IN THE

Court of Appeals of Maryland

SEPTEMBER TERM, 1972

NO. 105

MARY EMILY STUART,
Appellant,

v.

BOARD OF SUPERVISORS OF
ELECTIONS FOR HOWARD COUNTY *ET AL.*,
Appellees.

APPEAL FROM THE CIRCUIT COURT
FOR HOWARD COUNTY
(T. HUNT MAYFIELD, Judge)

APPELLANT'S BRIEF

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STATEMENT OF THE CASE

On April 6, 1972, Mary Emily Stuart, the Appellant, filed a Petition to Correct Registry in the Circuit Court for Howard County, Maryland, in Law No. A-5789, praying, *inter alia*,

that the voter registry of Howard County be corrected to show the name of Mary Emily Stuart as a registered voter and that the Court order the Respondents, Daniel L. Downey, Chairman, Board of Supervisors of Elections for Howard County, and the Board of Supervisors of Elections for Howard County, Appellees herein, to implement such correction without delay. (E. 1)

On April 13, 1972, the Appellant, Mary Emily Stuart, filed an Ex Parte Petition to Restore Name to Registry of Voters in Howard County, (E. 7) together with a Motion to Consolidate Cases No. A-5789 and No. A-5799, and a Motion to Shorten Time for Return and Answer and to Set Hearing on Merits.

The Court thereafter issued an Order Consolidating the cases, and an Order changing the Return Date to April 14, 1972, the Time for Answering to April 20, 1972, and also setting a hearing for April 25, 1972.

The Howard County Board of Supervisors of Elections filed a single demurrer to both petitions. The Court overruled it with leave to answer. The Howard County Board of Supervisors of Elections filed its Answer.(E. 10).

The State Administrative Board of Election Laws, upon reasonable application, was allowed to intervene and filed its Answer to the Petitions.

After a hearing on the merits in open court, the Court filed a Memorandum and Order (E. 15) whereby it dismissed the aforesaid petitions. This appeal directly concerns the propriety of the Order passed by the Trial Court.

QUESTIONS PRESENTED

1. Did the Trial Court err when it concluded that a woman's legal surname – upon marriage – becomes that of her husband by operation of law?

2. Do the laws of Maryland or Virginia require a woman to adopt her husband's surname?

3. Does the requirement that a woman, who upon marriage did not adopt her husband's surname, procure a decree changing her surname from that of her husband to the surname of her choice violate the Fourteenth Amendment to the Constitution of the United States for the reason that it is discriminatory and serves no legitimate interest?

4. Does the requirement that a woman, who upon marriage, did not adopt her husband's surname, procure a decree changing her surname from that of her husband to the surname of her choice abridge her rights to vote and, therefore, violate the Nineteenth Amendment to the Constitution of the United States?

STATEMENT OF FACTS

Mary Emily Stuart has been known all of her life only by the name "Mary Emily Stuart" (E. 2, 7, 22, 24, 27, 28). In accord with an antenuptial agreement, she retained the name of Mary Emily Stuart when she married Samuel H. Austell in Virginia in November 13, 1971 (E. 2, 7, 22, 24). This agreement was confirmed by her husband and was known to others (E. 26, 27, 29).

When Mary Emily Stuart registered to vote on March 2, 1972, she was qualified under the laws of the State of

Maryland to vote (E. 2, 7, 10, 12, 13, 14). Both Mary Emily Stuart and her husband informed the Registrar at the time of registration that Mary Emily Stuart did not change her name when she was married (E. 2, 7, 23, 27). She was allowed to register in the name of Mary Emily Stuart without objection (E. 2, 7, 11, 12, 23, 27).

On March 16, 1972, pursuant to an opinion of the office of the Attorney General of Maryland, dated April 7, 1971, a letter was mailed to Ms. Mary Emily Stuart instructing her to change her name by March 31, 1972, or her registration would be cancelled (E. 3, 7, 8, 23, 46). Mary Emily Stuart then called the Chairman of the Board of Supervisors of Elections and explained that her name had not been changed by marriage (E. 3, 23). Chairman Downey told Mary Emily Stuart that he was sorry but that did not make any difference.

She was told she would have to register under her husband's name or otherwise her name would be stricken from the rolls (E. 23, 32, 33).

On April 4, 1972, the Board sent another letter to Mary Emily Stuart cancelling her registration. (E. 3, 8, 23, 47).

No show cause hearing was offered or held for Mary Emily Stuart, because a hearing would not have changed the situation. (E. 3, 8, 23, 34).

Judge Nellie Marie Marshall, a former Judge of the Orphans' Court of Baltimore City and a member of the Maryland Bar since 1940, testified that after research, she found that the general opinion is that a name only serves to identify one, and as long as one is using the one name only,

not for fraud or misrepresentation, one can use any name he chooses, even though it is not a given name. (E. 29, 31). She found no statute requiring a wife to take her husband's name. (E. 29, 30).

When she married Charles W. Tysko in Maryland, she decided to keep her own name. (E. 29). She and her husband signed an antenuptial agreement covering the use of her name. (E. 32).

Judge Marshall received a notice from the Baltimore City Board of Supervisors of Elections directing a change of name, but upon a show cause hearing, the matter was held sub-curia. No opinion was ever issued and five years later she was still voting under the name of Marshall. She is now registered to vote in Florida in the name of Marshall, has a passport in the name of Marshall, and owns property as tenants-by-the-entireties with her husband in the names of Tysko and Marshall (E. 30).

When Judge Marshall's son filed as a candidate for office, he was informed by the Board of Supervisors of Elections that he could not use the name of M. Jack Marshall, but would have to use his first name. At a court hearing, it was decided he could use the name of M. Jack Marshall. (E. 31).

Testimony produced by the Appellees showed: that the practice of the Election Boards in this State, dating back to 1936, is that married women must use the surname of the husband. (E. 35);that the purpose of the practice is to provide some trail of identification to prevent voter fraud; that if a woman could register either way, the trail would be lost; (E. 35, 36, 37); that the only exception to the requirement that married women register under the husband's name is allowed

when the name is changed by a court order, (E. 36); that it is not the practice of the Board to require any other person, except married women, to change the name with which they enter the State; that some persons changed their names because regulations of the Election Board required the change when a person attempted to get on the ballot by using a nickname, rather than the legal name, because he was better known by the nickname. (E. 39).

Witnesses for the Appellees went on to say that even though Mary Emily Stuart was married in another state where she could retain her name and came to this state and did not change her status while in Maryland, the Board would still require her to change her name. (E. 39); that conceding that there is no fraud on the part of Mary Emily Stuart, the only thing remaining is identification (E. 44).

According to Appellees' testimony, identification of a voter by the Board starts with the name. (E. 44). The Board maintains two files of voters, which are alphabetized by district and precinct in binders and alphabetized by the county or the city in the master files. (E. 40). Some of the Boards that have computers are beginning to use identification numbers and the purpose of the numbers, where they are used, is to identify a voter. (E. 40). Not only names, but districts, wards, and precincts are used to identify voters. (E. 44). The Board can identify people who have the same name by using numbers, such as the precinct number and the address. (E. 41).

A witness for the Appellees volunteered the information that the practice of requiring married women to come in and re-register in Baltimore City has resulted in married women being registered twice, in both maiden and married names;

further, that Baltimore City is now trying to purge its records of some ninety thousand names, of which these names are a portion (E. 44, 46). Notwithstanding this situation, there has never been a case, to the knowledge of the State Administrator of Elections, of a woman having been accused of voting twice in the same election. (E. 45).

ARGUMENT

I.

THE COURT ERRED WHEN IT CONCLUDED THAT A WOMAN'S SURNAME UPON MARRIAGE BECOMES THAT OF HER HUSBAND BY OPERATION OF LAW.

The Constitution of the United States, the Constitution of Maryland and the Annotated Code of Maryland contain no requirement that a woman take the surname of her husband upon marriage.

Nevertheless, the State Administrative Board of Elections contends that Article 33, Section 3-18, Ann. Code of Md. (1971) Repl. Vol.) requires a married woman to register to vote in her husband's surname.

The pertinent parts of Article 33, Section 3-18, read as follows:

> "*Reports to be made by certain public agencies* — Reports to the board shall be made by several officials in Baltimore City at least once each month, and in the several counties, by the last days of January and July in each year, as follows:
>
> The clerk . . . of the circuit court for each county shall file with said representive boards the former and

present names of all female residents of said city or county, as the case may be, over the age of twenty-one years, whose names have been changed by marriage since the date of the last such report.

Notification to show cause before cancellation –Whenever the . . . change of name by marriage . . . is reported as above provided, the board shall cause to be mailed to the address of such voter . . . a notification that such . . . change of name by marriage . . . has been reported to the board, and shall require the voter to show cause within two weeks . . . why his registration should not be cancelled."

The Board predicates its contention upon an opinion issued by the Attorney General of Maryland on April 7, 1971, wherein it was stated that a married woman must use the surname of her husband. However, since the Attorney General's opinion is entitled to no greater weight than an opinion of any other attorney to a client, is this really the case?

The general opinion is that a name serves only to identify one, and as long as one is using a particular name without intending to defraud or to misrepresent, he may use any name that he chooses, even though it is not a given name (E. 31).

Maryland has adopted this opinion and made it a rule. In *Romans v. State,* 178 Md. 588, 597, 16 A.2d 642, 646 (1940), *cert. denied,* 312 U.S. 695 (1941), the court defined "name" as the designation or appellation which is used to distinguish one person from another, and stated,

"If there is no statute to the contrary, a person may adopt any name by which he may become known, and by which he may transact business and execute contracts and sue or be sued."

Other jurisdictions have opened with the Maryland rule,

" . . . A man may, if he pleases, and it is not for any fraudulent purpose, take a name and work his way in the world with his new name as best he can." *Davis v. Lowndes,* 1 Bing. N. Cas. 597, 618; 131 Eng. Reprint 1247, 1255 (1835).

"There is nothing in law prohibiting a man from taking another name if he chooses." *Smith v. U.S. Casualty Company,* 197 N.Y. 420, 424, 425.

"In England, from which came our customs with respect to names, a woman is permitted to retain her maiden name upon marriage if she so desires." *State ex rel. Krupa v. Green,* 114 Ohio App. 497, 117 N.E. 2d 616 (1961) at 619.

M. Turner-Samuels, in his book THE LAW OF MARRIED WOMEN, at 345, states:

"In England, custom has long since ordained that a married woman takes her husband's name. This practice is not invariable, nor compellable by law . . . A wife may continue to use her maiden, married or any other name."

To support his proposition, Turner-Samuels cites the following cases:

Cowley v. Cowley, [1901] A.C. 450; *Davies v. Lowndes, supra. Du Boulay v. Du Boulay,* [1869]L.R. 2 P.C. 430.

The common law rule is that a person may adopt any name he wishes, in the absence of fraud or deceit. Statutes prescribing the method for changing a name are generally held to be in addition to, rather than in derogation of, the common law rule, 57 Am. Jur. 2d *Change of Name* sec. 10-12

(1971); 110 A.L.R. 219 (1937); 65 C.J.S. *Names* sec 11 (1966); Lawrence Green, *How to Change Your Name,* Legal Almanac Series No. 34 (1954); Thomas Falconer, *On Surnames and the Rules of Law Affecting Their Change* (London 1862).

Lord Halsbury, in 23 *The Laws of England,* 555,556 (2d ed. 1936), states:

> "The law prescribes no rules limiting a man's liberty to change his name. He may assume any name he pleases in addition to or substitution for his original name; . . . The law concerns itself only with the question whether he has in fact assumed and has come to be known by a name different from that by which he was originally known.
>
> "As regards surnames, there never was any doubt that, as in the first instance they were arbitrarily assumed, so they could be changed at pleasure. An Act of Parliament, Royal License, or other such formality is not required for the purpose."

As it was at common law, so now is it the option of a married woman to choose the name that she desires to use. Nellie Marie Marshall retained the name of her first husband at the time of her second marriage. (E. 31, 32) Amy Vanderbilt, who has been married four times, says, "I have always used my maiden name." (Daily Record, April 28, 1972, page 4) Lynn Fontanne, of the fabled Lunt and Fontanne acting team, adopted a hyphenated name, Fontanne-Lunt, as her legal name. Lucy Stone, looking upon the loss of a woman's name at marriage as a symbol of a loss of her individuality, consulted several eminent lawyers, including Salmon P. Chase, later Chief Justice of the United States, and was assured that there was no law requiring the wife to take her husband's name, only a custom. She thereupon remained Lucy Stone. *Blackwell, Lucy Stone,*

Pioneer of Women's Rights, (1930) page 171. So recognized has Lucy Stone's action become that *Webster's Dictionary,* 3d ed. unabrid., defines (under "L" for Lucy) a Lucy Stoner as a woman who does not adopt her husband's name but retains her maiden name.

The legal authorities upon which the State Administrative Board of Elections relies can be distinguished from the instant case. The annotation, *Correct Name of Married Woman,* 35 A.L.R. 417 (1925) deals almost exclusively with the matter of service of process on women who had assumed their husband's name, as does 65 C.J.S., *Names*, Sec. 3(c) and 57 Am. Jur. 2d Names, Sec. 9.

Chapman v. Phoenix Nat'l. Bank, 85 N.Y. 437 (1881) has been heavily relied upon for the rule that a married woman's surname is that of her husband. The woman had taken her minister husband's name at marriage and had moved with him from one end of North Carolina to the other. She sought to recover stock she had bought before she was married which had been confiscated under the Civil War Confiscation Acts, on the ground she had no notice whatsoever of the proceedings. These Acts required proof of a person's disloyalty before property could be seized. The Court stated that in view of the confiscatory nature of the action, which bore such faint resemblance to a fair judicial hearing, it would strictly construe the notice requirement. The court found valid objections to the fact that the notice was posted in her maiden name, to the facts that her first name had been abbreviated so no one reading the court house door notice could tell if it be a man or woman desired, no address was listed, and the only description of the person, contained in the complaint, obviously was false. The complaint alleged that Ver. S. Moore had acted as an officer of the rebel forces, as a

member of Congress, and as a judge of one of the Confederate States. The oft-quoted statements: "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." are obiter dicta in purest form, totally unsupported by authority or reason.

Forbush v. Wallace, 341 F. Supp. 217 (M.D. Ala. N.D. 1971) (3 Judge Dist. Ct.) affirmed, 405 U.S. 970 (1972), 40 L.W. 3428 (1972) concerns a privilege, the matter of issuing a woman's driving license in her maiden name. Driving is considered to be a privilege and so is distinguished from a constitutionally guaranteed right, such as voting. The brief filed on behalf of Wendy Forbush contains this statement: "The Alabama common law rule that the husband's surname is the wife's legal name is the basis for the regulation. See *Bently v. State,* 70 So. 2d 430, (C.A. Ala. 1954) and *Roberts v. Grayson,* 173 So. 38, 39 (Ala. S. Ct. 1937) (A married woman's name consists in law of her own Christian name and her husband's surname.) In the decision of the three-Judge Federal Court at page 221, the Court said:

> "We may commence our analysis of the controversy by noting that Alabama has adopted the common law rule that upon marriage the wife, by operation of law, takes the husband's surname."

This opinion, citing *Bently* and *Roberts, supra,* refers to Alabama Common Law Rule and not to the English Common Law. Furthermore, these two cases treat with matters of

procedure and notice – and do not purport to deal with matters of constitutional right.

In *People v. Lipsky,* 327 Ill. App. 63, 63 N.E. 2d 642 (1945), Antonia E. Rego wished to continue to vote in her maiden name. She had no agreement with her husband that she would continue using her mainden name. The court based its decision on four cases: *Freeman, Bacon, Chapman, and Kayaloff. Freeman v. Hawskins,* 77 Texas 498, 14 S.W. 364, was a case concerning constructive servie in the maiden name of a married woman who had assumed her husband's name. At this juncture, it will be seen that the trial court relied on a case that dealt only with procedure and not with substantive right.

In *Bacon v. Boston Elevated Railroad Company,* 256 Mass. 30, 152 N.E. 35 (1926), the Plaintiff had assumed her husband's name and then tried to resume the use of her maiden name. *In re Kayaloff,* 9 F. Supp. 176 (S.E. N.Y. 1934), is the only federal case touching on the subject, and presents a very different situation. The petitioner, a well-known musician, sought to have her naturalization certificate issued in her maiden name, claiming pecuniary loss if it were not issued in the same name as was her union card. The court gently refused her request, citing *Chapman, supra,* dicta as his reason. Not enough information is supplied in the opinion to know whether the woman had in fact adopted her husband's name and was using her maiden name only for professional purposes. One can surmise that the woman may have been trying to effect a court change of name via a naturalization certificate. One can also conjecture that if the woman had previously been known by her married name, the government would have a legitimate interest in keeping a trail of identification that very probably began overseas.

The legally correct usage of name by a married woman is given in two Ohio opinions.

In *State ex rel. Bucher v. Brower, et al.,* Common Pleas Court of Montgomery County, 1941, 7 Ohio Supp. 51, 21 O. O. 208, the Court held that by custom only the wife assumes the surname of the husband, that a separate and distinct contract made at the time of marriage allowing the wife to retain her family surname is not against public policy or contrary to public morals, and that when a woman does not change her name upon marriage, *the provisions of the statute requiring re-registration do not apply and it is not necessary for her to re-register to vote.*

In *State v. Green,* 114 Ohio App. 497, 177 N.E. 2d, 616, 622, the Court says:

> "By custom, upon marriage, she may acquire the surname of her husband, but this does not prevent her from continuing to use her maiden name for any legitimate purpose so long as it is not fraudulently done or its use continued for a fraudulent purpose.
>
> "If any question of public policy should be advanced seeking to hold that a married woman has been bound by custom to take the name of her husband in all events and for all purposes, *there being no statute requiring it,* it should be noted that the trend against the loss of the identity of a woman by marriage has received common acceptance. *An examination of the statutes shows the trend toward emancipation of married women from the common law rules of bondage, from complete deprivation of all property rights, to that of being accorded the right to contract with her husband and others, to own property separate and apart from her husband, and to have the right of franchise, being limited only to the extent that her marital status cannot be changed or altered*

> *by common consent. From these facts, it must be evidence that many unnecessary restrictive customs have fallen by the wayside . . .* " (Emphasis added)

In each of the Ohio cases, as in this one, the wife contracted with the husband not to assume the husband's surname, did not assume the husband's surname, and continued to use and be known by her maiden name.

In Maryland, under common law, as well as by statute, a person may adopt and use any name he wishes so long as he does so in good faith and with no intent to deceive or defraud, there being no statute to the contrary. *Romans v. State, supra;* Rule BH 70-75, Maryland Rules of Procedure.

Article 45, Section 20, Annotated Code of Maryland, provides:

> "A married woman may contract with her husband . . . "
>
> "Under the Married Women's Act the wife has been placed on the same footing as her husband with respect to her property and personal rights." *Sezzin v. Stark,* 187 Md. 241, 49 A.2d 742 (1946)

It is to be noted that at no time during these proceedings was the suggestion made by any of the Appellees, or by the trial court, that the Appellant should have sued by using her husband's surname rather than the name Mary Emily Stuart, the name by which she has been known all her life. Certainly, as a matter of substance, were there any truth to the contentions made by the Appellees regarding enforcement of the applicable provisions of Article 33, then even more so should the Trial Court have insisted that Mary Emily Stuart sue in her husband's surname. When the Trial Court recognized and permitted the Appellant to use the name Mary

Emily Stuart in this suit, it clearly followed the dictate of Article 5 of the Declaration of Rights of the Maryland Constitution that the inhabitants of Maryland are entitled to the Common Law of England, and thereby effectively precluded a finding such as that from which this appeal is taken.

II.

THE LAWS OF MARYLAND OR VIRGINIA DO NOT REQUIRE A WOMAN TO ADOPT HER HUSBAND'S SURNAME.

The Maryland cases are silent as to any requirement that the laws of Maryland require a wife to adopt her husband's surname as her legal name.

In like manner, Article 45, "Husband and Wife," and Article 63, "Marriages," of the Annotated Code of Maryland also contain no requirement that a married woman adopt her husband's surname. Judge Nellie Marie Marshall testified she had researched the Maryland law before she married Charles Tysko and could find no such compulsory law in Maryland (E. 31).

Since the passage of the Married Women's Property Acts, a married woman has been able to contract and to sue and be sued as though she were a *femme sole.* In Maryland, she may make a contract with her husband and she may sue and be sued on such contract, Art. 45, sec. 21, and spouses may convey property from one to the other, Art. 45, sec. 1.

The philosophy underlying Art. 45 clearly is that a married woman has the same common law right to change her name voluntarily as either a single woman or a man, if in fact she had previously been barred by her coverture.

The only parts of the Annotated Code which appear to deal with the question of whether Maryland compels a woman to take her husband's surname at marriage are the previously quoted sections of Article 66½, Vehicle Laws, and Article 33, Election Code. Article 66½ has to do with licensing and not constitutional rights, and in view of the discussion of Question One, is equally inapplicable, as is Article 33.

The language of Article 33, sec. 3-18 (a)(3) requires only that a report be made by the clerk of the court, but does not compel a woman to change her name, nor does it – nor any other part of Article 33 – authorize any Board of Supervisors of Elections to compel such a change.

Article 33, sec. 3-18 does not apply to this case since it allows the Board to act only on the receipt of those reports specified in the statute, except when the Board has actual knowledge of the death of a registered voter, or when the death of a voter has been established beyond a resonable doubt. In this case, no report was sent to the Howard County Board because Mary Emily Stuart was married in Virginia. Any objections to the registration of Mary Emily Stuart should have been made as required by Art. 33, sec. 3-16 and therefore should have been made at least sixteen weeks prior to the primary election. The primary election in Maryland was held on May 16th, 1972, (E. 9) eleven weeks after Mary Emily Stuart registered to vote, (E. 46) so that timely objection to her registration could not have been made.

If the State contends that Artilce 33, sec. 3-18(a) (3) compels a woman to take her husband's surname as her legal name, then by the same reasoning the State must also content that sec. 3-18(a) (4) abrogates the common law right of a person to change his name without resort to legal proceedings because the language used in the respective sections is essentially the same, sec. 3-18(a) (4) requiring the clerk to

report all changes of name by court decree. This holding would abrogate the practice of allowing a divorced woman to resume use of her maiden name in the absence of any statement to that effect in the divorce decree. Rules BH 70-75 do not by their language preclude the common law method of name change. The quotation from *THE LAWS OF ENGLAND, supra,* that no formality is required to change a name supports the Appellant's answer to this question.

The State's interpretation of the way in which the provisions of Art. 33,sec. 3-18(a)(3) should be applied to married women who do not assume their husband's surnames: (a) makes a nullity of the show-cause provision of sec. 3-18(c); (b) discriminates against these women because it denies their common law right to use any name they wish, and (c) requires them to go to time, trouble, and expense to establish with the State a court record of the name by which they have been known. If the State's position be correct, that the Appellant must obtain a decree changing her name, then we would have this situation: Mary Emily Stuart would file a *verified* petition (Maryland Rule BH 70.a) in the name of Mary Emily Austell – a name by which she never has been known, seeking by such petition to have the court change her name back to Mary Emily Stuart, the only name by which she ever has been known. *Thus, the State would have a law-abiding citizen perjure herself!*

The oath for voting registrants prescribed by Article 33, sec.3-6, requires that a person swear (or affirm) that the information he gives when he registers is true regarding his *name,* residence, etc. Since Article 33 does not define "true name", it would logically follow that the true name would be the name that a person had always used and by which he is be known.

Judge Nellie Marie Marshall testified without objection that when her son M. Jack Marshall desired to run for public office and to have his name appear on the ballot as M. Jack Marshall, the election board denied him the right to run under that name. Instead of applying for a legal name change, he appealed to the court, and the court ruled he did have the right to use that name, (E. 31). Mr. Willard Morris, Administrator, State Administrative Board of Election Laws, testified that a person is required to obtain a name change decree if he wishes to appear on the ballot in other than his legal name because he is better known by another name. (E. 39)

Article III, sec. 33 of the Constitution of Maryland prohibits the General Assembly from passing any special or local laws changing the name of any person. In the instant case, the Office of the Attorney General, the State Administrative Board of Election laws, and the Board of Supervisors of Elections for Howard County, who derive their authority from the statutes passed by the General Assembly, are all attempting to do what the Constitution of Maryland forbids the General Assembly from doing – changing Mary Stuart's name.

Virginia statutes and case law, like those of Maryland are silent on this point insofar as the Appelles' contentions are concerned. Appellant married in Virginia on the advice of attorneys that no statute or rule of law existed in Virginia compelling a woman to take her husband's surname at marriage (E. 22,27). The Virginia statute, "Voting name change – registration," sec. 24.1-50 of the Virginia Code Annotated (1950, 1967 Repl. Vol.) requires that:

> "Whenever the name of a registered voter shall have been changed, either by marriage or order of court, or otherwise, such voter shall notify in writing the general registrar . . . (who) shall enter each change of name upon the registration books."

The language of the statute expressly recognizes that a person can change his name other than by marriage or court order. Thus, if Virginia were to decide that Mary Stuart's name changed by her marriage in that state, she should have been able to change it back to what it had been. The Virginia statute, sec. 8-577.1, "How name of person may be changed", does not abrogate the common law method.

III.

THE REQUIREMENT THAT A WOMAN, WHO UPON MARRIAGE DID NOT ADOPT HER HUSBAND'S SURNAME, PROCURE A DECREE CHANGING HER SURNAME FROM THAT OF HER HUSBAND TO THE SURNAME OF HER CHOICE VIOLATES THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES FOR THE REASON THAT IT IS DISCRIMINATORY AND SERVES NO LEGITIMATE INTEREST.

The right to vote is a "fundamental political right . . . preservative of all rights," *Reynolds v. Sims,* 377 U.S. 533, 562 (1964); *Dunn v. Blumstein,* 405 U.S. 330, 336 (1972). In *Dunn v. Blumstein,* the Supreme Court proclaimed clearly and unmistakedly that a substantial and compelling state interest must be shown in order to uphold a statute that places a condition on the right to vote. The "compelling state interest test" is triggered by any classification that serves to penalize that right, as the Supreme Court explained at 336:

> "In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. This 'equal right to vote' is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways. But as a general matter before that right (to vote) can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny. (citations omitted.)"

At page 343, the Supreme Court also said:

> "And, if there are other reasonable ways to achieve the state goals with a lesser burden on constitutionally protected activity, *a state may not choose the way of greater interference."* (Emphasis added.)

Certainly Maryland has a legitimate interest in protecting the integrity of the registration lists and the purity of the ballot box. The State insists that married women must register in their husbands' surnames unless they have a court decree granting them another name because the state needs a trail of identification to prevent possible voter fraud (E. 35). (Implicit in this requirement is the rampantly speculative suggestion that married women who do not adopt their husbands' surnames are more apt to commit fraud than other members of the voting community.) The State has shown no compelling state interest to support its contention that re-registered Appellant. Convenience of a State agency is neither to be achieved nor maintained at the expense of the citizens that the agency is supposed to serve.

When such a fundamental right as the right to vote is at issue, the presumption of a suspect classification is raised, and the substantial and compelling state interest test is to be applied, *Shapiro v. Thompson,* 394 U.S. 618 (1969).

To like effect, and with greater precision, is *Dunn v. Blumstein, supra,* where the Court said at 343:

> "It is not sufficient for the State to show that ... requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means which unnecessarily burden or restrict constitutional protected activity. Statutes affecting constitutional rights must be drawn with 'precision; ... and must be "tailored" to serve their legitimate objectives ... And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means' ..." (Citations omitted)

IV.

THE REQUIREMENT THAT A WOMAN, WHO UPON MARRIAGE DID NOT ADOPT HER HUSBAND'S SURNAME, PROCURE A DECREE CHANGING HER PURPORTED NAME TO THE SURNAME OF HER CHOICE ABRIDGES HER RIGHT TO VOTE AND, THEREFORE, VIOLATES THE NINETEENTH AMENDMENT TO THE CONSTITUTION.

The State Administrative Board of Election Laws contends that requiring a married woman to register in her husband's name is necessary (1) to identify the voter, (2) to keep proper records and (3) to prevent possible voter fraud, and (4) that the requirement is reasonable.

The Supreme Court of the United States has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. This "equal right to vote" is not absolute; the States have the power to impose voter qualifications, and to regulate access to the franchise in other ways. But, as a general matter, before that right can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close scrutiny. A more exacting test is required for any statute which places a condition on the exercise of the right to vote. If a challenged statute grants the right to vote to some citizens and denies the franchise to others, the Court must determine whether the exclusions are *necessary* to promote a *compelling* state interest.

"... A heavy burden of justification is on the State, and ... the statute will be closely scrutinized in light of its asserted purposes." *Dunn v. Blumstein, supra.*

Requiring a woman to register in the surname of her husband serves no legitimate purpose, and this is proved by the evidence adduced by the State Administrative Board.

In actual practice, the Board keeps the names of voters by location first and then the names within that location are alphabetized (E. 40). Although a voter is usually identified by name, he or she can be identified by a voter identification number, by precinct and district number, and by address (E. 41). In some jurisdictions where there are computers, voters are only identified by a number (E. 40, 41). The Board can identify prople who have the same names by using precinct numbers and addresses (E. 41).

Where a woman (1) by contract, (2) in another state where she had a right to, and had retained, her maiden name upon marriage and, thereafter (3) moved to Maryland to

reside, it is elemental that the requirement that she register and vote in the surname of her husband violates her right to contract, the full faith and credit clause of the Constitution of the United States and the Constitutional right to travel. This requirement by the State Administrative Board of Election Laws applies only to women, creating a suspect classification.

Rather than insuring proper record keeping, the requirement that a married woman register in her husband's name instead, in the instance of Baltimorr City, has helped create a situation where some ninety thousand surplus names are on the books as voters (E. 44, 45). Women married in the City of Baltimore were told to come in and re-register and did. The cards in their maiden names were not removed by the Board, resulting in double registrations (E. 44, 45). Thus the benefits of bureaucratic cranial malfunction – 90,000 female voters, all of whom had complied with the Board's wishes, each entitled to vote twice! And the City of Baltimore, also privileged to pay twice for the same thing!

The prevention of voter fraud in Maryland today is by a system of voter registration, Ann. Code of Maryland, art 33, sec. 3-1 *et seq.* The qualifications of the would-be voter in Maryland are determined when he or she registers to vote. His or her qualifications, including *name,* are established by oath. Ann. Code of Md., Art. 33, sec. 3-6. Since false swearing is no obstacle to one intent on fraud, the existence of burdensome voting qualifications, such as requiring a married woman to register in her husband's name, cannot prevent corrupt users of false names from fraudulently registering and voting. As long as the State relies on the oath-swearing system to establish qualifications, a requirement that a woman adopt her husband's surname adds nothing in the effort to stop fraud. The alias-user intent on committing election fraud will as quickly and effectively swear that his alias was his name as he

would swear that another name was his. Cf. *Dunn v. Blumstein, supra.*

Further, more than nine separate sections of the Maryland Code define offenses dealing with voter fraud, and some of these sections, as are Sections 24-1, and 24-2 of Article 33 include as many as twelve separate offense. To register or attempt to register to vote in or under the name of any other person, or in or under any false, assumed or fictitious name, or in or under any name not his own is a crime punishable by not less than six months nor more than five years in jail or in the penitentiary. Ann. Code of Md., Article 33, Section 24-1 (b). Cf. *Dunn v. Blumstein, supra.*

In addition to any criminal penalties, the Code provides in Article 33, sec. 16-14(a):

> "No person's right to vote shall be challenged at the poll on any ground but identity."

When a person can be challenged at the poll on the ground of identity, this surely is effective to prevent the type of fraud which the State fears. Where a State has available such remedial action to supplement its voter registration, it can hardly argue that broadly imposed political sexual disabilities, as requiring a wife to use her husband's surname before she may vote, are needed to deal with the evils of fraud. That this requirement is not necessary to prevent fraud is further shown by the fact that despite situations like that existing in Baltimore City, no woman, to the knowledge of the State Administrator of Elections, has ever been accused of voting twice in the same election. Cf. *Dunn v. Blumstein, supra.*

The requirement that a married woman must assume her husband's name to register and to vote is not reasonable, but places her in equal status with infants, lunatics, and convicted felons.

The Court in its opinion pointed out that Mary Emily Stuart could change her name by a "comparatively easy" procedure in the courts. The Court did not however mention either the time element nor the expense in a change of name proceeding.

Court costs, publishing costs, and an attorney's fee would have to be paid. The minimum fee suggested in the schedule of the *1971 Maryland Lawyers' Manual,* page 236, for an unopposed proceeding is $75.00. The court costs and publications costs would bring the total to more than One Hundred Dollars.

In an ordinary change of name proceeding, without some special intervention of the Court, it takes at least 36 days to complete the change. If Mary Emily Stuart had filed for a change of name on the day she received the first notice, she could not have received the order before the books were closed. BH 70-75, Maryland Rules of Procedure.

> "It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution ... Constitutional rights would be of little value if they could be ... indirectly denied ..." *Harman v. Forssenius,* 380 U.S. 528, 540-541 (1965).

Having no necessary purpose in actuality, the requirement that a woman must assume her husband's name to register and to vote cannot be reasonable. It is in direct violation of a married woman's statutory right to contract with her husband. It imposes a financial burden only on married women who seek to register and to vote in the surname of their choice. There is no similar requirement for men who marry and assume the name of the wife, although men have on occasion assumed the wife's surname. This practice of the

Board is not based on intelligence, ability, or biological difference between the sexes. It is sexual discrimination against married women.

"Sex, like race and lineage, is an immutable trait, a status into which the class members are locked by the accident of birth. What differentiates sex from non-suspect statuses, such as intelligence or physical disability, and aligns it with the recognized suspect classifications is that the characteristic frequently bears no relation to ability to perform or contribute to society. The result is that the whole class is relegated to an inferior status without regard to the capabilities or characteristics of its individual members. Where the relation between characteristic and evil to be prevented is so tenuous, courts must look closely at classifications based on that characteristic lest outdated social stereotypes result in invidious laws or practices.

"Another characteristic which underlies all suspect classifications is the stigma of inferiority and second class citizenship associated with them. Women, like Negroes, aliens, and the poor have historically labored under severe legal and social disabilities. Like black citizens, they were, for many years, denied the right to vote and, until recently, the right to serve on juries in many states. They are excluded from or discriminated against in employment and educational opportunities. Married women in particular have been treated as inferior persons in numerous laws relating to property and independent business ownership and the right to make contracts." *Sail'er Inn, Inc. v. Kirby,* 3 CCH Employment Practices Decisions, s. 8222, at 6756-57 (Calif. Sup. Ct. May 29, 1971).

The requirement that married women must assume their husbands' names to register and vote has resulted in the