

APPENDIX B

**Application to Register
Family Association with the
California Secretary of State**



State of California

March Hong Eu

Secretary of State

REGISTRATION OF UNINCORPORATED NONPROFIT ASSOCIATION PURSUANT TO CALIFORNIA CORPORATIONS CODE SECTION 21300

Send the signed application with Original signature(s) to the Secretary of State, Special Filings Unit, P.O. Box 944225, Sacramento, CA 94244-2250. Include Filing Fee of \$10.00

Registration For

Name Insignia Alteration Cancellation

1. Association Name

FAMILY OF THOMAS F. COLEMAN AND MICHAEL A. VASQUEZ

2. Street Address

P.O. BOX 65756

3. City and State

LOS ANGELES, CALIF.

4. Zip Code

90065

5. Nature of Alteration (If Any):

N/A

6. Description of Insignia:

N/A

7. Attach Facsimile:

N/A

SAMPLE
APPLICATION

Association includes any lodge, order, beneficial association, fraternal or beneficial society, historical, military, or veterans organization, labor union, foundation, or federation, or any other society, organization, or association, or degree, branch, subordinate lodge, or auxiliary thereof.

Insignia includes badge, motto, button, decoration, charm, emblem, or rosette.

Thomas F. Coleman / Michael A. Vasquez 5-5-90
8. Signature(s) Date

(For Office Use Only)

ASSOCIATION NAME/INSIGNIA

Reg. No. _____

THOMAS F. COLEMAN / MICHAEL A. VASQUEZ

Type Name, Include Title

FAMILY CO-MANAGERS

9. Return Acknowledgement To: (Type or Print)

Name

Address

City

State

Zip Code

THOMAS F. COLEMAN
MICHAEL A. VASQUEZ
P.O. BOX 65756
LOS ANGELES, CA. 90065

WARNING: Do not list anyone without their express permission. All adults who are listed should sign the application. FOR LEGAL ADVICE, CONSULT AN ATTORNEY.

POSSIBLE DISCLAIMER TO WRITE ON
REVERSE SIDE OF APPLICANT'S COPY
OF FAMILY REGISTRATION FORM

Disclaimers

"Financial Obligations. By registering as a family association, the parties do not intend to create financial obligations to each other that did not already exist prior to the signing of this application. Also, this application shall not be considered as evidence of a preexisting financial obligation, if any, between the parties.

"Business Transactions. This association (as an entity) will not engage in business activities or services, borrow money, hold property in its name, or seek tax exempt status."

Dated _____

Signed _____
Family Co-Manager

Signed _____
Family Co-Manager

APPENDIX C

**Certificate of Registration
of Family Association**



State of California

OFFICE OF THE SECRETARY OF STATE



Association
Reg. No. _____

CERTIFICATE OF REGISTRATION OF UNINCORPORATED NONPROFIT ASSOCIATION

I, MARCH FONG EU, Secretary of State of the State of California, do hereby certify that in accordance with the application filed in this office the ASSOCIATION named below has been registered.

Name of Association _____ Family of _____

Address _____

Date of Registration _____



IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this

24th day of May, 1990

March Fong Eu

Secretary of State

APPENDIX D

**Applications to Register
Unincorporated Nonprofit Associations
in Other Jurisdictions**

MICHIGAN DEPARTMENT OF COMMERCE — CORPORATION AND SECURITIES BUREAU												
(FOR BUREAU USE ONLY)							Date Received					
IDENTIFICATION NUMBER							M			—		

APPLICATION FOR REGISTRATION OF INSIGNIA
(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 281, Public Acts of 1927, the undersigned executes the following Application:

1. The name of the association, lodge, order, society, union or other entity applying for the registration is:
2. The business address of the applicant named in item 1 is:

3. Application is made to register a:

<small>(enter one of the following words: badge, button, decoration, charm, name, emblem, rosette, or identify other insignia)</small>
4. Describe, in words, any design including lettering styles, colors, words, etc. which are an inherent part of the badge, button, decoration, charm, name, emblem, rosette, or other insignia:

5. The registration shall be for the use, benefit and on behalf of all associations, degrees, branches, subordinate lodges and auxiliaries of said association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof and the individual members and those who thereafter become members thereof, throughout the State of Michigan.

This application is executed this _____ day of _____, 19____ by the chief officer or officers of the applicant acting in an official capacity for the applicant.

(Signature)

(Type or print name and title)

(Signature)

(Type or print name and title)

(Signature)

(Type or print name and title)

Name of person or organization remitting fees: _____

Preparer's name and business telephone number: _____

INFORMATION AND INSTRUCTIONS

1. Submit one original copy of this document. Upon registration a Certificate of Registration will be forwarded to the address appearing in item 2. Since this application will be retained on microfilm, it is important that the filing be legible. Documents with poor black and white contrast, or otherwise illegible, will be rejected.
2. This application is to be used pursuant to the Act by an association, lodge, order, fraternal society, beneficial association, fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation or any other society, organization, or association, degree, branch, subordinate lodge or auxiliary thereof for the purpose of registering its name, badge, button, decoration, charm, emblem, rosette, or other insignia.
3. A facsimile, duplicate or copy of the item being registered must accompany this form.
4. Item 4 - Describe the insignia as fully as possible including any design or pictorial features. If extra space is needed, continue on an attachment.
5. This application must be signed in ink by the chief officer or officers of the applicant:
6. FEES: Filing fee (Make remittance payable to State of Michigan) \$5.00
7. Mail form and fee to:

Michigan Department of Commerce
Corporation and Securities Bureau
Corporation Division
P.O. Box 30054
6546 Mercantile Way
Lansing, MI 48909
Telephone: (517) 334-6302

ORIGINAL APPLICATION TO REGISTER AN INSIGNIA

OR NAME

1. Your petitioner is _____
with its place of business located _____
in the City of _____ County of _____
and State of _____.
2. Your petitioner desires to register a name or insignia used by it in the conduct of some of its affairs.
3. Your petitioner desires to register the same in accordance with the provisions of Title 56, Chapter 2, of the Revised Statutes.
4. The name or insignia to be registered is _____
5. Said designation has no particular form or preconceived design, but consists solely of the said words arranged as above stated; to wit: _____

it being the intention that such designation shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, etc., and auxiliaries of such organization throughout the State of New Jersey, in accordance with the provisions of Title 56, Chapter 2-2, of the Revised Statutes.

IN WITNESS WHEREOF, _____
has caused these presents to be signed by its
President and attested by its Secretary, this
_____ day of _____
19____.

President's signature

Attest:

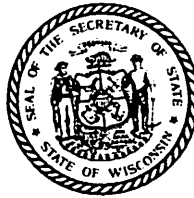
Secretary's signature

Mail this form, in duplicate, with three facsimilies of the insignia/name together with a check for \$50.00 and a self-address envelope to:

Trademark Section
Department of State
Division of Commercial Recording
CN 453
Trenton, NJ 08625

OFFICE LOCATION:

30 W. MIFFLIN ST.
10th FLOOR
MADISON, WI 53703
TELEPHONE: (608) 266-5653



MAILING ADDRESS:

SECRETARY OF STATE
TRADEMARK RECORDS
P.O. BOX 7848
MADISON, WI 53707

SECRETARY OF STATE
STATE OF WISCONSIN

FILING FEE \$15.00

APPLICATION FOR REGISTRATION OF MARKS
(For original or renewal registration)

Per Chapter 132, Wisconsin Statutes
Make check payable to Secretary of State; registration is effective for 10 years.

1. REGISTRANT: (Check ONE only)

- A CORPORATION (print EXACT corporate name) _____
(A foreign business corporation must be licensed to do business in Wisconsin per sec. 180.801, Wis. Stats. before this registration can be granted.)
- A SOLE PROPRIETOR (one individual--print name of person) _____
- A PARTNERSHIP (show name of partnership AND list names of all general partners) _____
- OTHER (such as labor unions, associations, etc.--print name) _____

2. Describe the type of business and goods for which this registration will be used:

3. REGISTRANT'S mailing address: _____
c/o Street
_____ Daytime Telephone (_____) _____
City State Zip

The certificate of registration will be mailed to the above address, unless another is specified here:

_____ c/o Street City State Zip

4. A "mark" is defined in s. 132.001(2) of the Wisconsin Statutes to mean "a label, trademark, trade name, term, design, pattern, model, device, shopmark, drawing, specification, designation or form of advertisement that is adopted or used by any person to designate, make known or distinguish any goods or service as having been made, prepared or provided by that person and that is registered by that person under s. 132.01."

A trade name may be word(s) in any form, size, color or style of lettering, identifying the name of a business and its goodwill; a trademark, label, etc., may be words, symbols or combinations of both with a distinctive appearance, identifying goods or services.

A. If the mark you wish to register is a trade name, print the word(s) here:

B. If the mark you wish to register is NOT a trade name, enclose two samples and describe the registration clearly with a written description (what does the registration look like?) _____

Dr. Nora J. Baladerian
Mental Health Consultants
P.O. Box "T"
Culver City, CA 90231-1690
(213) 391-2420

DECEMBER 13, 1990
STATEMENT AT PRESS CONFERENCE
STATE OFFICE BUILDING
LOS ANGELES, CALIFORNIA

**SOME PSYCHOLOGICAL BENEFITS OF
REGISTERING AS A FAMILY**

by

Nora J. Baladerian, Ph.D.
Licensed Psychologist

ABSTRACT: The structure of one's family may vary from one's concept of "ideal" - although within it one feels loved and secure. Validation of the diversity of family forms that exist in the community provides important psychological benefits, including a sense of belonging, community acceptance, personal pride and self-confidence. Family Registration serves as a symbol of this validation. With the Certificate of Registration, families of all structural variations can finally feel that they are fully participating members of their society, free from "second-class" status.

Members of families that do not conform to the stereotypical nuclear family, have for years been subjugated to a "second class" status by societal attitudes. These negative attitudes, are, in turn, internalized by the members of these family structures.

Negative attitudes are reinforced by the development and usage of pejorative adjectives attached to family, such as:

"broken" home, "unmarried" couple,
"illegitimate" child, "adopted" children, etc.

These, in turn, become epithets on the playground. The members of these families are made to feel "less than", and a sense of personal pride and belonging are compromised or lost. With an emphasis on the important family status, i.e. home, couple, child, children, a great deal can be gained psychologically for each family member, as well as the family as a whole.

Variety in family constellations is now the norm, and no family constellation constitutes the majority family form. According to the world-renowned pediatrician Dr. Benjamin Spock, "the important factors that make a person grow up happy and outgoing are having parents who thoroughly enjoy and approve of him...", NOT the blood, marriage, adoptive or consensual framework of that family. Further, as we continue the life cycle

APPENDIX E:

as adults, our sense of fulfillment and happiness are sourced in belonging to a family that meets our own personal needs and values.

The process of Family Registration can help contribute to the family members' self-esteem, both by today's public recognition and demonstration of respect by the community, and the receipt of the Certificate from the State. Thus, members of diverse types of family structures can experience a sense that their community views their family structure as VALID, POSITIVE, FUNCTIONAL AND IMPORTANT.

As we have seen recently, the importance of self-esteem pervades all areas of one's life, from values, to educational and vocational, social and personal achievement. Since the basic fiber of our culture is the family - the validation of one's family can not be over emphasized.

Language regarding various family types that pit one family form against another serves no positive function. Today's celebration of, and demonstration of positive regard for the family diversity we have in our community, is an important evolutionary step in our progress as a culture. Hopefully, negative attitudes strengthened by negative language will be reduced, and attacks on one family type can be easily refuted by a child with strong personal value, and the back-up of a Certificate of Registration.

Psychologically, the devaluing that we have experienced to date has contributed to depression, feelings of isolation, not belonging, and reduced self worth, bringing increased suicide, homicide, drug use and gang membership...living on the "fringes" of the "approved" society. Replacing de-valuing with valuing will have tremendous psychological benefit for the members of the family as a smaller unit, and the society as the greater whole.

According to psychologist Dr. Sol Gordon, "The primary needs for love, belongingness, safety, security, self-esteem and respect come before all others. The basic characteristic of these needs is that they can be fulfilled only from an outside source." This illustrates the vital importance of respect and valuing coming from one's community.

Internationally respected family therapist Dr. Salvador Minuchin, has written:

"In all cultures, the family imprints its members with selfhood. Human experience of identity has two elements" a sense of belonging and a sense of being separate. ...Man has survived in all societies by belonging to social aggregates. In different cultures these aggregates vary in their level of organization and differentiation. As societies grow more complex and new skills are required, societal structures are differentiated.

"In the face of...changes, modern man still adheres to a set of values that belong to a different society, one in which the boundaries between the family and the extrafamilial were clearly delineated. The adherence to an outmoded model leads to the labeling of many situations that are clearly transitional as pathological and pathogenic. The touchstone for family life is still the legendary 'and so they were married and lived happily ever after.' It is no wonder that any family falls short of this ideal.

"The occidental world is in a state of transition, and the family, which must always accommodate to society, is changing with it. But because of transitional difficulties, the family's major psychosocial task- to support its members- has become more important than ever. Only the family, society's smallest unit, can change and yet maintain enough continuity to rear children who will not be 'strangers in a strange land', who will be rooted firmly enough to grow and adapt."

The recognition of family diversity that we are celebrating today, is another step in the constant evolution of the human being - and the society in which we live. This is best reflected in the words of historian Dr. Jacob Bronowski who wrote:

"Evolution is founded in variety and creates diversity; and of all animals, man is most creative because he carries and expresses the largest store of variety. Every attempt to make us uniform, biologically, emotionally, or intellectually, is a betrayal of the evolutionary thrust that has made man its apex."

This paper was prepared by Nora J. Baladerian, Ph.D., a psychologist and family therapist in private practice at the Beverly Hills Counseling Center, and founder of Mental Health Consultants. She has served as a member and researcher with the Governor's Commission on Personal Privacy and Co-chair of the L.A. City Task Force on Family Diversity. Her areas of work focus on issues of family life for families in distress, poverty, Latino families & families with persons with disabilities.

CITATIONS:

- Bronowski, Jacob, The Ascent of Man, 1973, Little, Brown & Company, Page 400
Gordon, Sol, Psychology for You, 1974, Oxford Book Company, Pages 134, 143
Minuchin, Salvador, Families and Family Therapy, Harvard University Press, 1974, Pages 46-47
Spock, Benjamin, Baby and Child Care, Pocket Books, Inc., 1966, Page 576



social services union

american federation of nurses

SEIU local 535

STATEMENT OF PHIL ANSELL, SENIOR FIELD REPRESENTATIVE
SOCIAL SERVICES UNION/AMERICAN FEDERATION OF NURSES, LOCAL 535,
SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

FAMILY REGISTRATION PROCEDURE PRESS CONFERENCE
DECEMBER 13, 1990

In recent years, the structure of the American family has changed and with it the needs of those families. For most working people, family-related benefits -such as dependent health insurance, family sick leave, and bereavement leave- are provided by the employer. For this reason, our Union and many others have sought to negotiate an expanded definition of family as a means to extend job-related family benefits to today's families, as they actually exist.

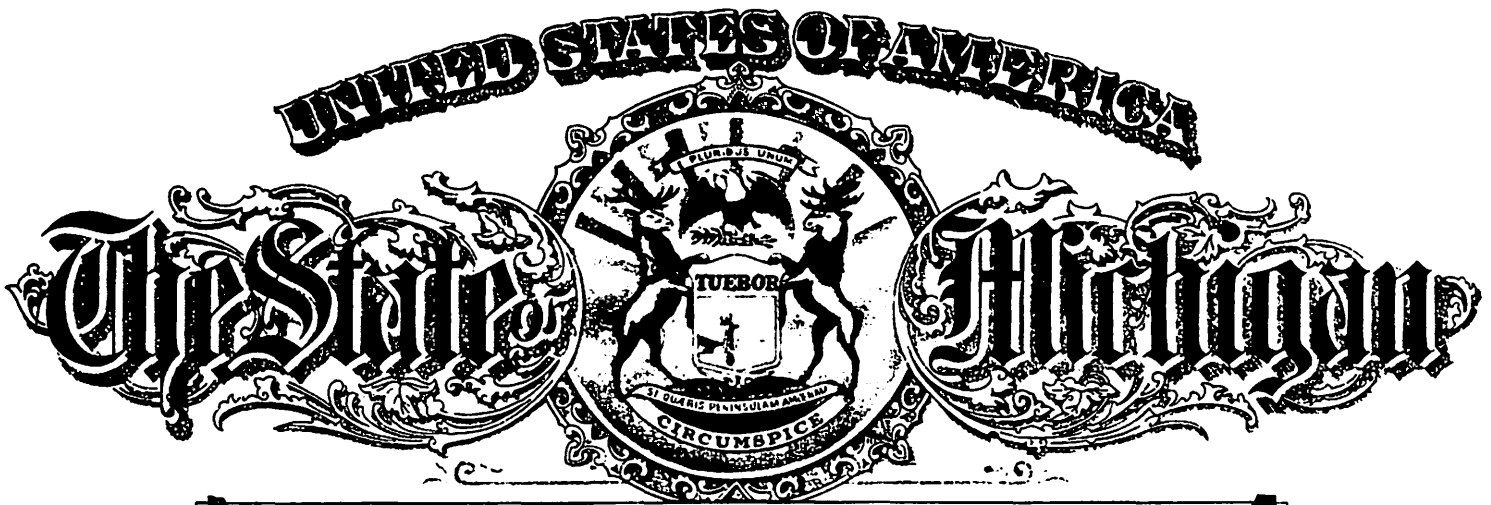
In this context, the family registration procedure is a major step toward meeting the needs of diverse families. This procedure offers a statewide mechanism for individuals to gain official recognition of their family composition, whatever that may be. While not conferring any benefits automatically, this registration procedure will be the foundation for the future extension of job-related benefits to today's diverse families. Employers have consistently raised the issue of registration in collective bargaining discussions regarding the extension of employee benefits to family members other than an employee's legal spouse or biological children. This procedure will eliminate administrative obstacles and thereby facilitate future progress in this area.

PAm:opeiu#29afl-cio,clc..DOMPTNR.DOC (A) 901205

548 south spring st. #630 • los angeles, ca 90013 • (213) 622-5660

other offices located in sacramento • san jose • fresno • oakland • santa barbara • san diego
affiliated with service employees international union afl-cio • clc

APPENDIX F:



Michigan Department of Commerce

Lansing, Michigan

This is to Certify That

the name FAMILY OF CATHERINE JEAN SWEENEY, KELLY MICHAEL SWEENEY, MATTHEW MARTIN SWEENEY, AND CARLY MICHELLE SWEENEY of the Family of Cathcrine Jean Sweeney, Kelly Michael Sweeney, Matthew Martin Sweeney, and Carly Michelle Sweeney located at _____ was registered in this office on the 6th of December, 1990, in conformity with Act 281, Public Acts of 1927, as amended. I further certify that a search of our records shows no conflict between this registration and the registration of any other name, badge, button, decoration, charm, emblem, rosette, or other insignia made pursuant to the Act. ID - M93-077.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 6th day of December, 19 90

Leroy S. Meyer Director

THURSDAY, DECEMBER 13, 1990

The Word 'Family' Gains New Meaning

■ **Relationships:** California will now sell a certificate to unrelated people recognizing their status as a household unit. The registration has no tax or legal consequences, but may provide other advantages.

By LAURIE BECKLUND
TIMES STAFF WRITER

People seeking to be recognized as a family unit can now register with the state of California under a novel system that supporters say could benefit thousands of diverse households, including gay couples, foster parents and step-families.

For a \$10 filing fee, any family—traditional or not—can receive an ornate color certificate bearing a gold state seal that declares the household an association called the "Family of [Doe]," a spokesman for the secretary of state's office said Wednesday.

The registration, however, has no known tax or legal consequences and confers no automatic benefits beyond the sentimental, according to Anthony Miller, chief deputy secretary of state.

It may, however, help step-parents in case of medical emergencies involving their children, assist domestic partners in obtaining hospital visiting rights and serve as a psychological boost to foster children who may feel keenly the lack of a family identity, said Thomas F. Coleman, an attorney and adjunct professor of family diversity at USC who conceived the idea.

The certificates may also be shown to health clubs, frequent flier programs, and insurance companies to help qualify for "family discounts," Coleman said.

In registering, families declare themselves "unincorporated nonprofit associations" under an existing section of the California



ELLEN JASKOL / Los Angeles Times

This Torrance group is registered with the California secretary of state as a family unit, although it includes two women who are children of other parents. Beppy and John Reynaert are shown with sons, Brian and Henry, and Pamela C. Petrou and Kyeong Chang. Beppy Reynaert says: "We take care of [the women] because their parents can't."

Corporations Code that is now used by such groups as fraternities, garden clubs, and homeowners associations.

"A certificate of registration is a tool that will help families gain recognition and economic benefits in addition to the psychological benefits and personal self-esteem that comes along with social recognition," said Coleman, who has served on several government task forces on changing family configurations in California and the nation.

While the secretary of state merely keeps track of the certificates and does not have

any authority to verify family units, Coleman said families may use the documents to establish proof of their relationships. He suggested that people keep reduced copies in their wallets.

Coleman submitted a lengthy report to Secretary of State March Fong Eu on the idea two months ago, Miller said. After studying the proposal, Eu declared it a "creative and valid use of existing law."

If the idea catches on, Miller added, it could become a revenue-producer for the state. The state makes a \$5 profit on each certificate.

Seven families, ranging from a gay couple in San Diego County to a foster family in Torrance have already been registered.

"This was a chance to somehow tell the whole world that we consider ourselves a family," said John Brown, 40, of Silver Lake, who took in three Guatemala-born boys three

years ago and is now their legal guardian. Because they are still close to their mother, a migrant laborer, he has not adopted the boys. "It's hard for guardian parents because people think in terms of traditional mother-father relationships.

Because of changing economic, social and demographic factors, many children and adults wind up living in households that function as a family, but have no papers to prove it.

Only 15% of the households in the United States now match the once-standard defini-

FAMILY: A New Meaning

tion of a family as a working husband, homemaker wife, and children, studies show. California families particularly those in Los Angeles, are even more diverse.

Just 22% of households in the city are composed of a heterosexual married couples and children, according to a report issued in 1988 by the city's Task Force on Family Diversity. Another 22% are married couples without children.

That means a large number of households—55% in Los Angeles and 42% in California—are people living alone, adult siblings or other blood relatives living together, roommates, single-parent families, unmarried couples living together, and other configurations.

Debbie Deem and James Riley of the San Jose area have lived together for nine years. Deem, 39, is a crime victim advocate with a nonprofit agency. Through her work, she said, she has seen wife and child abuse take place under the umbrella of a marriage certificate. She said she also has seen many unhappy marriages, and decided for philosophical reasons that she did not want to marry the man she loves.

Two years ago, she said, she moved from Alaska to Arizona, where she applied for a job as a probation officer and found, to her astonishment, that despite extensive experience she could not get the job because Arizona was one of several states in which by cohabitation by unmarried couples remains illegal.

"I'd always been told if you go to school, work hard, get good grades, doors will open up," she said. "Instead, it got slammed. I was being called a sex offender when I'd worked hard to put people like that in jail."

She and Riley moved to California, heard about Coleman's idea, and decided to register.

"It was a way of doing something positive after our negative experience," she said. "I wanted more validation from society than what I had had before. We just got a copy of the certificate and celebrated. It's the best I've felt in two years."

California is the first state in the country to register such families. But, Coleman said, at least six other states—Oregon, Michigan, Wisconsin, New Jersey, Virginia and West Virginia—have similar procedures.

If successful, the current use of the corporations code could substitute for the often-controversial ballot measures promoted by homosexual and lesbian groups to register gay marriages at city halls.

Coleman said he hopes it will also help establish individuals as family members so they might reap benefits from the more than 1,600 California statutes that use the term "family," sometimes loosely.

For example, a new business license is not required if the business is carried on by a surviving family member. Credit unions may only lend money to members and their families. A victim's surviving family member may receive restitution from a convicted defendant. But none of those statutes, he said, defines family member.

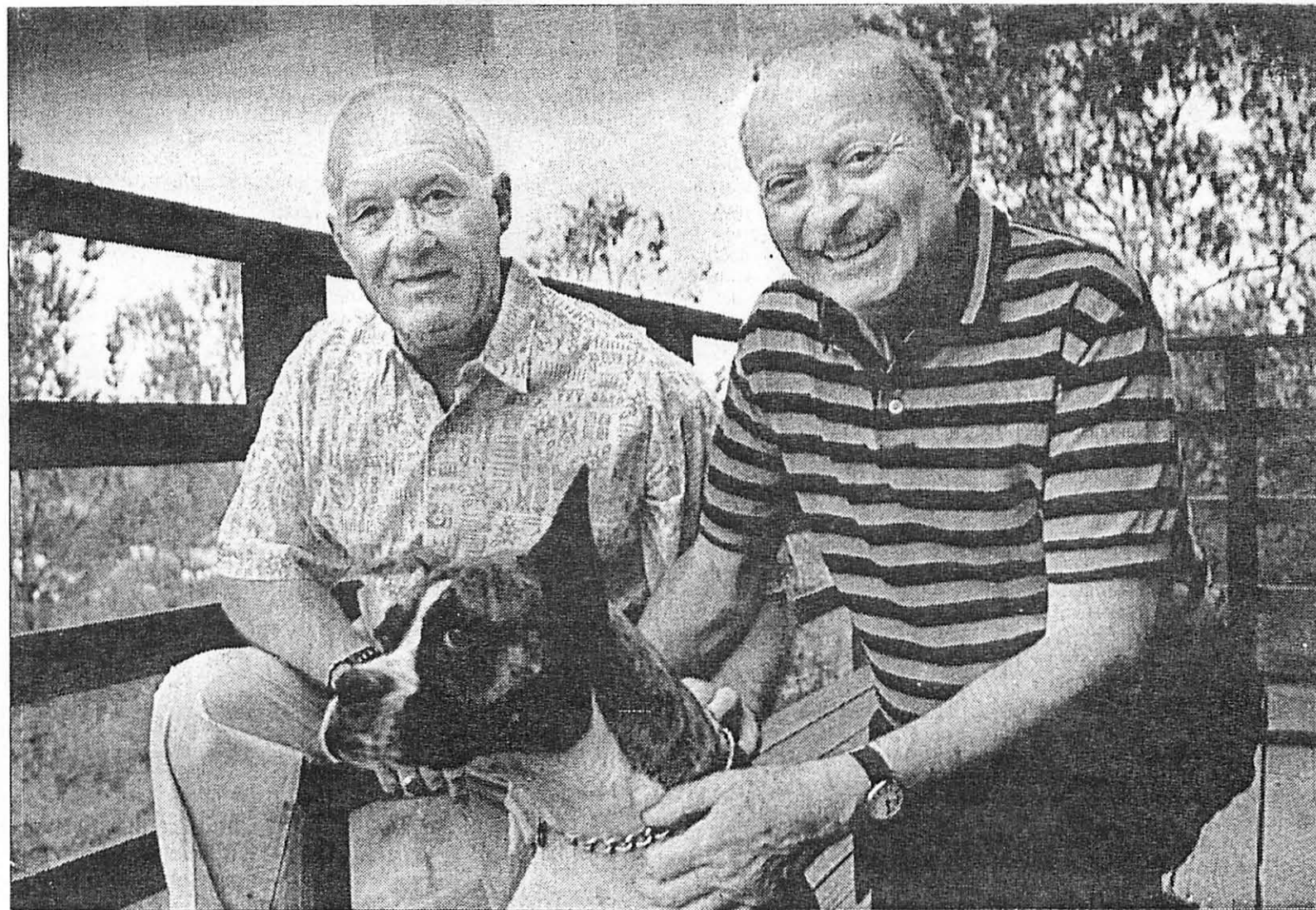
Herb King, 72, a consulting industrial engineer, and C. Stanley Mahan, 67, an electronic data processing specialist, are a retired gay couple who built a home together outside Vista, in San Diego County, 22 years ago.

"I was closeted during my entire employed career," said King. "But I've shared my life with another man for 32 years. We own property together. I feel that we should be legally entitled to whatever prerequisites and other good things in life are available to people like me whose only difference is that they are of opposite sex and have a marriage certificate."

King said he also believes the registry will benefit elderly heterosexual couples who live together without marrying for fear of losing Social Security and pension benefits.

Cathy Howard, 34, an instructional aide in Victorville, and her husband Pat, 49, also applied for a certificate for the benefit of her biological daughter, Shannon Gibson.

"My daughter has a good relationship with her dad," Howard said. "What brought our interest to this project was that my husband could not and would not adopt Shannon because Shannon's father is a very big part of her life. But if anything ever happened to me, or if I were out of town, my husband would have nothing showing they even know each other because their names are different."



DON BARTLETTI / Los Angeles Times

C. Stanley Mahan, left, and Herb King, retired gay couple at the home that they built together near Vista in San Diego County.

FAMILY: A New Meaning

tion of a family as a working husband, homemaker wife, and children, studies show. California families particularly those in Los Angeles, are even more diverse.

Just 22% of households in the city are composed of a heterosexual married couples and children, according to a report issued in 1988 by the city's Task Force on Family Diversity. Another 22% are married couples without children.

That means a large number of households—55% in Los Angeles and 42% in California—are people living alone, adult siblings or other blood relatives living together, roommates, single-parent families, unmarried couples living together, and other configurations.

Debbie Deem and James Riley of the San Jose area have lived together for nine years. Deem, 39, is a crime victim advocate with a nonprofit agency. Through her work, she said, she has seen wife and child abuse take place under the umbrella of a marriage certificate. She said she also has seen many unhappy marriages, and decided for philosophical reasons that she did not want to marry the man she loves.

Two years ago, she said, she moved from Alaska to Arizona, where she applied for a job as a probation officer and found, to her astonishment, that despite extensive experience she could not get the job because Arizona was one of several states in which by cohabitation by unmarried couples remains illegal.

"I'd always been told if you go to school, work hard, get good grades, doors will open up," she said. "Instead, it got slammed. I was being called a sex offender when I'd worked hard to put people like that in jail."

She and Riley moved to California, heard about Coleman's idea, and decided to register.

"It was a way of doing something positive after our negative experience," she said. "I wanted more validation from society than what I had had before. We just got a copy of the certificate and celebrated. It's the best I've felt in two years."

California is the first state in the country to register such families. But, Coleman said, at least six other states—Oregon, Michigan, Wisconsin, New Jersey, Virginia and West Virginia—have similar procedures.

If successful, the current use of the corporations code could substitute for the often-controversial ballot measures promoted by homosexual and lesbian groups to register gay marriages at city halls.

Coleman said he hopes it will also help establish individuals as family members so they might reap benefits from the more than 1,600 California statutes that use the term "family," sometimes loosely.

For example, a new business license is not required if the business is carried on by a surviving family member. Credit unions may only lend money to members and their families. A victim's surviving family member may receive restitution from a convicted defendant. But none of those statutes, he said, defines family member.

San Francisco Examiner



Saturday

DECEMBER 15, 1990

NATIONAL
EDITION

State lets gay couples register

Nontraditional
families can receive
formal certificate;
rights advocates call
it 'a breakthrough'

By Tupper Hull
EXAMINER SACRAMENTO BUREAU

SACRAMENTO — Nontraditional families, including gay and lesbian couples, now may have their unions formally recognized by the state of California under a new policy.

For a \$10 filing fee, families of almost any description can declare themselves "unincorporated non-profit associations" under current state law and receive an ornate certificate affirming their union's existence.

Though the registration document has little legal significance, advocates for gay rights say it could ultimately lead to a wide range of rights not now afforded gay and lesbian couples.

And mental-health experts say it could provide important psychological support to families that fall outside of the traditional definitions, such as married couples with foster children, families with stepchildren, single-parent families, and couples who do not wish to become married.

"It means nothing, but it means a lot," said Thomas F. Coleman, a Los Angeles lawyer and University of Southern California professor of family diversity. "It doesn't say anything, but it's a breakthrough."

It was Coleman, who served as executive director of the Commission on Personal Privacy empaneled in 1982 by then-Gov. Jerry Brown, who persuaded Secretary of State March Fong Eu to allow families to register their associations.

So far, seven families have quietly registered with the state under the new policy.

Eu's office said Thursday it had done nothing more than allow a slight broadening of existing law. Officials also said the office made no effort to verify the nature of the family or its motivations.

Still, that small change in interpretation was greeted with enthusiasm by gay rights advocate T.J. Anthony, an aide to San Francisco Supervisor Richard Hongisto.

"It's an exciting application of the law for everyone," Anthony said. "This is the foundation for what could become case law that ultimately leads to protection of lesbian and gay families."

Coleman said the registration documents were public records and should not be sought by couples or families who wished to keep their lifestyles private.

'A lot of potential'

There are more than 1,600 references to families in existing state laws, the vast majority of which are not defined, Coleman said.

He said court cases in California and elsewhere had established three general criteria for deciding when two or more people made up a family: what the intentions are of the parties involved, whether they have held themselves out publicly as a family, and whether they function as a family.

Registration with the state would establish the first two of those criteria, Coleman said. The third would be up to a judge or other mediator to determine.

"So there is a lot of potential here," he said. "This is part of an ongoing struggle of nontraditional families to receive support, benefits and recognition they feel they deserve and I think they deserve."

San Francisco voters last month approved Proposition K, an ordinance that allows gay and lesbian couples to record their partnerships with local government agencies. Backers of the measure expect it eventually will permit city health insurance benefits to include the same-sex partners of city employees.

And San Francisco Assemblyman John Burton, a Democrat, has announced he will introduce legislation early next year allowing same-sex couples to marry in California. Though supported by a majority of San Francisco supervisors, the measure faces difficult, if not insurmountable, opposition in the Legislature.

Nontraditional Families Register In California in Bid to Get Benefits

By TAMAR LEWIN

In what they hope will be the first step toward gaining benefits like health insurance and pensions, people who think of themselves as families but may not meet the traditional definition are registering with the State of California.

There have been seven such registrations, under a law originally intended for fraternal associations. They include two homosexual couples, an unmarried heterosexual couple, a stepfamily, a married couple with different last names and a family made up of a man and three refugee boys for whom he is the legal guardian.

"It was a great thing to get, especially for the kids, who see it as an important document," said John Brown, a Los Angeles man who is the guardian for three Guatemalan boys who had been living on their own and struggling to support themselves. "We're framing it and putting it on the wall, and it seems to recognize us as people whose lives are intertwined far more than guardianship, which feels like a technical thing."

At this point, registration is a purely symbolic act, conferring no legal benefit or right. But those who are seeking recognition of nontraditional families say that having an official registry is

an important step in winning benefits, which also include bereavement leave and family membership rates.

"Whenever we talk to employers about providing benefits to nontraditional families, they say that they wouldn't know who to consider a family, since there is no state recognition for anything other than married couples and their biological children," said Thomas F. Coleman, executive director of the Los Angeles-based Family Diversity Project, an advocacy group that held a news conference on Thursday to announce the registration process. "Now that we will have that recognition, we can move on to the next question, of actually getting the benefits."

He said providing nontraditional families with a way to get a state registration certificate will encourage employers to grant them the same benefits as other families.

Some people who have received their certificates say they are thinking of ways to use them. Herb King, a 72-year-old San Diego man who recently got a certificate with Stan Mahan, 66, his partner of 31 years, said he planned to write to the American Association of Retired Persons to ask whether the certificate would entitle him to join the group as Mr. Mahan's spouse.

"There are all kinds of situations in which this might be useful, because even though we've had a close personal relationship for 31 years, we're looked at in the eyes of the law as strangers" Mr. King said. "This may be helpful in getting hospital visiting privileges when only kin are allowed, or when one of us dies. It's not going to revolutionize the world, but it is a good psychological boost."

Mr. Coleman said that laws similar to the California statute are on the books in Oregon, Michigan, New Jersey, Oregon, Virginia, West Virginia and Wisconsin, and that families in Michigan and Wisconsin are in the process of applying.

The California statute regarding the registration of unincorporated nonprofit associations is written broadly.

"Under the law as written, we have no choice but to accept these filings from any group of people that call themselves a family association," said Anthony Miller, chief deputy secretary of state. "We have not the slightest idea how many people are going to use this to make a statement to themselves or society at large that they consider themselves a family. Frankly, we hope it's a lot, because there's a \$10 filing fee, and this state can use the money."

The registration procedure is simple. Applicants just fill out a form giving the name of their association, like "Family of John Doe and Mary Roe."

Small-scale efforts to gain recognition to nontraditional families have been undertaken in several municipalities.

The issue of what constitutes a family is also being argued in an increasing number of lawsuits.

Nontraditional families in California are registering with the state, under a law intended to register lodges and fraternal societies, in what many hope is a first step in winning such benefits as health insurance and pensions. A10

National Edition

Wednesday, December 19, 1990

Unmarried Couples Use Law To Put Relationships on Record

By Elizabeth Groat Associated Press

SAN FRANCISCO — Homosexual and unmarried couples as well as traditional families are using a new interpretation of an old state law to put their relationships on the record.

All it takes is \$10 for two or more people to register with the California secretary of state, declaring themselves an unincorporated, non-profit association with the word "family" in the title.

To make it really official, the association receives a colorful certificate with a gold state seal.

"What we're seeing here is a creative use of a longstanding division of law," said Tony Miller, chief deputy secretary of state. "People are gathering together,

It should be noted that the Secretary of State does not register 'families' as such. The Secretary of State does, however, as required by law, register the names of associations which may include, as part of their name, the word 'family.'

— March Fong Eu, Secretary of State

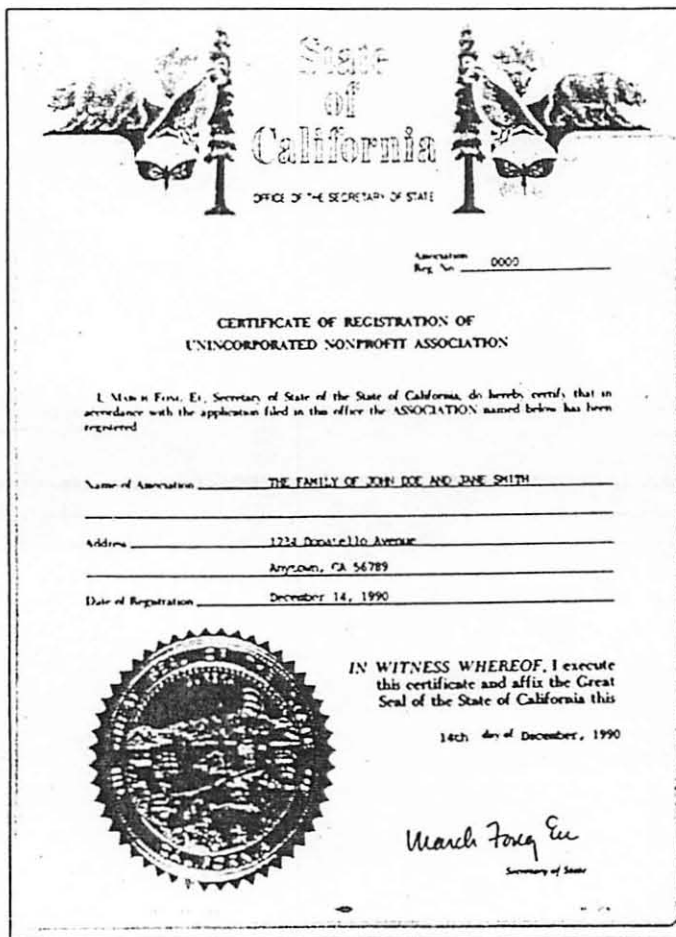
forming an association, calling it a family and registering it with the secretary of state."

But news of the registration was met with anger by some religious officials, particularly in San Francisco, where voters last month approved a domestic partners ordinance amid controversy.

Nuclear Family

"Of course I'm opposed to however they set up domestic partners [since] their ultimate aim is to change the marriage laws," said the Rev. Charles McLhenny of the First Orthodox Presbyterian Church, an outspoken opponent of the San Francisco ordinance.

Once the state government legislates the definition of the nuclear family or creates a family that will vie with the nuclear family, then you essentially destroy the essential building blocks of a



he had found a way to register families, he tested his theory by filing his own application.

Coleman would not discuss his private life, saying he only used his family to see if his notion would work. It did.

First Applications

The first handful of applications after that had an uneven reception by the office of Secretary of State March Fong Eu. Coleman later persuaded Eu's office with legal arguments. Thus far seven applications have been accepted and more are pending.

"It should be noted that the Secretary of State does not register 'families' as such," Eu said this week in a prepared statement. "The Secretary of State does, however, as required by law, register the names of associations which may include, as part of their name, the word 'family.'"

Miller, Eu's chief deputy, said the state, which makes a \$5 profit on each

'What we're seeing here is a creative use of a longstanding division of law. People are gathering together, forming an association, calling it a family and registering it with the secretary of state.'

— Tony Miller, Chief Deputy Secretary of State

OLD LAW — Using an innovative interpretation of a 60-year-old state law, traditional and non-traditional families, including gay, lesbian and unmarried couples, can register their unions. For \$10, a couple will receive from the Secretary of State's office a certificate with a gold seal that does not confer any legal rights, but officially declares them an unincorporated, non-profit association with the word family in the title.

family," he said Friday.

Other California municipalities allow unmarried domestic partners to register, among them Berkeley and Laguna Beach. San Mateo County employees can register domestic partners for all benefits except health insurance.

The idea to use a 60-year-old law to register unions was conceived by Los Angeles attorney Thomas F. Coleman, former executive director of the Califor-

nia Commission on Personal Privacy. The panel was convened in 1980 by then-Gov. Edmund G. "Jerry" Brown Jr.

During the past 10 years, reports and studies have documented discrimination against non-traditional families and the need for reform, Coleman said. Registration is a first step, he said.

After some research Coleman found the law regarding associations. Believ-

filing, is "delighted to have the money."

Coleman hopes that association status can enable family associations to enjoy benefits afforded traditional families, such as in frequent flyer programs, health clubs and insurance.

At least one hospital, Cedars-Sinai in Los Angeles, said it would honor the certificates as proof of immediate family for visitation rights, he said.

Oregon, Michigan, New Jersey, Virginia, West Virginia and Wisconsin have similar association registration laws on their books, Coleman said.

"The question is, will their secretaries of state allow it to be used that way?" he said. "This registration is helpful to nuclear families. It's helpful to everyone."

Not Kin but Kindred, Pair Will Put Official Seal on Their Status

TUESDAY

DECEMBER 25, 1990

■ **Relationships:** Using an old state law in a new way, widowed lifelong friends will have themselves declared a family.

By LYNN SMITH
TIMES STAFF WRITER

LA PALMA—Anne Burke and Toby Weiner say they were friends from the cradle. Both daughters of Brooklyn cab-drivers, they played together before Toby became a paraplegic. And after.

Then Anne's family moved and they lost touch for about 35 years, while each married and had children. The women reunited 15 years ago in Orange County, picking up their friendship right where they left off.

This year, Anne and Toby—now both widowed—moved in together in Anne's La Palma home.

Their relationship has been like family, they say, but better.

"My mother used to tell me you can choose your friends but not your family," Toby said. "I look at it as if I have chosen my family. I could not have made a better choice."

To tell the world how they feel, the women plan to file papers with the State of California declaring themselves an association called "family." They will be among Californians who have begun to use an old law in a new way to express their feelings about the unrelated people they live with.

The 1933 law allowed people to register the names of their unincorporated nonprofit associations. But as of last month, non-traditional families, led by Tom Coleman, a Los Angeles attorney who heads the Family Diversity Project, have been registering themselves as "The Family of. . ."

"There are a lot of people sharing space together these days that indeed consider themselves as family members and their situation to be a family," said Tony Miller, chief deputy secretary of state. "Being able to tell each other, their friends and neighbors and the entire world that they consider themselves a family is important to a lot of people."

Miller said he is unaware of any legal benefits that accrue from the gold-sealed certificate. But since news of Coleman's movement broke in mid-December, hundreds of Californians have called to obtain registration forms.



ROBERT LACHMAN / Los Angeles Times

Anne Burke, left, and Toby Weiner plan to show the world that they are family.

So far, he said, he has received only one complaint, from a "constituent alleging this is recognizing homosexual couples, and giving them the status of family."

Though no one investigates the nature of the relationships, Miller said requests have come from a mixture of gay couples, extended families, stepfamilies and others. In addition, Coleman said he has received inquiries from an alcohol recovery house and unmarried heterosexual couples of all ages.

Burke and Weiner hope the certificate will enable them to visit one another under family rules in case of emergency hospital stays.

But most of all, it will help verify what they already know: that "family" is not limited to parents and children.

Says Toby, 52: "Family to me is knowing someone is always there for you when you need them and being there for them. It's anticipating, not waiting to be asked. Not, 'If you need something, let me know.'"

Says Anne, 53: "When you're a child, you're thrown into a family situation. When you're married, the family again is thrust on you. But here are two adults, each one of us we know we have to make changes. And yet we want to and we do it."

"This is better than a blood family, because we are close. We enjoy doing the same things, yet we give each other our space."

It began 15 years ago with a phone call.

Toby had moved from New York to Anaheim with her husband, Hal. A childhood spinal injury had left her paralyzed from the waist down. Her husband had had polio. They sought to escape the harsh winters that made transportation dangerous for people in wheelchairs.

But Toby was miserable, so far from her friends and parents, and decided to call her long-ago neighbor, Anne, on the suggestion of her parents who knew Anne's location.

"I get a phone call after 10 at night," Anne recalled. "I get a little upset at night. I don't like my kids' friends calling after 10."

"I said, 'Hello?' She said, 'Anne you don't remember me, but my name's Toby.'"

"I said, 'My God! The little girl in the wheelchair!'"

"We picked up our friendship as though it never ended." Anne, an office supervisor for H & R Block, and her husband, Sanford, a manager for Unocal, lived in a five-bedroom La Palma home with their six children, including triplets. Toby, a secretary, and Hal, an auditor,

FAMILY

lived with their son Eric in an apartment.

The families visited one another and socialized at Temple Beth Emet, though the Weiners were more religious than the Burkes. They watched each other's children grow into young adults.

Then five years ago, Toby's husband died of cancer. "Anne was there for me every step of the way," she said. "I never had to ask for anything. She was always two steps ahead of me, knowing what I needed."

Then Toby and her son moved to Florida. But when her son decided to move back to New York, Toby came back to Orange County. Anne was there to meet her plane.

Cherishing her independence, Toby found an apartment in Santa Ana and a secretarial job with the IRS.

Then last November, Anne's husband died. Still coming to terms with her own grief, she said, she began to think of Toby. "I needed her emotional support. In a way, she needed emotional support, too."

She worried whether Toby was safe, living in a low-rent neighborhood.

In January, she called her friend. "I said, 'Hey, look. Eventually all my kids will be gone. Your son is 3,000 miles away, why don't you come on in here and we'll live together.'"

"My entire family said, 'Mom, why didn't you think of this earlier?' It's as though we were the last to know," she laughed.

Anne began the necessary renovations to accommodate a wheelchair: ramps, handrails, larger doorways, new kitchen cabinets and roll-out shelves.

Curiously, despite the myriad arrangements, Anne said she never thinks of her friend as disabled. "It's a strange phenomenon," she said.

In July, Toby moved into a downstairs bedroom of the two-story, five-bedroom home.

Since then, there have been adjustments, mostly to ease concerns that Toby's independence would be threatened.

They learned to share the kitchen. Each has her own telephone—which they often use to call each other just to talk.

They go to movies, take spur-of-the-moment weekend trips to Las Vegas and have gone on an Alaskan cruise. They have other friends, too. One, a divorced man, is Anne's weekly bowling partner. Toby goes along as "the mascot," she says.

When they go out, the pair become feisty activists for disabled rights, challenging ship captains and hotel managers to provide more and better access for wheelchairs.

So far, they cite only one conflict—over how to cook potato *latkes*, a traditional Jewish dish for Hanukkah. "She started mixing the egg with the onion," Anne said. "I like to mix my eggs first."

"I went upstairs and the boys asked me what was wrong. Someone said, 'You know Mom, you're acting like sisters.' Five minutes later, I came down and we talked. That was it."

Anne's children never have resented her, Toby said. In fact, twice, when they have bought homes, they made sure the houses were wheelchair accessible, so Toby could visit along with Anne.

"It's taken time to adjust and we are still adjusting," Anne says. "You have to adjust. You cannot just stay put. Everyone has to grow, no matter how old you are."

They have their differences. Toby is compulsively neat, Anne is more relaxed. Toby likes Danielle Steele, Anne like histories. Anne is the intellectual, Toby outgoing. "But when she's out, she's a bundle of fun," Toby said. "We laugh a lot. We cry a lot."

"We can sense when something

is bothering each other."

Even after five years, Toby said she still misses Hal. "There are times I can't deal with the loneliness, the loss of somebody that knew every part of you and how your brain worked. Somebody who would look at you and say, 'It's OK, babe, everything will be fine, don't worry about it.'"

People often say to Anne that Toby is lucky to have a friend like her.

"You know what my answer is to that," she states flatly. "I'm lucky to have a friend like her."

Toby says, "We're lucky to have each other."

FAMILY

lived with their son Eric in an apartment.

The families visited one another and socialized at Temple Beth Emet, though the Weiners were more religious than the Burkes. They watched each other's children grow into young adults.

Then five years ago, Toby's husband died of cancer. "Anne was there for me every step of the way," she said. "I never had to ask for anything. She was always two steps ahead of me, knowing what I needed."

Then Toby and her son moved to Florida. But when her son decided to move back to New York, Toby came back to Orange County. Anne was there to meet her plane.

Cherishing her independence, Toby found an apartment in Santa Ana and a secretarial job with the IRS.

Then last November, Anne's husband died. Still coming to terms with her own grief, she said, she began to think of Toby. "I needed her emotional support. In a way, she needed emotional support, too."

She worried whether Toby was safe, living in a low-rent neighborhood.

In January, she called her friend. "I said, 'Hey, look. Eventually all my kids will be gone. Your son is 3,000 miles away, why don't you come on in here and we'll live together.'"

"My entire family said, 'Mom, why didn't you think of this earlier?' It's as though we were the last to know," she laughed.

Anne began the necessary renovations to accommodate a wheelchair: ramps, handrails, larger doorways, new kitchen cabinets and roll-out shelves.

Curiously, despite the myriad arrangements, Anne said she never thinks of her friend as disabled. "It's a strange phenomenon," she said.

In July, Toby moved into a downstairs bedroom of the two-story, five-bedroom home.

Since then, there have been adjustments, mostly to ease concerns that Toby's independence would be threatened.

They learned to share the kitchen. Each has her own telephone—which they often use to call each other just to talk.

They go to movies, take spur-of-the-moment weekend trips to Las Vegas and have gone on an Alaskan cruise. They have other friends, too. One, a divorced man, is Anne's weekly bowling partner. Toby goes along as "the mascot," she says.

When they go out, the pair become feisty activists for disabled rights, challenging ship captains and hotel managers to provide more and better access for wheelchairs.

So far, they cite only one conflict—over how to cook potato *latkes*, a traditional Jewish dish for Hanukkah. "She started mixing the egg with the onion," Anne said. "I like to mix my eggs first."

"I went upstairs and the boys asked me what was wrong. Someone said, 'You know Mom, you're acting like sisters.' Five minutes later, I came down and we talked. That was it."

Anne's children never have resented her, Toby said. In fact, twice, when they have bought homes, they made sure the houses were wheelchair accessible, so Toby could visit along with Anne.

"It's taken time to adjust and we are still adjusting," Anne says. "You have to adjust. You cannot just stay put. Everyone has to grow, no matter how old you are."

They have their differences. Toby is compulsively neat, Anne is more relaxed. Toby likes Danielle Steele, Anne like histories. Anne is the intellectual, Toby outgoing. "But when she's out, she's a bundle of fun," Toby said. "We laugh a lot. We cry a lot."

"We can sense when something

is bothering each other."

Even after five years, Toby said she still misses Hal. "There are times I can't deal with the loneliness, the loss of somebody that knew every part of you and how your brain worked. Somebody who would look at you and say, 'It's OK, babe, everything will be fine, don't worry about it.'"

People often say to Anne that Toby is lucky to have a friend like her.

"You know what my answer is to that," she states flatly. "I'm lucky to have a friend like her."

Toby says, "We're lucky to have each other."

SACRAMENTO ADDRESS
STATE CAPITOL ROOM 5081
SACRAMENTO, CA 95814-4994
TELEPHONE: (916) 445-5976

DISTRICT OFFICES
401 NORTH BRAND
SUITE 424
GLENDALE, CA 91203-2364
TELEPHONE: (818) 247-7021

P.O. BOX 784
LANCASTER, CA 93534-0784
TELEPHONE: (805) 945-0586

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:

COMMITTEES:

BANKING AND COMMERCE
VICE CHAIRMAN
ENERGY AND PUBLIC UTILITIES
VICE CHAIRMAN
SUBCOMMITTEE ON ENERGY COSTS
& INDUSTRIAL DEVELOPMENT
LOCAL GOVERNMENT
TRANSPORTATION

JOINT COMMITTEES:

ENERGY REGULATION
& THE ENVIRONMENT
LEGISLATIVE RETIREMENT
MENTAL HEALTH RESEARCH
RULES
STATE'S ECONOMY

SELECT COMMITTEES:

CALIFORNIA'S WINE INDUSTRY
CHILDREN AND YOUTH
PACIFIC RIM

(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.)

Jack I. Horton
Ann Mackcy
Chief Deputies

James L. Ashford
Jerry L. Bassett
John T. Studebaker
Jimmie Wing

David D. Alves
John A. Corzine
C. David Dickerson
Robert Cullen Duffy
Robert D. Gronke
Robert G. Miller
Verne L. Oliver
Tracy O. Powell II
Marguerite Roth
Michael H. Upson
Daniel A. Weitzman
Christopher Zirkle
Principal Deputies

State Capitol, Suite 3021
Sacramento, CA 95814-4996
(916) 445-3057
Telecopier: (916) 324-6311

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
February 19, 1991

Gerard Ross Adams
Martin L. Anderson
Paul Antilla
Charles C. Asbill
Linda J. Atwood
Joe J. Ayaia
Raneene P. Belisle
Diane F. Boyer-Vine
Eileen J. Buxton
Gwynnae L. Byrd
Emilia Cutrer
Ben E. Dale
Jeffrey A. DeLand
Clinton J. deWitt
Frances S. Dorbin
Maureen S. Dunn
Sharon R. Fisher
John Fossette
Harvey J. Foster
Clay Fuller
Patricia R. Gates
Alvin D. Gress
Jana T. Harrington
Baldev S. Heir
Cecilia Jordan
David B. Judson

Michael Kelly
Michael J. Kersten
L. Douglas Kinney
S. Lynne Klein
Victor Kozieski
Eve B. Krotinger
Diana G. Lim
Jannifer Loomis
Rcmulo I. Lopez
Kirk S. Louie
James A. Marsala
Francisco A. Martin
Peter Meinicoe
John A. Moger
Sharon Reilly
Michael B. Salerno
Penny Schutz
William K. Stark
Ellen Sward
Mark Franklin Terry
Jeff Thom
Elizabeth M. Warf
Richard B. Weisberg
Thomas D. Whelan
Belinda Whitsett
Debra J. Zidich

Deputies

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

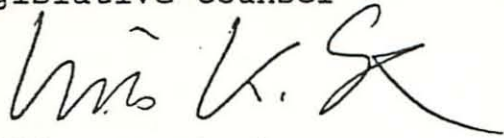
the association does not create the association but only registers its name. Thus, the registration does not create or increase the peril. It is the creation of the association by its members that creates the peril, if any, not the registration of the association's name.

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

SACRAMENTO
STATE CAPITOL BUILDING
SACRAMENTO, CA 95814-4994
TELEPHONE (916) 445-5870

DISTRICT OFFICES
401 NORTH BRAND
SUITE 424
GLENDALE, CA 91203-2364
TELEPHONE (818) 247-7021

P.O. BOX 784
LANCASTER, CA 93534-0784
TELEPHONE (805) 945-0566

California State Senate



NEWTON R. RUSSELL
SENATOR, TWENTY-FIRST DISTRICT

MINORITY WHIP

February 20, 1991

COMMITTEES

BANKING AND COMMERCE
VICE CHAIRMAN
ENERGY AND PUBLIC UTILITIES
VICE CHAIRMAN
SUBCOMMITTEE ON ENERGY COSTS
& INDUSTRIAL DEVELOPMENT
LOCAL GOVERNMENT
TRANSPORTATION

JOINT COMMITTEES:

ENERGY REGULATION
& THE ENVIRONMENT
LEGISLATIVE RETIREMENT
MENTAL HEALTH RESEARCH
RULES
STATES ECONOMY

SELECT COMMITTEES:

CALIFORNIA'S WINE INDUSTRY
CHILDREN AND YOUTH
PACIFIC RIM

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 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."

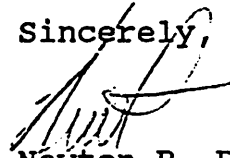
In your letter of December 20, 1990, you informed me that you were compelled under State law to issue these certificates. The issuance of Certificates as described above have been determined to be in violation of existing California State law

Honorable March Fong Eu
February 20, 1991
Page 2

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

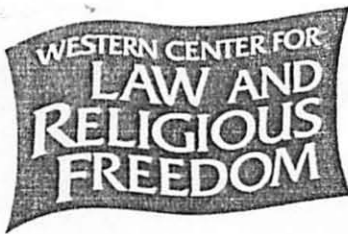
Please let me know what action you intend to take.

Sincerely,



Newton R. Russell
Senator, 21st District

NRR:mz



March 4, 1991

WESTERN CENTER FOR LAW
AND RELIGIOUS FREEDOM

INTERSTATE OFFICE AND
WCLRF NORTHERN CALIFORNIA
1211 H STREET, SUITE A
SACRAMENTO, CALIFORNIA 95814
TELEPHONE: (916) 447-4111
FAX: (916) 447-5191

DAVID L. LLEWELLYN, JR.
PRESIDENT AND SPECIAL COUNSEL

MICHAEL D. IMFELD
GENERAL COUNSEL

REGIONAL OFFICES:

WCLRF SOUTHERN CALIFORNIA
3855 EAST LA PALMA, SUITE 124
ANAHEIM, CALIFORNIA 92807
TELEPHONE: (714) 630-8366
FAX: (714) 630-8466

SAMUEL B. CASEY
SENIOR COUNSEL

JANET M. LARUE
SPECIAL COUNSEL

WCLRF WESTERN WASHINGTON
3700 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 682-0565
FAX: (206) 625-1052

WILLIAM H. ELLIS
CORPORATE COUNSEL AND
SPECIAL COUNSEL

WCLRF EASTERN WASHINGTON
WEST 1402 BROADWAY AVENUE
SPOKANE, WASHINGTON 99201
TELEPHONE: (509) 326-7500
FAX: (509) 326-7503

GREGORY CASEY
SPECIAL COUNSEL

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

Letter to Secretary of State re "Family Associations," page 1

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 Commission¹ 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.)

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

²Mr. 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

³Mr. 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.



Office of the Secretary of State
March Fong Eu

Executive Office
1230 J Street
Sacramento, California 95814

(916) 445-8371

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

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 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.

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 21307 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".

###

SACRAMENTO ADDRESS
STATE CAPITOL ROOM 8061
SACRAMENTO, CA 95814-4994
TELEPHONE: (916) 445-8978

DISTRICT OFFICES
401 NORTH BRAND
SUITE 424
GLENDALE, CA 91203-2364
TELEPHONE: (818) 247-7021

P.O. BOX 784
LANCASTER, CA 93534-0784
TELEPHONE: (805) 948-0866

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:

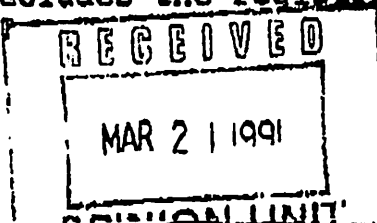
I am writing to request an opinion from the office of the Attorney General on the legality of the practice of the Secretary of State issuing unincorporated nonprofit association registration certificates to individuals who register themselves as "families" and then use the registration as official evidence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



COMMITTEES:

BANKING AND COMMERCE
VICE CHAIRMAN
ENERGY AND PUBLIC UTILITIES
VICE CHAIRMAN
SUBCOMMITTEE ON ENERGY COSTS
& INDUSTRIAL DEVELOPMENT
LOCAL GOVERNMENT
TRANSPORTATION

JOINT COMMITTEES:

ENERGY REGULATION
& THE ENVIRONMENT
LEGISLATIVE RETIREMENT
MENTAL HEALTH RESEARCH
RULES
STATE'S ECONOMY

SELECT COMMITTEES:

CALIFORNIA'S WINE INDUSTRY
CHILDREN AND YOUTH
PACIFIC RIM

MAR 20 1991

Received by
ATTORNEY GENERAL

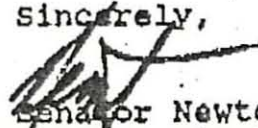
(3) Whether the meaning of "association" reasonably includes individuals desiring to declare themselves as "families"?

(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

Chairs Emeritus
Laurie Ostrow
Stanley K. Sheinbaum
Allan K. Jonas
Burt Lancaster
Irving Lichtenstein, M.D.

Chair
Danny Goldberg

President
Norman Lear

Vice Presidents
Alan Bergman
Madeline Goodwin
Bob L. Johnson
Allan K. Jonas
Frederick M. Nicholas
Eve Slaff

Treasurer
Louis Colen

Secretary
Irma Colen

Assistant Secretary-Treasurer
Lloyd M. Smith

Of Counsel
Sidney Machtinger
Robert Ornstein
Alan Sieroty
John V. Tunney

Board of Directors

Ruth Abraham
I.B. Adelman
Lucy Adelman
Susan Adelman
Richard Alfieri
C. Richard Allen
Marilyn Bergman
Jay Boberg
Bob Burkett
Thomas Carter
Robert Cohn
Barbara Corday
Richard Dreyfuss
Jane Egly
Sandy Elster
Joyce S. Fiske
Leo Frumkin
Sherry Frumkin
Bondie Gambrell
Alan L. Gleitsman
Gary Goldberg
Robert Greenwald
Susan A. Grode
Barry Hirsch
Dorothy Jonas
Jimi Kaufer
Burt Lancaster
Irving Lichtenstein, M.D.
John McTernan
Mark Magidson
Shirley Magidson
Gary Mandinach
Sol Marcus
Steven Markoff
Lee Masters
Faye Nuell Mayo
Robin Meadow
Virginia Olinicy
Laurie Ostrow
Max Palevsky
Judy Balaban Quine
Andrea Rich
Mark Rosenberg
Richard Rosenzweig
Joe Roth
Pat Roth
Arthur Allan Seidelman
Marc M. Seltzer
Robert Shutan
Larry Sprenger
David F. Stein
John T. Tate, Jr.
Florence Temkin
June Tyre
Phillip Wain
Paula Weinstein
JoAnne Widzer
Irwin Winkler
Robert Wise
Chic Wolf
Peg Yorkin
Beatrice Zeiger

Executive Director
Ramona Ripston

Legal Director
Paul Hoffman

Associate Directors
Linda K. Hunt
Sandra Jones

Legal Director Emeritus
Fred Okrand

General Counsel
Mark D. Rosenbaum

Senior Staff Counsel
Jon W. Davidson
Carol Sobel

Counsel
Rebecca Jurado
Tracy Rice
Michael Subit
Robin S. Toma


ACLU FOUNDATION
OF SOUTHERN CALIFORNIA

633 South Shatto Place
Los Angeles, California 90005
(213) 487-1720
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 initiating litigation to remove this existing cloud. We are presently researching the feasibility 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

Display 1991-1992 Bill Text - INFORMATION
BILL NUMBER: ACA 28

BILL TEXT

AMENDED IN ASSEMBLY APRIL 23, 1991

INTRODUCED BY Assembly Member Leslie

MARCH 8, 1991

Assembly Constitutional Amendment No. 28 A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 1 of , and by adding Section 31 to, Article I thereof, relating to inalienable families rights .

LEGISLATIVE COUNSEL'S DIGEST

ACA 28, as amended, Leslie. Inalienable rights: family integrity Families .

The California Constitution provides that all people are by nature free and independent and have inalienable rights and that these rights include enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

This measure would include among these inalienable rights the preservation of the integrity of one's family.

The measure also would enact the Family Bill of Rights, which would provide certain rights for families, as defined.

Vote: 2/3. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

Resolved by the Assembly, of the State of California, the Senate thereof concurring,

WHEREAS, Civilizations are established and cultures are preserved and transmitted primarily by families, from parent to children to grandchildren, from generation to generation; and

WHEREAS, The respect of society and the state for the marriage relationship between husbands and wives and for the right and responsibility of parents, rather than the government, to determine and direct the care and education of their children has been a

Display 1991-1992 Bill Text - INFORMATION
BILL NUMBER: ACA 28

BILL TEXT

fundamental premise of American culture from colonial days to the present; and

WHEREAS, The recognition of the natural and inalienable rights and responsibilities between a man and a woman in marriage and between parents and their children, by birth and adoption, has been so basic and fundamental to American law and government that at the time of the drafting of our state and federal constitutions the protection of these invaluable foundations of society was presumed rather than expressly delineated in the law; and

WHEREAS, Now, ever-expanding government increasingly intrudes into marriage and parent-child relationships, and advocates of a new moral order seek to obtain legal recognition and tax-supported benefits for various relationships between people of the same and opposite sexes which have been reserved legally and historically in our state and nation for the natural institutions of marriage and parenthood; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California at its 1991-92 Regular Session commencing on the third day of December 1990, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that Section 1 of Article I of the Constitution of the State be amended as follows:

First That Section 1 of Article I thereof, is amended to read:

SECTION 1. All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, preserving the integrity of one's family, and pursuing and obtaining safety, happiness, and privacy.

Second That Section 31 is added to Article I thereof, to read:

SEC. 31. (a) This section shall be known and may be cited as the "Family Bill of Rights."

(b) A family is a natural and legal relationship entitled to the highest constitutional recognition and protections.

(c) "Marriage" is a legal relationship defined by law and available only to individuals of the opposite sex.

(d) All laws and principles of law in this state shall be interpreted and applied in a manner to promote and protect the integrity of the family and the rights of parents to determine and direct the care and education of their dependent children, provided that mature minors shall not be compelled to undergo medical treatment against their objections unless necessary to sustain life.

(e) In all legal proceedings in this state, the actions of one or both parents concerning their children shall be presumed to be lawful and proper. This presumption may be overcome only by (1) factual evidence beyond a reasonable doubt in criminal proceedings or in any proceeding to remove a child permanently from the custody of the parents, or by (2) clear and convincing factual evidence in all other proceedings. This subdivision does not

Display 1991-1992 Bill Text - INFORMATION
BILL NUMBER: ACA 28

BILL TEXT

exclude opinion testimony or any other relevant evidence which is based on the facts of the case, provided that all relevant facts have first been admitted into evidence.

(f) Parents whose children are enrolled in public schools are entitled (1) to review before implementation, and to observe the implementation of, the curriculum, methods, and materials used in the education of their children, (2) to withdraw their children from any classes or courses to which the parent objects on the grounds of morality, religion, or parental values, and (3) to receive reasonable accommodation to their objections to curriculum, methods, and materials on all grounds.

(g) The enumeration of rights in this section shall not be construed to deny or disparage other rights retained by the people which do not conflict with the rights enumerated. The provisions of this section are self-executing and apply to all governmental activities, laws, regulations, and legal proceedings of every kind, including, but not limited to, educational, administrative, regulatory, civil, criminal, and juvenile proceedings.

(h) For the purposes of this section, the following terms have the following meanings:

(1) "Family" means (A) a man and woman related by marriage, and (B) parents and their children, natural and adopted.

(2) "Parental values" means the values derived from the interest of a parent in guiding the wholesome upbringing and education of his or her child.

(3) "Reasonable accommodation" means a balancing of the interests of parents in guiding the education of their children, against the interests of the public schools in the effective, equitable, and economical education of students, without imposing undue hardship on the public school.

CORRECTIONS

Title -- Line 5.

COMMISSION ON PERSONAL PRIVACY



December, 1982

The Honorable Edmund G. Brown Jr., Governor of California;

The Honorable David A. Roberti, President pro Tempore of the Senate
and Members of the Senate;

The Honorable Willie L. Brown, Speaker of the Assembly
and Members of the Assembly;

The People of California:

Pursuant to the mandate of Executive Order B74-80 (issued October 9, 1980), the Commission on Personal Privacy is pleased to present this Report of the Commission's work and recommendations to the Governor, Legislature, and People of the state. The Commission was charged with the investigation of invasions of the right of personal privacy and discrimination based upon sexual orientation in both the public and private sectors, the identification of existing remedies, and the suggestion of legislative, administrative, and other action where present measures provide inadequate protection. The concern underlying the Report is the safeguarding of human potential as the state's most valuable resource.

Of all the issues facing the state and the nation, none is more important or more bipartisan than the right of privacy. Privacy is seen as the insulating factor protecting individuals from unwarranted intrusions into their personal lives. This insulation becomes more critical as we shift from an industrial to an informational society in which modern advances in technology make our personal information, heretofore not easily accessible, readily available to persons within government and other institutions.

The right of privacy includes not only the right to be free from unjustified interference by government and other institutions, but also the right to make decisions affecting one's own identity and one's relationships with others. If freedom has any meaning, it must include "autonomous control over the development and expression of one's intellect, interests, tastes, and personality." This is the essence of the right of personal privacy.

We are not unmindful of the serious fiscal constraints currently being experienced by the people of this state and their institutions. Yet the Commission believes that a postponement in dealing with the issues contained in this Report may result in an irretrievable loss of what has been aptly labelled "the right to be let alone--the most comprehensive of rights and the right most valued by civilized men."

The Commission also recognizes that our most valued freedoms can remain available to the majority only by ensuring their protection for the minority. The safeguarding of one's personal information, of one's privacy in one's home and bedroom, and of one's decisions in formulating one's own personality and relationships, must necessarily depend, in part, upon protections against discrimination based upon sexual orientation. In addition, such discrimination limits the full participation in and contribution to society of a significant portion of the state's population.

We hope the Report will serve two functions: first, inform and help educate the people of this state and others as to the right of personal privacy; and, second, operate as a catalyst for implementation of whatever protections are still needed to make that right a practical reality.

Sincerely,

A handwritten signature in black ink, appearing to read "Burt Pines".

Burt Pines
Chairperson, Commission on Personal Privacy



