Sex Discrimination
Names' Choice of Surname

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Honorable Donald Burns
House of Representatives
Augusta, Maine

Dear Representative Burns:

You have requested an opinion regarding the Constitutionality of L.D. 469 which would require that whenever parents give their child a hyphenated surname which is a combination of the maternal and paternal surnames, the paternal surname must come first. The Statement of Fact accompanying this bill states that this law is "necessary in order to have uniformity of record-keeping." The Supreme Court has ruled that classifications such as the one suggested here which discriminate on the basis of sex for the purpose of administrative convenience are unconstitutional. Frontiero v. Richardson, 411 U.S. 677 (1973).

Birth records kept by the Division of Vital Records at the State Department of Human Services are indexed by the child's name and date of birth. It is therefore no more convenient or necessary to locate the child of Mary Jones and Robert Smith by looking up Robert Smith-Jones than it is to look up Robert Jones-Smith.

Even if it were arguably more convenient to record surnames on birth records in a particular order each time, when the method chosen to achieve this convenience is by setting up a classification system which is based on sex, i.e., male's surnames and female's surnames, and then giving arbitrary preference to the male's surname, it becomes constitutionally impermissible.

Although convenience in the administration of government programs is not unimportant, the "Constitution recognizes higher values than speed and efficiency." Stanley v. Illinois, 405 U.S. 645, 656 (1972). A statutory scheme, such as the one suggested by L.D. 469, which draws a line between the sexes solely for the purpose of administrative convenience, necessarily results in dissimilar treatment. Frontiero v. Richardson, 411 U.S. 677, 690 (1973). A mandatory preference to members of one sex over members of another merely for administrative convenience is the kind of arbitrary choice forbidden by the Equal Protection clause of the Fourteenth Amendment. Reed v. Reed, 404 U.S. 72, 76 (1971).

Very truly yours,

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JEB:we
cc: Hon. Albert E. Cote