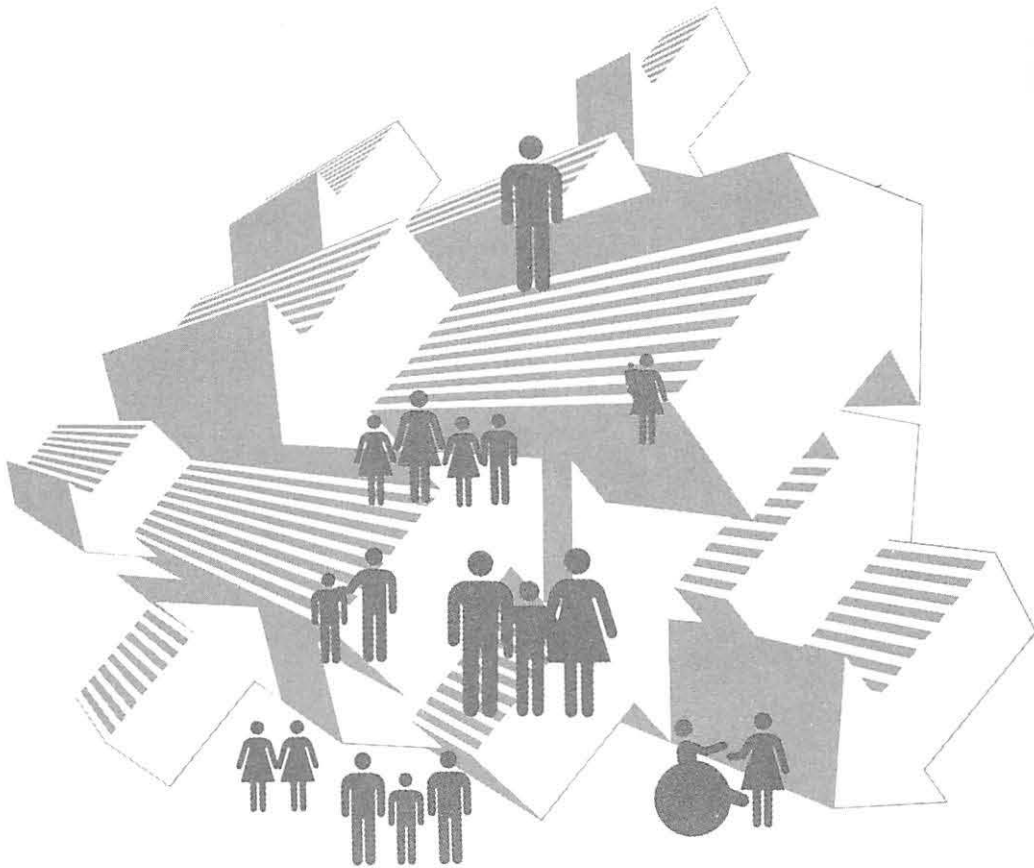


Public Policy



Definition of Family



PUBLIC POLICY AND THE DEFINITION OF FAMILY

“Family” may mean different things under different circumstances. The family, for instance, may be a 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.

— California Supreme Court
*Moore Shipbuilding Corporation
v. Industrial Accident Commission*
(1921) 185 Cal. 200, 196 P. 257

In the recent past, Americans had no reason to debate over the definition of “family.” Everyone knew that families were created either by marriage or birth. Since the families of nearly all adults were cut from the same social pattern, everyone’s experience of family neatly coincided with their intellectual understanding of this venerable institution. Family, of course, was then an unambiguous term which referred to so-called “nuclear” relationships (husband-wife-child) and extended kinship networks. Not only were most families cut from the same social pattern, they were also homogeneous in other significant ways, including race, religion, and ethnic background.

Although the average person held a rather narrow experiential and intellectual view of the traditional family, American jurisprudence was a bit more flexible. For example, adoption was developed by the legal system to accommodate childless couples seeking entry into the nuclear family mainstream. Occasionally, and for some rather limited purposes, the law even stretched the definition of family beyond the blood-marriage-adoption model to encompass servants or other household members. Thus, in this bygone era, the nuclear family was the social norm, albeit a norm which permitted a few minor exceptions.

Today, the picture is changed dramatically. What formerly was considered the exception now has become the rule. Since contemporary families exist in many shapes and sizes, family terminology has become complex. People refer to nuclear families, mixed marriages, childless couples, step families, blended families, binuclear families, interracial families, dual-career families, foster families, extended families, single-parent families, and unmarried couples or so-called domestic partners. Moreover, a significant portion of the population now comprises each of these variations.

Society is experiencing an uneasy tension between present experience and leftover social dogma. The nuclear family — once a normative reality — today is simply another variation, and a minority one at that; as a perceived ideal, the nuclear family is now a myth. Thus, since most people want to be “normal,” many feel somewhat guilty because their nonnuclear living arrangements have missed the mark, deviating from the lingering perception of the social norm.

This report does not seek to supplant old ideals with new ones. Neither does it intend to substitute one definitional straightjacket with another. Rather, the mandate and goal of the Task Force is to examine the realities of contemporary family living. Definitions will help describe what actually exists; for the Task Force, definitions are tools for understanding, passive reflections rather than a shoehorn designed to make one size fit all.

As this report demonstrates, people live in a wide range of committed family relationships. Fortunately, the law and society’s institutions are flexible enough to accommodate this reality.

Family Definitions from a Legal Perspective

The definition of family, like the definition of any term, is a function of the perspective of the definer, the context in which the term is used, and the user’s purpose in employing the term.

A layperson understands family in one way.¹ When he or she refers to family in a social conversation, a dictionary definition may suffice. However, a member of the clergy may understand family in quite another way.² If a pastor is delivering a sermon intended to reinforce institutional religious teachings, the term may be used in a restrictive manner which is designed to promote adherence to a designated model. On the other hand, a sociologist doing field research may be less concerned with a preconceived model than with actual and observable social functions involved in family relationships.³ In contrast to both the model and pragmatic definers, a philosopher may resist defining family at all, probing instead at the concept and its possible expansions and contractions.⁴

Although the Task Force on Family Diversity has considered these various perspectives in examining the definition of family, this report adopts a perspective that is inclusive rather than exclusive and, therefore, most useful for development of public policy and the administration of law.

Laws are intended to further public policies. Public policy is generally based upon the public interest or the public good, admittedly vague concepts not subject to precise definition.⁵

Questions of public policy are primarily determined by the legislative branch. However, when neither the Constitution nor the Legislature has spoken on a subject, the courts may declare public policy.⁶ A judicial declaration of public policy is not necessarily dependent on technicalities but is often based on the “spirit” of the law.⁷

The federal government plays a very limited role in the area of family law since domestic relations is an area which our constitutional federalism regards as the province of state law.⁸ Therefore, California’s public policy regarding the definition of family must be gleaned from the state Constitution, acts of the state Legislature, decisions of the state courts, and, to some extent, the actions of state and local administrative agencies. Since California’s public policy has been developed within the larger system of American jurisprudence, however, it is generally consistent with the flexibility inherent in American family law.

The word “family” is derived from the Latin term “familia,” which means household, i.e., the body of persons living in one housing unit under a common head.⁹ In American jurisprudence, family conveys the notion of some relationship, by blood or otherwise, which is of a permanent and domestic character. When the word is used without reference to an established household, family may refer to all blood relatives or, in a more restricted sense, to spouses and their children.¹⁰

Generally, the central characteristic underlying family is mutual interdependency. Thus, family may refer to a group of unmarried persons not related by blood, but who are living together and who have

some obligation, either legal or moral, for the care and welfare of one another.¹¹

The definition of family has been litigated in American courts in many factual contexts: single-family zoning, restrictive covenants, insurance policy exclusions, property tax exemptions, anti-nepotism regulations, and victim's compensation, to name a few. Whether American courts have granted or denied family status has depended on the particular circumstances of each case. For example, in some cases, disabled persons, delinquent teenagers, or religious novices living in group homes have been considered families. Courts also have ruled that communal living arrangements involving student roommates in dorms or fraternity houses were not family relationships.

With this legal background in mind, the Task Force has examined California's public policies involving family definitions. Those policies are grounded in constitutional considerations, legislative enactments, administrative decisions, and judicial interpretations.

Constitutional Considerations

The California Constitution declares that all people are by nature free and independent and have inalienable rights. Among these enumerated fundamental rights are enjoying and defending life and liberty, acquiring, possessing, and protecting property, as well as pursuing and obtaining safety, happiness, and privacy.¹²

Although the California Constitution and the United States Constitution have many similar provisions, the state Constitution is a document of independent force. State court judges have the personal obligation to exercise independent legal judgment in ascertaining the meaning and application of state constitutional provisions — even if their interpretations vary from the views expressed by the United States Supreme Court as to the meaning and scope of similar federal constitutional provisions.¹³ Consistent with federalist principles, the State of California, through its own state Constitution, is free to confer greater rights upon its citizens than the federal Constitution generally confers upon Americans.¹⁴

Since family law traditionally has been a matter of state, rather than federal, regulation, public policies governing family definitions are also grounded in the state Constitution. The California Supreme Court has the ultimate responsibility to define the meaning and scope of state constitutional provisions, and it does so when asked to decide specific cases and controversies. Some of these cases and controversies have involved the definition of family.

One such case was decided by the Supreme Court in 1980.¹⁵ The City of Santa Barbara adopted a zoning ordinance that restricted who could live in areas zoned for single families. The city defined a single family unit to include any size group related by blood, marriage, or adoption, as well as a group of unrelated occupants not exceeding five persons. The Adamson household violated the rule of five. It consisted of a group of 12 adults living in a 10-bedroom, 6-bathroom mansion. The Adamson householders were a close group with social, economic, and psychological commitments to each other. They lived much as a family would, sharing expenses, rotating chores, eating evening meals together, lending each other emotional support, and often taking vacations together. They regarded their group to be a family.

The Supreme Court termed the Adamson household an "alternate family" because the group's living arrangements achieved many of the personal and practical needs served by traditional family living. The court noted that the group met half of Santa Barbara's definition of family because it was a "single housekeeping unit in a dwelling unit." However, it failed to meet that part of the definition that required residents, if they were greater than five in number, to be related by blood, marriage, or adoption.

In declaring the city's restrictive definition of family violative of Article I, Section 1 of the California Constitution, the Supreme Court cited precedents in New Jersey and New York.¹⁶

Some courts, confronting restrictions similar to the rule-of-five here, have redefined "family" to specify a concept more rationally and substantially related to the legitimate aim of maintaining a family style of living. For example, in New Jersey a valid regulation of single-family dwellings would be "a reasonable number of persons who constitute a *bona fide* single housekeeping unit." *Berger v. State* (1976) 71 N.J. 206. "The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved. Moreover, such a classification system legitimatizes many uses which defeat that goal. . . . As long as a group bears the generic character of a family unit as a relatively permanent household, it should be equally as entitled to occupy a single family dwelling as its biologically related neighbors." *City of White Plains v. Ferraiolo* (1974) 34 N.Y.2d 300, 306.

Thus, the state Constitution protects the right of all Californians to form "alternate" family relationships, i.e., relationships not based on blood, marital, or adoptive ties, and to live with these chosen family members in a single dwelling without undue government interference.

On the other hand, in 1982, the California Supreme Court upheld a state prison regulation limiting overnight visitation with eligible inmates to persons with whom inmates were related by blood, marriage, or adoption. A prisoner claimed he had a long term nonmarital relationship with a woman. The woman and her daughter wanted to participate in the prison's family visitation program. The Department of Corrections, citing its restrictive definition of family, refused. In a three-way split, the majority of the court concluded that public policies favoring administrative efficiency and prison security overrode the inmate's interest in maintaining overnight visitation with his "alternate" family. A majority of the court, however, indicated that the scales of justice may have tipped in the inmate's favor had society provided "alternate" families with a simple method of authenticating their relationships. The court found unacceptable the idea of "mini" trials in which bureaucrats would have to decide which family relationships between prisoners and their potential visitors were authentic and which were not. The two justices whose votes were pivotal to the outcome of the case explained:¹⁷

The definition of "family" in our society has undergone some change in recent years. It has come to mean something far broader than only those individuals who are united by formal marriage. Many individuals are united

by ties as strong as those that unite traditional blood, marriage and adoptive families.

However, the very diversity of the groups of people now commonly referred to as "families" highlights the difficulty that would be created if the prison authorities were required to grant family visits to prisoners who were not married. The prison authorities do have a security interest in prohibiting visits by transients, whose ties to the prisoners may be fleeting or tenuous at best. In the absence of a marriage certificate or a valid out-of-state common law marriage [common law marriage has been abolished in California], it would be extremely difficult for prison officials to distinguish between the valid long-term commitments that constitute a "family" and transient relationships. Further, the evidentiary hearings that such determinations would require would pose a significant administrative burden on prison officials. . . .

In the absence of any reasonable alternative to distinguish between families and nonfamilies, the limitation of family visits to those who are married under the laws of this or another state is a valid restriction.

These and other cases support the individual's constitutionally-based freedom to choose whether to form and maintain a traditional family unit or to live in an alternate family form. Legislative or administrative decisions restricting this freedom of family choice may be invalidated or upheld, depending on the balancing of competing interests. Often the courts defer to legislative and administrative judgments in deciding how to strike the balance.

Legislative Enactments

The California Legislature has found and declared that the family unit is of fundamental importance to society in nurturing its members, passing on values, averting potential social problems, and providing the secure structure in which citizens live out their lives.¹⁸ Through actions on a wide variety of subjects, the Legislature has expressed its judgment that family units can be diverse in their structures. As a result, there is not one uniform definition of family in California law. Instead, there are family *definitions*.

In some contexts, the Legislature has defined family in a restrictive manner. For example, in describing those persons entitled to family allowances pending the administration of estates, the Probate Code uses the traditional blood-marriage-adoption definition.¹⁹ Similarly, the legislatively created veterans-home-purchase program defines "immediate family" as including only a spouse or adopted or natural dependent children.²⁰

Other contexts have merited and received the benefit of broader legislative definitions. In authorizing programs to rehabilitate child molesters who have abused youthful family members, the Penal Code defines family member in terms of being a "member of the household" of the victim.²¹ In providing remedies to persons who suffer violence caused by other family members, the Legislature has defined family in terms of residents of the same household.²² In domestic violence legislation in which the goal is specifically to prevent partner abuse, "family members" include a variety of adult household members, including

spouses, former spouses, and other adults having sexual relations with each other.²³ In the worker's compensation context, the Legislature extends survivor benefits to dependent relatives (blood-marriage-adoption), or to surviving dependent household members of deceased employees.²⁴ Here, the Legislature has reaffirmed the expansive definition of family by rejecting attempts to limit worker's compensation benefits to survivors related to deceased employees only by blood, marriage, or adoption.²⁵

In other situations, the Legislature uses the term family without defining it. For example, in establishing the Victims Restitution Fund, which provides assistance to crime victims and their families, the phrase "member of family" is used without definition.²⁶ In addressing the functions of Conciliation Courts, the Legislature sets a goal of keeping families intact. Here also, family is nowhere defined.²⁷ In these situations, the Legislature may have delegated definitional authority to the administrative and judicial agencies operating these programs.

Although the Legislature is aware that the definition of family varies from context to context, its definitional choices are not beyond critical analysis. For example, in 1986 the Legislature passed a law allowing members of a victim's family to be present during a criminal preliminary hearing that is normally closed to the public. The Legislature evidently determined that the families of victims have a greater interest than the general public in attending preliminary hearings and that the victim has an interest in having his or her family present for emotional support.²⁸ However, the definition of family was limited to the alleged victim's "spouse, parents, legal guardian, children, or siblings."²⁹ This restrictive definition fails to acknowledge the needs of victims whose closest family members do not fall within the definition. For an elderly victim, the only available relative might be a grandchild or nephew or niece who resides with the victim. Under this definition, the lifemate of a gay or lesbian assault victim would have to remain in the hallway while the victim faced the courtroom trauma alone. The expanded "household member" definition of family certainly would have been appropriate in this law. The Legislature's failure to use the expanded definition may very well have been merely an oversight.

This definitional survey shows that the Legislature recognizes diversity in family structures and does not entertain the goal of creating a singular definition. Rather, the term family is defined by the Legislature only as a method of furthering other public policies. While one policy may sometimes call for the use of a narrow definition, another policy may call for an expansive definition. The overriding principle is clear: public policy requires flexibility in the definitional process; the ultimate definition is guided by a keen understanding of the state's ultimate objectives when dealing with a particular problem.

Administrative Discretion

The State of California has a tripartite system of government. Like the federal government, its coequal branches are executive, legislative and judicial. The legislative branch passes laws and declares public policies. The judicial branch, the ultimate authority on constitutional issues, interprets laws in the context of specific cases and controversies. The executive branch, including administrative agencies, administers and enforces laws as passed by the legislative body and interpreted by the courts.

In operating their programs, administrative agencies have broad discretion in adopting rules, regulations, and definitions. Of course,

their discretion is not unlimited; administrators must act within the Constitution,³⁰ and their actions must conform to the will of the Legislature.³¹ However, within these confines, executive agencies are given wide latitude in setting definitional parameters for their operations.³² Very often, the Legislature, after declaring a general policy and fixing a primary standard, will confer upon administrative officers the power to fill in the details necessary to carry out the legislative objectives.³³

In 1982, the California Commission on Personal Privacy examined 96 federal, state, and municipal agencies which utilized the terms "family" or "household" in operating their programs.³⁴ Respondents were asked to indicate whether they used the standard Census Bureau definition of family (blood-marriage-adoption) or broader definitions. Program managers were also asked if their program definition and eligibility criteria included or excluded members of "variable" families, i.e., "two or more persons domiciled in the same household and operating as a single housekeeping unit, who are *not* related by blood, marriage, or adoption." The Privacy Commission survey revealed the following facts:³⁵

- * 75% of respondents were not bound by a definition based solely on blood, marriage, or adoption.
- * The greatest autonomy to adopt broader definitions existed at the municipal level of government.
- * 63.5% of respondents actually served variable families during program year 1981.

The survey showed that administrative discretion was often used to define family in an expanded way.³⁶ For example, in connection with its Child Care Program, the United States Department of Agriculture defined family as a "group of related or non-related individuals who are not residents of an institution or boarding house, but who are living as one economic unit." In its School Health Program, the State Department of Education defined family as "a unit of intimate transacting and interdependent persons who share the same values and goals, responsibility for decisions and resources, and a commitment to one another over time." In its Genetically Handicapped Program, the Monterey County Social Services Department defined family as a "group of individuals who live together on a continuing basis and share their income and expenses and are dependent upon the group's resources." In connection with its Child Protective Services Program, the San Diego County Social Services Department defined family as "primary caretakers, siblings, or significant others living together." The Probation Department of the Tulare County Family Court defined family as including "cohabiting individuals and natural parents (married or unmarried), their offspring, and other significant individuals concerned about children (e.g., grandparents)."

The Privacy Commission survey reported that a substantial majority of administrative agencies had no legal restrictions which prevented them from serving members of "variable" families. Nearly one-fourth of the respondents, however, did conclude that federal or state statutes or regulations prevented them from venturing beyond the traditional blood-marriage-adoption definition of family.³⁷

Flexibility, therefore, is the prevalent pattern which emerges from a study of governmental responses about the definition of family, whether those definitions are formulated by California's judges, legislators, or administrators.

Public Hearing Testimony

The Task Force on Family Diversity received testimony on the subject of defining family.³⁸ Wallace Albertson, President of the Los Angeles Community College Board of Trustees, appeared before the Task Force in her capacity as Commissioner of the California Commission on Personal Privacy, for which she had served as the Chairperson of a subcommittee on Family Relationships.

Her testimony focused on the diversity of family forms and the problems that arise from a misplaced presumption that the traditional nuclear family is the social norm. The study of the Privacy Commission indicated:³⁹

- * A dilemma surrounding the meaning of the word "family" exists both in a sociological/theoretical context and in social work practices.

- * The presumption that "family" means a married, heterosexual couple with children no longer applies to most of the population.

- * Persons whose family forms do not fit this presumed model suffer exclusion from legal, tax, and services protections.

- * The nature and variety of family forms in current society warrants definitions that are inclusive rather than exclusive of nontraditional family forms.

- * The right of personal privacy involves the right of an individual to choose intimate and familial associations without undue restriction.

- * Any definition of family should consider the following elements: continuity of commitment, mutuality of obligation, economic and/or domestic interdependence, as well as love and caring.

The Task Force on Family Diversity has found these points consistent with its overall research into family definitions and has taken them into consideration in determining its recommendations.

Research Team on Legal Definitions

The Task Force on Family Diversity received a topical report from its research team on "Legal Definitions of Family."⁴⁰ That report addresses the impact of legal definitions of family, how these definitions can serve government goals, the compatibility of flexible and traditional definitions, and government's responsibility to families.

Addressing the issue of definitional compatibility, the report stated:⁴¹

[T]he notion of expanding the definition of family, or making the definition flexible to achieve government goals, is not a process suggesting revolution, discarding of traditional values, or offending in morally sensitive areas. There is an important difference between the way family-type groups exist and function every day and what we believe, or feel, a family should be. And it is to the former

set of questions — what are the facts concerning the make-up of families in a given area, such as the City of Los Angeles — upon which we must base our decisions about how government should relate to family units. Legal definitions of family are not attacks on morality or religion; rather, both legal and layman's definitions of family can and do co-exist without [conflict]. The judicial decisions summarized earlier in this report illustrate the non-conflicting nature of the relationship between lay definitions and those created for the legal process. These holdings define family not as an end in itself, but only as a means of advancing specific legal policies.

The report stresses that the concern that government should use family definitions which are tailored to the way people actually live is based on the assumption that government has a positive and affirmative responsibility to encourage and support families. It emphasizes the important public policy goals which are served by the utilization of definitions that reflect the diversity of contemporary family structures:⁴²

Families of all definitions have traditionally cared for society's dependent members, like children, the elderly, the disabled, the sick, and the poor. Families discipline their members, and to the extent they are successful, contribute to the general peacefulness of society. Families live in groups, or neighborhoods, providing stability for surrounding commercial and cultural activities. And on the most personal level, families provide a haven and a source of renewal for those who are their members. Families are a great source of meaning and satisfaction to individuals, and the loss of a family arrangement or relationship can leave individuals disoriented and alienated. If government benefits are unavailable or closely restricted, families can become destabilized and will eventually pose further problems for which governments will have to expend funds. There is a general intuition among scholars, service providers, and ordinary citizens that family destabilization is a major cause of the majority of our society's ills.

The Task Force on Family Diversity urges those who make laws, those who administer them, as well as those who challenge them, to become and remain sensitive to the reality of contemporary family living arrangements. No legitimate secular policy is furthered by rigid adherence to a definition of family which promotes a stereotypical, if not mythical, norm. Rather, the appropriate function of lawmakers and administrators is to adopt policies and operate programs that dispel myths and acknowledge reality.

The Task Force on Family Diversity finds that current public policy favors the adoption of laws and the implementation of programs that support and strengthen families. Demographic trends indicate that family structures are diverse and that this pattern may last indefinitely. Public policy, therefore, is best served by the continuing use of flexible family definitions.

PUBLIC POLICY AND THE DEFINITION OF FAMILY: RECOMMENDATIONS

11. The Task Force recommends that the City Council develop a comprehensive family policy for the City of Los Angeles. A family policy would set standards to assist the Chief Legislative Analyst, Council members, and other city officials in assessing proposed legislation.

12. The Task Force recommends that lawmakers, such as the City Council and the state Legislature, and those with responsibility for drafting and analyzing proposed legislation, such as the Chief Legislative Analyst and City Attorney at the local level and the Legislative Counsel at the state level, should be sensitive to the fact that "family" now is a term of art, capable of many variable definitions. When the term family is used in proposed legislation, the Task Force encourages such officials to consider relevant definitional options and to favor inclusive rather than exclusive terminology.

Public Policy and The Definition of Family: Notes

¹ Green, Matthew, "Defining Family," *Report of the Task Force on Family Diversity: Supplement - Part Two*, p. S-600.

² Donovan, E.H., "Religion and the Family," *Report of the Task Force on Family Diversity: Supplement - Part One*, p. S-547.

³ McCord, Ellen, "Report of the Committee on Family Relationships," *Report of the California Commission on Personal Privacy: Supplement One*, p. 4.

⁴ McDonald, MR, "The Philosophical Definition of 'Family'," *Report of the Task Force on Family Diversity: Supplement - Part Two*, p. S-851.

⁵ *Peterman v. International Brotherhood of Teamsters* (1959) 174 Cal.App.2d 184; *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47.

⁶ *Safeway Stores v. Retail Clerks International Association* (1953) 41 Cal.2d 567.

⁷ *Altschul v. Sayble* (1978) 83 Cal.App.3d 153, 162.

⁸ *Pennoyer v. Neff* (1878) 95 U.S. 714, 734-735.

⁹ "Family," 35 *Corpus Juris Secundum*, p. 935.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Cal. Const., Art. I, Sec. 1.

¹³ *Committee to Defend Reproductive Rights v. Myers* (1982) 29 Cal.3d 252.

¹⁴ *Ibid.*

¹⁵ *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123.

¹⁶ *Ibid.*, at p. 133.

¹⁷ *In re Cummings* (1982) 30 Cal.3d 870, 875.

¹⁸ Welfare and Institutions Code Section 11205.

¹⁹ Probate Code Section 6540.

²⁰ Military and Veterans Code Section 985.

²¹ Penal Code Section 1203.066.

²² Penal Code Section 273.6; Code of Civil Procedure Section 540.

²³ Welfare and Institutions Code Section 18921.

²⁴ Labor Code Section 3503.

²⁵ Assembly Bill 890 (1983).

²⁶ Government Code Section 13960.

²⁷ Code of Civil Procedure Section 1730.

²⁸ Assembly Bill 1797, amending Penal Code Section 868.

²⁹ *Ibid.*

³⁰ *Southern Pac. Transp. Co. v. Public Utilities Commission* (1976) 134

Cal. Rptr. 189.

³¹ *Miller v. Woods* (1983) 148 Cal.App.3d 862.

³² *Pacific Legal Foundation v. California Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101.

³³ 15 *Op. Atty. Gen.* 267 (1950).

³⁴ “ ‘Family’ and ‘Household’ Use Survey: How Government Agencies Use These Terms in Operating Their Programs,” *Report of the California Commission on Personal Privacy - Supplement One* (1982).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Testimony of Wallace Albertson, “Defining ‘Family’,” *Public Hearing Transcript*, p. 84.

³⁹ *Id.*, at p. 85.

⁴⁰ Campbell, Lee, “Legal Definitions of Family,” *Report of the Task Force on Family Diversity: Supplement - Part One*, p. S-1.

⁴¹ *Ibid.*, at p. S-14.

⁴² *Ibid.*, at p. S-16.