong for her to still call herself Countess Cowley."[87] Countess Cowley's response cited the "courtesy" of the marital surname and the noble rank given to her in the English peerage system by such use. She further defended herself by invoking the English Crown's practice of allowing divorced women to retain titles of nobility, as well as her desire that her child be welcomed (with the Cowley surname) into the family of his father, her former husband.[88]

The House of Lords dismissed Earl Cowley's suit:

> [G]iven, as it is assumed here, that there was no malice and no annoyance, and no either implied or expressed assertion of marriage so as to give rise to a suit of jactitation, the simple broad question being whether this lady who, it is not doubted, bona fide, claims a right, and intends to claim a right, to be known by the name by which during the whole period of her married life she undoubtedly was known, can retain that right notwithstanding the divorce, it seems to me absolutely clear that no such suit could be entertained.[89]

Lord Macnaghten echoed his colleagues' position in this case of first impression by going on to say that there would be no relief that a court of law could grant to Earl Cowley, as she had used the name during the marriage and was entitled to its use thereafter.[90] He also seemed to waver on the nature of the right but indicated she would be allowed to

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85 Scholars have documented the history of peerage and the scandals related to how far British royals would go to maintain the integrity of their names. *See generally, e.g.*, Charles R. Mayes, *The Sale of Peerages in Early Stuart England*, 29 J. MOD. HIST. 21 (1957).

86 *Cowley*, [1901] AC (HL) at 450.

87 *Id.* at 452.

88 *Id.* at 454. There were elements of modern name-change law standards in her allegations that she was not attempting to retain the name for reasons of confusion or "claims to participate in Earl Cowley's hereditament." *Id.*

89 *Id.* at 453. In essence, there would be no claim for relief that the court could grant to Earl Cowley, finding that Countess Cowley had a right to use the former marital surname.

90 *Id*. at 455.

continue use of the name. "It is not a matter of right. It is merely a matter of courtesy, and allowed by the usages of society. In accordance with this usage the respondent still calls herself Countess Cowley."[91]

The *Cowley* case is notable for its assumption that a complainant must allege some injury or harm caused by the defendant's use of the surname—damage would be essential to the violation of whatever rights Earl Cowley claimed were infringed.[92] Without being able to prove such a harm, Earl Cowley was not afforded a remedy by the courts.[93] The case suggested an idea further developed in later U.S. state cases: property rights in names, whatever they may be, are not exclusively held by one individual in a marriage, even after that marriage ends.[94]

When there was doubt as to a married woman's surname in the mid-twentieth century, U.S. state courts seemed to fall back on property-based patrilineality and would often designate the name as that of the husband.[95] Basic tasks such as obtaining a driver's license and registering to vote all pulled women towards adopting the marital surname.[96] Some court decisions into the 1970s disfavored naming autonomy.[97] Others wrestled with the

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91 *Id.*

92 *Id.* at 460.

93 *Id.* at 456 ("Lord Cowley has not suffered either legal wrong or damage. . . . [E]ven if the matter were cognizable at law, I should hold that there was no right to an injunction. There is no precedent for such an order, and I should be very sorry to advise your Lordships to make a precedent in this case.").

94 *See, e.g.*, Baumann v. Baumann, 165 N.E. 819, 821 (N.Y. 1929) ("If the plaintiff has any property rights, that decree also protects those rights by legally establishing her status. . . . The plaintiff has a legal right to use the name 'Baumann,' but not necessarily an exclusive right to the use of that name."); Mueller v. Kamenesh, 864 So. 2d 38, 40 (Fla. Dist. Ct. App. 2003), *reh'g denied*, (2004) ("It is clear, however, that the trial court had no authority to order, at the instance of the former husband, the ex-wife to discontinue using her married name.").

95 *See, e.g.*, Kif Augustine-Adams, *The Beginning of Wisdom Is to Call Things by Their Right Names*, 7 S. CAL. REV. L. & WOMEN'S STUD. 1, 4–5 (1997) ("Historically, various courts, government entities and treatises in the United States legally assigned a married woman her husband's surname under the common law and otherwise. . . . Clearly, married women were dependent and largely invisible under the common law doctrine of merger, under which a married woman's legal identity was subsumed into that of her husband and she could not acquire or sell property, make contracts, sue or be sued independently.").

96 Emens, *supra* note 59, at 763.

97 *See, e.g.*, Forbush v. Wallace, 341 F. Supp. 217, 222–23 (M.D. Ala. 1971), *aff'd*, 405 U.S. 970 (1972) ("We conclude, therefore, that the existing law in Alabama which requires a woman to assume her husband's

naming rights analyzed in *Cowley* and whether common law could be used for the benefit of women's naming autonomy during marriage,[98] as well as women's ability to use a surname of their choice after their marriage had ended.[99]

As explained more fully in Part II, appellate courts slowly began to affirm naming autonomy principles for women in the 1970s. The force behind this legal reform (which occurred alongside political and social reform) is that marital naming generally follows common law practices, and common law naming autonomy persisted even in the few states that appeared to statutorily limit the common law rules. Very strong social and extralegal forces, however, have inhibited the reach of these ostensible legal protections and have moved the customary use of a marital surname into a gray area once a marriage ends. Hence, although extralegal factors drive the customary adoption of another person's surname in marriage, the law needs to clarify and protect the right to continue using that name after marriage if a woman so chooses.

II. Surname Use During a Marriage—Modern to Contemporary Framings

The historical backdrop of naming autonomy drapes a stage that, according to feminist studies scholars, still defaults to patriarchy in practice.[100] From language itself to how predominantly male lawmakers have shaped legal narratives, women have constantly fought for equality against a patriarchal backdrop.[101] Some states have laws that either reiterate

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surname upon marriage has a rational basis and seeks to control an area where the state has a legitimate interest.").

98 "[A]fter reviewing the extensive authorities on the subject, we conclude that the common law of England on July 4, 1776, did not by operation of law engraft the husband's surname upon the wife." Davis v. Roos, 326 So. 2d 226, 229 (Fla. Dist. Ct. App. 1976).

99 > The common law rule that a married woman takes her husband's surname was based on immemorial custom and usage in England and in this country. As far as we know there has never been any such uniform custom and usage as would dictate a common law rule that a divorced woman is required to retain the name of her former husband against her wishes. Historically, some divorced women have retained their married surnames until remarriage or death; others have resumed their maiden names.

Walker v. Jackson, 391 F. Supp. 1395, 1402 (E.D. Ark. 1975).

100 *See generally* Betty Friedan, *The Problem That Has No Name*, *in* THE FEMININE MYSTIQUE 57 (2001 ed.).

101 Omi Morgenstern Leissner, *The Problem That Has No Name*, 4 CARDOZO WOMEN'S L.J. 321, 323 (1998).

the naming autonomy custom or slightly displace it.[102] Courts have tried to reinforce the notion that marriage and surname usage are distinct,[103] but the social reality leaves two standard choices upon marital dissolution: a person's birth or former (before the marriage) surname or their partner's surname. Beyond this—or perhaps because of it—the law is unclear as to whether any other alternative surname could be used during a marriage in all "legal" senses.[104] In an opposite-sex marriage, the woman almost always takes the man's surname.[105] Law, as an institution, often is an end to societal means, and legal regulation of naming (whether by legislatures or courts) is therefore powerful,[106] but law does not often intervene in marital naming. This presents a problem and potentially leaves a gap in rights when and if the marriage ends.

To be clear, in a culturally diverse society such as the United States, surname taking during (and potentially after) marriage does not always bend towards patrilineality. Many individuals follow surnaming practices with origins outside of the United States: some surnames are maternal, some are neither paternal nor maternal (but tell a story about the person), and some cultures have no surname at all.[107] While we should celebrate these diverse practices, the reality of the American legal system presupposes and seems to prefer

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102 *See, e.g.*, LA. CIV. CODE ANN. art. 100 (Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.) ("Marriage does not change the name of either spouse. However, a married person may use the surname of either or both spouses as a surname."); N.D. CENT. CODE ANN. § 14-03-20.1(1)–(2) (West, Westlaw through Mar. 19, 2025, 2025 Reg. Sess.) ("Every person has the right to adopt any surname by which that person wishes to be known by using that surname consistently and without intent to defraud. A person's surname does not automatically change upon marriage.").

103 *See, e.g.*, *In re* Boardman, 166 A.3d 106, 111 (Me. 2017) ("[A]s a practical matter, given the variety of naming conventions in modern society, having the same last name no more indicates that a couple is married than having a different last name indicates that a couple is unmarried.").

104 With respect to the "blending" or merging of surnames (using letter combinations from each of the two individuals), four states statutorily allow blending (North Dakota, California, New York, and Kansas), and three states allow individuals entering into marriage to adopt *any* surname (Massachusetts, Iowa, and Minnesota), both of these possibilities without the necessity of a formal name change petition. Hannah Haksgaard, *Blending Surnames at Marriage*, 30 STAN. L. & POL'Y REV. 307, 309 (2019); Meegan Brooks, *For Nontraditional Names' Sake: A Call to Reform the Name-Change Process for Marrying Couples*, 47 U. MICH. J.L. REFORM 247, 258–59 (2019).

105 Studies vary, but approximately 80% of women in opposite-sex marriages take their husband's surname upon marriage, according to a 2023 Pew Research Center study. *See* Lin, *supra* note 35.

106 *See, e.g.*, Leissner, *supra* note 101, at 326 ("One area in which naming and the power to name are particularly important is law.").

107 Anthony, *A Spouse*, *supra* note 33, at 193.

patrilineal surnaming. So, at the borrowing spouse's option, a right to continue to use that name after marital dissolution, grounded in clear statutory guidance, should be available.

Our history is also marred by forcible surname practices aimed at specific populations, akin to government compulsion of women's surnames in the name of official recordkeeping.[108] Individuals subject to the institution of slavery were often forced to adopt a surname of their owners, which carried on through their descendants.[109] Some, in the interest of presumed financial opportunities, chose to go by other English surnames to "blend in with the dominant Anglo society, rejecting African names and the names of prominent slave holders or their former masters."[110] These cultural and historical facets of surnaming are important to a holistic view of how the law treats surname usage and can be reflected upon to more fully consider how current laws can shape the more traditional surname borrowing analysis that is the subject of this study.

This section first examines the extralegal forces still driving women to adopt and use their husbands' surnames in opposite-sex marriages. It then analyzes how those factors shaped the legal landscape and how courts and legislatures treat the "reputation" element of a marital surname—when, how long, and in what ways the name is used. Finally, it surveys how the law on marital surnaming has developed, starting with the women's rights movement of the 1970s through the judicial reform of the last fifty years, and how federal law may displace state law on naming.

A. Non-Legal Factors Leading a Woman to Adopt a Man's Surname During Marriage

Currently, no U.S. states mandate that an individual take their partner's surname in marriage. Women still, by a very large percentage, take the surname of men.[111] The

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108 *See, e.g.*, *supra* notes 65–67 and accompanying text.

109 Anthony, *In the Name*, *supra* note 52, at 86.

110 Augustine-Adams, *supra* note 95, at 30.

111 Lin, *supra* note 35; Kim, *supra* note 17, at 895 (arguing that there exist "persistently gendered practices of 'marital naming,' by which women almost universally adopt their husbands' last names upon marriage, despite the formal freedom of women to retain their names and of men to adopt their wives' last names").

percentage of children born of a marriage that are given the father's last name is high as well.[112]

Studies consistently reveal that very high percentages of women decide to take their husband's surname in marriage, and this is more prevalent among women with the following characteristics: white; located in the Southern United States; without a four-year college education; who marry younger; in religious ceremonies.[113] Only a relatively small percentage of women decide to hyphenate their former surname with their husband's surname or replace their second given (middle) name with their former surname.[114] Although no comprehensive data is yet available, it is very likely that an equally small percentage of couples combine their two surnames into one blended surname.[115] An even smaller percentage of men take their wife's surname or hyphenate their name before their wife's name.[116]

Some social science researchers have hypothesized that increases in the rates of divorce and remarriage, single parenting, and same-sex couple parenting have resulted in a greater number of American households with members bearing different surnames.[117] Studies also suggest that when women and men cohabitate before marrying, women are more likely

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112 David R. Johnson & Laurie K. Scheuble, *What Should We Call Our Kids? Choosing Children's Surnames When Parents' Last Names Differ*, 39 SOC. SCI. J. 419, 419–20 (2002) ("The norm of naming children after their father still operates strongly in society."); *see also* Colleen Nugent, *Children's Surnames, Moral Dilemmas: Accounting for the Predominance of Fathers' Surnames for Children*, 24 GENDER AND SOC'Y 499, 500 (2010).

113 As to race: Emens, *supra* note 59, at 788; Claudia Goldin & Maria Shim, *Making a Name: Women's Surnames at Marriage and Beyond*, 18 J. ECON. PERSP. 143, 152 (2004). As to education level: *id.* at 152. As to age: *id.* at 156 ("Brides in their mid-twenties had a much lower probability of 'keeping' [their formal surnames]."). As to geographic area of the United States: Laurie K. Scheuble, David R. Johnson & Katherine M. Johnson, *Marital Name Changing Attitudes and Plans of College Students: Comparing Change over Time and Across Regions*, 66 SEX ROLES 282, 285 (2012). As to religious or civil marriage ceremony: Goldin & Shim, *supra*, at 156.

114 *See, e.g.*, Suarez, *supra* note 4, at 239 (finding that approximately 5% of women hyphenate the names, and approximately 3% use their former surname as their middle name).

115 Haksgaard, *supra* note 104, at 309.

116 Lin, *supra* note 35; Kristin Kelley, *The Effect of Marital Name Choices on Heterosexual Women's and Men's Perceived Quality as Romantic Partners*, 9 SOCIUS 1, 1 (2023).

117 Johnson & Scheuble, *supra* note 112, at 419–20. Johnson and Scheuble point out that the relatively recent proliferation of these family models may operate to erode the strong patrilineal naming social norms that have existed for some time. Their work presented evidence that women who enter marriage committed to using their own surname or an otherwise "unconventional" surname choice (i.e., not the surname of their spouse)

to retain their birth surname.[118] Though research shows that women who marry later in life and after obtaining professional credentials, thereby likely establishing a professional identity in a former surname, tend to retain their former surnames,[119] some studies suggest a trend that even these populations are taking the surnames of their husbands.[120]

Though liberated in the law, in reality, a woman choosing a marital surname still operates under significant pressures, making her choice less free than it appears.[121] What forces are causing this, since courts since at least the 1970s have attempted to move toward a more egalitarian legal position on marital naming? Scholars point to a few factors, including social forces, a non-traditional sense of individualism, administrative and functional convenience, and predetermined, predictable naming conventions for children born of the marriage.

1. Social Forces

Although legally within the "private domain of individual choice,"[122] surname selection during marriage is subject to public perception, with attendant social judgment. Social pressures prevent many opposite-sex couples, even those committed to equal partnerships in marriage, from making related egalitarian marital naming decisions.[123]

Socially constructed gender-based stereotypes about women who retain their birth surnames after marriage remain, as do stereotypes about the perception of men with wives

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often pass that surname on to the children born during the marriage as a second given name, or "middle name," though the norm of naming children with the father's surname still persists. *See id.* at 428.

118 Melanie MacEacheron, *North American Women's Marital Surname Change: Practices, Law, and Patrilineal Descent Reckoning*, 2 EVOL. PSYCH. SCI. 149, 156 (2016).

119 *See, e.g.*, Emens, *supra* note 59, at 787–88, 792; Goldin & Shim, *supra* note 113, at 156.

120 *See, e.g.*, Suarez, *supra* note 4, at 239 ("Some women are now arguing that they prefer to 'buck the feminist viewpoint' and choose for themselves their own tradition. These women are more likely to take their husbands' surnames.").

121 Emens, *supra* note 59, at 762 ("[W]omen are ostensibly choosing their marital names, but in fact they are choosing from a very limited decision set. . . . The formal legal default that both spouses keep their names reinforces this bind for women.").

122 Kim, *supra* note 17, at 910.

123 Kelley, *supra* note 116, at 12.

who do so.[124] Studies have shown that men perceive women who keep their birth surnames as "assertive and job-oriented" rather than "home[-] or family-oriented,"[125] or even as "less attractive and mak[ing] worse mothers."[126] Women who strongly identify with the surname used before marriage are also are more likely to pass their birth surname on to their children.[127] Sociological studies have shown a relationship between identity autonomy and name adoption variations, with women who choose to hyphenate their former surname with their husband's surname still signaling some agency, more so than removal of their surname for the man's.[128] That women who choose to retain their own surname are viewed as less committed and loving than women who adopt their husband's surname reflects the strength of normative gender roles.[129] These studies show a higher negative impact on women than men when traditional marital surnaming practices are broken.[130]

Oftentimes, legal protections create a "lag" for social practices by "carr[ying] implications for the law insofar as these practices force consideration of residual biases in the law as well as of the ways in which social practices themselves act as constraints in much the same fashion as formal law."[131] These residual biases are present when lower court judges exercise their discretion in naming matters by interpolating their own views

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124 Rachael D. Robnett, Marielle Wertheimer & Harriet R. Tenenbaum, *Does a Woman's Marital Surname Choice Influence Perceptions of Her Husband? An Analysis Focusing on Gender-Typed Traits and Relationship Power Dynamics*, 79 SEX ROLES 59, 69 (2018).

125 MacEacheron, *supra* note 118, at 155.

126 *Id.*

127 Johnson & Scheuble, *supra* note 112, at 428.

128 Kelley, *supra* note 116, at 4.

129 *Id.* at 8 ("[N]ame-keeping women are viewed as 14 percent less committed and loving than name-changing women . . . and about 12 percent further from the ideal wife than name-changing women.").

130 *Id.* ("[B]reaking marital name norms had larger effects on evaluations of women than on evaluations of men. Being in an unconventional couple negatively affected evaluations of women and men, but the effects on women were more than twice the size of those on men.").

131 Kim, *supra* note 17, at 941.

on women's names.[132] Other actors in the legal system are largely driven by these social customs rather than by the letter of the law.[133]

Women also perceive social pressures from potential in-laws to use their husband's marital surname, and the desire to please future "legal" family and descendants of one's potential children are driving forces in deciding to use the man's surname as her own.[134] Scholars write about how this informs a psychological attachment to a hereditary, patrilineal surname: men are more psychologically tied to their surnames because society informs them it is more important than a woman's surname.[135] As a result, women's psychological ties to their birth surnames are often forgotten, and their identity as it relates to surnames is considered fleeting or transitory.[136]

2. Individualism and Romanticism

Under more recent feminist movements,[137] women are choosing to adopt their husband's surnames in marriage as a reflection of personal choice.[138] In a pervasive social media age, there appears to be "influencing" of a more holistic view of antiquated gender roles for

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132 Kushner, *supra* note 46, at 319. Researchers have found that the lack of statutory guidance and ability to enforce common law rights in naming also influence "formal" name change requests. "[D]enials often appear to be influenced by personal opinion or governing social values." *Id.*

133 Emens, *supra* note 59, at 824 ("One of the most striking results of this inquiry into marital names was the degree to which federal, state, and local government clerks gave inaccurate, incomplete, contradictory, or normative responses to specific questions about legal options."). Professor Emens has a famous analysis of this known as "desk-clerk law," where judicial civil servants such as clerks of court staff often place "burdens informally" on women to avoid any marital naming practice different than the traditional taking of the husband's birth surname as her own last name. *Id.* at 764–65.

134 MacEacheron, *supra* note 118, at 157 ("To the extent their future in-laws will be pleased if these women's husbands are pleased, these women may choose to please both their husbands and in-laws, by signaling fidelity to their husband's (and therefore in-laws') line and the intention to add their future children to it.").

135 Anthony, *A Spouse*, *supra* note 33, at 196.

136 *Id.*

137 Some scholars argue that surges exist within "multiple waves" of feminism, producing "mini-narratives" within and between these waves. *See, e.g.*, Elizabeth Evans & Prudence Chamberlain, *Critical Waves: Exploring Feminist Identity, Discourse and Praxis in Western Feminism*, 14 SOC. MOVEMENT STUD. 396, 398 (2015). Surname selection in marriage appears to be a narrative of the third wave as a reaction to the equality movements of the 1970s and the second wave.

138 Kim, *supra* note 17, at 941.

women in marriage, which may include a renewed interest in gender-based marital surname practices.[139] This attitudinal shift is part of what scholars like Suzanne Kim identify as third-wave feminism, in which women express a more direct sense of individualism, including in marital naming choices, as a break with previous feminist movements that sought to categorically shun the institutional oppression of women.[140]

Research has shown that women's name choices, even in so-called egalitarian relationships where both parties confirm commitments to individual autonomy, have an effect on courtship rituals, and changing to the man's surname has been shown to signal stronger commitment to the relationship as well as familial commitment.[141] There is also sociological research that shows that "women and men are viewed as better romantic partners when they adhere to conventional, gendered marital name norms,"[142] even though these norms originate from legally sanctioned subjugation of women to men in coverture-like arrangements.[143] Related to this, though stemming from a more historical, customary image of naming union in the traditional marriage context, is the romanticized decision[144] to take another's surname.[145] Continued high rates of marital surname taking may reflect a view of history and custom as a statement of autonomy in a third-wave reaction to modernity.[146]

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139 Jacqueline Beatty, *The Truth About the Past That 'Tradwives' Want to Revive*, TIME (Apr. 22, 2024), https://time.com/6962381/tradwives-history/ [https://perma.cc/5WCC-6NMD].

140 Kim, *supra* note 17, at 914.

141 Kelley, *supra* note 116, at 3.

142 *Id.* at 11.

143 Robnett et al., *supra* note 124, at 60 ("Although adherence to romantic relationship traditions may appear to be harmless, scholars have argued that many of these traditions are infused with power dynamics that afford men greater status and power than women. Indeed, the tradition of wives adopting their husbands' surnames originates from a time when women had few legal rights and were perceived as their husbands' property.").

144 *See, e.g.*, Michaela Bramwell, *21 Reasons Young Women Are Embracing the 'Tradwife' Phenomenon According to Gen Z'ers, and Honestly, Some of These Are Spot On*, BUZZFEED (Jan. 13, 2025), https://www.buzzfeed.com/michaelabramwell/gen-z-women-share-views-on-tradwife-phenomenon [https://perma.cc/8JJZ-E6RA].

145 Emens, *supra* note 59, at 796.

146 *Id.* at 814 ("[A]lthough some women may experience changing their names as a loss, more women may feel a loss at the idea of not becoming Mrs. His Name, to the extent that they grew up expecting to change their names at marriage, and even romanticizing it. . . . To depart from the convention might feel like the loss of something expected.").

3. Administrative/Functional Convenience in Shared Marital Names

Have we moved on from coverture's treatment of husbands as the legal head of household?[147] Women still feel significant pressure to take the surname of their husbands as part of becoming a single administrative unit. The sheer historical force of the marital surname custom almost exhausts the idea of naming autonomy for a woman in important tasks like obtaining a driver's license, receiving governmental benefits, considering tax benefits, registering children for school, organizing family travel, and completing a host of other societal chores. This panoply of civic activities seemed to inform the basis for a district court judge's reasoning in *Forbush v. Wallace*[148] that the state's interest in conveniently cataloging driver's licenses for married women outweighed the petitioner's interest in using her chosen name.[149] Although *Forbush*'s reasoning has been relegated to a corner of state law overriding marital naming autonomy, some shadow of that reasoning still exists outside of the law and in women's assumed decision to just make things easier by using her husband's surname. Ironically, despite the numerous logistical steps required to stamp a "formal" name change on some of the aforementioned documents, women still feel substantial administrative pressure to take their husband's surname.[150]

4. Surnames of Children Born of the Marriage

Just as U.S. laws no longer mandate what a woman's surname *must* be when she enters into marriage, most U.S. states do not directly mandate the surname of children born of the marriage.[151] Earlier state courts' decisions appeared to favor a naming autonomy approach

147 Weitzman, *supra* note 68, at 1177. Writing at a time when women's independence in marital rights was still being established, Weitzman recognized the existing legal structures of purported administrative convenience in coverture models: "In addition to domicile and surname, there are other areas in which the law still recognizes the husband as head of the household with his wife's identity subordinate to his." *Id.*

148 Forbush v. Wallace, 341 F. Supp. 217 (M.D. Ala. 1971).

149 *Id.* at 221–22 ("[A]dministrative convenience, if not a necessity, is an important consideration."). Though the wife did not prevail in *Forbush*, in the constitutional calculus applied by lower courts since, administrative convenience alone has been held insufficient when the challenged action involves a discriminatory classification.

150 *See, e.g.*, Emens, *supra* note 59, at 816–17 ("Any choice other than Keeping [a woman's former or birth surname] is costly. . . . Mrs. His Name, the choice that has as few, or fewer, costs than any other option, [is] a striking fact in light of just how many steps even that process seems to involve.").

151 A few states do have statutory schemes that mandate, or make it almost an irrebuttable presumptive option, that the surname of a child born during a woman's marriage to a man is to be the man's surname, favoring patrilineal naming. *See*, *e.g.*, LA. STAT. ANN. § 40:34.2(2)(a) (Westlaw through 2025 Reg. Sess.); TENN. CODE ANN. § 68-3-305(a)(1) (West, Westlaw through 2025 1st Reg. Sess. of the 114th Gen. Assemb.).

to an extent.[152] Almost all children born of a marriage, however, are given the father's surname by default.[153] Even in marriages where women retain their birth surname or hyphenate it with their husband's surname, children born of these marriages almost always have the father's (husband's) surname.[154] Studies show that women express an interest in their children's surname being predetermined and consistent as shown to the outside world. Social scientists have studied this patrilineal naming preference through several lenses.[155] One theory is that children would be more readily accepted in society as economic actors with a patrilineal descent, like marital naming generally, since social acceptance is driven substantially by customary and historical practice;[156] mothers do not want to isolate or ostracize their children outside of a social norm, even though it is legally permissible and society accepts marital partners with different surnames.

B. Surname Sharing in Same-Sex Marriages

Because names have been used historically to oppress marginalized populations,[157] these groups have attempted to use the law for naming practices to "reflect social power and identity."[158] Since the legalization of same-sex marriage as a constitutional matter in 2015,[159] there has not been much research on the surname selections of same-sex marital partners.[160] The little research that has been done indicates that same-sex couples do not consider name-sharing important.[161] As research on the *marriage* side of the matter is

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152 Sec'y of Commonwealth. v. City Clerk of Lowell, 366 N.E.2d 717, 725 (Mass. 1977) ("We think the common law principle of freedom of choice in the matter of names extends to the name chosen by a married couple for their child.").

153 Johnson & Scheuble, *supra* note 112, at 419.

154 *Id.*

155 *See, e.g.*, MacEacheron, *supra* note 118, at 149.

156 *Id.*

157 *See supra* notes 56–59 and accompanying text.

158 Kim, *supra* note 17, at 900.

159 Obergefell v. Hodges, 576 U.S. 644, 665 (2015).

160 Cori Alonso-Yoder, *Making a Name for Themselves*, 74 RUTGERS U. L. REV. 911, 942 (2022) (pointing out that little research on naming rights in the United States has explored the perspective of LGBTQIA+ individuals, particularly in the context of customary marital surname borrowing).

161 Haksgaard, *supra* note 104, at 316.

not prevalent, naming prerogatives for *divorced* same-sex couples are consequentially understudied.

Because of the relatively recent declaration of the constitutional right to same-sex marriage, same-sex couples often resort to formal name change processes to honor the custom. Long before the Supreme Court ruled that state restrictions on same-sex marriages were unconstitutional in *Obergefell*, many states were working towards legitimation of same-sex unions by allowing name-sharing through formal name change procedures.[162] This included, *inter alia*, allowing name changes to hyphenated surnames of both partners.[163] Blending surnames of both individuals in a same-sex marriage has been noted as a possible avenue.[164] However, even after the constitutional decision, the logistical challenges of formalizing a same-sex marriage remained (e.g., listing "spouses" instead of "bride" and "groom" on an application for a marriage license, gendered references in statutes regarding marriage).[165] Many states have worked towards remedying these logistical hurdles to same-sex marriage recognition in the decade since *Obergefell*.[166]

C. The Law on Surnames During Marriage, from the 1970s to Today

The mainstay of modern law on marital surnames is that parties to a marriage do not lose their former name legally;[167] no source of law now requires a woman to assume the surname of her husband upon marriage.[168] However, state statutes recognize the custom of surname borrowing in marriage[169] coming from the English common law and permit marital surname borrowing in fact (custom) rather than in law.[170]

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162 *In re* Bicknell, 771 N.E.2d 846, 849 (Ohio 2002).

163 *In re* Bacharach, 780 A.2d 579, 584 (N.J. Super. Ct. App. Div. 2001).

164 Haksgaard, *supra* note 104, at 316.

165 *Id.*

166 *Id.*

167 Davis v. Roos, 326 So. 2d 226, 228 (Fla. Dist. Ct. App. 1976); Levey v. Dijols, 990 So. 2d 688, 693 (Fla. Dist. Ct. App. 2008).

168 Malone v. Sullivan, 605 P.2d 447, 450 (Ariz. 1980) (en banc).

169 *In re* Natale, 527 S.W.2d 402, 404 (Mo. Ct. App. 1975); *Davis*, 326 So. 2d at 229; State v. Johnson, 690 S.E.2d 707, 709 (N.C. Ct. App. 2010).

170 State v. Taylor, 415 So. 2d 1043, 1047 (Ala. 1982) (citing Kruzel v. Podell, 226 N.W.2d 458 (Wis. 1975)).

1. When Is the Marital Surname "Yours"?—The "Repute" Conundrum

Does adoption of a partner's surname during marriage bear on the rights to the name at the end of the marriage? The steps an individual takes to announce to the world that they are adopting a new surname may determine how the rights to that name vest. This determination, socially and culturally, is contoured by what state law allows (or requires) for the surnames of individuals entering a marriage. Whether in jurisdictions infused with the civil law or the common law, marriage does not mandate a name change for either party.[171] However, the custom of changing one's name upon entering a marriage may impact what rights exist when the institution giving rise to the custom is terminated. In other words, does the public reputation or "repute" of a name solidify a right to use it? Justice Heffernan in the *Kruzel* case affirmed that "[b]y repute it could, of course, become a lawful name, though not a name legally compelled by marriage."[172] Many dimensions for consideration arise from this ruling: when an individual starts to use a name, the duration for which they used it, and in what capacity the name is used.

A few states recognize two individuals as married through their continuous, open, and transparent living as a married couple, with or without a ceremony or marriage license: a "common law marriage."[173] However, most states define by statute the requirements for marriage, disallowing such a possibility. In order for a name to be acknowledged by "repute," the recognition of surnames of the spouses is balanced with the finding of a marriage arrangement in the first place. Where a custom (of living as a married couple) does not solidify into a legally recognized union (i.e., a common law marriage), there is likely less of a right to a borrowed name. Recent case law has found, however, that the overriding naming autonomy principle can operate to allow a shared surname between unmarried individuals who hold themselves out in such a capacity, even in states that do not allow common law marriages.[174]

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171 *Malone*, 605 P.2d at 450.

172 *Kruzel*, 226 N.W.2d at 461.

173 *Common Law Marriage*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 11, 2020), https://www.ncsl.org/human-services/common-law-marriage-by-state [https://perma.cc/6695-RN56] (Within certain restrictions, eight states (Colorado, Iowa, Kansas, Montana, New Hampshire, South Carolina, Texas, and Utah) allow what are known as "common law marriages" through statute; two other states (Rhode Island and Oklahoma) allow it by judicial interpretation).

174 *In re* Rohlik, 233 N.E.3d 80, 83 (Ohio Ct. App. 2023) ("[H]aving the same surname does not necessarily imply marriage," explaining that allowing a woman to change her surname to that of her domestic partner and finding that allowing such would not tacitly adopt common law marriage otherwise prohibited in Ohio).

a. Timing of Adoption and Length of Use

The Tennessee Supreme Court, in *Dunn v. Palermo*, held that a woman has freedom of choice to use her own surname or take her spouse's by custom.[175] In *Dunn*, the court also acknowledged that the woman would never lose the right to use her former surname if, at any time while married, she started using her husband's surname.[176] To the extent a customary right is created to use a marital surname by virtue of the marriage itself, is the opposite of the reasoning in *Dunn* also true? Can a person begin to use a marital surname at any point during (or even *after*) a marriage has commenced, even if it is some time after the wedding? Could one begin to use a marital surname at any time and reap benefits from that use, or would the right be framed by when it was initially used and for the duration thereafter?

Assuming a married woman takes her husband's name at the beginning of the marriage, does the length of the marriage (aligning with the length of time the marital name is used) bear any relevance or weight to a continued right of use? Courts have held that, under the common law right of naming, when one "had been known exclusively by the adopted name for a period of many years,"[177] there is a recognition by one's community of that name. Cases in the 1970s have held that a legal entitlement to a marital surname may arise for a married woman only if the surname of her husband would be "habitually used by her."[178] Other courts have articulated that "consistent" use may make a marital surname "legally" that of the borrowing spouse.[179]

There is little research in law or other social science disciplines investigating community perceptions of a divorced woman's association with a marital surname depending on the length of the marriage and the duration of the marital surname usage. The reliance on community understanding for a legal standard is questionable when communities are highly variable. As the Maine Supreme Judicial Court foreshadowed in the *Reben* case: how would community understanding function in an increasingly mobile and transient society, where

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175 *Dunn*, 522 S.W.2d at 688.

176 *Id.* ("[T]he mere custom of married women adopting their husband's surname, does not necessarily imply a rejection of their own names. We are cited to no case where the non-user of a name works a forfeiture of the right to its use.").

177 *In re* Reben, 342 A.2d 688, 691 (Me. 1975).

178 *Kruzel*, 226 N.W.2d at 464.

179 Custer v. Bonadies, 318 A.2d 639, 644 (Conn. Super. Ct. 1974).

a new community is not aware of how long, and in what capacity, a particular surname has been or is being used?[180]

b. Capacity of Use (Professional vs. Personal and Public vs. Private)

Does the decision to use the marital surname in one dimension of married life but the birth or former surname in another have a bearing on the legal right to use the marital surname? French civil law scholar Marcel Planiol wrote in his *Treatise on the Civil Law* that although a woman retains her patronymic name upon marriage,[181] she may use her husband's name in any aspect of her life, "even . . . her commercial life."[182] He goes further to describe how a married woman may sign her name during marriage as a "right of enjoyment of her husband's name . . . as an avowal of her [marital] status."[183] When a woman decides to "change her name" without a modifier, it assumes she is using a new surname (that of her husband's) and "holding out to the world that the surname is the same as the husband's."[184] The name is hers to use in every aspect and in every way she would like, and confusion by friends in social circles or colleagues in her business life with respect to what surname she is using is a non-issue. Some women tend to use a marital surname on a "selective basis," choosing to use a former surname, for example, for business purposes and a spouse's surname for social or family purposes.[185]

Individuals may use pseudonyms, pen names, monikers, handles, stage names, or other nicknames beyond what is either recorded on their birth certificate, used "at home," or used in the social contexts of the marriage and family. The more regulated a name is by statute, the more troublesome it would be to determine in what different dimensions of life these types of aliases could be allowed as a matter of either custom or common law.[186] A woman

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180 *Reben*, 342 A.2d at 691 ("It must have occurred to the Maine Legislature to wonder, as it does to us, how long the individual, especially the new arrival in town, would be required to use the new name before he and people dealing with him could feel assured that it had replaced his old one, had not been motivated by fraud, and had become his legal name, and to question the acceptability of such uncertainty as our social structure became more urban and more transient.").

181 MARCEL PLANIOL & GEORGE RIPERT, TREATISE ON THE CIVIL LAW 258 (12th ed. 2005).

182 *Id.* at 259.

183 *Id.* at 260.

184 *Kruzel*, 226 N.W.2d at 465.

185 ALAN D. SCHEINKMAN, NEW YORK LAW OF DOMESTIC RELATIONS § 2:26 (11th ed. 2025).

186 Kushner, *supra* note 46, at 326.

may use a marital surname in matters of children's education, family medical documents, home finances, and joint liabilities with her husband, but she may use her birth or former surname in her professional career. Courts have found that these dual-use instances "rarely cause confusion" and do not require resorting to formal name change procedures.[187] State laws governing regulation of professions and licensing also allow a person to change his or her surname unless the change operates to unfairly compete with someone else in the same field or mislead the public or the profession in which the surname is known.[188] Separate statutory protections, such as trademark, may prevent a spouse or former spouse from using a certain name, thus displacing naming law's grounding in the common law,[189] but generally the common law roots of naming flexibility predominate.

What if the woman, during marriage, vacillates in different dimensions of her life between the marital surname and her former surname? How would a court determine what her "legal" name would be and for what purpose? What would then, as referenced in *Kruzel*, constitute her being a "habitual user"[190] of a name? Some legal critics have alluded to the problem of not enshrining a statutory determinant of marital surnames as actually hindering a woman's right to choose the scope of name use in different dimensions of her life.[191]

2. 1970s Court Cases Laying the Groundwork for Today

States had little statutory law on the naming rights of married persons by the 1970s.[192] Lower courts of general jurisdiction tended to arbitrarily deny a married woman's naming autonomy rights by either mandating use of her husband's surname or denying a request to

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187 *See, e.g.*, *In re* Mohlman, 216 S.E.2d 147, 151 (N.C. Ct. App. 1975).

188 *Kruzel*, 226 N.W.2d at 464.

189 *See, e.g.*, Dewberry Grp., Inc. v. Dewberry Eng'rs, Inc., 604 U.S. 321, 327 (2025).

190 *Kruzel*, 226 N.W.2d at 467 (Hansen, J., dissenting) ("If she blurs the situation by using both her maiden name and her married name, she will be hard put to qualify as an 'habitual user' under the new test.") (arguing that the majority created a new test of habitual use to determine whether the use of a marital surname rose to the level of legal protection).

191 *See, e.g.*, *id.* at 469 (Hansen, J., dissenting) ("[Recognizing a common law right to use whatever name] eliminates the married woman's prerogative to change her mind. Under the *Lane* option a married woman in this state could, at her option, use either her maiden name or her married name.").

192 *See, e.g.*, *Reben*, 342 A.2d at 689 ("There is a remarkable sparsity here of both decisional and statute law concerning the status of a married woman's name.").

resume using a former or birth surname without definable standards.[193] While tempered with an ostensible autonomy of naming, women still felt significant societal pressure to adopt the custom of taking a husband's surname, and a few courts determined that this custom had hardened into a legal requirement.[194] This was in large part due to the Alabama federal district court's pronouncement in *Forbush v. Wallace*[195] in 1971 and the tenuous assumption that a summary affirmance by the U.S. Supreme Court[196] settled the matter.[197] So, while many appellate courts held married women had a right to the name of their choosing and embraced naming autonomy, some still did not, choosing to stay with the interpretation of courts in the past like *Chapman*[198] emboldened by the procedural posturing of *Forbush*, that naming autonomy gave way to a legal requirement to take a man's surname during marriage. It would take a handful of state appellate court decisions to reject the idea that such a custom forcing women to take a marital surname had hardened into a legal mandate.

The freedom to choose one's name in marriage was re-emerging to promote liberal choice moving into the late twentieth century, originating from the reasoning in *Cowley*, the English House of Lords case decided seventy years earlier. Later state cases in Alabama openly disfavored the interpretation of the common law from *Forbush*.[199] Other states would follow, rejecting *Forbush*'s patrilineal marital presumption and favoring the *Cowley* interpretation. Cases such as *Kruzel* spurned other courts' encouragement of naming

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193 *See, e.g.*, *Forbush*, 341 F.Supp. at 222; *Egner*, 337 A.2d at 47; *Kruzel*, 226 N.W.2d at 460.

194 Walker v. Jackson, 391 F. Supp. 1395, 1402 (E.D. Ark. 1975) ("We think it is fair to say that Arkansas, like Alabama, generally follows the common law rule that when a woman marries she takes the surname of her husband.").

195 341 F. Supp. 217, 217 (M.D. Ala. 1971) (holding that a requirement that a married woman use her husband's surname in her application for a state-issued driver's license did not violate the Equal Protection Clause and determining that the administrative requirements of the state Department of Motor Vehicles having accurate records was a rational reason for requiring a woman to use her husband's surname on a driver's license).

196 405 U.S. 970, 1197 (1972). Because the U.S. Supreme Court affirmed the decision of the district court without briefing or oral arguments, this summary disposition should have had no precedential value. Yet, litigants in favor of *Forbush*'s state-deferential reasoning readily used it as ostensible stare decisis to require women to use their husbands' surname during marriage. *See, e.g.*, *Walker*, 391 F. Supp. at 1402.

197 The U.S. Supreme Court has not yet taken up any other case asserting naming as a constitutionally protected liberty interest under substantive due process or the Equal Protection Clause.

198 *See supra* notes 76–77.

199 *See* State v. Taylor, 415 So. 2d 1043, 1047 (Ala. 1982) ("Our research has convinced us that *Forbush v. Wallace* does not accurately state the common law on names[.]").

autonomy and the relegation of the use of a spouse's surname to merely a non-legally enforceable social custom. As the women's rights movement pressed on, when presented with the straightforward question of whether it was mandatory that a married woman assume the name of her husband, appellate courts disagreed with lower courts often,[200] holding it not mandatory.[201] Any adult could adopt any name they chose, provided the use was not for "fraudulent or criminal purpose" and "that the name itself is [not] obscene or otherwise offensive."[202] It was only by custom that a woman would choose to adopt the surname of her husband.[203] That custom only holds if she uses the name, and there was no law requiring her to use it.[204]

Slowly, more and more state courts were recognizing the "common law right of any person, absent a statute to the contrary, to 'adopt any name by which he may become known and by which he may transact business and execute contracts and sue or be sued.'"[205] Where there were statutes, many state courts held that they were not intended to usurp or otherwise interfere with a common law naming autonomy prerogative.[206] Statutes regarding name changes or naming options were to be read consistent with that right, not in contravention

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200 *In re* Natale, 527 S.W.2d 402, 405 (Mo. Ct. App. 1975) ("Our research had disclosed no appellate decision in any state which affirmed the trial court's denial of a married woman's name change petition on the ground of an ongoing marriage. . . . These cases hold that it is an abuse of discretion to deny a married woman her name change on grounds other than those specified in the statute or at common law[.]").

201 *See, e.g.*, Dunn v. Palermo, 522 S.W.2d 679 (Tenn. 1975) (holding that a woman is not required, under a state's compulsory voter registration law, to register using husband's surname and can register using her maiden name); Davis v. Roos, 326 So. 2d 226, 229 (Fla. Dist. Ct. App. 1976) (holding that a woman is not required to have her married surname on her state-issued driver's license and can have it issued in her maiden name). Crediting the lower courts' forward-thinking view in both of these cases, these appellate decisions were affirmances of those courts' decisions.

202 *See, e.g.*, Egner v. Egner, 337 A.2d 46, 48 (N.J. Super. Ct. App. Div. 1975); *supra* note 4.

203 *Dunn*, 522 S.W.2d at 680 (Tenn. 1975) ("The statute under consideration, standing alone, does not mandate a change of name by marriage. It merely recognizes the prevalence of the virtually universal custom under which a woman normally adopts the surname of her husband.").

204 *Kruzel*, 226 N.W.2d at 459; *see also Davis*, 326 So. 2d at 228 ("[A] woman upon marriage adopts the surname of her husband by thereafter customarily using that name, but no law required that she do so." (citing *Kruzel*, 226 N.W.2d at 458)).

205 *Dunn*, 522 S.W.2d at 686 (referencing Romans v. State, 16 A.2d 642, 646 (Md. 1940)).

206 Kushner, *supra* note 46, at 328–29.

of it[207] or to abrogate it,[208] only providing an "additional method"[209] to make the change or to codify the right into positive law.[210] Presumably, "official" government documents, procedures, and benefits (such as driver's licenses, passports and Social Security benefits) would need a record of an "official name,"[211] but contracts, property transfers, and other private legal transactions would not be invalidated if they were entered into using a surname other than a marital one.[212]

Naming autonomy cases allowed women either to revert to using their former surname (or "maiden name," as the courts often framed it) or, in rare instances, allowed wholly new names to be used. In the case of *In re Natale*,[213] a Missouri appeals court reversed a circuit court's decision to deny a woman a name change request from using her husband's surname to moving that name to her second given name and going by the surname "Montage." The stated purpose was for purposes of her "professional and personal identity and convenience to her husband and herself in carrying out their professional careers."[214]

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207 *See, e.g.*, *Egner*, 337 A.2d at 48 (N.J. Super. Ct. App. Div. 1975); *supra* note 4.

208 *In re* Dengler, 246 N.W.2d 758, 762 (N.D. 1976).

209 *In re* Knight, 537 P.2d 1085, 1086 (Colo. App. 1975).

210 *In re* Reben, 342 A.2d 688, 693 (Me. 1975).

211 The purpose of a state statute requiring a formal name change procedure or naming certainty vis-à-vis the marriage institution, like the names required on a child's birth certificate, is for official recordation purposes. "[T]here are situations in which the public interest entitles the State to demand that a person identify himself by his true, legal name in connection with his performance of certain activities." *Id.* at 694.

212 "[W]e are aware of no law that will invalidate obligations and conveyances executed by and to her in her baptismal name, if she chooses to give or take them in that form." Lane v. Duchac, 41 N.W. 962, 965 (Wis. 1889), *cited with approval in Kruzel*, 226 N.W.2d at 462.

213 527 S.W.2d 402 (Mo. Ct. App. 1975).

214 *Id*. at 403. The shared professional reasons were interesting in this case: the husband, as a local St. Louis-area school administrator, did not want his home phone number listed publicly, but the wife, as an attorney starting a law practice, did want her name listed. She saw value in the Natale name's reputation, but also was mindful of her husband's concerns as a local school official.

3. Legislation: Modifying or Continuing the Common Law Standard?

a. Scarcity of State Statutory Guidance

Given the lack of judicial guidance on whether one's interest in a surname is property-based or not, and the void of any constitutional protection, states may feel the need to resort to statutory frameworks for clarity. But the majority of states do not have a statutory rule on the name that will be used or taken once an individual is married. Aside from formulaic requirements regarding information to be placed on an application for a marriage license, where the name listed on the license is the "legal" name at the time of application, states acquiesce almost exclusively in the custom of marital surname borrowing. As the Maine Supreme Judicial Court acknowledged in *Reben* in 1975, and as is still true today, there is simply not much statutory regulation over married individuals' names.[215] For those few states that do have statutes, the legislation indicates that marriage itself does not change a surname but allows the marital custom to be used. Louisiana's Civil Code, for example, affirmatively states that marriage does not change the name of either spouse, but a married person may use the name of the other spouse and/or their own as a surname.[216] Hawai'i's law expressly indicates that parties to a marriage are not required to have the same last name, but it does require the parties to list the names they intend to use once they are married, even though the parties can adopt "any middle or last name upon entering into a marriage or civil union."[217]

Only a handful of states' marriage license applications require the parties to affirmatively indicate the surname each intends to use upon entering the marriage,[218] whether it be the

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215 *See* Kim, *supra* note 17.

216 LA. CIV. CODE ANN. art. 100 (Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.).

217 HAW. REV. STAT. ANN. § 574-1 (West, Westlaw through 2024 Reg. and 1st Spec. Sess.).

218 New York, as an example of one of the few, asks applicants for a marriage license to be notified of their rights regarding the adoption of surnames, including: (a) the right not to change a surname, (b) the right to adopt the surname of the other prospective spouse, (c) the right to adopt a single surname that is an amalgam of the parties' surnames, and (d) the right to adopt a combination separated by a hyphen. The parties are then required to file their choice so that selection can be entered upon the marriage license. Noticeably, New York also includes the reinforcement that marriage does not change a person's name legally. N.Y. DOM. REL. LAW § 15 (McKinney 2021, Westlaw through L. 2025 Chs. 1 to 49, 61 to 107); *see also* CAL. FAM. CODE § 306.5(b)(1) (West, Westlaw through Ch. 1 of 2023-24 Ex. Sess., and all laws through Ch. 1017 of 2024 Reg. Sess.); IOWA CODE ANN. § 595.5 (West, Westlaw through leg. effective Nov. 5, 2024 from the 2024 Reg. Sess. and Nov. 5, 2024 Gen. Elec.); KAN. STAT. ANN. § 23-2506 (West, Westlaw through 2024 Reg. Sess. and 1st Spec.

same as before the marriage or different. Statutory requirements of this nature may lend some support for a legal right to use a name after and if the marriage ends, since the intention to use a particular name is recorded by an official act.

b. Challenges to State Naming Laws under Federal Statutory Law

When looking at how the general common law right of naming autonomy interacts with state laws, one must also ask whether federal statutory law can displace states' legal interests in naming regulation.[219] Just as a potential constitutional question may be avoided when alleged in tandem with state common law name usage challenges, federal statutory law provides an arena where courts also may stop short of making constitutional determinations.[220] This has occurred in the area of determining whether state election laws and state motor vehicle laws violate federal statutory protections against discrimination by requiring a married woman to use her husband's surname.

In *Ball v. Brown*,[221] a federal district court in Ohio struck down action under a state statute[222] that cancelled the voting registration of women who married but failed to notify the local elections board of their name change as a violation of provisions of the Voting Rights

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Sess.); MASS. GEN. LAWS ANN. ch. 46, § 1D (West, Westlaw through Ch. 341, 2024 2d Ann. Sess.); MINN. STAT. ANN. § 517.08 (West, Westlaw through Mar. 18, 2025, 2025 Reg. Sess.); N.D. CENT. CODE ANN. § 14-03-20 (West, Westlaw through Mar. 19, 2025, 2025 Reg. Sess.).

219 An analysis of federal law is necessary because of its preemptive effect over state law. Since the U.S. Supreme Court has not found a constitutional right in naming that would give either the individual or the state more freedom in regulating the field, federal regulation is ripe for analysis to determine the interests the federal government may assert, through statute, in naming regulation.

220 Generally speaking, if relief is afforded under a federal statute (that, for example, prevents discrimination), there is not a need to prove a constitutional violation if both are alleged. Allen v. Lovejoy, 553 F.2d 522, 524 (6th Cir. 1977) ("When such discrimination is found to exist, it is not necessary to prove a constitutional violation."). In addition, courts will often avoid interpreting statutes to have constitutional deficiencies when a constitutionally-legitimate interpretation is possible. *See generally, e.g.*, Panama Railroad Co. v. Johnson, 264 U.S. 375 (1924); F.C.C. v. Fox Television Stations, 556 U.S. 502 (2009).

221 450 F. Supp. 4 (N.D. Ohio 1977).

222 Here too, a constitutional challenge was asserted, but the district court declined to strike down the statute, only looking, rather, at how it was being used in this case and likely to be used in the future. "O.R.C. § 3503.18 is not so clearly and palpably unconstitutional on its face as to require the Court to strike it down. . . . The State of Ohio has a valid and compelling interest in the orderly operation of its election machinery. There is no constitutional barrier to the State requiring the disclosure of a voter's *correct* name." *Id.* at 9 (emphasis added).

Act of 1965.[223] The court reasoned that the board must determine whether the woman had *in fact* changed her name through marriage "prior to cancelling the registration form."[224] The court enjoined any further voter registration cancellations by the local elections board, when notified of a name change by marriage from the local probate court, without evidence that the person's name had actually been changed.[225] The "legal name" conundrum often comes up for married women who choose to use their birth or former surname in the context of voter registration or who vote under their married name without an updated a driver's license or passport. In the spirit of the *Ball* decision, several courts have held that voter registration requirements that mandate a married woman to register under a surname of her spouse either violate common law naming autonomy[226] or state and federal voting protection laws.[227] A bill initially introduced in the 118th Congress[228] and then reintroduced in the 119th Congress in January 2025[229] was ostensibly intended to secure voting protections only for United States citizens by requiring certain proof of citizenship documentation. The bill has been criticized as potentially impacting the voting rights of married women who may have taken their husband's surname when the regular use of that name may not match the surname the woman has listed on other proof of citizenship documents the bill mandates for voting identification.[230] One state, New Hampshire, has

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223 42 U.S.C.A. § 1971, *transferred to* 52 U.S.C.A. § 10101 (West, Westlaw through P.L. 119-36).

224 *Ball*, 450 F. Supp. at 10. The court went on to say the change in name is not the same as a change in marital status, and premising the former automatically on the latter is a violation of federal voting law. *Id.*

225 *Id.* Although the court did not opine as to what type of evidence this would be, it is likely the observation that the married woman has openly and continuously adopted usage of the marital surname (from evidence such as changes on a state-issued driver's license and/or Social Security card).

226 If a married individual made exclusive, consistent, nonfraudulent use of a former name, they are entitled to use said name for voter registration unless a state statute speaks to the contrary. *See, e.g.*, Stuart v. Bd. of Supervisors of Elections for Howard Cnty., 295 A.2d 223, 227 (Md. 1972).

227 Thirty-six states have voter ID laws, twenty-one of them requiring photo identification. *Voter ID Laws*, NAT. CONF. STATE LEGISLATURES (July 2, 2025), https://www.ncsl.org/elections-and-campaigns/voter-id/ [https://perma.cc/H7TM-PM3D].

228 SAVE Act, S. 4292, 118th Cong. § 2 (as passed by House, July 10, 2024).

229 SAVE Act, H.R. 22 and S. 128, 119th Cong. § 1 (2025).

230 Sophie Clark, *Married Women Could Be Stopped from Voting Under the SAVE Act*, NEWSWEEK (Feb. 11, 2025) ("The SAVE Act does not include proof of name change or a marriage certificate as acceptable proof of identity. This could be vital for married women with a birth certificate that does not match their current legal name."), https://www.newsweek.com/married-women-stopped-voting-save-act-2029325/ [https://perma.cc/3PDK-WQE5].

a similarly restrictive provision,[231] already enacted as valid law and used for the first time in local elections in March 2025, where at least one divorced woman, going by her former spouse's surname, alleged barriers to voting because her identification for voting did not match the required citizenship documents, such as her birth certificate.[232]

In *Allen v. Lovejoy*,[233] the Sixth Circuit held that requiring a woman to sign employment forms in the name of her husband (for a job she held with a county health department before she was married) violated Title VII of the Civil Rights Act of 1964.[234] If validating a woman's right to use the name she regularly goes by—in this case, her birth or "maiden" surname—could be achieved through the federal statute, it would not be necessary to resort to a constitutional provision.[235] Basing protections against gender discrimination in statute, as opposed to the U.S. Constitution, appears to be a trend.[236] As the chasm between

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231 N.H. REV. STAT. ANN. § 654:12 (Westlaw through Ch. 2 of the 2025 Reg. Sess.).

232 Todd Bookman & Josh Rogers, *NH's New ID Requirements Send Some Would-be Voters Home to Grab Passports, Birth Certificates*, N.H. PUB. RADIO (Mar. 11, 2025, at 17:24 ET), https://www.nhpr.org/nh-news/2025-03-11/nhs-new-id-requirements-send-some-would-be-voters-home-to-grab-passports-birth-certificates/ [https://perma.cc/FF2K-EAHR]. A divorced woman who voted in New Hampshire experienced a delay when the surname she uses regularly (that of her former husband) did not match the surname on her birth certificate. The voter was quoted as saying, "When I divorced, I kept my last name for consistency with my family[.] The idea that women have to prove their name change is profoundly sexist and limiting." *Id.*

233 553 F.2d 522 (6th Cir. 1977).

234 42 U.S.C. § 2000e-2(a)(1).

235 *See Allen*, 553 F.2d at 524 ("In the present case we are dealing with a specific congressional enactment designed to eliminate discrimination in employment. When such discrimination is found to exist, it is not necessary to prove a constitutional violation."). In light of the decision below, the Shelby County, Tennessee, Department of Health had changed the offending policy from requiring a married woman to use her husband's surname to requiring a married woman use the name listed on her Social Security card. *Id.* at 523. Since Anna Allen went by, and was known by, her birth surname (her prerogative under the established common law of Tennessee at the time), she never took any administrative "steps" to use a marital surname. Thus, "Allen" was the name on her Social Security card and there was no forward-looking injury to justify injunctive or declaratory relief. *Id.* at 525.

236 Consider, for example, the Supreme Court's landmark *statutory* determination that discrimination based on a person's sexual orientation or transgender status is prohibited by Title VII because it is discrimination "because of . . . sex" in the plain text of 42 U.S.C. § 2000e-2(a)(1). Bostock v. Clayton County, 590 U.S. 644, 658 (2020). The Court has not yet held, however, that gender identity discrimination is subject to intermediate scrutiny (as is sex discrimination under *Craig v. Boren*, 420 U.S. 190 (1976)), for purposes of an Equal Protection analysis. Aligning gender discrimination with naming discrimination, some intermediate appellate courts have found violations of the Equal Protection Clause in denials to amend birth certificate sex designations based on gender identity for transgender individuals. *See, e.g.*, Fowler v. Stitt, 104 F.4th 770, 771 (10th Cir. 2024).

statutory and constitutional interpretation widens, the chances of finding *any* liberty interest grounded in the U.S. Constitution for naming rights seem to be dwindling.

With respect to identification documents and standardized naming conventions, there are concerns about the impact of the federal REAL ID provisions.[237] The law's requirements could operate to formalize naming in such a way as to erode naming autonomy at the expense of both the individual and the state's ability to regulate naming.[238] The requirements imposed by the law for everyday activities, such as going through airport security and doing business in federal buildings,[239] could have the effect of federalizing a statutory regime on naming. While naming autonomy is often at odds with the government's interest in identification, courts have countered, in favor of naming autonomy, that other conventions—numerical and alpha-numerical—can be used by the government for identification of individuals.[240] Naming decisions thus often prevail in the face of government challenges that certain naming requests burden government recordkeeping or cataloging of government benefits and resources.

III. The Law of Surnames, in Divorce Actions and Beyond

The strength of the common law right to be named whatever one wishes carries over to the custom of marital surname borrowing. That "repute" continues from the inception and through the duration of the marital institution, as shown by the consistency of the naming autonomy case law of the 1970s. History has shown that there are elements of property rights in a surname emanating from the marital custom (i.e., a right to *retain* the use of a surname).[241] Whether that custom of usage ossifies into a legal right once a marriage is

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237 *See* REAL ID Act of 2005, Pub. L. No. 109-13, § 202, 119 Stat. 231, 312 (2005). The Act requires states to include an individual's "full legal name" on applications for driver's licenses and identification cards but does not provide a definition of what constitutes legality. *Id.*

238 *See* Adam Candeub, *Privacy and Common Law Names: Sand in the Gears of Identification*, 68 FLA. L. REV. 467, 494 (2016).

239 *See About REAL ID*, DEP'T OF HOMELAND SEC., https://www.dhs.gov/real-id/about-real-id [https://perma.cc/T9T7-426B].

240 "Today's society does not use only names as a means of identification. Individuals are often identified through numbers: social security number, driver's license number, FBI or State Police criminal numbers for those charged with crimes, and account numbers supplied by individual businesses or financial institutions." *In re* Ferner, 685 A.2d 78, 82 (N.J. Super. Ct. Law Div. 1996).

241 "A woman on her marriage takes her husband's name, and she *retains* it although the marriage may have been dissolved by divorce unless she has so far obtained another name by Repute as to obliterate the

terminated should not be left to the whim of the common law; it should be solemnized in a statute. This is so because the law allows a presumption that a person does not intend to part with a name they have legally acquired,[242] whether through formal legal channels or by customary acclimation.

Unlike for surnames upon entering a marriage, most states *have* enacted statutes indicating what surnames can be used at or after a divorce.[243] These statutes seem to reflect the flexibility of the common law standard, since courts presume that state legislators are aware of all laws (including a state's adoption of common law standards) when enacting statutes. So, if these statutes do not expressly override common law principles, courts will interpret said statutes to align and coexist with the common law naming autonomy principle.[244] Moreover, as the analysis of this section will show, the language of post-divorce surname usage statutes is almost exclusively couched in terms of options to return to the use of a former surname or change to a new one, but not the affirmative right to continue using a marital one.

As seen in Table 1, state laws do not expressly address what a divorced woman can do with the *marital* surname after the marriage has ended. This may be because of the general common law maxim that one can use whatever name they choose provided such use does not commit fraud or cause confusion. It could also be an unstated assumption that the use of the marital surname continues beyond the end of the marital regime. English law imports to the United States tell us that "[h]aving assumed her husband's name [a woman] retains it, notwithstanding the dissolution of the marriage by decree of divorce or nullity."[245] However, it is curious that some statutes, if accepting the flexibility of that common law standard, *do* address the possibility of a woman returning to the use of her former surname, which under that same common law is her legal name anyway. If the common law standard is the rule and statutes are not meant to supplant this, why would this rule be specified in a

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original name." Fendall v. Goldsmind, 2 P.D. 263, 264 [1877] (emphasis added), *cited with approval in* Dunn v. Palermo, 522 S.W.2d 679, 682 (Tenn. 1975).

242 *See, e.g.*, Mozzochi v. Luchs, 391 A.2d 738, 740 (Conn. Super. Ct. 1977); Carson v. Harris, 242 S.W.2d 777, 780 (Tex. Civ. App. 1951).

243 *See infra* Table 1.

244 *See, e.g.*, Raubar v. Raubar, 718 A.2d 705, 708 (N.J. Super. Ct. Law Div., Fam. Pt. 1998) ("The court presumes that the legislature is familiar with (1) existing judicial statutory interpretations, (2) its own enactments, (3) *our common law*, and (4) rules of grammar." (emphasis added)).

245 19 HALSBURY'S LAWS OF ENGLAND 829 (3d ed. 1957), *quoted in In re* Mohlman, 216 S.E.2d 147, 149 (N.C. App. 1975).

statute? The present statutory language is there likely to create a guideline for a divorced woman to return to using her former surname if she so chooses as a presumption in the law. But what if she chooses to continue using a marital surname? A name that, according to the common law and marital custom, is hers to use? Can she do so in every aspect of her life? Can she do so only in the capacities (if any) that the name was used during the marriage?

This section first describes the reality of divorce recordkeeping challenges. It then analyzes the statutory guidance provided by name-usage-upon-divorce statutes before turning to the still-concerning gender-lined language of some of the statutes. Finally, it examines the actual surnaming options in the statutes as well as the rights implied (or ignored) by what is *not* mentioned in most of them—retaining a marital surname.

A. Divorce Recordkeeping Challenges

As indicated above, few states mandate that the parties list the name they plan to use once married on a marriage license application.[246] States require their respective local governments to collect vital information, but there is a wide array of data points that are captured for marriage and divorce.[247] As between the marriage license application and the process for divorce, "it is more likely divorce information that is not obtained from the courts."[248] There is, simply, "more uniformity in what states collect regarding marrying couples than divorcing ones."[249] While it is very common for localities to report a woman's "maiden" name to the state, the surname to be used after divorce is rarely, if ever, reported. It is therefore difficult to determine a decreed or "legal" basis in surname usage for many divorcing individuals.

Generally speaking, compared with marriage information, fewer states collect divorce information at the state level.[250] With respect to surname changes specifically, less than one in five states report receiving requests for proof of name changes upon divorce (for

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246 *See supra* Part II.C.3.a.

247 *See generally* THE LEWIN GRP., COLLECTION OF MARRIAGE & DIVORCE STATS. BY STATES 2 (2008) (prepared for the U.S. Department of Health and Human Services, Administration for Children and Families and Office of the Assistant Secretary for Evaluation and Planning).

248 *Id.* at 2.

249 *Id.*

250 *Id.* at 21.

example, from state revenue collection units).[251] In those states using a standard divorce certificate (as a cover sheet to a divorce petition, for example), the surname usage question is present. However, the certificate, if not incorporated into the terms of a final divorce decree, is not law between the parties, so it is possible that the surname issue may not be addressed as part of a judgment. Furthermore, if the decree is paper-based, localities may not transmit (to state registries) all adjudged information from the decree onto the certificate electronically submitted to the state registry. "Relative to marriage, however, there is less consistency in the types of information states require local areas to collect regarding divorcing couples."[252] Forty-one states require, in the standard divorce certificate, the full name of the divorcing spouses, but thirty-one require the "maiden" name of the wife to be listed.[253] To the extent the "full name" of the divorcing spouses is required on a standard divorce certificate, there can be occasion for the official decree or judgment to not reference either a conscious decision to retain a marital surname or to indicate that the spouse who desires to change their surname is taking action under the respective state statute.[254]

Records of surname decisions at divorce are difficult to analyze because of the dispersed, widespread nature (at the sub-state level, predominantly by county or similar government unit) of how such records are generated.[255] Aside from scattered datapoints counting the number of marriages and divorces (e.g., the divorce rate by state)[256] and though there are some registries for such information, centralized vital statistics on what surname individuals decide to use after a divorce are not readily available. While the Social Security Administration's (SSA) "Numerical Identification System" (or Numident) files record name changes upon divorce for purposes of that federal agency's programs and

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251 *Id.* at 27.

252 *Id.* at 19.

253 *Id.* at 20.

254 *See infra* Table 1.

255 THE LEWIN GRP., *supra* note 247, at 1.

256 The National Center for Health Statistics keeps data, by state, on the rate of marriages and divorces, but actions incidental to those legal processes are not generally part of that government organization's statistics. *Marriages and Divorces*, NAT'L CTR. FOR HEALTH STAT. (Aug. 12, 2024), https://www.cdc.gov/nchs/nvss/marriage-divorce.htm#state_tables [https://perma.cc/LRZ3-2FD3].

benefits,[257] the SSA does not release public data on the frequency of surname changes upon divorce.[258]

In short, naming determinations following divorce are difficult to research. Also, state statutes on surname usage after divorce generally do not address the continued use of the surname of a marital partner taken during the marriage. As Table 1 reveals, state legislatures seem more concerned with establishing legal processes for returning to a former surname or adopting a totally new one. When one considers, among other matters, federalized uniformity in state naming conventions that may be coming online in 2025,[259] a more concrete state-level statutory right in a marital surname is all the more warranted.

B. Considerations Courts Use in Deciding Surnaming Requests Related to Divorce

Because of the lack of statutory rules regarding surname usage in marriage and the custom of continued usage of marital surnames after a marriage ends, cases considering a divorced woman's right to continue using a marital surname are few and far between. Some earlier decisions envisioned that a woman would not want to use the marital surname after divorce,[260] thus avoiding the legal questions posed by her continued use. The decision to continue use of a marital surname, as a result, has not been affirmatively acknowledged by

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257 *RM 10212.060 — Evidence of Name Change Based on a Divorce, Dissolution, or Annulment*, SOC. SEC. ADMIN. (Oct. 24, 2011), https://secure.ssa.gov/apps10/poms.nsf/lnx/0110212060 [https://perma.cc/RY3D-VG6V]; *RM 10212.065 — Evidence Required to Process a Name Change on the SSN Based on Divorce, Dissolution, or Annulment*, SOC. SEC. ADMIN. (June 7, 2024), https://secure.ssa.gov/apps10/poms.nsf/lnx/0110212065 [https://perma.cc/N9MV-HJ9S].

258 SOC. SEC. ADMIN., Letter (Sep. 9, 2024), S9H: 2024-FOIA-01482. The author sought a Freedom of Information Act ("FOIA") request for the number of surname change requests based on divorce or annulment using a divorce decree or judgment in calendar year 2023 by state. The SSA stated that there were no records responsive to the request and that "FOIA does not require an agency to perform research or create a record to satisfy a request." *Id.*

259 *See supra* Part II.C.3.b; *see also supra* notes 237, 239 (the state "official documents" implication for interstate travel because of the requirements of the REAL ID Act as of May 2025).

260 Using the example of "Richard Roe" and "Jane Doe" or "Roe," the Massachusetts Supreme Judicial Court, in a case determining the limits of discretion for local town clerks in naming practices on marriage license applications (in the face of a state attorney general statement on the matter), said this: "[O]n divorce from Richard Roe, with or without a court order as to her name, Jane Roe may retain that name or resume the name Jane Doe as her maiden name or the name of a previous husband or she may assume a new name. . . . It seems unlikely that after divorce she would desire to retain the name Mrs. Richard Roe." Sec'y of Commonwealth v. City Clerk of Lowell, 366 N.E.2d 717, 724 (Mass. 1977).

a court as a legal right beyond this custom. Given the entrenched strength of the marital institution in American legal and social culture and the correlative naming practices intertwined with it, a woman's decision to use the name should not be automatically cast aside, nor should it be considered a capitulation to arcane social mores. She may want the name for herself, and the marriage has allowed her that possibility however the right may be grounded (as one in property, the common law, or otherwise).

Courts have intimated that a woman's decision to retain use of a marital surname or use another surname should have no bearing on other incidentals of divorce, such as interim and final periodic financial support awards, also known as alimony.[261] Naming concerns upon divorce only arise once the parties are no longer married, so they are not relevant during the period of "legal" separation (to the extent states still recognize this concept) or otherwise before a final divorce decree or judgment.[262] Further, a man may not compel his former wife through an annulment proceeding to revert to use of her former surname (from before the marriage) unless he can prove that the continued use of the marital surname has damaged him or has otherwise interfered with his rights.[263] At least one state court of last resort dismissed, for lack of jurisdiction, a former husband's appeal to vacate an order allowing his former wife to resume use of the marital surname[264] through the state's traditional name-change procedure,[265] indicating that the appropriate forum to contest the

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261 *See, e.g.*, Horton v. Horton, 211 S.W.3d 35, 39 (Ark. Ct. App. 2005) (Baker, J., concurring) ("[W]here fraud or other illegal purpose is absent, I cannot conceive of a situation where it would not be an abuse of discretion to deny a name-change request in a divorce action. Certainly, a wife should not be forced to effectively 'purchase' her former name by foregoing the alimony to which she may be legally entitled, nor should her name be used as a bargaining chip in negotiations of monetary matters, as the decree [of the trial court] suggests.").

262 *See, e.g.*, Wilty v. Jefferson Par. Democratic Exec. Comm., 157 So. 2d 718, 721 (La. 1963) (wife's use of husband's first and last name in an election post-separation but before they were officially divorced).

263 Queen v. Queen, 135 N.Y.S.2d 536, 537 (N.Y. Sup. Ct. 1954).

264 *In re* Larson, 295 N.W.2d 733, 734–35 (N.D. 1980). The former wife had alleged that she was known professionally by the marital surname. *Id.* at 734. The thesis of this work was not implicated because she chose to initiate proceedings under the state's formal name change procedure, an avenue to which anyone may resort (subject to the common standards regarding fraud and avoiding confusion in name change statutes). *Id.*

265 "The order was granted on the basis that the appellee had the statutory right to petition for a change of name . . . and there was good cause for such change." *Id.* at 734.

considered use of the marital surname would be *during* the name change proceeding and not after or apart from it.[266]

In the realm of formal name change petitions,[267] judges have broad discretion. There are almost always separate statutes dedicated specifically to surname options at divorce,[268] and these statutes may modulate the discretion afforded in formal name-change statutory proceedings. The purpose of having statutes specifically for divorce is, in part, to bypass the sometimes-onerous requirements of a state's formal name-change process. Rarely do states address surname options upon divorce directly under their general change of name statute(s).[269] Maryland imports elements of formal name change into its divorce name use statute, allowing a requesting party to a divorce to return to either their birth surname or "any other former name the party wishes to use if . . . the purpose of the party is not illegal, fraudulent, or immoral."[270] In those few states without a specific surname-choice-upon-divorce statute, the onerous requirements of notice, publication, and sometimes a hearing used in general name changes may be suspended for divorce-related surname determinations.[271] The data in Table 1 bear out this scattershot array of language, forcing courts to look at the matter from several angles.

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266 "[T]he opportunity for anyone to object at the hearing to a petitioner's change of name request stems from this general notice provision, and an objection will be not heard by way of posthearing means." *Id.* at 735.

267 Courts have disallowed certain requests for name changes, and many of their justifications have found their way into name change statutes. Examples include denying name change petitions when asking to change to a number, or to names that may be deemed offensive, cumbersome, or overly lengthy. *See, e.g.*, *In re* Dengler, 246 N.W.2d 758, 759–64 (N.D. 1976) (request to change name to a number); Petition of Variable for Change of Name v. Nash, 190 P.3d 354, 356 (N.M. Ct. App. 2008) (request to change name to "Fuck Censorship!").

268 *See infra* Table 1.

269 Some states allow for name changes at marital dissolution in line with their respective name change statutes. *See, e.g.*, TENN. CODE ANN. § 29-8-101(b)(4) (West, Westlaw through 2025 1st Reg. Sess. of the 114th Gen. Assemb.) (indicating, within the state's general name-change statute, that the prohibition on name changes for persons convicted of certain crimes does not apply to a name change as a result of marital dissolution). Illinois, for example, indicates that resorting to the state's general name-change statute is not required if the request for a certain surname is indicated in the judgment, reasoning *arguendo* that it is required if such a request is not in the divorce judgment. While Minnesota, as another example, has its own name-change-upon-divorce statute, the language of the statute incorporates elements of the state's general name-change statute more so than many other states. *See infra* Table 1.

270 MD. CODE ANN., FAM. LAW § 7-105(a) (West, Westlaw through 2025 Reg. Sess.).

271 For example, in New Mexico, § 40-8-2 of the general name change statute, which involved an onerous publication process, was repealed in 2023. 2023 N.M. Adv. Legis. Serv. 28. A hearing is still required under N.M. STAT. ANN. *§* 40-8-3 (West, Westlaw through chs. effective July 1, 2025 of the 2025 1st Reg. Sess.).

1. Children of Divorced Individuals and Divorce's Impact on Surname Choices

This work addresses the surnaming decisions of adults dissolving their marriage, not the potential surnames of children born of the marriage. However, a brief description of naming processes for children of dissolved marriages is warranted as a precursor to the divorcing parties' naming options themselves. A child is not necessarily required to be given the surname used by the parties during the marriage, and neither party to the marriage has a superior right to decide the surname legally.[272] When the parents disagree as to the child's surname, naming autonomy often gives way to a judicial standard, whether the parents are married or not, that a child's surname is determined by the best interests of the child.[273]

The historical pressure of the patriarchy was strong in mid-twentieth-century divorce cases involving issues of children's names. A New Jersey Superior Court decision held that a man could restrain his divorced wife from using her second husband's surname as his children's surname in school, since the children were filiated to him through his marriage with the wife.[274] However, in a later New Jersey case, which involved an abusive and neglectful father and a request by the divorced wife and mother of the child to use *her* former (pre-marital) surname, the court allowed the change of the child's surname from the father's to the mother's.[275] In more recent times, for changing a child's surname, courts have consistently held that name-changing standards for children are fundamentally different from those of adults and are part of the "best interest"[276] calculus used in many judicial decisions impacting children, such as custody and child support determinations.

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272 Garling v. Spiering, 512 N.W.2d 12, 13 (Mich. Ct. App. 1993). Very few states still have patrilineal presumptions for surnames of children born during a marriage. *See supra* Part II.A.4; *supra* note 151.

273 "[A]s with other parental disputes concerning children, we are convinced that adoption of the 'best interest' test is the most rational way in which to resolve disputes between parents regarding a child's surname." *Garling*, 512 N.W.2d at 13.

274 Sobel v. Sobel, 134 A.2d 598, 599–600 (N.J. Super. Ct. Ch. Div. 1957).

275 *In re* Rossel, 481 A.2d 602, 603, 606 (N.J. Super. Ct. Law Div. 1984).

276 "In divorce proceedings and in custody disputes between parents, a trial court has the jurisdiction and legitimate authority to resolve disputes between parents regarding the proper name of a child. In doing so, the trial court is guided by the best interest of the child." Block v. Bartelt, 580 N.W.2d 152, 154 (S.D. 1998) (citing Keegan v. Gudahl, 525 N.W.2d 695, 696–97, 699 (S.D. 1994)).

The fact-specific nature of a child's name-change request also moves courts to decide it separately from the divorcing parties' naming concerns.[277]

As to the naming options of the divorcing individuals themselves, courts generally will not deny a woman's request to use a name other than the marital surname on the grounds that a woman's surname should match that of children born to the marriage.[278] This is true even if the children themselves express "discomfort" with the varying names when faced with their mother requesting her former surname or a new spouse's surname.[279] California does not prevent a divorced woman from returning to the use of her former surname even if there are children of the marriage with the surname of her former husband.[280] Similarly, Nebraska's statute allowing a party to return to a pre-marriage surname except for "good cause shown" states that children having a different surname from a divorced parent is not "good cause."[281] Texas expressly indicates that a court cannot deny a change of

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277 [C]ourts have considered many factors, including the child's preference, taking into account the child's age and maturity; the length of time the child has used the surname; the effect of a surname change on the preservation and development of the child's relationship with each parent; whether the child might feel embarrassment or discomfort bearing a surname different from the rest of the family; whether any negative association or social stigma has attached to either the current or proposed name; the motives of the moving parent; and any other factor relevant to the child's best interest. Because the facts of each petition will differ, some of the factors may not be relevant in a particular case and should not be considered. The court has broad discretion in determining what is in the best interests of the children, and thus which factors the court considers is a matter of discretion.

In re Wilson, 648 A.2d 648, 651 (Vt. 1994) (citations omitted).

278 *See, e.g.*, Kim, *supra* note 17, at 921; Piotrowski v. Piotrowski, 247 N.W.2d 354, 356 (Mich. Ct. App. 1976).

279 *See, e.g.*, Leadingham *ex rel.* Smith v. Smith, 56 S.W.3d 420, 427 (Ky. Ct. App. 2001).

280 The California Family Code's chapter on the restoration of a wife's former name states that the request for a name change at divorce cannot be denied just because the requestor has custody of minor children or "for any other reason other than fraud." CAL. FAM. CODE § 2081 (Deering 2024). Section 2082 reiterates California's statutory alignment with the general common law right of name change, in that the statutory pronouncements must not be construed to abrogate common law naming autonomy. CAL. FAM. CODE § 2082 (Deering 2025). The same language also appears in CAL. FAM. CODE § 306.5 regarding name changes upon marriage and CAL. CIV. PROC. CODE § 1279.5 regarding general name change proceedings. CAL. FAM. CODE § 306.5(a)–(c) (Deering 2025); CAL. CIV. PROC. CODE § 1279.5(a)–(f) (Deering 2018).

281 NEB. REV. STAT. ANN. § 42-380(1) (West, Westlaw through 1st Reg. Sess. of the 109th Legis.).

name "solely to keep last names of family members the same."[282] Rhode Island allows a name change at divorce "notwithstanding that there may be children born of the marriage . . . ."[283] Contrast these with North Carolina and Kentucky's provisions: North Carolina's statute seems to limit a woman's ability to return to using the surname of a prior living husband, allowing it only if she has children who use that individual's surname.[284] The same restriction (i.e., having children with that surname) is not present for a prior deceased husband.[285] Kentucky allows its courts discretion to deny a woman the right to resume a former surname if there are children born of the marriage.[286]

2. Who Can Ask for the Surname Change? When Can It Be Requested?

Naming autonomy, as a personal right, usually requires only that the person whose name is to change assert the right to ask for a naming option at divorce.[287] The vast majority of jurisdictions allow only the individual affected directly (i.e., their own surname would be new or different) to request to have a different surname than one used during the marriage.[288] There have been only a few cases where courts have considered whether a divorced husband can demand his former wife stop using a marital surname. Courts have not allowed a plaintiff-husband to prevent his former wife from using the marital surname without her consent.[289] This pattern holds true when a man files for divorce, asking that his soon-to-be former wife discontinue using the marital surname, but the woman does not

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282 TEX. FAM. CODE ANN. § 45.105(a) (West, Westlaw through 2025 Reg. and 2d Called Sess. of the 89th Legis.).

283 15 R.I. GEN. LAWS ANN. § 15-5-17 (West, Westlaw through Ch. 473 of the 2025 Reg. Sess.).

284 N.C. GEN. STAT. ANN. § 50-12(a) (West, Westlaw through S.L. 2025-70, S.L. 2025-72 to S.L. 2025-75, and S.L. 2025-77 to S.L. 2025-89 of the 2025 Reg. Sess.).

285 *Id.*

286 *See infra* Table 1.

287 *See, e.g.*, Newsom v. Newsom, 976 S.W.2d 33, 40 (Mo. Ct. App. 1998) ("Husband's request in his petition to restore Wife's maiden name to her was ineffective to raise the issue, as the common law and statutory rights to change her name belonged to Wife, and not to Husband.").

288 Well over 30 U.S. states allow only the individual requesting the name status (in most cases, the woman) to bring the action. *See infra* Table 1.

289 *See, e.g.*, Smithers v. Smithers, 804 So. 2d 489 (Fla. Dist. Ct. App. 2001), *reh'g denied*, (2002) (husband in an annulment proceeding cannot bar his putative wife from using his surname); Mueller v. Kamenesh, 864 So. 2d 38 (Fla. Dist. Ct. App. 2003), *reh'g denied*, (2004) (extending the same principle to a divorce proceeding).

respond to the suit.[290] Additionally, in at least one case, a former wife was unsuccessful in suing for the exclusive right to use her former husband's surname and to prevent his second wife from using the name.[291]

Eight states' statutes seem to allow a court, on its own motion, to decide the naming options of divorcing spouses.[292] Washington's statute does not seem to connect the right of the party whose name is being changed to the party requesting the change.[293] South Dakota expressly allows either party to the divorce to request the "restor[ation] to the woman [of] her maiden name or the name she legally bore prior to her marriage to the husband in the divorce suit."[294] Third parties, in rare instances, are contemplated directly in the statutes. Colorado's process requires the requesting party to attest "that the restoration of a prior full name is not detrimental to *any* person," and the judge's order will only issue, *inter alia*, upon such proof.[295] Alabama's law expressly gives a court discretion to enjoin a divorced woman from using her former husband's "given name or initials" upon "application of any interested party."[296] For most states, however, third parties who may have an interest in the naming of a divorcing individual may need to search court records for a divorce decree in order to request intervention, as they cannot directly petition to compel or refute another's surname adoption.[297]

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290 *See* Warfield v. Warfield, 661 So. 2d 924 (Fla. Dist. Ct. App. 1995).

291 Weicker v. Weicker, 237 N.E.2d 876 (N.Y. 1968) (divorced woman cannot enjoin former husband's new wife from using his surname).

292 These states are Alaska, Arkansas, Massachusetts, New Hampshire, New Jersey, South Carolina, South Dakota, and Vermont. Five of them refer to "parties" or "spouses," but Arkansas and Massachusetts refer to changing the name of only "the wife" or "a woman," respectively. As a separate note, South Dakota allows either the court or a party to request the name change. *See infra* Table 1.

293 *See infra* Table 1.

294 *See infra* Table 1.

295 COLO. REV. STAT. ANN. § 14-10-120.2(2)(b), (3)(b) (West, Westlaw through legis. effective Mar. 24, 2025, 1st Reg. Sess., 75th Gen. Assemb. 2025) (emphasis added).

296 *See infra* Table 1. This would legally prevent, according to a judge's sole discretion, a woman from using a full title such as "Mrs. John Smith" but presumably wouldn't prevent her from using "Ms. Jane Smith" or even "Mrs. Jane Smith." The statute notably allows the injunction to be brought by not only the former husband but by "any interested party."

297 *See, e.g.*, Raubar v. Raubar, 718 A.2d 705, 712 (N.J. Super. Ct. Law Div. Fam. Pt. 1998) ("[T]hird parties contemplating new or different contractual relationships with either party [to a divorce proceeding] have already been placed on constructive notice through the filed [divorce] complaint . . . .").

The majority of states require that a naming option be requested as part of the divorce proceeding.[298] Maryland allows it then or "within 18 months after a final decree of absolute divorce is entered."[299] Five states expressly allow a post-divorce name change at any time after the divorce is finalized.[300] Of course, nothing would prevent a divorced individual from petitioning for a name change under a state's formal name-change law; the benefit, however, of changing a name under the divorce-specific statute is that it may dispense with the name-change statute's more onerous requirements (publication for notice, a hearing, etc.).[301]

C. Gender Lines in the Statutes

The social science literature reveals that women continue to adopt men's surnames in opposite-sex marriages.[302] That said, the law should reinforce the equality and liberty principles for which the women's movement of the 1970s fought so hard. And statutes that expressly create gender disparities with respect to surname choices at divorce seem vulnerable to constitutional challenges. Eight states still reference gender distinctions in their statutes on surname options at divorce by providing the name change options only to women.[303] Most states acknowledge the concern and have fairly recently changed their statutes to be gender neutral. Louisiana has recently moved away from gendered language in one statute,[304] but gendered language remains in another.[305] In Montana, gendered

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298 *See infra* Table 1.

299 *See infra* Table 1.

300 These states are Colorado, Connecticut, Georgia, Kansas, and Pennsylvania. Georgia amended its statute in 2024 to include new subsection b allowing a former spouse to revert back to their birth surname by a petition filed at any time after the divorce; previously, the request for a name change had to accompany the divorce petition.

301 *See, e.g.*, Ogle v. Circuit Court, Tenth (now Sixth) Judicial Circuit, 227 N.W.2d 621, 623 (S.D. 1975) (a divorced woman may resume her maiden name after divorce without having requested it in the divorce proceeding and without showing cause under the general name-change statute).

302 *See, e.g.*, *supra* Part II.A; *supra* note 111.

303 Those states are Alabama, Arkansas, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, and South Dakota. *See infra* Table 1. Oklahoma and North Carolina both reference gender lines but have two sections, one dealing with a former wife's naming options and another dealing with a former husband's naming options.

304 LA. CODE CIV. PROC. ANN. art. 3947(B) (effective August 1, 2021).

305 LA. STAT. ANN. § 9:292 (West, Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.).

language referring to a "wife" was replaced with the gender-neutral term "party" in 2019; the phrase "maiden name" was retained, but "or birth" [name] was added.[306] Vermont's statute was made gender neutral in 2023.[307] Rhode Island's statute was made gender neutral in 2024, changing "woman" to "person" and "her" to "their."[308] Whether expressly gender referenced or attempting to move to a gender-neutral lexicon, twelve states still have the term "maiden" in their statutes.[309]

North Carolina's statute is noteworthy. It has two separate sections addressing name change options for women and men. Subsection a1 (for men) was added in 1994 to, ostensibly, make the statute gender-neutral,[310] but the separate classifications serve to accentuate historical norms and gender-lined differences. Although both sections seem to only allow returning to a prior surname, the language of the subsection regarding divorced men allows more options than the subsection for divorced women.[311] Women are not given the right to resume using the surname of a prior living husband with whom they do not have children.[312] There is no similar restriction for a divorced man who wishes to resume using the surname of a former spouse with whom the man does not have children.[313] To the extent this creates an unequal classification, there may be an equal protection problem.[314]

D. Limitations on *What* Surnames Can Be Used

Virtually all states have crafted divorce-related statutes to allow individuals to revert to pre-marriage surname use, and a handful also allow the opportunity to change to any

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306 2019 Mont. Laws Ch. 180 (H.B. 274).

307 2023 Vt. Acts & Resolves No. 161, § 20 (Adj. Sess.) (effective June 6, 2024).

308 2024 R.I. Pub. Laws, ch. 163, § 2 (effective June 17, 2024).

309 These states are Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Montana, North Carolina, Oklahoma, South Dakota, and Virginia. *See infra* Table 1.

310 1994 N.C. Sess. Laws ch. 565, § 1 (Reg. Sess.) (effective Oct. 1, 1994) (H.B. 1133).

311 *See infra* Table 1.

312 *See infra* Table 1.

313 *See infra* Table 1.

314 Recall that the U.S. Supreme Court has not yet heard a full case on the merits regarding the constitutionality of a right to use a particular surname. Its decision in *Forbush* was a summary affirmance of the district court's finding. *See supra* note 196.

(new) surname.[315] Some states handle the matter within the more general framework of their respective name-change statutes.[316] A handful of states address the matter in case law rather than by stand-alone statute or within their name-change statutes.[317] North Dakota and Hawai'i, as two of the few states that require marriage applicants to list the names they intend to use during the marriage on the marriage license, likely use their respective "at marriage" statutes as reference points for naming options at divorce along with common law naming autonomy principles.[318]

1. Returning to a "Former," "Prior," or "Birth" Surname

The vast majority of states' divorce-specific naming statutes only provide for returning to a former name.[319] States have a wide array of language evidencing this limitation, and some of that language is worth discussing. Most states refer to a "former," "previous," or "prior" name or the name of a "former spouse." These terms all have similar meanings and appear to permit a divorcing spouse to return to any surname used before the marriage. Some states, however, expressly include the option to return to use of a "birth name" or name on a birth certificate; this option exists alongside the option to return to a former

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315 Adopting any new surname, as a more wide-open option, can be conditioned on some of the same types of restrictions as a state's name change statute (i.e., new name cannot be used to perpetrate fraud or cause confusion) including that statute's notice and publication provisions. *See, e.g.*, ALASKA STAT. ANN. § 25.24.165(b) (West, Westlaw through Ch. 2 of the 2025 1st Reg. Sess., 34th Legis.).

316 *See infra* Table 1. A handful of states do not have dedicated statutes to address the issue of surname usage upon divorce but rather address the matter as a subsumed component of the state's general name change statutory framework. These states include Florida, Mississippi, New Mexico, Tennessee, Utah, and Wyoming. Some states exempt divorce-related naming options from one or more of the onerous requirements of the more general name-change law (e.g., notice, publication); some do not.

317 Idaho, for example, does not have a statute on name changes upon divorce, either stand-alone or within its name-change law, but the Idaho Supreme Court has indicated that returning to a former surname is permitted if a party requests it in the divorce decree. Cook v. Arias, 435 P.3d 1086, 1090 (Idaho 2015). The same functional rule is true in Missouri. *See* Newsom v. Newsom, 976 S.W.2d 33, 41 (Mo. Ct. App. 1998).

318 *See infra* Table 1.

319 *See infra* Table 1. A variety of terms are used in this context with varying legal significance. For example, most statutes use "former" name (or tautologically similar terms like "prior" or "previous") either along with, or in lieu of, allowing return to a "maiden name" or "birth name." The first set allows the option to return to using a surname of another former spouse in a marriage before the one contemplated in a particular divorce action.

name in almost all instances where it is indicated.[320] The inclusion of a "birth name" is significant because it is a statutory pronouncement that could displace the common law option to adopt whatever name one wishes, thus limiting the names that could be used after a divorce. Georgia's statute, originally enacted in 1880, allows a party to request "restoration of a maiden or prior name."[321] A second subsection, added in 2024, may override that by limiting the options to just one—the birth surname.[322] Seven states—Georgia, Iowa, Michigan, Nevada, South Dakota, West Virginia, and Wisconsin—refer to a "legal name": Georgia to the aforementioned birth surname that appears on a birth certificate, West Virginia to the proof used to obtain a state driver's license or identification card, and the other five states to legal names in the abstract.

Of the well over thirty states with language that restricts post-divorce name usage to some name the individual used before the marriage, twenty-one limit judicial discretion by using the term "shall."[323] Fourteen provide discretion to the court by using the term "may." Two states, Georgia and Kentucky, have both mandatory and permissive language for different scenarios. Georgia's statute seems to contain a contradiction between the original 1880 portion of the statute (new subsection a) and a recent 2024 amendment (new subsection b).[324] Kentucky mandates the name change ("shall") for a divorced

320 *See infra* Table 1. As in the statutes for California, Connecticut, the District of Columbia, Georgia, Iowa, Louisiana, Maryland, Michigan, and Montana.

321 1880-81 Ga. Laws § 19-5-16(a), p. 121, § 1.

322 2024 Ga. Laws § 19-5-16(b), Laws 2024, Act 397, § 1 (effective April 22, 2024). The disparity between the old section (a) and new section (b) ostensibly prevents a twice-divorced woman from returning to a legally recognized use of a first spouse's surname after a divorce from a second spouse if she did not ask for that first surname to be restored in her first divorce. Georgia's restriction in this regard is atypical and possibly inadvertent.

323 *See, e.g.*, VT. STAT. ANN. tit. 15, § 558 (West, Westlaw through Reg. Sess., 2025–2026 Vt. Gen. Assemb., effective as of Mar. 5, 2025). In addition to amending the statute to make it gender neutral in 2023, Vermont also removed much of the trial court's discretion ("may" was changed to "shall" allow, but "good cause to the contrary" language still present) to deny an individual the right to resume a former surname. 2023 Vt. Acts & Resolves, Adj. Sess., No. 161, § 20 (effective June 6, 2024). The previous language read, "Upon granting a divorce to a woman, unless good cause is shown to the contrary, the court may allow her to resume her maiden name or the name of a former husband." *Id*.

324 Georgia's original statute indicates that the decree "*shall* specify and restore to the party the name so prayed (maiden or prior name) for in the pleadings." However, the 2024 amendment appears to vest discretion in the judge in the last sentence of subsection 2: "The court . . . *may* issue an order restoring the given surname shown on the movant's birth certificate . . . at any time after the filing of a motion." GA. CODE ANN. § 19-5-16 (West, Westlaw through Act 1, 2025 Reg. Sess.) (emphasis added); 2024 Ga. Laws § 19-5-16(b), Laws 2024, Act 397, § 1 (effective April 22, 2024) (emphasis added).

woman, if requested, when there are no children of the marriage. But Kentucky makes it permissible ("may") if there are children of the marriage.[325]

These statutory restrictions limit women's legal surname options upon divorce. Given that some of these statutes still use archaic gendered language or simply because of reasons outside the law,[326] women resort to these statutes much more often than men. The statutes purport to vindicate naming autonomy, but they constrain by design when stating that a woman may *only* return to a previous name. Common law naming autonomy says that divorced women should be free to be named whatever they choose, but some statutes facially restrict that choice to a pre-marital surname. Statutory language should clearly establish that remaining with the marital surname is an option. The law should give women certainty and solace in that decision, in addition to any other statutory naming options provided.

2. The (Additional) Option to Adopt *Any* New Surname?

Eight states appear to give a divorcing spouse the option to change their surname to any they choose.[327] Five of these include *both* the option to return to a former surname and for a spouse to take any new surname.[328] Four of those five (all but New Jersey), however, allow a judge more discretion to deny a name change if the individual requests a "new" name, as opposed to one used before the marriage.[329] These discretionary standards allow a judge to consider the factors under a state's general name change statute (e.g., fraud, confusion) but without some or all of the other legal requirements in that statute (e.g., notice, publication of the new name, and a hearing).

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325 KY. REV. STAT. ANN. § 403.230(2) (West, Westlaw through laws effective Mar. 24, 2025 and the Nov. 5, 2024 election).

326 *See supra* Part II.A.

327 *See infra* Table 1. These eight states are Alaska, Kansas, Maine, Michigan, Minnesota, New Jersey, Rhode Island, and Washington.

328 *See infra* Table 1. These five states are Kansas, Maine, Michigan, New Jersey, and Washington.

329 Maine's statute, for example, indicates that the court *shall* change the surname of a requesting spouse if a former name is requested but *may* change the surname if "any *other* name [is] requested." ME. REV. STAT. ANN. tit. 19-A, § 1051 (West, Westlaw through 2023 2d Reg. Sess., 131st Legis.) (emphasis added). Washington's statute, as another example, reads, "Upon request of a party whose marriage or domestic partnership is dissolved or declared invalid, the court *shall* order a former name restored or the court *may*, in its discretion, order a change to another name." WASH. REV. CODE ANN. § 26.09.150(3) (West, Westlaw through 2024 Reg. Sess.) (emphasis added).

In the three states where taking any (ostensibly, "new") name is the only option listed, there is differing judicial discretion. In Minnesota[330] and Rhode Island,[331] the standard is mandatory, as the statutes use the term "shall," but both states' statutes seem to acknowledge the limited reasons a court could deny a request under a general change-of-name statute or rule (i.e., the fraud and confusion standards). This balances the naming autonomy principle of the common law with some element of traditional name-change laws. The standard appears to be permissive in the Alaska statute, as that law indicates that a court "*may* change the name of either of the parties."[332]

3. A Right or Interest in What Is *Not* Said?—Retaining the Marital Surname

What is curious about these statutes is that virtually all of them *do not* expressly affirm (or deny, as in the French Civil Code) an individual's right to retain a marital surname. As described above, the statutes speak in terms of reverting to former names or, to a lesser extent, using the divorce proceeding as an opportunity to change the surname to a new one. The omission of retaining the marital surname as an option is significant. Does it signal an acknowledgment of custom? Is the naming autonomy principle so obvious that a statute need not address it? Should we assume that if the issue is not raised at all, the woman leaves the marriage with a right to the marital surname unencumbered by any concerns of her former spouse? New York's statute, for example, does not expressly prohibit a divorcing individual from continuing to use the surname of the other individual, but by using the permissive "*may*" language (if a spouse requests to return to using a former surname), the statute implies an allowed continued use of a marital surname without restriction.[333]

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330 In Minnesota, unless the party requesting the name change has a felony conviction, the court *must* change the name, subject only to the general change-of-name standards of denying a name change if there is a finding of "an intent to defraud or mislead." MINN. STAT. ANN. § 518.27 (West, Westlaw through Mar. 18, 2025, 2025 Reg. Sess.).

331 In Rhode Island, the language of the statute is passive and indicates that the person "shall, upon request, be authorized by the decree to change their name," with acknowledgment of the statute as suppletive to the common law standard. 15 R.I. GEN. LAWS ANN. § 15-5-17 (West, Westlaw through Ch. 457 of the 2024 Reg. Sess.).

332 ALASKA STAT. ANN. § 25.24.165(a) (West, Westlaw through Ch. 25 of the 2025 1st Reg. Sess. and Ch. 1 of the 1st Special Sess. of the 34th Leg.) (emphasis added).

333 *See* N.Y. DOM. REL. LAW § 240-a (McKinney, Westlaw through L. 2025 Chs. 1 to 503); ALAN D. SCHEINKMAN, NEW YORK LAW OF DOMESTIC RELATIONS § 2:26 (11th ed. 2025).

Given that a handful of these statutes also confirm the right to the use of a name if requested in a divorce decree (or thereafter in a few states), the divide between certainty in using whatever "new" surname comes out of this process and retaining a marital surname becomes wider. When this omission is coupled with the vast differences in language of these state statutes and the wide judicial discretion in naming decisions, a divorced woman may not be aware, with a reasonable degree of certainty, of her rights in the continued use of a marital surname.

Only three states' statutes speak to an individual's option to retain the marital surname after divorce. Illinois seems to be the only state that places an affirmative duty on a divorcing individual to ask to retain a marital surname by requiring the party to ask the court *not* to include a name change provision in the divorce decree.[334] Rhode Island's statute expressly states that a divorced individual who seeks to change their name is entitled "to the same rights and liabilities as if their name had not been changed."[335] This could imply that if a divorced woman did continue to use a marital surname, she could do so in all ways and in every aspect of her post-divorce life—private or public, for personal use or for commercial gain—as she could have done while married. Louisiana offers what seems to be the firmest legal protection in retaining use of the marital surname. Its statute affirmatively indicates that a divorced woman may retain the surname of the spouse from whom she is divorced, even if remarried.[336] An article in that state's Code of Civil Procedure grants a judge the authority to confirm an order authorizing the use of a certain name, including presumably maintaining a marital surname after a divorce.[337]

So, by default, if nothing is requested in the divorce petition and/or ultimately adjudged in the divorce decree, the divorced woman's surname remains the one she may have held out and used continuously during the marriage. The Alaska Supreme Court has held that it is not a legal error when a court decrees a divorcing woman as continuing to use the marital surname even if she did not request the court to do so otherwise.[338] The right to retain use of

334 *See infra* Table 1; 750 ILL. COMP. STAT. ANN. 5/413(c) (Westlaw through P.A. 103-1082, 2024 Reg. Sess.). This could be to formally request to maintain the marital surname, or it could simply be a matter of privacy requested in the name to be used after the divorce.

335 15 R.I. GEN. LAWS ANN. § 15-5-17 (West, Westlaw through Ch. 457 of the 2024 Reg. Sess.).

336 LA. STAT. ANN. § 9:292 (Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.).

337 LA. CODE CIV. PROC. ANN. art. 3947(B) (Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.).

338 Helen S.K. v. Samuel M.K., 288 P.3d 463, 480 (Alaska 2012). Helen S.K. argued that a superior court's finding, in her divorce action, that she "shall retain her married name" was in error, causing her expenses and

the name exists not only because of the systematic, continuous, and open use of a marital surname, but also by the rights that both custom and common law naming autonomy provide her to use that name. A comprehensive statute that states can use involving the existing name change options upon divorce but *expressly including* rights in the continued use of a marital surname is proposed in the next section.

IV. Model Law on Post-Divorce Surname Usage

Statutes are passed by legislatures as the will and intent of a people.[339] In both common law and civil law systems, statutes override inconsistent judicial pronouncements.[340] The common law is formed, in significant ways, from custom:[341] the pervasive practices that are generally accepted parts of a society and its social institutions. Statutes override the common law, providing additional certainty and predictability. The seminal House of Lords case of *Cowley* summarizes it best: "[T]he Sovereign can at any moment confer on the Countess the privilege of using the name, style, and title which the Earl complains of her using."[342]

The law has facilitated the marital custom of surname taking, even in divorce. Repeated, consistent, and pervasive use in both the private and public spheres appears to create a new legal moniker under which rights and obligations should be protected and defended. Courts, as far back as fifty years ago, saw the potential danger in letting this custom harden

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time delays. The supreme court acknowledged that Helen S.K. never asked the superior court to change her name back to her former surname and found no legal error. The supreme court did reference her ability to be granted relief from the divorce judgment under Alaska R. Civ. Pro. 60(b) and potentially amend the judgment (or go through Alaska's traditional name-change statutory process) to go by the name she wanted to go by, her former name.

339 *See, e.g.*, LA. CIV. CODE ANN. art. 2 (Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.) ("Legislation is a solemn expression of legislative will.").

340 Martin Krygier, *The Traditionality of Statutes*, 1 RATIO JURIS 20, 24 (1988). Civil law systems have some measure of "common law" in their courts' pronouncements through the use of a doctrine known as *jurisprudence constante* or a series of several cases, all reasoning in a consistent manner.

341 *See, e.g.*, LA. CIV. CODE ANN. art. 3 (Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.) ("Custom results from practice repeated for a long time and generally accepted as having acquired the force of law. Custom may not abrogate legislation.").

342 Cowley (Earl) v. Cowley (Countess) [1901] AC (HL) 450, 461.

into law but remain unwritten.[343] If not only to protect the judiciary from allegations of inconsistency, statutory protections for marital surname use post-divorce would create certainty for the parties, as well as third parties dealing with the formerly married persons.

The formal name change process, by statute in almost all United States jurisdictions, includes a hearing or appearance process requiring the petitioner asking for a name change to aver, *inter alia*, that the new name will not be used for fraudulent purposes. The derivatives of that common "no fraud" promise include a range of consumer-protection-like phrases, such as preventing confusion and "substantially interfer[ing] with the rights of others."[344] Any varying use of a name could be considered confusing or deceptive, so courts probe further by applying a subjective intent standard to fraudulent name use.[345] Some courts have interpreted the standard to mean that the new name cannot be "detrimental to the interests of *any* other person."[346] What would these scenarios look like? How would they be investigated? By a factfinder or a judge, and by what burden of proof and why? How would these concerns weigh on the retention of a marital surname after a marriage ends?

Statutes that address name change or name reversion options upon divorce should include express permission for a divorced person to continue using a marital surname. The marital regime's historic importance is so foundational in the law[347] that we allow the custom of surname adoption while *in* marriage with minimal formal process; because such customary usage often renders the surname central to a woman's identity, her rights to the surname should not be hindered following the marriage. Legislation should provide certainty and predictability in name usage for *all* the options (former surname, any surname, continuing the marital surname) available to a divorced woman. The common law provides flexibility, and flexibility lends itself to autonomy (and individual liberty). However, predictability is also necessary, especially in an increasingly bureaucratic society. The

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343 "With the rapid increase of divorces and remarriages in America today, with attendant name changes, we may reach the point of having to forbid a change of name by marriage in order to bring about stability, reduce confusion and preserve the identity of women who acquire a different name from each successive husband." Dunn v. Palermo, 522 S.W.2d 679, 688 (Tenn. 1975).

344 *In re* Reben, 342 A.2d 688, 695 (Me. 1975).

345 Ellen Jean Dannin, *Proposal for a Model Name Act*, 10 U. MICH. J.L. REFORM 153, 159 (1976).

346 *In re* Knight, 537 P.2d 1085, 1086 (Colo. App. 1975) (citing COLO. REV. STAT. ANN. § 13-15-101(2)(a) (2025)).

347 "The State has a well-defined interest in the continuance of the marriage relationship as the relationship has been maintained from the days of the common law to the present time on the grounds of public policy." *Reben*, 342 A.2d at 701 (Dufresne, C.J., dissenting).

trend towards administrative name uniformity[348] requires statutory affirmance of naming rights to avoid costly litigation and provide trial and probate judges with a "clear and stable reference."[349] Without certainty in a name, legal rights are less protected.[350] It should be, as one court put it, that "one can secure [a status of] a change of name through legal procedure with a provision for proper recordation thereof among the public records."[351] This would be "desirable and far less objectionable than the common law provision."[352]

A. Language of a Model Act, Borrowing from the Model Marriage and Divorce Act

The National Conference of Commissioners on Uniform State Laws drafted a Model Marriage and Divorce Act ("MMDA") in 1970, with amendments in 1971 and 1973.[353] Unlike other model laws such as the Uniform Probate Code and the wildly popular Uniform Commercial Code, only six states have adopted the relevant provision as a template for their naming options upon divorce.[354] The provision on surname usage post-divorce of the MMDA reads as follows:

> Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a former name restored.[355]

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348 *See, e.g.*, Real ID Act of 2005, Pub. L. 109-113, Title II, H.R. 1268; *see supra* Part II.C.3.b; *supra* notes 237, 239.

349 Dannin, *supra* note 345, at 153.

350 *Id.* at 157.

351 *In re* Mohlman, 216 S.E.2d 147, 151 (N.C. Ct. App. 1975).

352 *Id.*

353 MODEL MARRIAGE AND DIVORCE ACT § 314(d) (UNIF. LAW COMM'N 1973). The designation was changed from "uniform" to "model" by the Conference in 1996.

354 Those six states are Arizona, Colorado, Georgia, Minnesota, Montana, and Washington. *Marriage and Divorce Act*, UNIF. LS. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=c5a9ecec-095f-4e07-a106-2e6df459d0af [https://perma.cc/5T69-4HMU].

355 *Id.*

To reflect the research in this article and modernize the language, a model law to serve as a foundation for surname certainty in rights of use after divorce could look like this:[356]

(1) Upon request by an individual named as a party in the petition or answer for dissolution or declaration of nullity of the marriage, ~~a wife whose marriage is dissolved or declared invalid~~ or at any time, upon motion by the individual, within thirty-six months after a final decree of dissolution by divorce or declaration of nullity of that same marriage, the court ~~may~~, ~~and if there are no children of the parties~~ shall~~,~~ order that individual's surname to be any of the following, subject to the provisions in section (2) below: ~~her maiden name or a former name restored.~~

(a) Any of the individual's surnames used before the marriage.

(b) The individual's surname used during the marriage if different from (1)(a) above and was the same surname used by the individual's former spouse during the marriage.

(c) Any other surname.

(2)

(a) If the individual elects to use a surname under (1)(a), no hearing or evidence as to the reasons for the use of the surname is necessary, and the surname can be used for all purposes.

(b) If the individual elects to use a surname under (1)(b):

(i) The surname can be used for all private and public purposes, except for purposes as set forth in (2)(b)(ii). The purposes can include, but are not limited to, all matters involving children of the marriage. No hearing or evidence as to the reasons for the use of the surname under this subsection is necessary.

(ii) If the surname is used for any business-related public purpose, the individual's former spouse who regularly and consistently used

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356 Note that all text after this new proposed section (1) (based on the MODEL MARRIAGE AND DIVORCE ACT § 314(d) (UNIF. LAW COMM'N 1973)) is new proposed provisions of a model act.

the same surname, in the same or a substantially similar business endeavor, during the marriage to the individual, may challenge the use. The court may deny the surname usage only for this limited business-related public purpose if the former spouse can prove, by clear and convincing evidence, that the use or intended use by the individual is being done in a way that is fraudulent and reasonably likely to misrepresent the surname's usage by causing public confusion.

(A) An action under this subsection shall not be available to the former spouse if the individual used the surname for this business-related purpose during the marriage, either individually or in a joint business enterprise with the former spouse.

(B) This standard is only considered when both the former spouse and the individual are involved, post-divorce, in the same or a substantially similar business endeavor and use of the surname would cause confusion for the customers, clients, or persons engaging with the former spouse and/or the individual in the context of the business-related public purpose. If the individual commences their business before the former spouse, it shall be an irrebuttable presumption that the use of the surname will not cause public confusion.

(iii) No other person, except for the former spouse who regularly and consistently used the surname during the marriage to the individual, may challenge a surname elected under (1)(b).

(iv) An action by the former spouse under this subsection must be brought within six months of the court's final determination that the individual's request to use the surname in (1)(b) is granted.

(c) If the individual elects to use a surname under (1)(c), the court hearing the request or motion may ask for a hearing where any interested person may participate. The court may also ask for evidence as to whether the surname requested under (1)(c) is or may be used for purposes that could be considered fraudulent, reasonably likely to misrepresent the surname's usage, or otherwise cause public confusion.

(3) Nothing in this section should be construed to deny or otherwise infringe upon a person's right to seek redress under other laws regarding a name's usage.

(4) Nothing in this section should be construed to deny or prevent an individual from seeking a formal change of name under the state's general change-of-name law, nor should this section be interpreted in such a way as to infringe naming rights available under the common law of this state.

B. Components Discussed

The first section of the proposed model act above (hereinafter "the Act") is based loosely upon subsection 314(d) of the MMDA. It gives a general overview of who can request a post-divorce naming option, when such options can be requested, and the granting court's discretion. The Act provides three post-divorce surname options: any surname used before the marriage, retaining the marital surname, or changing to any other surname. This first section modernizes language from subsection 314(d) of the MMDA by using gender-neutral terms and making the action available to either party to the divorce action. It allows a timeframe of three years after the divorce for a party to petition for such a naming option decree. This timeframe borrows from Maryland's statute[357] but extends it by doubling the 18-month time frame. This is primarily to allow the individual bringing the action time to determine whether there is commercial value in seeking to retain the marital surname (e.g., starting a small business where the individual may be well-known in a community by their married name). The action remains viable even with the death of one of the parties.[358] However, it is not unlimited, acknowledging some potential property-based rights of the former spouse who brought the surname into the marriage and who may also seek to exploit its recognition in business after the dissolution of the marriage. The first section removes a trial or probate court's discretion in granting the name declaration with respect to children born of the marriage who may or may not have the same surname as the party petitioning for a naming declaration.

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357 MD. CODE ANN. FAM. § 7-105(a) (West, Westlaw through 2024 Reg. Sess., Gen. Assemb.).

358 At least one court has held, in the context of an action by a woman in a divorce to revert to the use of her former surname, that the death of her spouse after the filing of the divorce petition but before the decree of final divorce did not defeat her request. Hesson v. Hesson, 919 A.2d 907 (N.J. Super. Ct. Ch. Div. 2007).

Section two of the Act establishes proof standards for courts, borrowing commonly used standards in name-change statutes.[359] Most states have incorporated the common law standard for name change statutes, requiring a showing of fraud or misrepresentation akin to fraud in order to deny a change of name.[360] The notice requirement in traditional name-change statutes is satisfied here by the judicial filing feature of the statute's provisions—either directly within a divorce proceeding or by subsequent motion. Courts have found that form requirements of name-change statutes, if different or more onerous than those related to the incidentals of a divorce proceeding, are not grounds to deny a name change connected to dissolution of marriage. The judicial filing feature puts third parties on notice of a potential name change or declaration of retention of a particular surname, and subsection (2)(b)(iii) prevents anyone except the former spouse from challenging a post-marital-dissolution name change.

The Act preserves all other law-based naming options, including resorting to a state's formal name-change process and using general common law naming autonomy. The purpose of the Act is to provide a layer of certainty in the use of a particular surname while balancing the rigidity of the name-change process and the liberality of naming autonomy. The first naming option, in subsection (1)(a) and (2)(a), simply recognizes an individual's right to revert to a former name. This subsection follows the traditional evidentiary norms of many of the statutes in Table 1 and dispenses with many of the evidentiary and procedural burdens of name-change statutes. It only sets aside a potential public use of the name for business purposes, addressed in subsections (1)(b) and (2)(b).

With respect to the standards in subsection (2)(b) referencing the naming option in subsection (1)(b), the statutory language will operate to protect the right of continued use of the marital surname. The Act allows this even in instances when the divorced individual chooses to continue use of the marital surname in only one arena of their life, such as in business using an eponymous branding, trade name, D/B/A, or pen/stage name. This would be in line with the traditional understanding that, during a marriage, a person can use the marital surname in some contexts (e.g., personal, familial) and their birth/former surname in others (professional, business, etc.).[361] Recall that in its 1975 decision in *Kruzel*, the Wisconsin Supreme Court held that changing a name in a professional or licensed context

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359 Subsection (2)(c), referencing the ability to change to any surname other than one used before or during the marriage (option in subsection (1)(c)) simply restates typical state law name-change standards, including a judge's discretion in applying these factors.

360 Kruzel v. Podell, 226 N.W.2d 458, 466 (Wis. 1975).

361 *See, e.g.*, *In re* Mohlman, 216 S.E.2d 147, 151 (N.C. App. 1975).

does not prevent the person from continuing to carry on their trade or business, subject to the same fraud and misrepresentation standards of a name-change statute.[362] So, if a woman named Mary Watson became known as a bestselling author during her marriage to John Smith and sold books under the pen name "Mary Smith," but later divorced John Smith, she could continue to be known professionally as Mary Smith whether or not she remarried or decided to revert to her birth or former surname in other settings.[363]

Similarly, naming autonomy, while analyzed almost exclusively in the context of natural persons' rights, is also potentially a right of non-natural or juridical persons such as corporations, partnerships and other forms of business entities. That common law right has been discussed in some cases.[364] Under the Act, a divorced woman should have the necessary derivative right to use the marital surname of her former marriage even in business enterprises where she uses the name as part of a registered name in a D/B/A or other formal business capacity. Registering the business' name with the appropriate state or local authority would put all parties on notice of the name's use, and a statutory protection of the continued right to use a marital surname post-divorce would put a woman's business on firmer legal ground than relying on common law naming autonomy or name-sharing custom.[365] Assuming the standard of avoiding fraud or confusion is in place, there should be

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362 *Kruzel*, 226 N.W.2d at 464. The Court further explained that the name use could be challenged if it "operates to compete unfairly with another practitioner or misleads the public to its detriment or to the detriment of a profession." *Id.*

363 "A woman on her marriage takes her husband's name, and she retains it although the marriage may have been dissolved by divorce unless she has so far obtained another name by Repute as to obliterate the original name." Dunn v. Palermo, 522 S.W.2d 679, 682 (Tenn. 1975). This standard should apply irrespective of when the woman started using the marital surname while still married; whether she begins using the surname in a professional context after the marriage but having never used the surname in any way during the marriage is potentially actionable under the procedures explained in the statute (i.e., the standard for fraud as confusion or possibility of misleading use) if the name is being used in a specific market and context relative to a similar business enterprise of her former spouse and within a defined geographic area and only after the marriage has ended.

364 *See, e.g.*, *In re* Reben, 342 A.2d 688, 696 (Me. 1975) (Dufresne, C.J., dissenting) ("This Court has recognized an ancient common law right in individuals, partnerships and corporations, in the absence of statute, to adopt any name under which legitimate business transactions may be carried on, and contracts so entered into under an assumed name are valid and binding upon the contractual parties if unaffected by fraud.").

365 Doing business under a pseudonym or name not clearly connected to the names of the person or persons doing business may be subject to criminal sanction or criminal penalty. *See, e.g.*, *In re* Natale, 527 S.W.2d 402, 404 (Mo. Ct. App. 1975). To the extent the law requires a business to complete certain registration and accounting procedures, such an omission, under the standards of the statute, could potentially be used as evidence of fraud or misrepresentation in a challenge to a particular surname's use. Statutory confirmation of

no distinction between Mary Smith and Mary Smith Booksellers, Inc. A person is allowed to have a single name to carry on a business (as well as their own legally recognized name) in the interest of the holistic simplicity of personal and business affairs.[366]

The Act allows a former spouse to challenge the continued use of a marital surname only in a very limited circumstance, with an elevated burden of proof and within a very short window of time (six months). It allows the action only if the surname would be used in a business context and then only when the intended use by the individual is within the same business domain of the former spouse, who used the name in the same or similar context during the marriage.[367] The action cannot be used by a spouse who began using the name in that business area after the marriage. It likewise cannot be used against a spouse who engaged in the business area during the marriage, either alone or jointly with the former spouse.

The difficulty of demonstrating fraud would also very likely allow an individual to continue using the marital surname even if she began using it after the divorce and after the former spouse began using it. The Act requires that the challenging former spouse show evidence of intent to misrepresent *and* that the misrepresentation would cause public (not just private, between the parties, or social) confusion. This is likely more onerous than the formal name-change statutory standard, and the heightened protections are meant to allow wide latitude for a divorced woman to develop a business under the marital surname. Continued use of a marital surname would not be denied to a divorced woman because of simple public recognition of that name, even if any notoriety or value in such recognition is only by virtue of the former husband's efforts during the marriage. There is case law supporting the imposition of such a heightened threshold and the necessity of determining the mindset of an individual seeking to use a particular name for allegedly

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a continued right in the use of a marital surname, post-divorce, "avoids any risk of prosecution for use of an unregistered, fictitious name . . . by using the statutory rather than the common law method." *Id.* at 405.

366 *See, e.g.*, *In re* Ferner, 685 A.2d 78, 80 (N.J. Super. Ct. Law Div. 1996).

367 It would be hoped that courts would interpret "business domains" in such a way so as to allow the individual (most likely a divorced woman) the ability to use the marital surname in her business endeavors. Language in subsection (2)(b)(ii) is provided to give guidance to courts to delineate what types of business activities would be considered in an action by a former spouse against an individual seeking use of a marital surname certainty declaration.

fraudulent purposes.[368] A court is unlikely to find such "harm" in a woman's continued use of a surname which she had already employed during the marriage.

Section three indicates that rights under the Act are not exclusive, and relief under other laws is allowed.[369] Either party may separately attempt to trademark the business use of the surname, but the U.S. Supreme Court has said that trademarking a surname to prevent others with the same surname from using it can be challenging.[370] In sum, this subsection seeks to reach a compromise between: (1) deference to the societal support and encouragement of the institution of marriage and (2) acknowledging a divorced woman's discretion to use a marital surname in her own right, acknowledging her commitment to the former marriage.

Finally, section four indicates the Act is not the only avenue permitted for post-marital-dissolution naming. General common law naming autonomy on one end and formal name changes by judicial process on the other remain options for naming divorced individuals.

CONCLUSION

Although the law supports naming autonomy and naming independence, it is still very common for a woman to take a man's surname in an opposite-sex marriage. This is because of a host of reasons outside of the law, such as social factors, custom, and children born of the marriage. However, "[i]t is hard to justify giving courts such discretion when the petitioner's personal identity is at stake and the state's interests are very limited."[371] It is also equally common for the matter not to even be addressed in divorce proceedings.

Because of the uncertainty of the rights in a marital surname, trial and probate courts have had little guidance, whether expressly in state statutes or in consistent common law

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368 *See, e.g.*, *supra* note 9; *In re* Serpentfoot, 646 S.E.2d 267 (Ga. Ct. App. 2007), *reconsideration denied*, *cert. denied*, (Ga. 2007).

369 As indicated above, this would likely be either trademark law or a right of publicity claim in tort law. *See supra* Introduction; *supra* notes 27–29.

370 Brown Chemical Co. v. Meyer, 139 U.S. 540, 542 (1891) ("It is hardly necessary to say that an ordinary surname cannot be appropriated as a trade-mark by any one person as against others of the same name, who are using it for a legitimate purpose; although cases are not wanting of injunctions issued to restrain the use even of one's own name where a fraud upon another is manifestly intended, or where he has assigned or parted with his right to use it.").

371 Alexander, *supra* note 1, at 75.

precedent, on how to deal with the issue. This lack of guidance exacerbates the concerns regarding the close to unbridled discretion of lower court judges in naming matters and the very real concern of solidifying the rights in *any* naming choice.[372] Divorced women deserve the right to predictable outcomes when they choose to continue using a marital surname, including the right to commodify the name's use. Given the very high percentage of women who continue to take men's surnames in marriage, what then of the vestiges of the feminist movement from the 1970s in this modern era? Is there a space in the fourth wave of feminism to further formalize the notion that one (of many) roads to financial independence after divorce is to begin with an asset that could potentially generate wealth, even if that asset was not "originally" hers?

As explained above, social factors mean that women who choose to take a man's name during marriage are likely to retain said surname after the marriage has ended. They may have committed a large amount of time and energy to raising children, managed a household, and assisted in increasing the accrued wealth of their former husbands. Such contributions to the marriage weigh in favor of according women a concrete interest in the surname.

States should create explicit, clear protections for the continued use of a marital surname by a divorced woman. Many divorced women who wish to continue using a marital surname and, say, start a small business with it, will not possess the resources to seek legal advice to protect the use of a marital surname, nor is it clear that trademark law would unequivocally protect her interest in the continued use of the surname. A statutory provision authorizing judicial recognition of her right to utilize the name would provide predictability in the use of the surname publicly, allowing her to rebuild after a divorce. Only under very limited circumstances (as spelled out in the model act) could her former husband challenge her use of the name, diminish or condition said use, or have any rights to the fruits or revenues that she may generate from that name's post-divorce usage.

Until we have a determination by the U.S. Supreme Court that a name, the very thing at the core of our identity, has constitutional attributes as a liberty interest, state statutory protection is the necessary vehicle for beginning on the long road to gender equality in this space.

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372 Kushner, *supra* note 46, at 319.

Table 1: State Laws on Options for Surnames at Divorce[373]

Alabama – ALA. CODE § 30-2-11 (Westlaw through 2025 Reg. Sess.).	After divorce from the bonds of matrimony and within the discretion of the circuit court of the county in which the divorced wife resides and upon application of any interested party, the divorced wife may be enjoined from the use of the given name or initials of the divorced husband.
Alaska – ALASKA STAT. ANN. § 25.24.165(a) & (b) (West, Westlaw through Ch. 25 of the 2025 1st Reg. Sess. and Ch. 1 of the 1st Special Sess. of the 34th Leg.).	(a) In a judgment in an action for divorce or action declaring a marriage void, the court may change the name of either of the parties. (b) If a party seeks a change of name to a name other than a prior name, the court shall set a date for hearing not less than 40 days after filing of the action. Notice of the application for a change of name to a name other than a prior name and the date of the hearing shall be published once each week for four consecutive calendar weeks before the hearing in a newspaper of general circulation in the judicial district. The court may also require posting of the notice at locations it considers appropriate. The court shall by judgment authorize the party to assume the new name not less than 30 days after issuance of the judgment, if the court is satisfied that no reasonable objection exists to assumption of the new name. Within 10 days after issuance of the judgment the party shall publish notice of the approval of the name change in a newspaper of general circulation in the

373 Text of applicable statutes are in regular print. Where particular states do not have a statute specific to options for surnames upon divorce, explanations as to where in a respective state's law those options may be found are in italics.

	judicial district. The court may also require the posting of a copy of the judgment.
Arizona – ARIZ. REV. STAT. ANN. § 25-325(c) (Westlaw through 1st Reg. Sess. of the 75th Leg. 2025).	On request by a party at any time before the signing of the decree of dissolution or annulment by the court, the court shall order that the party's requested former name be restored.
Arkansas – ARK. CODE ANN. § 9-12-318 (West, Westlaw through 2025 Reg. Sess.).	In all cases when the court finds that either party is entitled to a divorce, the court may restore the wife to the name that she bore previous to the marriage dissolved.
California – CAL. FAM. CODE § 2080 (West, Westlaw through Ch. 764 of the 2025 Reg. Sess.).	In a proceeding for dissolution of marriage or for nullity of marriage, but not in a proceeding for legal separation of the parties, the court, upon the request of a party, shall restore the birth name or former name of that party, regardless of whether or not a request for restoration of the name was included in the petition.
Colorado – COLO. REV. STAT. ANN. § 14-10-120.2 (West, Westlaw through 1st Reg. and Extr. Sess. 2025).	(1) Pursuant to the provisions of this section, at any time after the entry of a decree of dissolution or legal separation, a party to the action may request restoration of a prior full name.[374]
Connecticut – CONN. GEN. STAT. ANN. § 46b-63 (West, Westlaw through 2025 Reg. Sess.).	(a) At the time of entering a decree dissolving a marriage, the court, upon request of either spouse, shall restore the birth name or former name of such spouse. (b) At any time after entering a decree dissolving a marriage, the court, upon motion of either spouse, shall modify such judgment and restore the birth name or former name of such spouse. The court shall rule on any motion filed

374 The statute also allows a divorced person, at any time after the divorce decree, to request returning to a former surname provided that the former name's use "is not detrimental to any person."

	by such spouse to have his or her birth name or former name restored without a hearing.
Delaware – DEL. CODE ANN. tit. 13 § 1514 (West, Westlaw through Ch. 229 of the 153rd Gen. Assemb. 2025-2026).	The Court, upon the request of a party by pleading or motion, may order that such party resume a maiden or former name.
District of Columbia – D.C. CODE ANN. § 16-915 (West, Westlaw through July 21, 2025).	Upon divorce from the bond of marriage, the court shall, on request of a party who assumed a new name on marriage and desires to discontinue using it, state in the decree of divorce either the birth-given or other previous name which such person desires to use.
Florida – FLA. STAT. ANN. § 68.07(9) (West, Westlaw through 2024 2d Reg. Sess.).	*Florida does not have a separate, specific statutory provision regarding formal law on name changes at divorce; it is part of the state's general name change statute in FLA. STAT. ANN. § 68.07. Name changes at divorce are exempted from the requirements of the name change statute, such as listing previous employment and obtaining a fingerprint card for a criminal background check.*
Georgia – GA. CODE ANN. § 19-5-16 (West, Westlaw through Act 1, 2025 Reg. Sess.).	(a) In all divorce actions, a party may pray in his or her pleadings for the restoration of a maiden or prior name. When a divorce is granted, the judgment or decree shall specify and restore to the party the name so prayed for in the pleadings. (b) (1) After entry of a judgment and decree of divorce, a former spouse may petition the court by motion ex parte to restore his or her legal surname to the given surname as shown on his or her birth certificate. (2) Notwithstanding any other provision of law or order of court requiring a request to be filed or made prior to the entry of judgment and decree of divorce or within the term of

	court of such entry of such judgment and decree, and notwithstanding that the requested restoration was not previously specified in the movant's pleadings in the original divorce action, the motion provided for in paragraph (1) of this subsection may be filed at any time after the judgment and decree of divorce was entered. No publication in any legal organ shall be required. The court with or without a hearing may issue an order restoring the given surname shown on the movant's birth certificate in chambers at any time after the filing of a motion. (3) This subsection shall apply to motions filed on or after May 1, 2024.
Hawai'i – HAW. REV. STAT. ANN. § 574-5(a)(2)(B)(i) (West, Westlaw through 2024 Reg. and 1st Spec. Sess.).[375]	It shall be unlawful to change any name adopted or conferred under this chapter, except: By a final order, decree, or judgment of the family court issued as follows: When in a divorce proceeding either party to the proceeding requests to: Resume the middle name or names and the last name used by the party prior to the marriage or civil union or a middle name or names and last name declared and used during any prior marriage or civil union and the court includes the change of names in the divorce decree.

375 This provision is Included in Hawai'i's general name-change procedure statute, HAW. REV. STAT. ANN. § 574-5, administered by the Office of the Lieutenant Governor. Hawai'i requires the intended name to be placed on a marriage license or application from a series of statutory options. If an individual does so to take the surname of their spouse at the inception of marriage but does not then seek relief under this specific section of the name-change statute, (a)(2)(B)(i), upon dissolution of marriage, the presumption is that the marital name remains their legal name after divorce. *See* HAW. REV. STAT. ANN. § 574-1 (West, Westlaw through 2024 Reg. and 1st Spec. Sess.).

Idaho	*No statute changing a spouse's name upon marriage, but reverting to a former surname is allowed if asked for by the party seeking it in the divorce decree*. See Cook v. Arias*, 435 P.3d 1086 (Idaho 2015).*
Illinois – 750 ILL. COMP. STAT. ANN. 5/413(c) (Westlaw through P.A. 104-433, 2025 Reg. Sess.).	Unless the person whose marriage is dissolved or declared invalid requests otherwise, the judgment under this Section shall contain a provision authorizing the person to resume the use of his or her former or maiden name, should he or she choose to do so, at any time he or she chooses to do so. If a judgment contains such a provision, the person resuming the use of his or her former or maiden name is not required to file a petition for a change of name under Article XXI of the Code of Civil Procedure.[376]
Indiana – IND. CODE ANN. § 31-15-2-18(b) (West, Westlaw through 2024 2d Reg. Sess., 123d Gen. Assemb.).[377]	A woman who desires the restoration of her maiden or previous married name must set out the name she desires to be restored to her in her petition for dissolution as part of the relief sought. The court shall grant the name change upon entering the decree of dissolution.

376 This refers to Illinois' change of name statutes in its Code of Civil Procedure, 735 ILCS § 5/21-101 *et seq.* (Westlaw through P.A. 104-433, 2025 Reg. Sess.).

377 Subsection b is new, following reorganization in 2019. The new subsection a of this statute indicates that subsection b does not apply to "a lifetime sex or violent offender."

Iowa – IOWA CODE ANN. § 674.13 (West, Westlaw through leg. effective Nov. 5, 2024 from the 2024 Reg. Sess. and Nov. 5, 2024 Gen. Elec.).	A person shall not change the person's name more than once under this chapter unless just cause is shown. However, in a decree dissolving a person's marriage, the person's name may be changed back to the name appearing on the person's original birth certificate or to a legal name previously acquired in a former marriage.
Kansas – KAN. STAT. ANN. § 23-2716(a) & (b) (West, Westlaw through 2024 Reg. Sess. and 1st Spec. Sess.).[378]	(a) Upon the request of a spouse, the court shall order the restoration of that spouse's former name. The court shall have jurisdiction to restore the spouse's former name at or after the time the decree of divorce becomes final. (b) Upon the request of a spouse, the court may order such spouse's name be changed to a name that is different than such spouse's former name. The court shall have jurisdiction to change the spouse's name at or after the time the decree of divorce becomes final.
Kentucky – KY. REV. STAT. ANN. § 403.230(2) (West, Westlaw through laws effective Mar. 24, 2025 and Nov. 5, 2024 election).	Upon request by a wife whose marriage is dissolved or declared invalid, the court may, and if there are no children of the parties shall, order her maiden name or a former name restored.

378 Subsection b was recently added to the statute. 2023 Kansas Laws Ch. 39 (H.B. 2065). That recent bill also removed the term "maiden" from what is now subsection a. Subsection c of this statute (the third of three) calls for a "simple, concise and direct" form to be created to facilitate the options in subsections a and b.

Louisiana (1) – LA. CODE CIV. PROC. ANN. art. 3947(B) (West, Westlaw through 2024 1st Extr. Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.).	The court may enter an order confirming the name of a spouse in a divorce proceeding, whether the person is the plaintiff or defendant, which confirmation shall be limited to the name that the person was using at the time of the marriage, or the name of the person's minor children, or the person's surname on the birth certificate, without complying with the provisions of R.S. 13:4751 through 4755. This Article shall not be construed to allow an amendment to a birth certificate with the Bureau of Vital Statistics.
Louisiana (2) – LA. STAT. ANN. § 9:292 (West, Westlaw through 2024 1st Extraordinary Sess., 2d Extr. Sess., Reg., and 3d Extr. Sess.).	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 former spouse, the surname of her present spouse, or any combination thereof.
Maine – ME. REV. STAT. ANN. tit. 19-A, § 1051 (Westlaw through 2025 Reg. and 1st Spec. Sess. of the 132nd Leg.).	Upon the request of either spouse to change that person's own name, the court, when entering judgment for divorce: (1) Shall change the name of that spouse to a former name requested; or (2) May change the name of that spouse to any other name requested.

Maryland – MD. CODE ANN. FAM. LAW § 7-105(a) (West, Westlaw through 2024 Reg. Sess., Gen. Assemb.).	In granting a decree of absolute divorce or on motion of a party filed within 18 months after a final decree of absolute divorce is entered, the court shall change the name of the requesting party to either the name given the party at birth or any other former name the party wishes to use if: (1) the party took a new name on marriage and no longer wishes to use it; (2) the party asks for the change of name; and (3) the purpose of the party is not illegal, fraudulent, or immoral.
Massachusetts – MASS. GEN. LAWS ANN. ch. 208, § 23 (West, Westlaw through Ch. 341, 2024 2d Ann. Sess.).	The court granting a divorce may allow a woman to resume her maiden name or that of a former husband.
Michigan – MICH. COMP. LAWS ANN. § 552.391 (West, Westlaw through P.A. 2025, No. 2, 2025 Reg. Sess., 103d Leg.).	The circuit courts of this state, whenever a decree of divorce is granted, may, at the instance of the woman, whether complainant or defendant, decree to restore to her birth name, or the surname she legally bore prior to her marriage to the husband in the divorce action, or allow her to adopt another surname if the change is not sought with any fraudulent or evil intent.

Minnesota – MINN. STAT. ANN. § 518.27 (West, Westlaw through 2025 Reg. Sess. and 1st Spec. Sess.).[379]	Except as provided in section 259.13, in the final decree of dissolution or legal separation the court shall, if requested by a party, change the name of that party to another name as the party requests. The court shall grant a request unless it finds that there is an intent to defraud or mislead, unless the name change is subject to section 259.13, in which case the requirements of that section apply. The court shall notify the parties that use of a different surname after dissolution or legal separation without complying with section 259.13, if applicable, is a gross misdemeanor. The party's new name shall be so designated in the final decree.
Mississippi[380]	*No state statute expressly addresses the issue of name changes at divorce; the relevant statute considered by a court would be the general name-change statute in MISS. CODE ANN. § 93-17-1(1). The state seems to embrace the common law naming autonomy principle*—see Marshall v. Marshall*, 93 So. 2d 822 (Miss. 1957).*[381]

379 The statute repeatedly refers to MINN. STAT. ANN. § 259.13. That statute addresses standards for name changes of persons with felony convictions. *See* MINN. STAT. ANN. § 259.13 (West, Westlaw through Mar. 18, 2025, 2025 Reg. Sess.).

380 State regulations reference the matter for name changes on state-issued identifications and driver's licenses. *See, e.g.*, 31 Miss. Admin. Code Pt. 1, R. 4.2(3). ("For females changing their married name, the examiner will accept the divorce decree even if it does not state the female is changing back to her maiden name. Then the examiner must see the certified birth certificate to add the maiden name. If the applicant wishes to add another name, such as a previous married name, the examiner must see that certified document.")

381 The author graciously thanks Prof. Debbie Bell and Maggie Crain (J.D. 2025), both from the University of Mississippi School of Law, for assistance in isolating the likely rule.

Missouri[382]	*The statute describing the requirements for a petition for divorce does not expressly address naming options, but reverting to a former surname is allowed if asked for by the party seeking it in the divorce decree—see* Newsom v. Newsom*, 976 S.W.2d 33, 40 (Mo. App. 1998).*
Montana – MONT. CODE ANN. § 40-4-108(5) (West, Westlaw through chs. effective Mar. 4, 2025).	Upon request by a party whose marriage is dissolved or declared invalid, the court shall order the party's maiden or birth name or a former name restored.
Nebraska – NEB. REV. STAT. ANN. § 42-380(1) (West, Westlaw through legis. effective Mar. 12, 2025, 1st Reg. Sess., 109th Legis., 2025).	When a pleading is filed pursuant to section 42-353 or pursuant to an action for annulment as authorized by section 42-373, either the plaintiff or the defendant may include a request to restore his or her former name. The court shall grant such request except for good cause shown. The mere fact that a parent and child may have different surnames following a dissolution of marriage or annulment shall not be sufficient to constitute good cause. The decree of dissolution or declaration of annulment shall specifically provide for the name change, giving both the old name and the name as it will be after the decree or declaration. A change of name granted pursuant to this section shall become effective on the same date that the decree of dissolution or declaration of annulment, as the case may be, is entered. The requirements of sections 25-21,270 to 25-21,273 shall not apply to this section.

382 Newsom v. Newsom, 976 S.W.2d 33, 40 (Mo. App. 1998) (referencing the court's decision that the action to change a surname in a divorce petition is the type of "relief sought" allowed in a divorce proceeding under MO. REV. STAT. § 452.310(8), acknowledging that requesting a name change as a type of "relief" is not expressly provided for in the statute.).

Nevada – NEV. REV. STAT. ANN. § 125.130(4) (West, Westlaw through legis. of the 83d Reg. Sess. effective through Feb. 13, 2025).	In all suits for divorce, if a divorce is granted, the court may, for just and reasonable cause and by an appropriate order embodied in its decree, change the name of either party to any former name which he or she has legally borne.
New Hampshire – N.H. REV. STAT. ANN. § 458:24 (Westlaw through Ch. 2 of the 2025 Reg. Sess.).	In any proceeding under this chapter, except an action for legal separation, the court may, when a decree of divorce or nullity is made, restore a former name of the spouse, regardless of whether a request therefor had been included in the petition.
New Jersey – N.J. STAT. ANN. § 2A:34-21 (West, Westlaw through L. 2025, Ch. 146 and J.R. 10).[383]	The court, upon or after granting a divorce from the bonds of matrimony to either spouse or dissolution of a civil union to either partner in a civil union couple, may allow either spouse or partner in a civil union couple to resume any name used by the spouse or partner in a civil union couple before marriage or civil union, or to assume any surname.
New Mexico	*There is no statute in New Mexico dealing directly with name status at divorce. A person may request a name change at the time of divorce. If they do not, they would have to later follow the general civil change of name statute in N.M. STAT. ANN. § 40-8-1 (West, Westlaw through chs. effective July 1, 2025 of the 2025 1st Reg. Sess.).*

383 The statute once included language that allowed the court discretion to "order the wife to refrain from using the surname of the husband as her name." That language was removed by a 1988 amendment to the statute. 1988 N.J. Sess. Law Serv. 153, § 2 (West).

New York – N.Y. DOM. REL. LAW § 240-a (McKinney, Westlaw through L. 2025 Chs. 1 to 503).[384]	In any action or proceeding brought under the provisions of this chapter wherein all or part of the relief granted is divorce or annulment of a marriage any interlocutory or final judgment or decree shall contain, as a part thereof, the social security numbers of the named parties in the action or proceeding, as well as a provision that each party may resume the use of his or her premarriage surname or any other former surname.
North Carolina – N.C. GEN. STAT. ANN. § 50-12(a), (a1), (c) & (d) (West, Westlaw through end of 2024 Reg. Sess., Gen. Assemb.).	(a) Any woman whose marriage is dissolved by a decree of absolute divorce may, upon application to the clerk of court of the county in which she resides or where the divorce was granted setting forth her intention to do so, change her name to any of the following: (1) Her maiden name; or (2) The surname of a prior deceased husband; or (3) The surname of a prior living husband if she has children who have the husband's surname. (a1) A man whose marriage is dissolved by decree of absolute divorce may, upon application to the clerk of court of the county in which he resides or where the divorce was granted setting forth his intention to do so, change the surname he took upon marriage to his premarriage surname.

384 This statute, in the Domestic Relations Code of New York, is referenced by a section in the general name change law of the state, though the notice and other formalities of the general name change law need not be adhered to for a name change because of divorce under § 240-a in the Domestic Relations Code. *See* N.Y. CIV. RIGHTS LAW § 65(2) (McKinney, Westlaw through L. 2025 Chs. 1 to 503): "Any person may, upon divorce or annulment, elect to resume the use of a former surname or middle name according to the provisions of section two hundred forty-a of the domestic relations law." The effect is to require that the person be recognized by the surname change indicated by the divorce order. N.Y. CIV. RIGHTS LAW § 64.

	(c) If an applicant, since the divorce, has adopted one of the surnames listed in subsection (a) or (a1) of this section, the applicant's use and adoption of that name is validated. (d) In the complaint, or counterclaim for divorce filed by any person in this State, the person may petition the court to adopt any surname as provided by this section, and the court is authorized to incorporate in the divorce decree an order authorizing the person to adopt that surname.
North Dakota – N.D. CENT. CODE ANN. § 14-03-20.1(1)–(5) (West, Westlaw through Mar. 19, 2025, 2025 Reg. Sess.).	*North Dakota does not have a statute that expressly addresses divorcing individuals' surname options, so the matter may be contemplated under the statute that addresses surname options of married individuals. N.D. CENT. CODE ANN. § 14-03-20.1* (*That statute's first section reinforces the general common law precept that a person may go by any name they choose so long as the use is not meant to defraud. Subsequent parts of the statute allow individuals entering into marriage to indicate the surname they intend to use on the application for a marriage license; the combination of the common law custom and this intention seems to create a strong presumption that the name listed can be used beyond the duration of the marriage (subject to the same prohibitions of the change-of-name standard—no intent to defraud or cause confusion or harm to others).*

Ohio – OHIO REV. CODE ANN. § 3105.16 (West, Westlaw through File 25 of the 136th Gen. Assemb. and 2025 Statewide Issue 2).	When a divorce is granted the court of common pleas shall, if the person so desires, restore any name that the person had before the marriage.
Oklahoma – OKLA. STAT. ANN. tit. 43, § 121(A) (West, Westlaw through 1st Reg. Sess. of the 60th Leg. 2025).[385]	When a dissolution of marriage is granted, the decree shall restore: (1) To the wife her maiden or former name, if her name was changed as a result of the marriage and if she so desires; (2) To the husband his former name, if his name was changed as a result of the marriage and if he so desires.
Oregon – OR. REV. STAT. ANN. § 107.105(1)(h) (West, Westlaw through 2025 Reg. Sess.).	Whenever the court renders a judgment of marital annulment, dissolution or separation, the court may provide in the judgment: (h) To change the name of either spouse to a name the spouse held before the marriage. The court shall order a change if it is requested by the affected party.
Pennsylvania – 54 PA. STAT. AND CONS. STAT. ANN. § 704(a) (West, Westlaw through Act 39 of the 2025 Reg. Sess.).	Any person who is a party in a divorce action may, at any time prior to or subsequent to the entry of the divorce decree, resume any prior surname used by him or her by filing a written notice to such effect in the office of the prothonotary of the county in which the divorce action was filed or the decree of divorce was entered, showing the caption and docket number of the proceeding in divorce.

385 By including a statute about naming options at divorce *and also* statutes requiring parties to a marriage to list the name they intend to use during the marriage, Oklahoma seems to have abrogated the general common law right to use whatever name one would like and restricts name changes at divorce. OKLA. STAT. tit. 43 §§ 5–8 (West, Westlaw through 1st Reg. Sess. of the 60th Leg. 2025). Compare this to North Dakota's arrangement, without a naming-option-upon-divorce statute but an express protection of common law naming autonomy coupled with a marriage license intention naming provision.

Rhode Island – 15 R.I. GEN. LAWS ANN. § 15-5-17 (West, Westlaw through Ch. 457 of the 2024 Reg. Sess., R.I. Leg.).	Any person, to whom a divorce from the bond of marriage is decreed, shall, upon request, be authorized by the decree to change their name, notwithstanding that there may be children born of the marriage, and subject to the same rights and liabilities as if their name had not been changed. This statute is in addition to, and not in abrogation of, the common law.
South Carolina – S.C. CODE ANN. § 20-3-180 (West, Westlaw through 2024 Gen. Assemb. Sess.).	The court, upon the granting of final judgment of divorce or an order of separate maintenance, may allow a party to resume a former surname or the surname of a former spouse.
South Dakota – S.D. CODIFIED LAWS § 25-4-47 (West, Westlaw through 2025 Reg. Sess. effective Mar. 17, 2025).	Whenever a decree of divorce is granted, the trial court may, in its discretion or upon the application of either party by the terms of the decree, restore to the woman her maiden name or the name she legally bore prior to her marriage to the husband in the divorce suit. All decrees of divorce previously entered restoring to the divorced woman her former name under this section are declared legal and valid and effective from their date of entry.

Tennessee	*Tennessee has a state constitutional provision that restricts the legislature's ability to pass name-change laws; the state legislature can, by passing general laws, allow courts to do so. Tenn. Const. Art. XI, § 6. Statutorily, name changes by divorce are addressed directly only in the context of allowing name changes upon divorce for individuals convicted of certain crimes.* See *TENN. CODE ANN. § 29-8-101(b)(4) (West, Westlaw through 2025 1st Reg. Sess. of the 114th Gen. Assemb.).* *It is worth mentioning that one of the very few seminal cases on divorce and marital names comes from Tennessee in* Dunn v. Palermo.[386]
Texas – TEX. FAM. CODE ANN. § 45.105(a) (West, Westlaw through 2023 Reg., 2d, 3d, and 4th Called Sess., 88th Leg. and Nov. 7, 2023 Gen. Elec.).	On the final disposition of a suit for divorce, for annulment, or to declare a marriage void, the court shall enter a decree changing the name of a party specially praying for the change to a prior used name unless the court states in the decree a reason for denying the change of name. The court may not deny a change of name solely to keep last names of family members the same.

386 "A woman on her marriage takes her husband's name, and she retains it although the marriage may have been dissolved by divorce unless she has so far obtained another name by Repute as to obliterate the original name." Dunn v. Palermo, 522 S.W.2d 679, 682 (Tenn. 1975).

Utah	*Utah follows the spirit of the common law rule regarding name use when considering name changes under* UTAH CODE ANN. *§ 42-1-1 et seq. (West, Westlaw through 2025 Gen. Sess. and Chs. 1 to 2 of the 2025 1st Special Sess.).* See, e.g.*,* Matter of Childers-Gray*, 487 P.3d 96 (Utah 2021). However, the state requires certain documentation for divorce-related name changes on official government-issued documents like driver's licenses.* UTAH CODE ANN. *§ 53-3-216(2)(d) & (e).*
Vermont – VT. STAT. ANN. tit. 15, § 558 (West, Westlaw through Reg. Sess., 2025-2026 Vt. Gen. Assemb., effective as of Mar. 5, 2025).	Upon granting a divorce, unless good cause is shown to the contrary, the court shall allow a spouse to resume the spouse's prior name or the name of a former spouse.
Virginia – VA. CODE ANN. § 20-121.4 (West, Westlaw through 2024 Reg. Sess., 2024 Spec. Session I, and 2025 Reg. Sess. cc. 6, 20, 85, 147, and 157).[387]	Upon decreeing a divorce from the bond of matrimony the court shall, on motion of a party who changed his or her name by reason of the marriage, restore such party's former name or maiden name by separate order meeting the requirements of VA. CODE ANN. § 8.01-217.
Washington – WASH. REV. CODE ANN. § 26.09.150(3) (West, Westlaw through 2024 Reg. Sess. of the Wash. Leg.).	Upon request of a party whose marriage or domestic partnership is dissolved or declared invalid, the court shall order a former name restored or the court may, in its discretion, order a change to another name.

387 The ability to revert to a former name is conditioned upon the requirements of Virginia's general name change statute, including an application under oath and that the name reversion is not "sought for a fraudulent purpose or would otherwise infringe upon the rights of others." VA. CODE ANN. § 8.01-217(B)(C).

West Virginia – W. VA. CODE ANN. § 48-5-613 (West, Westlaw through legis. of the 2025 Reg. Sess., approved through Mar. 20, 2025).	The court, upon ordering a divorce, shall if requested to do so by either party, allow such party to resume the name used prior to his or her marriage without the necessity of filing a separate petition pursuant to section one hundred one, article twenty-five, chapter forty-eight of this code. If a name change is requested, the court shall also issue a certificate of divorce reflecting that change in name. The certificate shall be no longer than one page. For purpose of confidentiality, the certificate shall not be considered an order. The certificate shall include the style of the divorce case, the name on the birth certificate of the party requesting the name change, that party's date of birth, that party's social security number, the date on which the name change is effective, and the new name of that party. In order to be valid, the certificate shall be certified by a clerk of the court. The certified certificate may be used by that person for all lawful purposes, including as a proof of legal name change for driver licensing purposes or state identification card at the Division of Motor Vehicles.

Wisconsin – WIS. STAT. ANN. § 767.395 (West, Westlaw through 2023 Act 272, pub. Apr. 10, 2024).[388]	Except as provided in § 301.47, the court, upon granting a divorce, shall allow either spouse, upon request, to resume a former legal surname, if any.[389]
Wyoming	*There is no statute expressly for change of names in the laws on divorce, but those laws do indicate that the divorce action, and relief as part of it, is conducted as a civil action that presumably includes that title's name change laws, WYO. STAT. ANN. §§ 1-25-101 et seq. (West, Westlaw through 2025 Gen. Sess.)*[390]

388 In 1975, a state trial court judge denied a petition by a married woman to revert back to the use of her former surname. In interpreting a historical version of this statute, he reasoned that the language permitted a woman, upon divorce, under some circumstances, to "resume" her maiden name; the judge determined the facts of this case and the basis of this couple's divorce did not allow the woman to revert back to the use of a surname before the marriage, even though she never held herself out as using the married surname. The Wisconsin Supreme Court vacated that judgment, holding that a woman's name is unchanged by marriage, and as a result, her legal name was her maiden name, so she could use it at any time. Kruzel v. Podell, 226 N.W.2d 458, 459 (Wis. 1975), *referencing* WIS. STAT. ANN. § 247.20, *renumbered as* WIS. STAT. ANN. § 767.395 *by* 2005 Act 443, § 78 (effective Jan. 1, 2007).

389 The other statute referenced here is the statute prohibiting name changes for sex offenders.

390 The "petition" for a name change referenced in § 1-25-101 is satisfied by the request for name change relief in a petitioner's complaint for divorce or a defendant's counterclaim thereto. *See Family Law Information and Instructions*, WYO. JUD. BRANCH 3 (July 2014), https://www.courts.state.wy.us/wp-content/uploads/2017/04/DNCD03.pdf [https://perma.cc/K67X-76RP] ("Restoration of Wife's previous name: The Wife should state whether or not she would like to resume her prior name in either the *Complaint for Divorce* if she is the Plaintiff, or a *Counterclaim* if she is the Defendant. This is the Wife's choice ONLY; the Husband cannot demand that his Wife's name be changed." (emphasis in original)).