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California State Senate

NEWTON R. RUSSELL
SENATOR, TWENTY-FIRST DISTRICT

MINORITY WHIP

January 17, 1991

TO: Bion Gregory

FROM: Senator Newton Russell

RE: Registration of Family Associations under Corporation Code Section 21301

Pursuant to Corporation Code sections 21301, 21302 and 21305, the Secretary of State, upon the filing of a properly completed application and the payment of the applicable fees, may register the name of any unincorporated nonprofit association and issue a certificate of registration to that effect, provided that the name does not so resemble another registered name as may be likely to deceive.

The Secretary of State has issued a "Certificate of Registration of Unincorporated Nonprofit Association" to Rebecca A. Tapia and Jennifer L Baughman registered as Fraternal Name No. 4309 and listed their association by using the words "FAMILY OF REBECCA A. TAPIA AND JENNIFER L. BAUGHMAN". A similar certificate has been issued by the Secretary of State to Thomas F. Coleman and Michael A. Vasquez registered as Fraternal Name No.4302 and listed their association by using the words "FAMILY OF THOMAS F. COLEMAN AND MICHAEL A. VASQUEZ".

These people have registered as the "FAMILY OF ___" in order to gain a perceived status of a family through the color of law. See the memorandum prepared by Thomas F. Coleman and presented to Secretary of State March Fong Eu and attached herewith at (page 7, footnote 28).

I am concerned that this may be an improper use of the above code sections and may subject the State of California to potential lawsuits and liability. Therefore, I am requesting a Legislative Counsel's opinion based on the following issues and questions which raise serious doubt and legal question as to the validity of the above-described practice:

(1) Whether the State of California may incur potential liability to people who register as an unincorporated nonprofit association "FAMILY" for the unintended legal consequences of their registration, for failure to inform these people of the potential legal consequences of the formation of an unincorporated nonprofit association "FAMILY" since unincorporated nonprofit associations operate under laws that are distinctly different from the laws that govern typical family relationships?

(2) Whether people who register as an unincorporated nonprofit association "FAMILY" must be informed by the state of California concerning the implications of acting under unincorporated nonprofit association law? Indeed, how will members of the "FAMILY" know when they are acting as individuals or when they are acting as an unincorporated nonprofit association? Will this be an additional issue to be litigated in unincorporated nonprofit association "FAMILY" dissolutions?

(3) Whether the use of the unincorporated nonprofit association registration to register otherwise unrelated people as a "FAMILY" is consistent with the statutory authority of Corporation Code section 21300 et seq. or whether it intrudes upon areas governed by other law such as partnership law, family law, including the law of marriage, and criminal law?

(4) Whether the statute as applied would open the law to permit (a) two men and a woman or (b) two women and a man or (c) a single man or woman and a unrelated minor boy or girl,or (d) a single parent and minor child or (e) a polygamous relationship or (f) a palimony relationship or (g) a "group marriage" relationship (such as the "Manson Family") or (h) a homosexual relationship or (i) any other combination to register as a "family"?

(5) Whether all members of a registered unincorporated nonprofit association "FAMILY" are liable for tortious conduct of other members of the "FAMILY" when acting under unincorporated nonprofit association law?

(6) Whether all members of a registered unincorporated nonprofit association "FAMILY" are liable for contractual obligations and or damages incurred by other members of the "FAMILY" when acting under unincorporated nonprofit association law?

(7) Whether property owned in the name of a registered unincorporated nonprofit association "FAMILY" will pass to the members of the "FAMILY" by intestate succession (or otherwise by inheritance) or whether it will escheat to the state as the property of a defunct unincorporated nonprofit association? Can such property be probated?

(8) Whether registration as an unincorporated nonprofit

association "FAMILY" will have the effect of waiving the statutory protections of parents for financial liability for the acts of their minor children?

(9) Whether the use of unincorporated nonprofit association law affects the legal obligations of an unincorporated nonprofit association "FAMILY" in other ways?

(10) Whether there are in fact no legal consequences, benefits or obligations resulting to people who register as an unincorporated nonprofit association "FAMILY" or whether there exist substantial legal consequences to property rights, legal liability in general or other legal considerations? (The Coleman memorandum asserts that there are no legal consequences.)

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Sacramento, California
February 19, 1991

Honorable Newton R. Russell
5061 State Capitol

Family Associations - #2151

Dear Senator Russell:

QUESTION NO. 1

Are a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family entitled to register the name of their "association" with the Secretary of State under Section 21301 of the Corporations Code under a style such as "Family of John Doe and Jane Roe"?

OPINION NO. 1

A group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family are not entitled to register the name of their "association" with the Secretary of State under Section 21301 of the Corporations Code under a style such as "Family of John Doe and Jane Roe."

ANALYSIS NO. 1

Section 21301 of the Corporations Code provides for the registration of associations, as follows:

> "21301. Any association, the principles and activities of which are not repugnant to the Constitution or laws of the United States or of this State, may register in the office of the Secretary of State a facsimile or description of its name or insignia and may by reregistration alter or cancel it."

Upon registration, the Secretary of State issues a certificate of registration. Section 21307 of the Corporations Code then prohibits any unauthorized person from using the association's registered name, as follows:

> "21307. Any person who willfully wears, exhibits, or uses for any purpose a name or insignia registered under this chapter, unless he is entitled to use, wear, or exhibit the name or insignia under the constitution, bylaws, or rules of the association which registered it, is guilty of a misdemeanor punishable by fine of not to exceed two hundred dollars ($200) or by imprisonment in the county jail for a period not to exceed 60 days."

Thus, registration under Section 21301 creates an exclusive right to use a name or insignia. An exclusive right to use a name cannot be granted to words in common use since those words are regarded by the law as common property (American Assn. v. Automobile O. Assn., 216 Cal. 125, 131). Similarly, a family name cannot be the subject of an exclusive right so as to prohibit another from using his or her name (Tomsky v. Clark, 73 Cal. App. 412, 418).

The registration of an association under a name such as "Family of John Doe and Jane Roe" would give that association an exclusive right to use that name and would prohibit others from using that name, under threat of criminal penalty (Sec. 21307, Corp. C.). Similar names, such as "The Doe Family" could be appropriated, and other "Doe Families" would thereafter be prohibited from using that name, even, arguably, in such cases as on holiday cards. These problems arise from the fact that "family" is a word in common use, and therefore cannot be made a title subject to the exclusive use of another. The association of it with a surname does not help since a family name cannot be the subject of an exclusive right-to-use. Thus, under Section 21301, the registration of such a name would be repugnant to the laws of the state that permit people to use common words and family names without restriction.

We do not imply that an association cannot be formed for that purpose in appropriate cases. However, no formalities are required for the formation of an unincorporated nonprofit association (Law v. Crist, 41 Cal. App. 2d 862, 865). The only purpose of registration is protection of the registered name.

Accordingly, it is our opinion that a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family are not entitled to register the name of their "association" with the Secretary of State under Section 21301 of the Corporations Code under a style such as "Family of John Doe and Jane Roe."

QUESTION NO. 2

May a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family form an association to formalize that relationship?

OPINION NO. 2

A group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family may form a nonprofit association to formalize that relationship. However, many rights traditionally granted to family members may be unavailable if based solely on the association.

ANALYSIS NO. 2

A nonprofit association is defined by Section 21000 of the Corporations Code, as follows:

> "21000. A nonprofit association is an unincorporated association of natural persons for religious, scientific, social, literary, educational, recreational, benevolent, or other purpose not that of pecuniary profit."

The rights and duties of members of an association are basically determined by the contract of the association, such as its constitution or bylaws, although the agreement of association need not be formal or in writing (Law v. Crist, supra, at 865). In essence, the agreement to associate is contractual and the rights under it are contractual (Lawson v. Hewell, 118 Cal. 613, 618-619).

Accordingly, a group of people may obtain rights similar to that of a family by forming an association if those rights may be obtained by contract.

However, in determining what those rights are, it must be borne in mind that "family" is not a word of precise legal meaning. It may refer to spouses, it may refer to parents and children, it may refer to siblings, it may refer to a combination of these relationships, or it may refer to even more extended relationships. Indeed, in Moore S. Corp. v. Industrial Acc. Com, 185 Cal. 200, at 207, the court stated as follows:

> "There is little to be gained by reviewing the numerous definitions given by the courts and lexicographers of the words 'family' and 'household.' They mean different things under different circumstances. The family, for instance, may be an entire group of people of the same ancestry, whether living together or widely separated; or it may be a particular group of people related by blood or marriage, or not related at all, who are living together in the intimate and mutual interdependence of a single home or household."

Since "family" has so many varied meanings, it is difficult to definitively determine the characteristics that would be shared by a "family association." They may vary from association to association, depending on the nature of the "family relationship" that is involved.

However, not all rights inherent in a family relationship could be obtained by forming an association. For example, a contractual relationship between persons living together without marrying is not enforceable under the Family Law Act (Marvin v. Marvin, 18 Cal. 3d 660, 665 and 681). However, at least to the extent that contracts are not based upon an illicit consideration of sexual services, contracts between nonmarital partners will be enforced (Id., at 672). Accordingly, members of an association could contract to pool their earnings in a manner similar to that done by a husband and wife under the community property statutes. Of course, since the Family Law Act is inapplicable, recourse in the event of a breach of contract would not be under the Family Law Act but would be limited to contractual remedies.

With respect to an association that was formed to have functions similar to a parent and child relationship, it may be that an adult could undertake a duty of support to a child similar to that owed by a parent (Sec. 196, Civ. C.). However, a minor

does not usually have the capacity to enter into a contract that cannot be disaffirmed (Sec. 35, Civ. C.). In addition, the relationship of parent and child is subject to very substantial statutory regulation (see, for example, Title 2 (commencing with Sec. 196), Pt. 3, Div. 1, Civ. C.). For example, a change in the parent-child relationship requires compliance with specific requirements (for example, Ch. 2 (commencing with Sec. 221), Title 2, Pt. 3, Div. 1, Civ. C. (adoption)). Thus, that aspect of the parent-child relationship could not be established by merely forming an association. Of course, we are not informed of the particular types of rights and duties that are intended to be created by such an association.

However, any of these rights would arise solely because of the contractual relationship of members of the association, and not because they have somehow become spouses (or children and parents) by entering into the association. In Marvin v. Marvin, supra, the court held that the Family Law Act is inapplicable to nonmarital partners, even though a contractual relationship had some of the same characteristics as a marital relationship. Similarly, membership in a "family association" will not, in itself, create a relationship of spouse or parent and child. The law prescribes the prerequisites for these relationships (for example, Sec. 221 and following, Civ. C. (adoption); Title 1 (commencing with Sec. 4000), Pt. 5, Div. 4, Civ. C. (marriage)). In the absence of compliance with requirements applicable to establish a spousal or parent and child relationship, the rights of members of a family association will be limited to those contractual rights established under the association's charter, bylaws, or other governing provisions, and then only to the extent not prohibited by law.

Thus, for example, members of the association may leave property to other members in their wills. However, in the absence of such an intentional disposition, membership in the association will not establish a right to property under the laws governing intestate succession (Pt. 2 (commencing with Sec. 6400), Div. 6, Prob. C.).

So far, we have discussed limits on the ability of a nonprofit association to obtain rights and obligations similar to those present in a traditional family relationship. Conversely, membership in a nonprofit association may impose obligations that are not usually present in a traditional family relationship.

Section 388 of the Code of Civil Procedure provides as follows:

> "388. (a) Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.
>
> "(b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint and several, or several."

Thus, the association can be sued as an association, while spouses, though they may be joined in the same suit on occasions, are not sued in the name of the family.

In addition, members of a nonprofit association are not generally liable for contractual debts of the association unless the member has personally assumed that debt (Secs. 21100 and 21101, Corp. C.). However, members of a nonprofit association may, in some instances, be liable for the tort liability of other members in pursuing the purposes of the association (Steuer v. Phelps, 41 Cal. App. 3d 468, 472). This liability will depend upon the facts, such as whether the individual members authorized the activity that gave rise to the injury (Id.), and whether there were officers or directors to whom liability could be imputed (White v. Cox, 17 Cal. App. 3d 824).

It is difficult to apply these principles to all possible types of family associations. As stated previously, the nature of family relationships are so varied that it is impossible to find a simple characterization that can be applied to all. In addition, since the nature of an association will necessarily depend upon the terms of the agreement between its members, a "family association" is an entity that may take numerous forms.

Thus, it is our opinion that a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family may form a nonprofit association to formalize that relationship. However, many rights traditionally granted to family members may be unavailable if based solely on the association.

QUESTION NO. 3

Does the state have any potential liability if it does not inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association?

OPINION NO. 3

The state does not have any potential liability if it fails to inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association.

ANALYSIS NO. 3

There is no statutory or regulatory requirement that the state inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association.

Since there is no statutory or regulatory duty to inform registrants of potential problems, no liability arises from a failure to discharge a mandatory duty (Sec. 815.6, Gov. C.). Thus, any duty to inform must arise under the common law (see Davidson v. Westminster, 32 Cal. 3d 197, 202).

In the absence of a special relationship, the state is under no duty to warn others of potential hazards that may be caused by others (Tarasoff v. Regents of University of California, 17 Cal. 3d 425, 435; Davidson v. City of Westminster, supra, 203). A special relationship that gives rise to a duty to warn or otherwise exercise care may arise when a public official voluntarily assumes a duty to exercise care, when there is an express or implied promise to exercise care, or when the official created or increased the peril to the victim (Jackson v. Clements, 146 Cal. App. 3d 983, 988) and the peril was not readily foreseeable by the victim (Johnson v. State of California, 69 Cal. 2d. 782, 786).

In the case of the registration of an association's name, there is no voluntary assumption of a duty to protect a victim or an express or implied promise to care for a victim. Accordingly, any duty to inform or warn must be based on the creation or aggravation of a risk that is not reasonably foreseeable by a victim. However, the registration of the name of

the association does not create the association but only registers its name. Thus, the registration does not create or increase the peril. It is the creation of the association by its members that creates the peril, if any, not the registration of the association's name.

In addition, the state, by registering the name, does not have sufficient information to fully assess the nature of any potential liabilities since the registration does not disclose the terms of association membership. The members of the association are in a far better position to understand the rights and duties that they have imposed on themselves. Thus, the risk of forming the association is more readily foreseeable by members of the association than by the state.

Accordingly, it is our opinion that the state does not have any potential liability if it fails to inform persons who register as an unincorporated nonprofit association with a name that indicates characteristics similar to those of a family of the consequences of forming such an association.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By
William K. Stark
Deputy Legislative Counsel

WKS:dfb

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California State Senate

NEWTON R. RUSSELL
SENATOR, TWENTY-FIRST DISTRICT

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February 20, 1991

Honorable March Fong Eu
Secretary of State
Executive Office
1230 J Street
Sacramento, CA 95814

Dear March:

Upon learning that "Certificates of Registration of Unincorporated Nonprofit Associations" were being issued to individuals registered as "FAMILY OF JOHN DOE AND JANE ROE", I investigated the legality of that procedure. In cooperation with the Western Center on Law and Religious Freedom, I prepared a number of issues which we believed raised serious concerns and possible violations of law. These issues were submitted to Legislative Counsel for analysis and a written opinion. Attached herewith is Legislative Counsel opinion, number 2151.

In response to my request, Legislative Counsel issued in part the following opinion stating:

> **A group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family are <u>not</u> entitled to register the name of their "association" with the Secretary of State under Section 21301 of the Corporations Code under a style such as "Family of John Doe and Jane Roe."**

In your letter of December 20, 1990, you informed me that you were compelled under State law to issues these certificates. The issuance of Certificates as described above have been determined to be in violation of existing California State law

and further issuance of these types of certificates should be terminated and those that were issued should be immediately revoked.

Please let me know what action you intend to take.

Sincerely,

Newton R. Russell
Senator, 21st District

NRR:mz

WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM

WESTERN CENTER FOR LAW AND RELIGIOUS FREEDOM

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GREGORY CASEY
SPECIAL COUNSEL

March 4, 1991

March Fong Eu, Secretary of State
Anthony L. Miller, Chief Deputy
State of California
1230 J Street
Sacramento, California 95814

Re: Request to Terminate Registration of "Family Associations" under California Corporations Code §21300 et seq.

Dear Secretary of State Eu and Mr. Miller:

By a letter dated September 19, 1990, the office of the Secretary of State received a demand from attorney Thomas F. Coleman of the Center for Personal Rights Advocacy accompanied by a 9-page memorandum arguing that the Secretary of State must issue official certificates of registration of unincorporated nonprofit associations to "couples" who seek to register themselves as "family associations."

The Secretary of State has apparently issued certificates of registration to at least two so-called "family associations."

The Western Center for Law and Religious Freedom believes that registration of "family associations" is a misapplication and abuse of the authority of Corporations Code §21300 et seq., and the purpose of this letter is to request that the Secretary of State's office terminate this practice forthwith and rescind any existing "family association" registrations.

At the request of Senator Newton R. Russell, we assisted in the preparation of a letter to the office of the Legislative Counsel requesting an opinion on the legal authority for this practice. A copy of the letter of request dated January 17, 1991, is attached hereto.

The Legislative Counsel has issued an opinion letter dated February 19, 1991, concluding also that the use of the registration procedure is unlawful. A copy of the Legislative Counsel opinion letter is attached hereto.

Without repeating the legal concerns which we raised in our earlier correspondence and which are

supported by the opinion of Legislative Counsel, additional considerations reconfirm that this registration procedure should be terminated.

A complete refutation of Mr. Coleman's memorandum is unnecessary, but it should be noted that it begins with three false premises which permeate his analysis and render it pointless.

First, his extensive policy arguments extolling his belief in the laudable results which would follow, in his opinion, from the "creative . . . use" (page 5) of this statute are entirely irrelevant. Clearly the statute was not adopted with this "creative" intention, and the meaning of the statute must be determined by its language and legislative history, not by the manipulative arguments of special interest groups who want to twist it to societal applications outside its original scope.

Second, Mr. Coleman contends that the term "family" can mean virtually any form of relationship, citing as his primary authority dicta in the "settled decision" in Moore Shipbuilding Corporation v. Industrial Accident Commission[1] in which the Court ruled that a 3-year-old dependent unrelated to the deceased was entitled to a death benefit as a member of his "household" as defined by the Workman's Compensation Act.

If anything, Moore Shipbuilding rebuts Mr. Coleman's argument.

(a) The Supreme Court in Moore Shipbuilding emphasized that its opinion dealt exclusively with the Workman's Compensation Act and that this law was a "'. . . system of rights and liabilities different from those prevailing at common law' . . . which 'undertakes to supersede the common law altogether and to create a different standard of rights and obligations'" (at 196 P. 258, emphasis added). In fact, the Court ruled that but for the Workman's Compensation Act the child's relationship to the deceased would be "outside the pale of legislative recognition" (id.). This case stands for very narrow, expressly authorized, special exception to the law, not, as Mr. Coleman argues, as the prevailing standard for the law in general.[2]

(b) The Court in Moore Shipbuilding ruled that the mother of the child, the woman with whom the deceased had been living as husband and wife without benefit of marriage, was disqualified to be a member of the family or household of the deceased under the law. (Id. at 260.) This unmarried male-female relationship ("palimony," in modern parlance) is precisely one of the kinds of relationships which Mr. Coleman wants to register under Corporations Code §21300 et seq. (See Coleman memorandum at page 1.)

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[1](1921) 185 Cal. 200, 196 P. 257, cited in Coleman at page 2.

[2]Mr. Coleman's expansive reading (page 9, note 33, for example) is entirely unjustified.

(c) There is not a word in Moore Shipbuilding to support the assertion that a self-declared "family" should be treated under the laws of the state of California as an unincorporated nonprofit association and subject to the special laws dealing with unincorporated nonprofit associations.

Third, Mr. Coleman paradoxically asserts that "No benefits are automatically conferred upon a family which registers itself as an association" (at page 8), as if registration were merely a symbolic act and not what it really would be, the declaration that the parties to the registration are now to be governed by the laws of unincorporated nonprofit associations. This is the basis for many of the questions submitted to the Legislative Counsel.

Having denied the actual impact of registration, the application of unincorporated nonprofit association law, Mr. Coleman asserts a broad range of intentions to assert other legal consequences of registration, including granting legal recognition to unmarried couples, same sex couples and "domestic partnerships" (pages 1, 5, 8), permitting foster parents and guardianships to circumvent the parameters of existing law by registering minor children as "family" members (page 7, note 28), and permitting all Californians to bypass the laws of marriage.[3] Moreover, Mr. Coleman's claims are too modest. Not only could "couples" register as "families," mimicking the true families created by the natural and immemorial relationships of marriage and parenthood, any combination of people could register and become a "family," including the "Manson family" and polygamous or polyandrous relationships.

The analysis stated in the Legislative Counsel opinion and the foregoing comments demonstrate that registration of unincorporated nonprofit association "families" is not, as asserted by Mr. Coleman, a ministerial duty of the Secretary of State but rather a misapplication of the law which should be terminated.

We are available to discuss this matter further at your convenience. Please send us notice of the action taken on this request by your office.

Sincerely,

DAVID L. LLEWELLYN, JR.
President and Special Counsel

---

[3] Mr. Coleman fails to deal with the fact that these pseudo-families will not be protected by the extensive statutes of California family law on the dissolution of their associations and the inevitable convoluted litigation among them.

TO: ANTHONY MILLER
CHIEF DEPUTY
SECRETARY OF STATE

RE: **SUGGESTIONS FOR MEMO ON FAMILY REGISTRATION**

DATE: MARCH 6, 1991

HERE ARE SOME IDEAS FOR POSSIBLE INCLUSION IN THE SECRETARY OF STATE'S MEMO REGARDING FAMILY REGISTRATION. YOUR DRAFT IS EXCELLENT. HOWEVER, THERE ARE A FEW OTHER POINTS THAT YOU MAY WANT TO INCLUDE. HERE THEY ARE:

1. **DEFINITIONS**

"Shall" is mandatory and "may" is permissive. (See Corporations Code Section 15) These definitions govern the entire Corporations Code. (See Corporations Code Section 15)

[Comment: Any association may register . . . as used in Section 21301 is therefore permissive, that is, it permits any association to register its name, unless, of course, there is a restriction in another statute. Section 21302 is the only restriction applicable to the registration of names. Section 21302, in effect, forbids (shall not be permitted) the registration of a name if it is likely to be misleading because a similar name is already registered. Therefore, unless Section 23102 comes into play, any association is authorized by law to register its name under Section 21301.]

[Comment: Section 21305 states that upon registration, the Secretary of State <u>shall</u> issue a certificate of registration. This is a mandatory duty. Therefore, once the discretionary duty of making sure that Section 21302 is complied with, the remaining function of the Secretary of State is ministerial, that is, there is no discretion but rather an obligation to issue the certificate.]

2. **SEVERABILITY**

Section 19 of the Corporations Code expresses a legislative intent that each provision of the code is intended to stand on its own.

[Comment: Therefore, problems with Section 21307 should not automatically be transferred to Section 21301. If section 21307 were invalidated by a court, for example, because it conflicted with provisions of the state constitution protecting freedom of speech and association, then only that section would fall and Section 21301 would remain in effect.]

3. CONSTITUTIONAL CONSIDERATIONS

A. ARTICLE I, SECTION 1 (RIGHT OF PRIVACY)

The right of privacy of the state Constitution overrides statutes that unduly restrict this right. City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123. Among the freedoms protected by this right of privacy is the freedom of individuals to choose with whom they will live or associate as a family. In other words, the right to establish a family association is constitutionally protected even if some or all of the members are not related by blood, marriage, or adoption. (Ibid.) The state Constitution sometimes requires that a group of unrelated people living together in a relatively permanent household be treated on an equal basis with blood related families. City of Chula Vista v. Pagard (1981) 115 Cal.App.3d 785, 797.

[COMMENT: The Secretary of State is obligated to enforce and uphold the federal and state Constitutions as she administers state statutes. Since constitutional provisions are paramount to statutes, as she administers a particular statute, the Secretary of State must consider constitutional provisions, in light of relevant judicial precedents, that may interrelate to the statute. As explained by the Legislative Counsel, since family associations have a right to exist, it would be discriminatory, and possibly a constitutional violation to deny these valid associations the right to register with the state.]

B. ARTICLE I, SECTION 2 (FREE SPEECH)

The state Constitution provides that all persons may freely speak, write, and publish his oer her sentiments on all subjects, being responsible for the abuse of this right. The registration of a family association is a public communication that has constitutional dimensions.

The free speech clause of the state Constitution controls over statutes that unduly restrict free expression. City of Albany v. Meyer (1929) 99 Cal.App. 651.

Even though other branches of government usually defer to legislative action, such deference vanishes when constitutionally protected rights are threatened. Spriitual Psychic Science Church v. Azuza (1985) 39 Cal.3d 501, 514. This is another way of saying that if a statute conflicts with the constitution, the constitution must control.

[COMMENT: It is not the Secretary of State's perogative to second guess non-fraudulent motivations for registration as an unincorporated association, be they emotional affirmations, a public communication of intentions, or other personal, social, economic, or political motivations. All persons in California have the right to choose and communicate about their associations.]3.

C. FREEDOM OF ASSOCIATION

The protections of the First Amendment of the United States Constitution on freedom of speech and expression extend to the right of association. Barkman v. Superior Court (1977) 63 Cal.App.3d 306, 312. The federal Constitution, in short, protects associational freedoms without regard to race, creed, or political or religious affiliation and without regard to the popularity of the association or its ideas. (Ibid.) When associational freedoms come into conflict with the exercise of valid governmental powers, a reconciliation must be effected between the two competing interests through a careful weighing process. (Ibid.) If the state action has the effect of deterring association ties and relationships, the state must show, convincingly, and overriding and compelling interest. (Id, at p. 313)

The federal Constitution protects both "intimate" and "expressive" associational rights. Roberts v. Jaycees (1984) 104 S.Ct. 3244, 3249. The California Constitution affords even greater privacy, expressive, and associational rights in some cases than does the federal counterpart. Isbister v. Boys Club (1985) 40 Cal.3d 72, 85. The right of so-called "nontraditional" families to associate and live together is one such example. City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123, 130, fn. 3.

[COMMENT: Forming an association, giving it a name, and registering the name in a public manner, especially when the organization is a family association that may use its associational status to petition the government for redress of grievences (Article I, Section 3 of the California Constitution) are all activities which implicate the right of privacy and the freedoms of speech and association. Therefore, the Secretary of State could only restrict the right to register as an association in the most narrow of circumstances. Where the officers of the association state that they have the authority to register the association's name and where the name is not already registered, the Secretary of State must register it. To do otherwise would not only contravene her statutory duties but also would violate the constitutional rights of the association.]

4. OTHER STATUTES PERTAINING TO REGISTRATION OF ORGANIZATIONAL NAMES

A. PROFESSIONAL CORPORATIONS

A person who forms a professional corporation may use his or her name as the name of the corporation. (Corporations Code Section 13409) For example, Thomas F. Coleman and Rebecca Tapia could form a professional corporation entitled "THOMAS F. COLEMAN AND REBECCA TAPIA, Inc." In fact, using personal names to name a professional corporation is a common practice. If two other people with the same names, that is Thomas F. Coleman and Rebecca Tapia wanted to incorporate a professional corporation using their names, that is, "THOMAS F. COLEMAN AND REBECCA TAPIA, Inc.," the Secretary of State would have to reject that corporate name because it was already taken, even though the people wanted to use their own names. (Corporation Code Section 13409)

[COMMENT: The Legislative Counsel's opinion has much too broadly concluded that people always have the right to use their own names and therefore erroneously concluded that an organization with a name that includes personal names cannot be registered and thereby gain exclusive use. Unfortunately, the Legislative Counsel focused only on trade marks and trade names in its analysis and failed to look to situations more similar to registration of an association name. The name of organizations, such as corporations, are more akin to the registration of an unincorporated associatio-n's name.]

B. PROFESSIONAL LAW CORPORATIONS

A professional law corporation can only adopt a name permitted by the State Bar Rules. (Corporations Code Section 13409) Rule 4(A)(5) of the Law Corporation Rules of the State Bar require that the only name that can be used by a professional law corporation is that of its stockholders. Therefore, if Thomas F. Coleman and Rebecca Tapia wanted to incorporate as a professional law corporation, they would have to use the name "THOMAS F. COLEMAN AND REBECCA TAPIA, Inc."

[COMMENT: Again, the Legislative Counsel did not properly analyze the issue of the use of personal names and the registration of such with the Secretary of State. The rules with respect to professional law corporations is a perfect analogy. Unfortunately, the Legislative Counsel decided to use trade name registration as an analogy rather than laws governing the names of organizations.]

ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

633 South Shatto Place
Los Angeles, California 90005
(213) 487-1720
FAX (213) 480-3221

TO: Anthony Miller
Chief Deputy
California Secretary of State

FROM: Jon W. Davidson
Senior Staff Attorney

DATE: March 7, 1991

RE: Suggestion for memo on Family Registration

Thank you for agreeing to allow Thomas F. Coleman to share with me your excellent draft memo regarding the Legislative Counsel's February 19, 1991 Opinion respecting Family Associations.

I have one suggested addition, which Tom suggested I fax to you.

At page 3 of your draft you note that, although words in common use may not be protectable by themselves, when such words are combined with other words so as to create a distinctive name, as is the case with the association names which the Secretary of State's office has registered to date, the full name is properly registerable. I believe the decision in Cebu Association of California, Inc. v. Santa Nino de Cebu Association of U.S.A. (1979) 95 Cal.App.3d 129 [157 Cal.Rptr. 102] adds additional support to this proposition. In that case, the California Court of Appeal held that, because the word "Cebu" was the name of an island in the Philippines, a company could not obtain exclusive use of the word "Cebu" sufficient to preclude the formation of other groups "interested in the island of Cebu to use such names as 'Friends of Cebu,' 'Cebu Circle,' and 'Cebu Brotherhood.'" (Id., 95 Cal.App.3d at p. 135 [157 Cal.Rptr. at p. 105].) Nevertheless, the Court held that, even though courts could not properly enjoin others from using the single word "Cebu," a "court may properly enjoin the use of the composite marks, 'Cebu Association of California' and 'Cebu Association'." (Id. (emphasis added).)

The Legislative Counsel therefore errs in concluding that registration of an association

ACLU FOUNDATION
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under a name such as "Family of John Doe and Jane Roe" would necessarily preclude others from using names such as "The Doe Family." Other individuals may use their own name so long as there is no intent to cause confusion or deceive the public. (See D & W Food Corp. v. Graham (1955) 134 Cal.App.2d 668, 675 [286 P.2d 77.) This does not mean, however, that the association name "Family of John Doe and Jane Roe" may not be registered; it simply means that such registration will not preclude others from in good faith using their own names. Although a prior registration under Cal. Corp. Code § 21301 might preclude other associations from registering precisely the same combination of words and given names under that code section as the designation of a separate association, such other associations should be allowed to register the given names of their members as part of the designation of their association, provided that those names are combined with other words in such a way as to distinguish the name of their association from an association whose designation already has been registered.

Section 21307 of the Corporations Code would not preclude the use of this separate distinctive name, whether it is registered of not. The common law right to use one's own name would preclude liability for any non-deceptive use of one's own name. Moreover, if the separate distinctive name were registered, the members of that separate association themselves would be permitted, under the plain language of Section 21307, to use their own registered name.

I hope the above comments are helpful. If I can be of any further assistance, please let me know.

Office of the Secretary of State
March Fong Eu

Executive Office
1230 J Street
Sacramento, California 95814

(916) 445-6371

March 11, 1991

Honorable Newton R. Russell
State Capitol
Sacramento, California 95814

Dear Senator Russell:

Thank you for sending me a copy of the Opinion of Legislative Counsel dated February 19, 1991, regarding the registration of the names of unincorporated nonprofit associations.

My legal staff has reviewed the opinion and I am enclosing a copy of their analysis. Please be advised that my office will act in accordance with that analysis.

Sincerely,

March Fong Eu

MARCH FONG EU

Enclosure

State of California

Memorandum

To : March Fong Eu

Date : March 11, 1991

From : Secretary of State, Office of Chief Counsel Anthony L. Miller

Subject : Legislative Counsel's Opinion
Family Associations-#2151
February 19, 1991

You have requested a review of the above-referenced Opinion of Legislative Counsel which was requested by Senator Newton R. Russell. Most of the issues addressed in that opinion have already been considered by Secretary of State legal staff.

In his opinion, the Legislative Counsel concludes that a group of persons who live together in a relationship in which they share rights and duties similar to those shared by members of a traditional family may form an unincorporated nonprofit association to formalize that relationship. We agree. Legislative Counsel concludes that no formalities are required for the formation of such an unincorporated nonprofit association. We agree. Legislative Counsel appears to conclude that an association described above can assume a name under a style such as "Family of John Doe and Jane Roe". We agree. Although not essential to our analysis of the duties of this office, Legislative Counsel concludes that "family" has many varied meanings and that it may include individuals not related by blood or marriage who are living together in the intimate and mutual interdependence of a single home or household. We agree. Notwithstanding the foregoing, Legislative Counsel concludes that an unincorporated nonprofit association which has assumed a name in the style of "Family of John Doe and Jane Roe" cannot register that name pursuant to Corporations Code section 21301.* We disagree.

Section 21301 provides, in applicable part,

> Any association...may register in the office of the Secretary of State a facsimile or description of its name or insignia....
> [emphasis added]

*Subsequent section references are to the Corporations Code unless otherwise noted.

Section 21302 provides:

> An association shall not be permitted to register any name or insignia similar to or so nearly resembling another name or insignia already registered as may be likely to deceive.

Section 21305 provides:

> Upon registration, the Secretary of State shall issue his [sic] certificate setting forth the fact of registration. [emphasis added]

We find this language to be unambiguous. Any association (except for certain specified categories not herein relevant) is entitled, as a matter of right, to register its name with the Secretary of State provided that the name does not conflict with the name or insignia of a previously registered association. Upon registration, the Secretary of State must issue a certificate to that effect, the word "shall" in section 21305 imposing a mandatory duty to do so. (section 15) The Secretary of State, therefore, upon proper application, is under a mandatory, ministerial duty to register the names of associations and issue certificates accordingly notwithstanding the fact that an association name may be under a style such as "Family of John Doe and Jane Roe."

The Legislative Counsel, in reaching his conclusion that an association with a name under the style of "Family of John Doe and Jane Roe" cannot register its name pursuant to section 21301, does not address the unequivocal language ("Any association...may register...."/"...the Secretary of State shall issue....)[emphasis added] of that section and of section 21305. Instead, Legislative Counsel relies upon section 21307 which provides:

> Any person who willfully wears, exhibits, or uses for any purpose a name or insignia registered under this chapter, unless he is entitled to use, wear, or exhibit the name of insignia under the constitution, bylaws, or rules of the association which registered it, is guilty of a misdemeanor punishable by fine of not to exceed two hundred dollars ($200) or by imprisonment in the county jail for a period not to exceed 60 days.

Legislative Counsel argues that this penal section creates an exclusive right to the use of a registered name or insignia under section 21301; that case law does not permit "exclusive rights" to be attached to "words in common use" such as the word "family" or to a family name; that, therefore, an association which includes as part of its name the word "family" or a "family name" cannot be registered. We disagree.

Legislative Counsel assumes, without analysis, that section 21307 vests in an association the exclusive right, without exception, to use the words which comprise its name once the name is registered pursuant to section 21301. Thus, if a hypothetical unincorporated association with the name "Friends of the Homeless" registered its name pursuant to section 21301, it would, according to Legislative Counsel's line of reasoning, prevent anyone else, at the risk of criminal prosecution, from ever uttering, writing, or in any way using those words even, presumably, in the course of casual speech or other discourse. A speaker at a rally for the homeless who described the gathering as "friends of the homeless" would risk arrest. That is absurd. It is axiomatic that the courts will avoid interpreting statutes so as to lead to absurd results and a court would have no problem avoiding such a result in interpreting section 21307.

Section 21307, stripped to its essence, says: "Any person who willfully...uses for any purpose a name...registered under this chapter [unless authorized by the association] ...is guilty of a misdemeanor...." The prohibition here does not involve the coincidental use of words which the user is otherwise entitled to use, such as a person's own name. The prohibition, instead, relates to the willful unauthorized appropriation or infringement of an association's registered name. An association name, once registered, is protected from unauthorized appropriation or infringement by others but section 21307 does not prevent the benign use of the words which comprise the association name by others who are independently vested with the right to use them.

This point was made by the court in Cebu Association of California, Inc. v. Santo Nino de Cebu USA Inc. (1979) 95 Cal.App.3d 129, 157 Cal.Rptr. 102. In that case a trial court had issued an injunction restraining appellants from using the word "Cebu" as part of the name, title, or designation of appellant's organization or in connection with the solicitation or promotional purposes. ("Cebu" is the name of a major island in the Philippines.) The appellate court reversed, holding that a court may properly enjoin the use of composite marks such as "Cebu Association of California" but not the single word "Cebu" from use by another organization. 95 Cal.App.3d at 135. The court distinguished between the protections extended to a name versus the words which may comprise all or part of the name.

Just as the court in Cebu refused to enjoin the use of words which appellants were otherwise entitled to use as a matter of right (in that case, a geographic name), so must section 21307 be read so as to bar nothing more than the unauthorized appropriation or infringement of an association's registered name. Thus, it would not, as Legislative Counsel suggests, make criminal the "Doe family's" mere use of their surname on greetings cards even if an association by the name of "Family of Doe" had registered its name pursuant to section 21301. Section 21307 would come into play only if the "Doe family" or other individuals willfully attempted to appropriate or in some way infringe upon the association's name. (It should be noted that, in reality, a prosecution under section 21307 would be extraordinarily rare regardless of how this section is construed given the uniqueness of association names in the style of "Family of James Doe and Jane Roe.)

We believe that Legislative Counsel has read more into section 23107 than the Legislature provided and than a court would find. Thus, we do not believe that section 21307 can be the basis of preventing associations from registering their names which are otherwise entitled to be registered pursuant to section 21301. However, our analysis does not stop here because we believe that the Legislative Counsel has erred in reaching his conclusion even if his expansive reading of section 21307 is correct.

Assuming, arguendo, that section 21307 does purport to create an exclusive right in an association to use the words of its registered name, it does not follow that any common law prohibition regarding exclusive rights to use the word "family," or the right to use one's own name, can be read into section 21301 as limitations on the right to register an association name. If "exclusivity" is the problem, as Legislative Counsel argues, then the defect is with section 21307 which purports (according to Legislative Counsel) to create exclusive rights to the words of a registered association name rather than with section 21301 which creates a right to register an association name.

To the extent that section 21307 may overreach common law rights to use words or names, it is either unenforceable and must be construed narrowly as is previously argued to avoid the defect or must be declared to be invalid. In any case, should section 21307 be determined to be defective, it is specifically made severable from section 21301 pursuant to section 19 and any sins in section 21307 cannot be visited on section 21301.

Even if conceivable defects with section 21307 can be imputed to section 21301, Legislative Counsel's application of trademark law to the registration of association names pursuant to section 21301 does not lead to the conclusions he suggests. Legislative Counsel

argues that an exclusive right to use a name cannot be granted to words in common usage. That is, of course, a well-established principle of trademark law as is set forth in American Automobile Association v. American Automobile Owners Association (1932) 216 Cal. 125, 131 which is cited by Legislative Counsel. However, that case goes on to hold that words in common use "...may be used by others in combination with such other descriptive words, provided they are not used in combination with such other words or symbols or designs as to render it probable that they would mislead persons possessing ordinary powers of perception." Ibid.

This latter situation is, of course, precisely what is at issue here. The word "family" is used in conjunction with other words which, when combined, comprise the name of the association. Thus, this office has never refused to register the name of an unincorporated nonprofit association because it contained words of "common usage". Were we to do so, very few, if any, names would ever be registered since most association names do include one or more words in common usage. Thus, we see no bar to registering association names which may include words of common usage, even "family". The Secretary of State's office has, for example, registered "Church of the Family of Jesus Christ" (1980), "Family Setzekorn Association" (1979), "The Schramm Family Society" (1978), "Tai Land Lim's Family Association" (1978), among others.

Legislature Counsel argues that a family name cannot be made the subject of an exclusive right so as to prohibit another from using his or her own name. We agree except in cases where some fraudulent intent is involved. But the instant issue does not involve the isolated use of a person's name. The issue is the right to register an association name that includes, as a portion thereof, a person's name. That requires a different approach than the blind application of the principle prohibiting an exclusive right to use the name of an individual.

The court's reasoning in Cebu is, again, instructive. In that case, the court held that, because the word "Cebu" was the name of an island in the Philippines, a company could not obtain an exclusive right to use the word. However, the court held that courts could, nevertheless, properly enjoin the use of the composite marks "Cebu Association of California" and "Cebu Association" from use by another organization. Ibid at 135. The court reasoned that a mark composed of more than one word, "must be considered in its totality. It is improper to dissect and analyze component words or phrases." Ibid at 134, citing Beckwith v. Comm. of Patents (1920) 252 U.S. 538, 545-546. We believe that a court would apply a similar analysis in the instant case were it compelled to reach the issue at all.

To summarize, the registration of an association name pursuant to section 21301 under a style such as "Family of John Doe and Jane Roe" [emphasis added] does not prohibit anybody by the name of John Doe or Jane Roe from using his or her own name, singularly or collectively. To the extent section 21307 is construed so as to prohibit one from using his or her name, it is unenforceable. But that does not mean that an association cannot register a name which includes a surname under section 21301 which, by its terms, provides for the registration of any association name (except as otherwise specified in that section and section 21302). Had the Legislature intended to provide for such a limitation, it could have certainly provided for such as it did in section 21301 itself with respect to "subversive" organizations. Whether it could do so constitutionally, is, of course, another question.

We need not address various constitutional issues which Legislative Counsel's conclusion, if correct, would raise. These issues would include, but probably not be limited to, the rights of association, free speech, privacy, due process and equal protection which are provided for in varying degrees by the Constitutions of the United States and of California. These significant issues would have to be engaged only if the statutes were to be read to preclude the registration of the names of only one category of association, i.e., an association with a name that included the word "family" and a surname. We believe the contrary to be true.

This office always gives considerable weight to the Opinions of Legislative Counsel. In the instant case, we agree with most of his conclusions. However, the Secretary of State is, ultimately, responsible for the implementation of the laws that are within the jurisdiction of her office and she must independently determine what those laws require her to do. We construe section 21301 to provide for the ministerial registration of the names of unincorporated nonprofit associations upon proper application and the issuance of certificates accordingly even if the names include the word "family" or one or more "surnames".

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California State Senate

NEWTON R. RUSSELL
SENATOR, TWENTY-FIRST DISTRICT

MINORITY WHIP

March 18, 1991

Attorney General Daniel Lungren
Department of Justice
1515 K Street
Sacramento, CA 95814

Dear Attorney General Lungren:

I am writing to request an opinion from the office of the Attorney General on the legality of the practice of the Secretary of State issuing unincorporated nonprofit association registration certificates to individuals who register themselves as "families" and then use the registration as official evidence of their "family" status.

Enclosed is a series of correspondence on these issues that will clarify the question, including:

(1) Correspondence from Senator Russell to Secretary of State date February 20,1991,
(2) Legislative Counsel's opinion #2151 dated February 19, 1991,
(3) Correspondence from the Western Center for Law and Religious Freedom to Secretary of State dated March 4, 1991,
(4) Secretary of State's Chief Counsel's reply to Legislative Counsel's opinion #2151 dated March 11, 1991 and
(5) Attorney Thomas Coleman memo to Mr. Anthony L. Miller, Chief Deputy Secretary of State dated September 19, 1990.

The questions about the appropriateness of the registration may be summarized as follows:

(1) Whether the rights to exclusive use of a registered name of an unincorporated nonprofit association precludes the registration of a family name (such as the Jones Family)?

(2) Whether the absence of any indicia of intention to operate under or to be bound legally by the law of unincorporated nonprofit associations precludes the registration of individuals as "families"?

(3) Whether the meaning of "association" reasonably includes individuals desiring to declare themselves as "families"?

(4) Whether the admittedly "creative...use" of the registration statute to register "families" falls outside of the intended scope of the law?

(5) Whether registration of individuals as a "family" under the law permits such unincorporated nonprofit associations to obtain any rights or privileges accorded to "families" under California law?

I would appreciate your opinion to the above question as-soon-as possible. If I can be of further assistance in clarifying any of the above please do not hesitate to contact me or my assistant Mr. Zamorano.

Sincerely,

Senator Newton Russell
21st Senate District

ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

633 South Shatto Place
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FAX (213) 480-3221

April 17, 1991

Anthony L. Miller
Chief Deputy
Office of the Secretary of State, March Fong Eu
Executive Office
1230 J Street
Sacramento, California 95814

Dear Mr. Miller:

Thank you for sending me copies of the index cards with respect to unincorporated nonprofit associations that have registered their names under the style of "Family of ...."

We have reviewed the Secretary of State's opinion in response to the Legislative Counsel's Opinion requested by Senator Newton R. Russell, and we are in agreement with the Secretary of State's conclusions. We are greatly concerned, however, by the cloud that is being placed over the validity of such registrations through the demand letter of the Western Center for Law and Religious Freedom, by the Legislative Counsel's Opinion, and by Senator Russell's attempt to secure a similar Attorney General's opinion on the subject.

We are committed to defending the rights of Californians to register the names of their associations, including family associations, under California Corp. Code § 21301. We are prepared to defend such rights in court, if necessary.

I wanted to let you know that we also are contemplating the possibility of intiating litigation to remove this existing cloud. We are presently researching the feasibilty of maintaining an action for declaratory or other appropriate relief conclusively to establish the authority and duty of the Secretary of State to issue such registrations. I will let you know when we reach a final conclusion in this regard. Until then, I would greatly appreciate it if you would keep us informed of any further communications from the Western Center for Law and Religious Freedom or any other matter which may bear on the continued issuance and validity of registrations of this nature.

ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

Please feel free to call me if you have any questions.

Thank you again for your assistance.

Very truly yours,

Jon W. Davidson

Jon W. Davidson

THOMAS F. COLEMAN
ATTORNEY AND COUNSELOR AT LAW

CENTER FOR PERSONAL RIGHTS ADVOCACY
POST OFFICE BOX 65756 • LOS ANGELES, CA 90065 • (213) 258-8955

FAX TRANSMISSION
(916) 324-2960

TO: Nelson Kempsky
Assistant Attorney General

RE: Family Registration

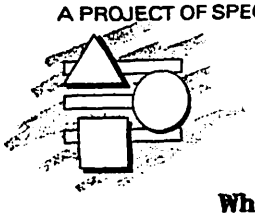
DATE: April 17, 1991

Here is the memo I promised to send. I hope that it is helpful.

Tom Coleman

PAGE 1 of 5

FAMILY DIVERSITY
A PROJECT OF SPECTRUM INSTITUTE



REGISTERING A FAMILY WITH THE STATE OF CALIFORNIA

What is Registration? How Do We Register? What Does It Mean?

I. WHAT IS FAMILY REGISTRATION?

A. **Formation of a Family.** Families are formed by birth, marriage, adoption or by voluntary association. In California, two or more people have the right to associate with each other as a family.

B. **Registration as a Family Association.** Any association can register its name or insignia with the Secretary of State. By registering its name, a family can declare its existence and list its members.

C. **Official Certification of Registration.** A family receives an official document from the Secretary of State officially certifying that the named association has registered, for example, as "Family of John Doe and Jane Roe, including John Doe Jr."

II. HOW DOES A FAMILY REGISTER WITH THE STATE?

A. **Fill Out Application.** Obtain an application from the Secretary of State to register the name of a Non-Profit Unincorporated Association. Where the application calls for the name of the association, insert the words "Family of" followed by the names of the family members. The name of the association, therefore, might be "Family of Joan Smith and Jane Williams.

B. **All Adult Family Members Should Sign Application.** Although it is not absolutely necessary for more than one association officer to sign, it is advisable that all adult members of the family sign the application. This reduces concern over possible fraud and removes ambiguity regarding the intentions of the persons listed as family members. The title of those signing can be listed family "co-managers" or simply as "family members."

C. **Specify What You Are Registering.** Applicants should request that the "name" of the association be registered. Applicants can also register a family "insignia." An insignia can be the "motto" of the family, e.g. the basic agreement or statement of principles of the family. A fee of $10 must be paid for each registration. Therefore, submit $10 to register the name and an additional $10 to register the insignia.

D. **Request Certified Copy of Application.** Applicants should request a certified copy of the application which will constitute proof of who signed the application. This costs an additional $6.00.

E. **Wait for Certificate.** It takes about six to eight weeks to receive the Certificate of Registration and/or Certified Copy of the Application.

P.O. BOX 65756
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III. WHAT ARE THE IMPLICATIONS OF REGISTRATION?

A. **Psychological Aspects.** The psychological implications of family registration should not be underestimated. Registration can generate psychological empowerment, enabling persons to declare who they are and to publicly acknowledge their primary relationships. This can help enhance the self-esteem of persons whose family structures have been ignored or devalued, e.g., domestic partnership families, foster families, guardianship families, stepfamilies, single-parent families, etc.

B. **Administrative Aspects.** Society has an interest in having accurate information about its members, including their personal characteristics, family and business relationships, and other vital statistics. Procedures have been established to record personal and family data through the issuance of birth and death certificates, name change decrees, certificates of marriage and judgments of divorce, and court orders for adoptions or child custody. The census collects other vital information, including household living arrangements. Methods to record business transactions include procedures to file fictitious name and partnership statements or incorporation papers, or registration of trade marks and trade names. The establishment of such procedures signifies that the data is important to society. Family registration fills an administrative gap by recording the existence of relationships that have previously been overlooked or ignored. Having such data recorded is helpful, if not essential, to the orderly administration of legal and economic rights and responsibilities.

C. **Legal Aspects.** Registration with the Secretary of State does not, per se, confer legal rights and responsibilities on the members of registering families. Registration, however, may be a powerful legal and political tool in the struggle of many so-called "nontraditional" families to receive the benefits and share the obligations that society often confers on families, especially on primary relationships such as those between spouses or between parent and child.

1. **Evidence of Family Relationship.** In effect, registration is a form of evidence. Such evidence can be particularly important when the term "family" is used without definition, as it is in about 75% of our state statutes that confer benefits or obligations on families. When "family" is not defined in a statute or in a contract, whether a particular relationship qualifies or not will usually depend on three factors: (1) whether the parties to the relationship subjectively consider themselves to be a family (rather than as friends or roommates); (2) whether the parties have publicly held themselves out to society as a family (rather than as friends or roommates); and (3) whether the parties function as a family. Registration as a family supplies objective proof of the first two factors. The third factor often will depend on other criteria, such as whether the parties live together, the length and intimacy of the relationship, and the degree of their interdependence.

2. **Evidence of Interdependence.** Sometimes society limits the extension of legal or economic benefits to persons who

III. WHAT ARE THE IMPLICATIONS OF REGISTRATION?

A. **Psychological Aspects.** The psychological implications of family registration should not be underestimated. Registration can generate psychological empowerment, enabling persons to declare who they are and to publicly acknowledge their primary relationships. This can help enhance the self-esteem of persons whose family structures have been ignored or devalued, e.g., domestic partnership families, foster families, guardianship families, stepfamilies, single-parent families, etc.

B. **Administrative Aspects.** Society has an interest in having accurate information about its members, including their personal characteristics, family and business relationships, and other vital statistics. Procedures have been established to record personal and family data through the issuance of birth and death certificates, name change decrees, certificates of marriage and judgments of divorce, and court orders for adoptions or child custody. The census collects other vital information, including household living arrangements. Methods to record business transactions include procedures to file fictitious name and partnership statements or incorporation papers, or registration of trade marks and trade names. The establishment of such procedures signifies that the data is important to society. Family registration fills an administrative gap by recording the existence of relationships that have previously been overlooked or ignored. Having such data recorded is helpful, if not essential, to the orderly administration of legal and economic rights and responsibilities.

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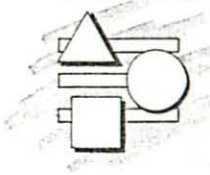
FAMILY DIVERSITY
A PROJECT OF SPECTRUM INSTITUTE



REGISTERING A FAMILY WITH THE STATE OF CALIFORNIA

What is Registration? How Do We Register? What Does It Mean?

I. WHAT IS FAMILY REGISTRATION?

A. Formation of a Family. Families are formed by birth, marriage, adoption or by voluntary association. In California, two or more people have the right to associate with each other as a family.

B. Registration as a Family Association. Any association can register its name or insignia with the Secretary of State. By registering its name, a family can declare its existence and list its members.

C. Official Certification of Registration. A family receives an official document from the Secretary of State officially certifying that the named association has registered, for example, as "Family of John Doe and Jane Roe, including John Doe Jr."

II. HOW DOES A FAMILY REGISTER WITH THE STATE?

A. Fill Out Application. Obtain an application from the Secretary of State to register the name of a Non-Profit Unincorporated Association. Where the application calls for the name of the association, insert the words "Family of" followed by the names of the family members. The name of the association, therefore, might be "Family of Joan Smith and Jane Williams.

B. All Adult Family Members Should Sign Application. Although it is not absolutely necessary for more than one association officer to sign, it is advisable that all adult members of the family sign the application. This reduces concern over possible fraud and removes ambiguity regarding the intentions of the persons listed as family members. The title of those signing can be listed family "co-managers" or simply as "family members."

C. Specify What You Are Registering. Applicants should request that the "name" of the association be registered. Applicants can also register a family "insignia." An insignia can be the "motto" of the family, e.g. the basic agreement or statement of principles of the family. A fee of $10 must be paid for each registration. Therefore, submit $10 to register the name and an additional $10 to register the insignia.

D. Request Certified Copy of Application. Applicants should request a certified copy of the application which will constitute proof of who signed the application. This costs an additional $6.00.

E. Wait for Certificate. It takes about six to eight weeks to receive the Certificate of Registration and/or Certified Copy of the Application.

P.O. BOX 65756
LOS ANGELES, CALIFORNIA 90065
(213) 258-8955/FAX (213) 258-8099

have formed what might be called a primary family relationship. These are relationships that are presumptively intimate and financially interdependent, such as that between spouses or between a parent and child. These primary relationships are distinguishable from others because the law imposes various obligations of support between the parties as long as the relationship exists. Registering as a family with the Secretary of State is not, per se, proof of a primary family relationship. However, the parties could create proof of intimacy and interdependence by registering a family insignia. The family insignia could be a short and concise cohabitation agreement, a certificate of domestic partnership registration, or some other statement specifying that the parties live together, the duration of the relationship, and the degree of economic or other interdependence. It is optional, of course, to create evidence of interdependence through the registration of a family insignia. If cohabitation status and/or interdependence is established, the registered family may qualify, for example, under programs granting workers compensation benefits to a surviving household dependent or unemployment benefits when a worker quits a job to care for an ill family dependent or to relocate when a primary family member gets a job transfer to another city.

3. **Evidence for Health and Estate Planning.** Registration as a family association is not a substitute for other legal documents that are available to protect families. Registration, however, can be most helpful when done in conjunction with these other legal mechanisms. Every adult should have a durable power of attorney for health care. This can confer primary family status on a designated agent, enabling the agent to have access to medical records, privileged hospital visitation, preference to be appointed as a conservator, priority in medical decisionmaking, and control of the disposition of the remains of the principal. Every adult should have a will. This enables the adult to control the transfer of property to designated beneficiaries and to specify who controls the administration of the estate. Sometimes a hostile relative will attempt to invalidate a will or a power of attorney, claiming that the agent or beneficiary used undue influence on the decedent. Family registration can be a form of proof regarding the logical and natural inclinations of a patient or a decedent in the event of a will contest or conservatorship proceeding.

4. **Evidence of Equivalency.** Marital status discrimination is illegal in employment, housing, credit, and some types of insurance practices in California. All business establishments are prohibited from engaging in "arbitrary" discrimination against consumers. The government must provide equal protection of the laws to persons who are "similarly situated." Persons who register as a family, especially when insignia registration creates proof of a primary relationship, may be in a much better position to succeed in a lawsuit that alleges marital status discrimination, arbitrary discrimination, or a violation of equal protection than two friends or roommates would be who have not registered as a family.

IV. DOES THIS DIFFER FROM A DOMESTIC PARTNER REGISTRY?

A. **Local Registration Systems.** Several municipalities have adopted domestic partner registration laws. Under these systems, "domestic partners" are limited to: (1) two persons; (2) who are not related by blood or marriage; (3) who are over 18 years of age; and (3) who declare some type of commitment and/or interdependence. Most cities require that the partners live together. Confidential registries for public employee benefit systems exist in cities such as Berkeley, Santa Cruz, Los Angeles, Laguna Beach, and Seattle. Public registries exist in West Hollywood and Ithica NY. San Francisco has a public registry but also gives partners an option for confidentiality.

B. **Comparison with San Francisco.** The following are some comparisons between the registry operated by the California Secretary of State and that of the City of San Francisco:

COMPARISONS:	CALIFORNIA:	SAN FRANCISCO:
Partners or Members Can Be Related by Blood	Yes	No
Partners or Members Can Be Married Couples	Yes	No
Upper Limit on Number of Partners or Members	No	2
Partners or Members Can Register Their Children	Yes	No
Partners or Members Must Live Together	No	Yes
Partners Must Declare Joint Responsibility for Basic Living Expenses Such as Food and Shelter	No	Yes
Partners or Members Must Register Publicly	Yes	Optional
One Partner Must Live or Work in San Francisco	No	Yes
Automatic Consequences for Partners or Members Receiving Assistance from Public Benefit Programs	No	Yes

V. **ADDITIONAL INFORMATION.** To receive an information packet, including a COMPREHENSIVE LEGAL MEMO on the implications of family registration with the California Secretary of State, send a $10 donation to **SPECTRUM INSTITUTE**, P.O. Box 65756, Los Angeles, CA 90065.

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Office of the Secretary of State
March Fong Eu

Executive Office
1230 J Street
Sacramento, California 95814

(916) 445-6371

April 24, 1991

Nelson P. Kempsky, Esquire
Office of the Attorney General
1515 K Street, Suite 511
Sacramento, California 95814

Dear Mr. Kempsky:

It has come to my attention that Senator Newton Russell has requested an opinion of the Attorney General regarding the legal interpretation and implementation of the provisions of Corporations Code section 21301 et seq. as they relate to the registration of the names of unincorporated nonprofit associations by the Secretary of State. The request is apparently designed to help resolve inconsistent legal opinions issued by this office and the Legislative Counsel.

We have been advised previously that the matter is expected to result in litigation to be initiated by persons who disagree with the opinion of this office. We have just been advised by letter, however, that the ACLU Foundation of Southern California is also contemplating the initiation of legal action in this regard in an effort to judicially sustain the approach being taken by this office. (See enclosed letter.) This has prompted our own consideration of whether an action for declaratory relief might be appropriately brought by this office to clarify the matter. Should we decide that the filing of an action by this office is appropriate, or should we be the subject of litigation brought by others, we would, of course, confer with your office about the Attorney General providing legal representation.

In the meantime, if we can provide any information regarding our legal interpretation of these provisions, please do not hesitate to let me know.

Sincerely,

ANTHONY L. MILLER
Chief Deputy

Enclosure

bcc: Tom Coleman

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 K STREET, SUITE 511
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SACRAMENTO 94244-2550

(916) 324-5166

May 14, 1991

Thomas F. Coleman
Executive Director
Family Diversity Project
P. O. Box 65756
Los Angeles, CA 90065

Dear Mr. Coleman:

Opinion No. 91-505

We have received a request from Senator Newton R. Russell for an opinion of the Attorney General on the following question:

May individuals register themselves as a "family" with the Secretary of State under the provisions pertaining to unincorporated nonprofit associations? If so, what rights follow from registration?

It is the policy of our office to solicit the views of all interested parties prior to issuing an opinion. Your comments regarding the questions presented would be appreciated. If possible, a response by June 14, 1991, would be most helpful; materials received after such date will nonetheless be considered. Views submitted will be treated by our office as public records under the Public Records Act. Please address your views to: Deputy Attorney General Ronald Weiskopf, 110 West "A" Street, Suite 700, San Diego, CA 92101; telephone (619) 237-7674.

Sincerely,

DANIEL E. LUNGREN
Attorney General

NELSON KEMPSKY
Chief, Opinion Unit

NK:lac

California NOW, Inc.
California National Organization for Women
926 J Street, Suite 523, Sacramento, CA 95814 (916) 442-3414

April 2, 1991

Thomas Coleman
The Spectrum Institute
P.O. Box 65756
Los Angeles, CA 90065

Dear Mr. Coleman:

Thank you for the information regarding the family registry project. I have enclosed a copy of the California National Organization for Women's *California NOW News* Call to Conference edition. The article on family registry is on page 3.

Best of luck in your work.

Sincerely,

Kerry Flynn

Kerry Flynn
Fundraising & Special Projects Coordinator

 March 1991

California's Family Registry

by Kerry Flynn

According to a recent study, only 15% of the households in the United States are comprised of the standard working husband, at-home wife and children. However, families that do not fit this description, although in the majority, have not been recognized as such. Finally, this is changing.

Due to the Family Diversity Project, there are now hundreds of diverse households in California who have registered with the Secretary of State's office as a family.

This is possible because of a section in the California Corporations Code which enables people to declare themselves as "unicorporated nonprofit associations."

When people register as a family, they receive a certificate that declares them "The Family of" or "The Household of" Jane Doe, for example. All members of the family may be listed on the registration, including children.

The registration has been beneficial to gay couples, stepfamilies, and fosterfamilies.

The families who have registered thus far are of various configurations. For example, one of the first few families to register was a same sex couple who had lived together for many years. They decided to register with the Secretary of State's office "hoping that such a registration will be useful to families who have historically been denied social and legal recognition as well as economic benefits."

Other families include a married couple with stepchildren, and although not all of the children are related by blood, they all think of themselves as brothers and sisters. Family registry in these types of cases is especially helpful if a stepfamily that is living together desires family recognition yet the biological parent is still living, therefore making adoption by the step-parent an unlikely possibility.

Another example of family registration include guardianship families or fosterparents who want all the children to feel part of the family so the fosterchildren will not otherwise view themselves as outsiders.

The family registry, however still does not afford people the same rights as those members of the more traditional families. Anthony Miller, Chief of Staff to Secretary of State March Fong Eu, states that the registration "has no known tax or legal consequences and confers no automatic benefits beyond the sentimental."

While it is true that registration as a family association does not automatically grant legal benefits, families could be recognized, along with other "appropriate evidence," by courts, administrative agencies, or private sector organizations, according to the report submitted by the Family Diversity Project. For example, being acknowledged as a family may be helpful to government workers who need to take time off from work to care for a sick family member. Those who need to take bereavement leave could also benefit from the family registry. Also, health services could possibly be provided for family members of government or private sector employees.

Being able to visit a sick family member is something many of us take for granted, but hospital visitation rights have been historically denied those persons not of the "immediate family" for patients in long term health care or community care facilities. Thus, longtime partners of AIDS victims have been unable to visit their loved ones because they are not considered "family."

Other benefits of family registration may include being able to receive unemployment compensation in order to relocate with a partner to preserve a family unit as long as a "significant family necessity requires relocating." There is also the possiblity of being able to borrow money from a credit union as a partner of a member of the credit union.

There are indeed many benefits to family registry as Thomas Coleman, Executive Director of the Family Diversity Project, points out. But he also states that it is important to be aware of a few things. "Family registry is not for everyone," Coleman says. "For example, if someone who has been receiving AFDC benefits registers with a working partner, there is a possibility that benefits would be cut. This is certainly not to discourage anyone from registering, but should be noted as a word of caution." Coleman also said that it is important to keep a copy of your registration handy in order to provide verification.

Moreover, Coleman pointed out that you can also choose to define the relationships in your family by filing a statement of principle, or motto, either as a primary relationship family or secondary relationship family. If you register as a couple in a primary relationship, you can set forth levels of interdependency, cohabitation and joint financial arrangements which lend more "credibility" to the couple or unit as a family, especially in the court system. A secondary relationship is considered more of a moral, not legal, statement of love or companionship, similar to sibling relationships.

There are registrations also taking place at the local level in San Francisco and West Hollywood, but children or persons related by blood cannot register as they can at the state level.

Of course, the Family Registry is not without opposition. The Traditional Values Coalition is blasting the registry as a way to allow "homosexuals to register their unholy matrimony as a family." So far, a spot bill, which merely holds a place for a bill and offers no substantive change in the law until further amended, has been introduced by Senator Newton Russell regarding this issue. California NOW's lobbyist, Kate Sproul, has noted that NOW will be watching to see if there will be any amendments made by Russell.

For more information about the Family Registry, contact the Spectrum Institute, P.O. Box 65756, Los Angeles, CA, (213) 258-8955 or call the Limited Partnerships Division at the Secretary of State's Office at (916)

324-0778

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE

1515 K STREET, SUITE 511
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(916) 445-9555

(916) 324-5167

January 16, 1992

Thomas F. Coleman
Center for Personal Rights Advocacy
P. O. Box 65756
Los Angeles, CA 90065

RE: Opinion No. 91-505

Dear Mr. Coleman:

Enclosed is a copy of opinion number 91-505, dated January 16, 1992.

Thank you for your views and comments, which were carefully considered and greatly appreciated.

Sincerely,

DANIEL E. LUNGREN
Attorney General

Anthony S. Da Vigo
ANTHONY S. DA VIGO
Deputy Attorney General

ASD:em
Enclosure