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July 20, 1992

The Honorable Chief Justice Lucas
and Associate Justices
California Supreme Court
303 Second Street, South Tower
8th Floor, Room 8023
San Francisco, CA 94107-1317

To the Honorable Malcolm M. Lucas, Chief Justice of California,
and to the Associate Justices of the California Supreme Court:

Beaty v. Truck Insurance Exchange
Case No. C010475

We are writing to request that the Court grant review of the above-entitled case on its own motion under Rule 28(a)(1) of the California Rules of Court. Alternatively, we request the Court to depublish the decision under Rule 978 of the California Rules of Court.

The opinion in Beaty was final as to the Court of Appeal on June 28, 1992. Therefore, in order for the Court to preserve its jurisdiction to grant review on its own motion, we respectfully urge that on or before July 28, the Court issue an order extending time for it to consider more fully whether to grant review.

The Beaty case held that the Unruh Civil Rights Act does not prohibit marital status discrimination against consumers. This is the first appellate decision to so hold. The decision conflicts with opinions of the Attorney General and administrative decisions of the Fair Employment and Housing Commission. The Fair Employment and Housing Commission adjudicates cases of employment, housing and public accommodations discrimination and thus plays a significant role in the administrative enforcement of the Unruh Act and the Fair Employment and Housing Act (Government Code section 12935, subdivision (b).) Although both of these agencies have concluded that Unruh does prohibit marital status discrimination, the Court of Appeal decided otherwise, without even mentioning these agency decisions. The Court of Appeal rendered its decision in a

The Honorable Chief Justice Lucas
and Associate Justices -2-

July 20, 1992

vacuum, absent any input, amicus curiae or otherwise, from any government agency or any civil rights organizations.

The identical issue -- whether marital status discrimination is prohibited by the Unruh Act -- is pending in this Court in Donahue v. Fair Employment and Housing Commission, Supreme Court No. S 024538. The issue was fully briefed by Verna Terry, Real Party in Interest in Donahue. (See Opening Brief on the Merits of Real Party in Interest, pages 12-18.) The issue of marital status was also addressed by the City of San Diego in its amicus letter dated May 19, 1992.

The Beaty case involves an important question of law. In as much as this same issue is pending before this Court in Donahue, The City of San Diego urges this Court to maintain the status quo regarding marital status discrimination protection under Unruh at least until it issues its decision in Donahue. This Court may do so by: (1) issuing an order prior to July 28 extending to consider a sua sponte grant of review in Beaty; (2) give full consideration to a grant of review of the Court's own motion; and (3) grant review and defer briefing in the case pending the Court's decision in Donahue.

Alternatively, The City of San Diego asks this Court to order the Beaty decision depublished pursuant to Rule 978 of the California Rules of Court. The opinion should be depublished because it ignores administrative precedent, including two attorney general opinions (58 Op. Att'y Gen. 608, 613 (1975) and 59 Op. Att'y Gen. 223, 224 (1976)), and a decision of this Court which cited the 1975 Attorney General opinion with approval (Marina Point Ltd. v. Wolfson, 30 Cal. 3d 721, 736 (1982).) The Court of Appeal opinion also ignored the decision of the Fair Employment and Housing Commission in the Donahue case in which the Commission ruled that the Unruh Act prohibits marital status discrimination.

Sincerely yours,

JOHN W. WITT, City Attorney

By

Sharon A. Marshall
Sharon A. Marshall
Deputy City Attorney

SAM:mrh:571.1



CITY OF
SANTA MONICA
CALIFORNIA

OFFICE OF THE CITY ATTORNEY

WRITER'S DIRECT DIAL NUMBER

(310) 438-

8336

July 20, 1992

California Supreme Court
303 2nd Street, South Tower
San Francisco, California 94107-1317

Re: Beaty v. Truck Insurance Exchange
3rd Dist Ct of Appeal Case No. C010475
Opinion Filed May 29, 1992

Request of Appellants for Order Extending Time Prior
to Jurisdictional Deadline of July 28, 1992

Attention: Chief Justice Malcolm M. Lucas

TO THE COURT:

The City of Santa Monica supports the request of appellants in Beaty v. Truck Insurance Exchange for an order granting review under Rule 28(a)(1) of the California Rules of Court or alternatively, for an order depublishing the decision under Rule 978 of the California Rules of Court, since the issue of whether marital status discrimination is prohibited by the Unruh Act is pending before this Court in the Donahue v. Fair Employment and Housing Commission case, Supreme Court No. S 024 538.

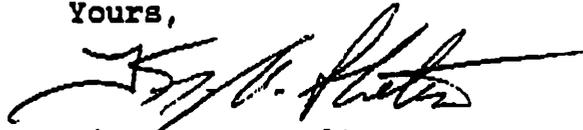
The Plaintiffs in the Donahue case are similarly situated to the plaintiffs in the Beaty case in that the overriding basis for discrimination in both cases is marital status. The issues of equality in consumer services for unmarried couples is extremely important in a state as diverse as California. The holding in the Beaty case is far reaching in its possible effects on other consumer services. The issue of whether the Unruh Civil Rights Act (Civil Code Section 51 et seq.) prohibits discrimination on the basis of marital status is of such importance that the intervention of the Supreme Court is necessary to protect the rights of the vast number of individuals

California Supreme Court
July 20, 1992
Page 2

who may be adversely affected by the holding of the Court of Appeal.

In light of the extensive briefing of the issue of marital status discrimination in the Donahue case and the possible impact the Beaty decision, we strongly urge the Court to grant the Appellants' request to grant review of the decision or in the alternative to depublish it.

Yours,



Kimery A. Shelton
Deputy City Attorney
Consumer Protection/Fair
Housing & Civil Rights Unit

BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM

P.O. Box 421983

San Francisco, CA 94142-1983

(415) 956-5764

July 23, 1992

California Supreme Court
303 Second Street, South Tower
San Francisco, California 94107-1317

Attention: Chief Justice Malcolm M. Lucas

RE: Beaty v. Truck Insurance Exchange, Third District Court of
Appeal Case No. C010475, Opinion Filed May 29, 1992

To The Honorable Justices of the California Supreme Court:

Bay Area Lawyers For Individual Freedom ("BALIF") writes in support of the petition for review in the above-entitled case. In the alternative, BALIF supports depublication of the decision.

BALIF is an organization of more than four hundred lawyers, legal workers and law students in the San Francisco Bay Area. It was founded in 1980 to protect and further the legal and professional interests of lesbians and gay men and, more broadly, to seek justice for sexual minorities under the law. BALIF has filed numerous amicus curiae briefs in important state and federal gay and lesbian rights cases, most recently in Donahue v. Fair Employment and Housing Commission, California Supreme Court No. S 024538.

BALIF requests that the Court grant review of the above-entitled case on its own motion pursuant to Rule 28(a)(1) of the California Rules of Court. The opinion in Beaty was final as to the Court of Appeal on June 28, 1992. We therefore respectfully request that the Court issue an order extending time for consideration of whether to grant review, thus preserving the Court's jurisdiction to grant review on its own motion.

The Court of Appeal in Beaty held that the Unruh Civil Rights Act does not prohibit discrimination based on marital status. While the holding in Beaty conflicts with two opinions of the Attorney General (58 Ops.Cal.Atty. Gen. 608, 613 (1975); 59 Ops.Cal.Atty.Gen. 223, 224 (1976)), the Court of Appeal nowhere addressed these opinions. Moreover, the Court of Appeal nowhere acknowledged that its ruling was contrary to the decision reached by the Fair Employment and Housing Commission ("FEHC") in Donahue v. Fair Employment and Housing Commission, supra.

BALIF is a Bar Association of over 400 lesbian and gay members of the legal community.

The Beaty case involves an important question of law. How that issue is resolved will directly affect the civil rights of the many heterosexual and gay and lesbian unmarried couples of the state of California. The question of whether marital status discrimination is prohibited by the Unruh Civil Rights Act is currently before the Court in Donahue, supra. In contrast to the Beaty decision, which was reached without the benefit of any amicus briefing or administrative agency determination, in Donahue the issue has been fully briefed both by Verna Terry, Real Party in Interest, and numerous amici, and the FEHC has ruled on the matter.

In light of the above, BALIF requests that the Court: (1) issue an order prior to July 28, 1992 extending time to consider a sua sponte grant of review in Beaty; (2) give full consideration to a grant of review on the Court's own motion; and (3) grant review and defer briefing in the case pending the Court's decision in Donahue.

In the alternative, BALIF requests that the Court order Beaty depublished pursuant to Rule 978 of the California Rules of Court. The opinion should be depublished because it ignores the administrative precedents cited above.

Thank you for your attention to this matter.

Very truly yours,



Michael Adams
Bay Area Lawyers For Individual Freedom

PROOF OF SERVICE

I, Michael Adams, declare that I am a citizen of the United States, employed in the City and County of San Francisco; I am over the age of 18 years and not a party to the within action or cause; my business address is 1663 Mission Street, Suite 400, San Francisco, California, 94103.

On July 23, 1992, I caused to be served by mail a copy of a letter to the California Supreme Court dated July 23, 1992, by placing a true copy thereof enclosed in a sealed envelope, with appropriate postage, and placed in the U.S. Mail addressed as follows:

Maureen Sheehy, Esq.
Feldman, Waldman & Kline
235 Montgomery St., 27th
Flr.
San Francisco, CA 94104

Craig H. Bell, Esq.
Waldman, Graham & Chuang
12121 Wilshire, #401
Los Angeles, CA 90025

Tom Coleman, Esq.
P.O. Box 65756
Los Angeles, CA 90065

Honorable Joe Grey
720 9th Street
Sacramento, CA 95814

Clerk
California Court of Appeal
Third District
914 Capitol Mall, Rm. 100
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 23, 1992 at San Francisco, California.



Michael Adams

The Law Offices of
GOLDFARB & LIPMAN

One Montgomery Street
Telesis Tower
Twenty-Third Floor
San Francisco
California 94104

July 23, 1992

Steven H. Goldfarb
Barry R. Lipman
M David Kroot
Lee C. Rosenthal
Roger A. Clay, Jr.

Honorable Chief Justice Malcolm M. Lucas
Honorable Justice Stanley Mosk
Honorable Justice Edward Panelli
Honorable Justice Joyce L. Kennard
Honorable Justice Armand Arabian
Honorable Justice Marvin Baxter
Honorable Justice Ronald Marc George

Paula S. Crow
John T. Nagle
Polly V. Marshall

California Supreme Court
303 Second Street, South Tower
San Francisco, California 94107-1317

Natalie L. Gubb
Lynn Hutchins
Richard A. Judd
Peter Franklin
Scott R. Barshay
James D. Smith

Re: **Request for Order Extending Time in
Which to Grant Review, Order Granting
Review, or Order Granting Request for
Depublication in Beaty v. Truck
Insurance Exchange, (Case No. C010475,
3rd District Court of Appeal, Opinion
filed May 29, 1992); **Supreme Court Case
No. S-027760****

Karen M. Tiedemann
Thomas H. Webber
Michael I. Berry
Dianne Jackson McLean
Raymond P. Bolanos
Irene M. Shin
R. Renée Glover
Andrew Z. Shagrin

To the Justices of the California Supreme Court:

On behalf of Midpeninsula Citizens for Fair Housing, a California nonprofit public benefit corporation, we write to request that the Supreme Court: (1) order an extension of time in which to determine whether to grant review of the decision of the Third District Court of Appeal in Beaty v. Truck Insurance Exchange, Case No. C010475, published in the advance sheet at 6 Cal.App.4th 1455 (copy attached); and (2) on its own motion, grant review of that decision pursuant to Rule 28(a)(1) of the California Rules of Court. Alternatively, we request that the Court depublish the decision under Rule 978 of the California Rules of Court.

In affirming the grant of a demurrer without leave to amend, the Beaty court determined that the Unruh Civil Rights Act (Civil Code Section 51 et seq.) does not prohibit marital status discrimination. Beaty, 6 Cal.App.4th at 1463. The Beaty court decided this very important question of civil rights law without the participation by any affected government agency, any civil rights organization, or other amicus. In its opinion, the Beaty court failed to cite or distinguish relevant precedents.

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213 627-6336

INHSE177.P50

We became aware of the Beaty decision a few days ago. We are informed that the Beaty plaintiffs have retained new counsel and have requested that the Supreme Court take the same actions requested in this letter.

Nature of Requesting Entity

MCFH is a private nonprofit membership organization, located in Palo Alto, California, which provides investigation, counseling and education concerning housing discrimination in more than a dozen San Francisco Bay Area cities. MCFH has been actively engaged in fair housing for over twenty-five years. MCFH's interests are directly affected by the Beaty decision because the Unruh Civil Rights Act is one of the civil rights laws applicable to housing which MCFH seeks to enforce. MCFH has a vital interest in the interpretation of discrimination laws applicable to housing.

The Beaty Opinion and the Donahue Case

The Beaty opinion is the first appellate decision which expressly holds that the Unruh Act does not prohibit marital status discrimination. The decision fails to mention or distinguish contrary authority and purports to determine an issue now before the Supreme Court in Donahue v. Fair Employment and Housing Commission, Case No. S 024538. (See Donahue v. Fair Employment and Housing Commission, (1991) 1 Cal.App.4th 387, 394, fn.2 and at 400, fn.5, rev. granted.)

The Fair Employment and Housing commission (FEHC) concluded in Donahue, inter alia, that marital status discrimination is prohibited by the Unruh Act and the Fair Employment and Housing Act (Government Code Section 12900 et seq.) (the "FEHA"), and found that the Donahues had discriminated on the basis of marital status against an unmarried couple, Verna Terry and Robert Wilder. (See D.F.E.H. v. John Donahue et al., Case No. 89-10, August 10, 1989, at 7.) The Court of Appeal determined that the Free Exercise Clause of the California Constitution exempted the Donahues from the enforcement of the marital status discrimination prohibition under the FEHA. (Donahue, 1 Cal.App.4th at 410.)

In order to reach its conclusion that the constitutional exemption required dismissal of the FEHC enforcement action, the Court of Appeal's decision in Donahue assumed, arguendo, that the Unruh Act prohibited marital status discrimination. The Court of Appeal declared that "[t]o the extent that Civil Code section 51 applies,

the existence of a constitutionally based exemption to [the prohibition against marital status discrimination under] Government Code Section 12955 . . . would apply, as well, to section 51." (Donahue, 1 Cal.App.4th at 400, fn. 5.)

The question whether the Unruh Act prohibits marital status discrimination has been fully briefed in the Supreme Court. (See "Opening Brief on the Merits of Real Party in Interest," pp. 12-18; and respondent's answer thereto, pp. 7-8.) The Supreme Court may reach and decide the Unruh Act question in Donahue.¹

The Beaty Opinion and Relevant Precedent

The Beaty opinion does not even mention opinions of the California Attorney General and the administrative decision of the California Fair Employment and Housing Commission in Donahue, which hold that the Unruh Act does prohibit marital status discrimination. (See (1) the Opinions of the California Attorney General at 58 Ops.Cal.Atty.Gen. 608, 613 (1975), cited with approval in Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 736, at 59 Ops.Cal.Atty.Gen. 223, 224 (1976), and (2) the decision of the FEHC at D.F.E.H. v. John Donahue et al., Case No. 89-10, August 10, 1989, at 7). In addition to the failure to deal with this prior authority, we believe that the Beaty opinion erroneously applies the decision of the Supreme Court in Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142. Under Harris, the Unruh Act prohibits arbitrary discrimination on the basis of personal characteristics, as distinguished from "economic" criteria. Harris, 52 Cal.3d at 1169. Marital status is properly characterized as a "personal characteristic" within the meaning of the Unruh Act.

Request for Grant of Review

The Beaty decision became final as to the Court of Appeal on June 28, 1992. If the Supreme Court does not act with regard to the Beaty Decision by July 28, the decision will become final in its current status as a published decision. For the reasons stated above, we urge the Supreme Court to maintain the status quo of civil rights

¹ If the Supreme Court concludes that the Donahues are not entitled to a religious exemption from the marital status discrimination prohibition, the judgment of the Court of Appeal would be reversed unless this Court were to decide that neither statute prohibits discrimination against unmarried couples.

enforcement of marital status protection under the Unruh Act at least until the Supreme Court issues its decision in Donahue. We request that the Court: (1) issue an order prior to July 28 extending time to consider a sua sponte grant of review in Beaty, (2) give full consideration to a grant of review of the Court's own motion, and (3) grant review and defer briefing in Beaty pending the Court's decision in Donahue. The Supreme Court has the authority to take all these actions pursuant to California Rules of Court Rule 28(a)(1).

The court should grant review of the Beaty decision in order to secure uniformity of decision with prior precedent and the Donahue case, and to settle an important question of law regarding the scope of the Unruh Act's anti-discrimination protection. See California Rules of Court Rule 29(a).

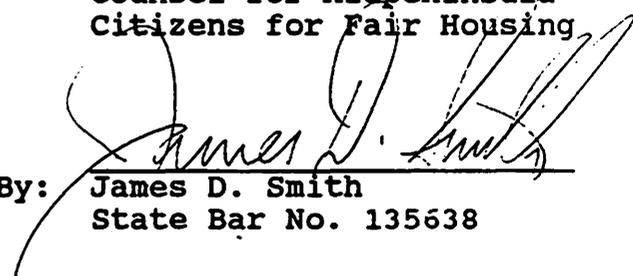
Alternative Request for Depublication

Alternatively, MCFH requests the Supreme Court to order the Beaty decision depublished pursuant to Rule 978 of the California Rules of Court. The opinion should be depublished because it fails to mention and distinguish relevant contrary precedents, and because it erroneously applies the applicable standard for determining whether discrimination on the basis of a personal characteristic is prohibited by the Unruh Act.

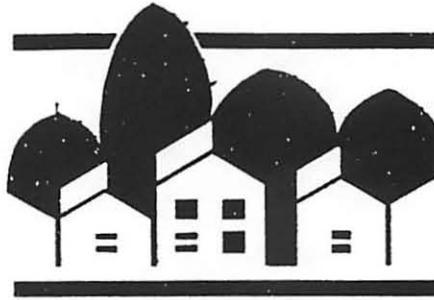
Thank you for your consideration of this request.

Sincerely,

GOLDFARB & LIPMAN
Counsel for Midpeninsula
Citizens for Fair Housing


By: James D. Smith
State Bar No. 135638

July 21, 1992



Honorable Chief Justice Malcolm M. Lucas, and
Honorable Associate Justices
Supreme Court of the State of California
303 2nd Street, South Tower, 8th Floor
San Francisco, CA 94107-1317

RE: Beaty v. Truck Insurance Exchange, Third District Court of
Appeal, Case No. C010475

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES:

The Fair Housing Council of Orange County respectfully requests the Court to grant review of the above entitled action on its own motion pursuant to Rule 28(a)(1) of the California Rules of Court.

Beaty v. Truck Insurance Exchange is the first appellate decision to hold that the Unruh Civil Rights Act does not prohibit marital status discrimination against consumers. In so holding, the Third District ignored contrary precedents set by both the Fair Employment and Housing Commission and the Office of the Attorney General, including the opinions of 58 Ops.Cal.Atty.Gen. 608 (1975) and 59 Ops.Cal.Atty.Gen. 223 (1976); moreover, the Court of Appeals failed to acknowledge a decision of this Court which cited the former Attorney General opinion with approval (Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 736). Finally, this precise issue is currently pending in this Court in Donahue v. Fair Employment and Housing Commission, Supreme Court No. S024538.

The Beaty decision was filed on May 29, 1992, and was final as to the Court of Appeal on June 28, 1992. So that this Court may maintain jurisdiction to grant review on its own motion, we would ask that it issue an order, on or before July 28, 1992, extending the time for considering a sua sponte review. Should the Court issue such an order, and after fully considering this question, it is our sincere hope that the Court will in fact grant review of the subject case and defer further briefing pending the forthcoming decision in Donahue. This would insure, at least until the Donahue opinion is rendered, that the current protections afforded under the Unruh Act will continue intact and undiminished.

FAIR HOUSING COUNCIL of ORANGE COUNTY
1222 N. BROADWAY, SANTA ANA, CALIFORNIA 92701 ☐ (714) 569-0823

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Counseling Agency"

"Serving Orange County Since 1965"



In the alternative, and for the reasons previously cited, we would respectfully request that the Court order the Beaty decision depublished pursuant to Rule 978 of the California Rules of Court. If permitted to stand, this decision will inevitably have far-reaching and devastating effects on the livelihood of many of our state's residents.

Sincerely,

A handwritten signature in cursive script that reads "Rob B. Rank". The signature is written in dark ink and is positioned to the right of the typed name.

Rob B. Rank
Fair Housing Council of Orange County

✓

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OUR FILE NUMBER:
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July 17, 1992

VIA FEDERAL EXPRESS

Hon. Malcolm M. Lucas, Chief Justice, and
the Associate Justices of the Supreme Court
303 2nd Street, South Tower
San Francisco, CA 94107-1317

Re: Beaty v. Truck Insurance Exchange,
Third District Court of Appeal
No. C010475, Opinion Filed May 29, 1992

Dear Chief Justice and Associate Justices:

Greenberg, Glusker, Fields, Claman & Machtinger serves as general counsel to Westside Fair Housing Council ("WFHC"), a nonprofit corporation organized to assist victims of illegal housing discrimination in West Los Angeles and neighboring communities. We write to request that the Court grant review of the Beaty case on its own motion under Rule 28(a)(1) of the California Rules of Court. Alternatively, we asked the Court to order that the opinion be depublished under Rule 979 of the California Rules of Court.

Organized in 1968, WFHC is a community-based organization funded by government grants and private donations. Operating under contracts with the City of Los Angeles and other Southern California municipalities, WFHC works to eliminate unfair housing practices and assists homeseekers and renters who have been unfairly denied housing opportunities. In this role, WFHC conducts independent investigations to uncover evidence of illegal discrimination, supports litigation on behalf of victims of illegal discrimination, and occasionally joins as a plaintiff in litigation against landlords who violate fair housing laws and the Unruh Civil Rights Act.

The opinion in Beaty became final as to the Court of Appeal on June 28, 1992. Therefore, in order for the Court to preserve

Hon. Malcolm M. Lucas, Chief Justice, and
the Associate Justices of the Supreme Court
July 17, 1992
Page 2

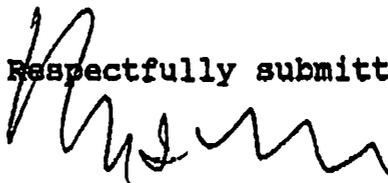
its jurisdiction to grant review on its own motion, we respectfully urge that on or before July 28, 1992, the Court issue an order extending time for it to consider more fully whether to grant review.

Among other things, the Court of Appeal held in Beaty that the Unruh Civil Rights Act does not prohibit discrimination against consumers based on their marital status. This very issue is pending in this Court in Donahue v. Fair Employment and Housing Commission, Supr. Ct. No. S 024538. The issue was fully briefed by Real Party in Interest Verna Terry in the Donahue case.

Both the Fair Employment and Housing Commission and the Attorney General have concluded that the Unruh Civil Rights Act prohibits marital status discrimination. The Court of Appeal in Beaty decided otherwise without reviewing any decision of the FEHC or any opinion of the Attorney General. (See 58 Ops.Cal.Atty.Gen. 608, 613 (1975); 59 Ops.Cal.Atty.Gen. 223,224 (1976).)

Westside Fair Housing Council respectfully requests that the Court maintain the status quo ante of civil rights enforcement pending its decision in Donahue. Alternatively, Westside Fair Housing Council requests that the Court order that the Beaty opinion be depublished pursuant to Rule 979 of the California Rules of Court.

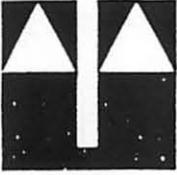
Respectfully submitted,



Roger L. Funk

RLF/sw

cc: Attached Proof of Service



Lambda Legal Defense and Education Fund, Inc.

666 Broadway, New York, NY 10012 (212) 995-8585 FAX (212) 995-2306
606 S. Olive St., Suite 580, Los Angeles, CA 90014 (213) 629-2728 FAX (213) 629-9022

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July 23, 1992

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San Francisco, CA 94107-1317

Re: Beaty v. Truck Insurance Exchange
Court of Appeal No. C 010475
Published at 6 Cal.App.4th 1455

Action Required by July 28, 1992

Dear Members of the Court:

Lambda Legal Defense and Education Fund, Inc. and Lawyers for Human Rights filed a brief amicus curiae with this Court on May 15, 1992, in the case currently pending before the Court entitled Donahue v. Fair Employment and Housing Commission, S 024538. We now join in the request of Appellants Boyce Hinman and Larry Beaty that the Court "grant and hold" review of the above-referenced case, Beaty v. Truck Insurance Exchange, pending disposition of Donahue.

As pointed out by Appellants Hinman and Beaty, the deadline for filing a petition for review in this case expired on July 8, 1992. Counsel for amici did not learn that Appellants' counsel before the court of appeal had failed to file a petition for review until after July 8. Because of the similarity of issues resolved in Beaty to those raised before this Court in Donahue, amici believe that the interests of fairness and judicial consistency will best be served through the Court's exercise of its power sua sponte to "grant and hold" review of the Beaty case, pending disposition of Donahue. Alternatively, amici urge this Court to depublish the Beaty decision as inconsistent with existing caselaw.

The Beaty decision addressed the issue of whether, in the context of insurance, the Unruh Civil Rights, Civil Code Section 51 et seq., prohibits business establishments from discriminating against unmarried couples on the basis of their marital status. This issue already lies before this Court in Donahue. Not only does this issue affect the constituents represented by amici,

Los Angeles Office

Through test-case litigation and public education, Lambda works nationally to defend and extend the rights of lesbians, gay men, and people with HIV. Lambda is a non-profit, tax-exempt organization founded in 1973.

this issue similarly affects all persons, married or unmarried, who may face differential treatment based on their marital status. The decision in Beaty that such discrimination is not barred by the Unruh Act is inconsistent with existing precedent. The Beaty decision does not address two conflicting opinions from the Office of the Attorney General: 1) 58 Ops.Cal.Atty. Gen. 608, 613 (1975) (cited with approval in Marina Point Ltd. v. Wolfson (1982) 30 Cal.3d 721, 736); and 2) 59 Ops.Cal.Atty.Gen. 223, 224 (1976). The decision also conflicts with the decision of the Fair Employment and Housing Commission and the Court of Appeal in the Donahue case.

A "grant and hold" is appropriate in instances such as this to preserve the status quo and to prevent a miscarriage of justice. If the Beaty decision is allowed to stand unreviewed, numerous agencies will be hampered in their interpretation and enforcement of the Unruh Act. The Beaty court did not have the benefit of the participation of these agencies and the numerous amici who have provided this Court with additional insight into the ramifications of such a holding. Thus, the decision should be held pending disposition of Donahue.

For the foregoing reasons, we respectfully urge the Court to issue an order on the Court's own motion to grant review in Beaty and defer further action pending the Court's decision in Donahue, or, alternatively, to depublish the Beaty decision.

Respectfully submitted,



Mary Newcombe
Counsel for Amici Curiae
Lambda Legal Defense and
Education Fund, Inc. and
Lawyers for Human Rights

cc: Attached Proof of Service

No. 3rd C010475 - S027760

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

LARRY BEATTY et al.

v.

TRUCK INSURANCE EXCHANGE

The time for granting or denying review on the court's own motion is hereby extended to and including August 27, 1992, or the date upon which review is either granted or denied. Rule 28(a)(1) California Rules of Court.

SUPREME COURT
FILED

JUL 24 1992

Robert Wandell Clerk
P. QUINN
DEPUTY



Acting Chief Justice

Third Appellate District No. C010475
S027760

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

LARRY BEATY Et Al., Appellants

v.

TRUCK INSURANCE EXCHANGE, Respondent

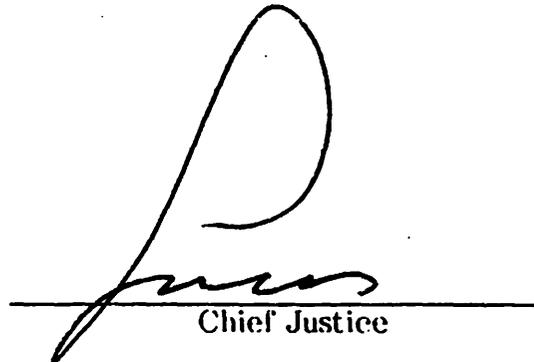
SUPREME COURT
FILED

AUG 27 1992

Robert Wandruff Clerk

DEPUTY

The requests to grant review on the court's own motion are denied.
The requests for an order directing depublication of the opinion
are denied.


Chief Justice

Display 1991-1992 Bill Text - INFORMATION
BILL NUMBER: SB 1923

BILL TEXT

INTRODUCED BY Senator Marks

FEBRUARY 21, 1992

An act to amend Section 790.03 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1923, as introduced, Marks. Insurance: unfair practices.

Existing law prohibits life or disability insurers from engaging in certain discriminatory practices, as specified, on the basis of race, color, religion, national origin, ancestry, or sexual orientation.

Existing law also defines and provides remedies for various unfair practices in the business of insurance. One of these categories of unfair practices is the making or permitting of unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in other benefits payable or in any other of the terms and conditions of the contract.

This bill would revise that unfair practice provision to specifically include, as an unfair practice, discrimination based on an individual's race, religion, national origin, marital status, or sexual orientation in the rates charged for any contract of insurance or in other benefits payable or in any other of the terms and conditions of the contract.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.



**PROPOSED AS AMENDED
July 1, 1992**

Introduced by Senator Marks

February 1, 1992



*An act to amend Section 790.03 of the Insurance Code, relating to insurance.
SB 1923, as introduced, Marks. Insurance: unfair practices.*

The people of the State of California do enact as follows:

SECTION 1. *Section 790.03 of the Insurance Code is amended to read:*

790.03. *The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.*

(a) Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his or her insurance.

(b) Making or disseminating or causing to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatsoever, any statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his or her insurance business, which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.

(c) Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(d) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public any false statement of financial condition of an insurer with intent to deceive.

(e) Making any false entry in any book, report, or statement of any insurer with

intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

(f) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life, including, but not limited to, discrimination based on an individual's race, religion, gender, sex, origin, marital status, or sexual orientation, in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract.

This subdivision shall be interpreted, for any contract of ordinary life insurance or individual life annuity applied for and issued on or after January 1, 1981, to require differentials based upon the sex of the individual insured or annuitant in the rates or dividends or benefits, or any combination thereof. This requirement is satisfied if those differentials are substantially supported by valid pertinent data segregated by sex, including, but not necessarily limited to, mortality data segregated by sex.

However, for any contract of ordinary life insurance or individual life annuity applied for and issued on or after January 1, 1981, but before the compliance date, in lieu of those differentials based on data segregated by sex, rates, or dividends or benefits, or any combination thereof, for ordinary life insurance or individual life annuity on a female life may be calculated as follows: (a) according to an age not less than three years nor more than six years younger than the actual age of the female insured or female annuitant, in the case of a contract of ordinary life insurance with a face value greater than five thousand dollars (\$5,000) or a contract of individual life annuity; and (b) according to an age not more than six years younger than the actual age of the female insured, in the case of a contract of ordinary life insurance with a face value of five thousand dollars (\$5,000) or less. "Compliance date" as used in this paragraph shall mean the date or dates established as the operative date or dates by future amendments to this code directing and authorizing life insurers to use a mortality table containing mortality data segregated by sex for the calculation of adjusted premiums and present values for nonforfeiture benefits and valuation reserves as specified in Sections 10163.5 and 10489.2 or successor sections.

Notwithstanding the provisions of this subdivision, sex based differentials in rates or dividends or benefits, or any combination thereof, shall not be required for (1) any contract of life insurance or life annuity issued pursuant to arrangements which may be considered terms, conditions, or privileges of employment as these terms are used in Title VII of the Civil Rights Act of 1964 (Public Law 88-352), as amended, and (2) tax sheltered annuities for employees of public schools or of tax exempt organizations described in Section 501(c)(3) of the Internal Revenue Code.

(g) Making or permitting any unfair discrimination between individuals of the same class, including, but not limited to discrimination based on an individual's race, religion, gender, sex, national origin, marital status, or sexual orientation in the acceptance or rejection of any contract of insurance, in the rates charged therein, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract.

The remedies available under subdivisions (f) and (g) shall be cumulative to those set forth under this code and shall not prohibit any other remedy provided by law.

(h) Marital status may be considered as a factor for the determination of rates to

be charged in automobile insurance policies, provided that said rates are based on actuarial studies and tables as approved by the Department of Insurance.

(g)

(i) Making or disseminating, or causing to be made or disseminated, before the public in this state, in any newspaper or other publication, or any other advertising device, or by public outcry or proclamation, or in any other manner or means whatever, whether directly or by implication, any statement that a named insurer, or named insurers, are members of the California Insurance Guarantee Association, or insured against insolvency as defined in Section 119.5. This subdivision shall not be interpreted to prohibit any activity of the California Insurance Guarantee Association or the commissioner authorized, directly or by implication, by Article 14.2 (commencing with Section 1063).

(h)

(ii) Knowingly committing or performing with such frequency as to indicate a general business practice any of the following unfair claims settlement practices:

(1) Misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverages at issue.

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.

(4) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured.

(5) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.

(6) Compelling insured to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insured, when the insured have made claims for amounts reasonably similar to the amounts ultimately recovered.

(7) Attempting to settle a claim by an insured for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.

(8) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured, his or her representative, agent, or broker.

(9) Failing, after payment of a claim, to inform insured or beneficiaries, upon request by them, of the coverage under which payment has been made.

(10) Making known to insured or claimants a practice of the insurer of appealing from arbitration awards in favor of insured or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(12) Failing to settle claims promptly, where liability has become apparent, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to provide promptly a reasonable explanation of the basis relied on in the insurance policy, in relation to the facts or applicable law, for the denial of a claim or for the offer of a compromise settlement.

(14) Directly advising a claimant not to obtain the services of an attorney.

(15) Misleading a claimant as to the applicable statute of limitations.

(16) Delaying the payment or provision of hospital, medical, or surgical benefits for services provided with respect to acquired immune deficiency syndrome or AIDS-related complex for more than 60 days after the insurer has received a claim for those benefits, where the delay in claim payment is for the purpose of investigating whether the condition preexisted the coverage. However, this 60-day period shall not include any time during which the insurer is awaiting a response for relevant medical information from a health care provider.



**THE STATE BAR
OF CALIFORNIA**

OFFICE OF GOVERNMENTAL AFFAIRS

915 L STREET, SUITE 1280, SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 444-2762 FAX: (916) 443-0562

FACSIMILE COVER SHEET

TO: Thomas Coleman EXT. NO _____

FROM: Amy Stewart EXT. NO (916) 444-2762

DATE: June 25, 1992

TOTAL NUMBER OF PAGES 4 INCLUDING COVER SHEET

PLEASE CALL IF YOU DID NOT RECEIVE ALL OF THE PAGES

MESSAGE: _____

Enclosed/Attached, you'll find a copy
of SB 1923's analysis, and the proposed amendments

Update: Amended copy of bill is attached. As amended, the bill passed the
Senate Insurance Committee. It is opposed by State Farm, Personal Insurance
Federation and Association of California Life Insurance Companies. Opposition
is mainly focused on the marital status discrimination prohibition. The bill is
supported by the Department of Insurance.

TRANSMITTING TO FACSIMILE NUMBER: 213-258-8099

Compliments of: THOMAS F. COLEMAN
President, EEO Seminars
(213) 258-5831

DATE OF HEARING: May 13, 1992

SB 1923

**SENATE INSURANCE, CLAIMS AND CORPORATIONS COMMITTEE
ART TORRES, CHAIRMAN**

SB 1923 (Marks), As Introduced February 21, 1992

SUBJECT: Unfair Insurance Practices: Family or Marital Status

DIGEST:

Existing law declares that specified insurer claims practices are unfair methods of competition and unfair and deceptive acts or practices. These include:

- 1) Discrimination between individuals of the same class and life expectancy.
- 2) Failing to adopt and implement reasonable standards for prompt claims investigation and processing.
- 3) Not attempting in good faith to settle claims in which liability has become clear.
- 4) Failing to affirm or deny coverage of claims within a reasonable period of time.

This bill specifies that discrimination among classes of like individuals includes class based on race, religion, national origin, marital status or sexual orientation is an unfair insurance practice.

FISCAL EFFECT

The Department of Insurance may incur unknown, but probably minor (under \$50,000), annual regulatory costs for monitoring compliance with this bill's provisions. These costs would be payable from the Insurance Fund.

COMMENTS

This bill was introduced at the request of the California State Bar Association to provide an explicit prohibition against insurance discrimination based on marital status or sexual orientation.

Current law generally prohibits discriminatory practices of the sale of insurance (Ins. Code sec. 790) and is specifically subject to the standards of the Unruh Civil Rights Act (Ins. Code SEC. 1861.03).

Existing law does not establish specific sanctions for committing an unfair business practice. The value of defining a specific action as an unfair practice is that violation can be grounds for: 1) a bad faith lawsuit (if the violator does not meet federal standards as a self-insured business which would exempt it from state regulation), and 2) an investigation by the Department of

Insurance.

ISSUES

1. Does this bill increase Consumer Protection?

This bill as drafted enumerates those considerations that can be considered under the existing anti-discrimination provisions of the insurance law. Under current law, as well as this bill, the law prohibits discrimination among classes of individuals with "equal expectation of life".

This bill maintains the existing standards that prohibits discrimination between similar classes of individuals and therefore may not add any additional protection for those newly enumerated classes.

2. Does this bill decrease protection against sex-based discrimination?

This bill enumerates classes of people who may not be discriminated against based on their class to include race, religion, national origin, marital status, or sexual orientation. The bill does not include the sex of the individual of an enumerated class and may therefore be interrupted to lessen the protections against sex-based discriminatory practices.

POSITIONS

Support

State Bar Association

Opposition

State Farm
Personal Insurance Federation

Amey: 
Personal Insurance Fed said they would likely drop their opposition in view of the proposed amendments.



LOS ANGELES CITY TASK FORCE ON FAMILY DIVERSITY

May 19, 1988

The Honorable Michael Woo
Member, Los Angeles City Council;

The Honorable Tom Bradley
Mayor, City of Los Angeles;

The Honorable John Ferraro
President, Los Angeles City Council,
and Members of the City Council;

The People of the City of Los Angeles:

It is with pleasure that the thirty-seven members of the Los Angeles City Task Force on Family Diversity hereby submit our Final Report and recommendations.

When we began this project some two years ago, it quickly became obvious that a study of the strengths and weaknesses of contemporary family life in Los Angeles would be an enormous undertaking. We therefore organized ourselves into specific research teams, each focusing on selected family demographics, populations, topics, and problems. As part of our mandate, our research included an examination of families that have not traditionally had the benefit of public study and documentation.

Through our public hearings, we gathered information from a variety of witnesses — advocates, academics, service providers, and legal experts, as well as individuals who related personal experiences that helped illuminate problems in a very vivid way.

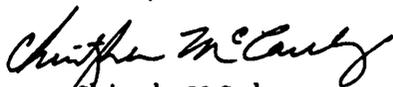
Although not encompassing every conceivable family issue, our Final Report includes analyses of a number of critical problems that vex contemporary families -- available and affordable housing, transportation, affordable insurance, child care, family violence and abuse, quality education, and issues related to employment opportunity and economic well-being.

Throughout this project we have attempted to recognize ways in which public policy may not be consistent with the reality of how we live. Where we have uncovered legal, institutional, or practical burdens imposed upon family life as a matter of public policy, we have suggested remedies. Where we have found programs or policies supporting family life, we have specifically commended them.

During the course of its study, the Task Force discovered that "family" is a very broad and expansive concept, which is capable of encompassing a wide variety of committed relationships. This conceptual flexibility is consistent with local family demographics. The City of Los Angeles is undeniably rich in family diversity.

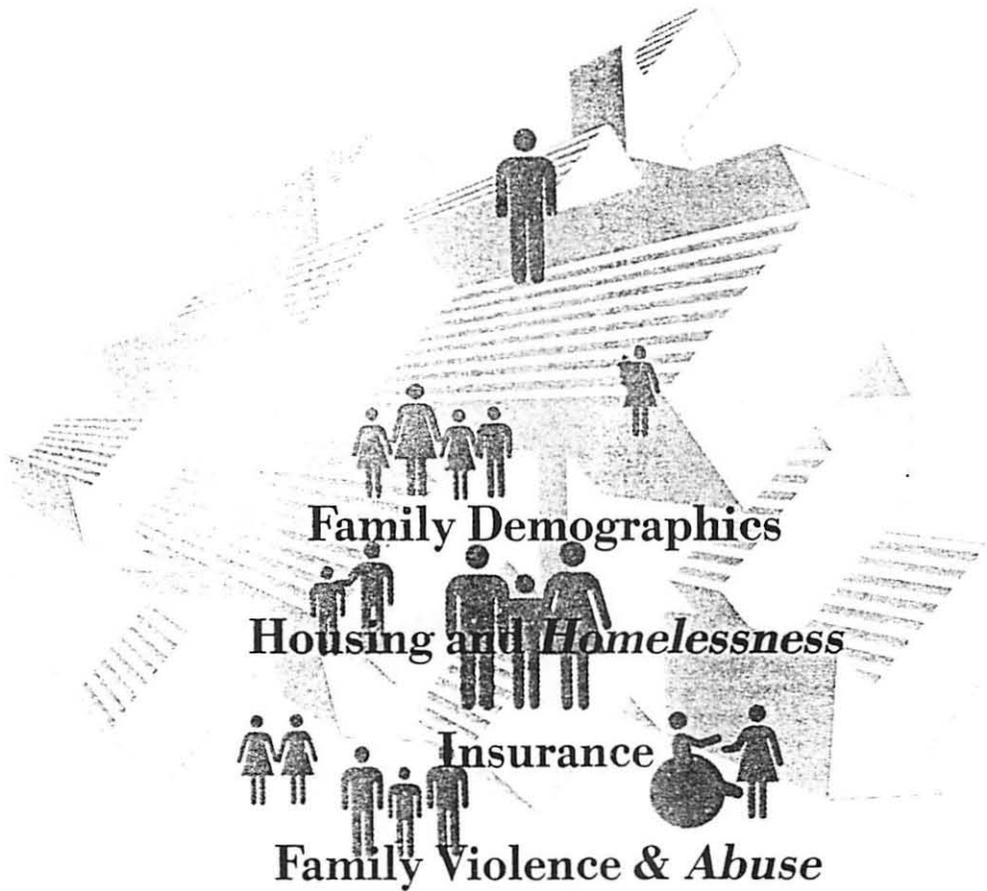
We appreciate the opportunity to have served the people of Los Angeles. We have learned enormously from everyone who participated in this project and we sincerely hope that all families will benefit from our findings and recommendations.

Sincerely,


Christopher McCauley
Co-Chair


Nora Baladerian, Ph.D.
Co-Chair

Families in the City of Los Angeles



Education & *City Schools*

Some Families and *Their Needs*

Institutional *Influences*



INSURANCE

Insurance is a subject of major concern to Los Angeles families. During a medical emergency, for example, health insurance may be all that stands between survival and ruination for one's family. Under the law, the family car must have liability coverage. If the car is financed, lenders insist that there is also replacement coverage. Mortgage companies demand that the family home be insured against hazards. Although life insurance is not "essential," many heads of household buy it in order to protect their dependents. Disability insurance can guarantee income that might otherwise be threatened by the extended illness of a family's primary wage earner. Most families in the city are renters; renter's insurance guards against the ever-increasing risk of burglary. Obtaining and maintaining insurance — health, life, automobile, homeowner's, renter's, and more — has become a very serious and important matter; it is essential to protect family assets, to protect family members, and in some instances, is required by law.

According to Steve Miller, Executive Director of Insurance Consumers Action Network (ICAN), about 13% of the disposable income of a family is spent on insurance.¹ That makes insurance the third leading family expenditure — after shelter and food, but before taxes.²

Although insurance is a necessity for everyone, its cost is often prohibitive for middle and lower-income families; it is not a luxury, but it is often priced as if it were.

The impact of the so-called insurance crisis is being experienced by parents who cannot afford automobile insurance for their teenagers, seniors who are dropping their homeowner policies, lower-income workers who drive to and from work uninsured, and middle-income workers denied health and life insurance, not because they cannot afford it, but because of lifestyle discrimination.

As a reaction to this crisis, more than 25,000 Los Angeles area consumers recently expressed their frustration in letters sent to Tom Vacar, Consumer Reporter to KCBS-TV in Los Angeles.³ Of the first 16,000 letters analyzed, 90% complained about automobile insurance. Many others criticized homeowner and health insurance, and the high premiums that are causing day care centers to close. People complained most about "insurance company greed," than the lack of affordability. Most of the consumers suggested a need for more active state regulation of the insurance industry. A considerable number wanted the state to actually take over the industry.

The California Department of Insurance also receives a large number of complaints from consumers, nearly 14,000 in 1984-85, for example.⁴ However, according to the state Auditor General, these complaints reflect only a portion of disgruntled insurance consumers.⁵ Many find it difficult to reach the department; during a one-week period in March 1986, consumers received busy signals more than 7,000 times when attempting to telephone the Department of Insurance.⁶ Citing such problems as the department's overwhelming backlog in processing complaints, the Auditor General concluded that "the public lacks protection against improper conduct" by insurance companies.⁷

The Task Force on Family Diversity examined the insurance issue with the assistance of law student researchers,⁸ with input from the Association of California Life Insurance Companies,⁹ with information from the legal counsel to the state Department of Insurance, with advice

from consumer advocates,¹⁰ with testimony from insurance professionals,¹¹ and with recommendations supplied from Task Force members.¹²

The major areas of complaint that surfaced during the Task Force study focused on the price of automobile coverage and on lifestyle discrimination in automobile, health, and life insurance.

Automobile Insurance

Under present California law, automobile insurance rates are minimally regulated. In other states, rates are regulated by various methods. Some states establish rates insurers may charge; others require prior approval of rates by the Insurance Commissioner. Most states provide some form of review either as rates are introduced or changed.¹³

The current law in California — virtually unchanged since enacted in 1947 — provides for an "open rating" or competitive ratemaking system; although the law requires that insurance rates not be excessive, inadequate, or unfairly discriminatory, the law includes no concrete standards and is generally not enforced by the state Insurance Commissioner. Under existing law, companies are not even required to report to the insurance department the rates they charge consumers.

Two years ago, the Little Hoover Commission reported that: "The Insurance Commissioner has held only one public hearing on excessive rates and has never fined an insurance company for excessive rates since 1948."¹⁴ The Commission identified as one of the major underlying causes of the insurance crisis:¹⁵

The Insurance Commissioner's lack of authority and leadership in the rate-setting process — the Insurance Commissioner does not have authority to control rate increases in California [prior to the increase] and has not exercised his [sic] discretionary powers to control rate increases [after an increase] and make insurance available.

The Little Hoover Commission recommended that consideration be given to requiring the Insurance Commissioner's prior approval of rate increases in excess of 15%.¹⁶

Two recent studies have demonstrated the relationship between state regulation and the cost of insurance. The General Accounting Office — the investigative arm of Congress — found that the cost of automobile insurance was always higher in "competitive" rating states like California where there is no rate regulation. Rates in so-called "competitive" states were about 14% higher than in regulated states.¹⁷ A study commissioned by the California State Assembly found that the profits of automobile insurance companies in California were about 30% higher than in states with a stronger regulatory environment.¹⁸

It is a misnomer to call California an "open rating" or "competitive" state for automobile coverage. Price fixing by insurance companies is not illegal under federal law,¹⁹ nor is it illegal under state law.²⁰ Current law authorizes insurers to act "in concert" in setting rates, thus conferring upon insurance companies a unique exemption from antitrust laws. Last year, Attorney General John Van de Kamp addressed this problem:²¹

Nothing prohibits insurance companies from fixing rates, from agreeing not to compete, from allocating territories

to one another, from obtaining and exploiting a monopoly in any line of insurance. And no other industry enjoys this kind of sweeping exemption from the antitrust laws. . . .

This immunity is unhealthy for consumers and it is unhealthy for the industry itself. It breeds a culture of collusion. Hearings before the Department of Insurance last year revealed that the two largest auto insurers in the state had a practice of routinely exchanging their rating books — in effect their price lists. Such exchanges suggest a fundamentally unhealthy pattern of collusive conduct.

The Task Force on Family Diversity agrees that the current exemption of insurance companies from the state's antitrust laws is inappropriate and harmful to the people of the state. The exemption should be repealed so that price fixing by insurers would be unlawful and so the exchanging of price information among insurers with the purpose of suppressing competition would also be illegal.²²

Many insurers claim that price fixing does not exist and that consumers can find the lowest rate and best coverage by shopping around. However, one recent consumer study found that price shopping for insurance coverage is virtually impossible.²³

"Redlining," a practice in which insurers set prices through a complex formula of residential location, occupation, age and sex classifications, is also a subject of extensive criticism. State Senator Art Torres has called for legislation prohibiting the setting of rates on any factor other than an individual's driving record.²⁴

More and more people in this state cannot afford auto insurance even though they have good driving records. Insurance rates should be based on a person's driving record, not on his or her zip code, marital status, occupation, or sex. That is unfair.

Redlining of certain areas and groups makes minimum auto liability insurance so expensive that an estimated 50% to 60% of drivers in some sections of Los Angeles, and 15% to 20% statewide, are uninsured.²⁵

Insurance Reform. In addition, noting that California is one of only five states that allow automobile insurance companies to raise prices without justifying the size of rate increases, Attorney General John Van de Kamp has joined consumer advocates and many legislators in calling for rate regulation.²⁶ Last year, the Attorney General supported proposed legislation which would have: (1) enacted a system of flex-rating for property/casualty insurance; (2) created an insurance consumer advocate's office within the Department of Justice; (3) required prior approval by the Insurance Commissioner of any rate increases exceeding 10% in personal lines or 25% in commercial lines and (4) established an Office of Consumer Advocate to present a public point of view of proposed rate changes.²⁷ Although the bill, and several proposed compromises, passed the Assembly Finance and Insurance Committee, it failed to pass the Assembly Ways and Means Committee, thus ending consumers' hopes for legislative relief.²⁸

According to the Attorney General, "It's a stalemate. The powers have basically produced gridlock."²⁹ As a result, he suggested that the only path to reform might be a statewide ballot initiative.

The Task Force on Family Diversity believes that the following reforms should be enacted into law either by the Legislature or through the initiative process: (1) *rate regulation* — rate increases or decreases that exceed specified ranges should require prior approval by the state Insurance Commissioner; (2) *antitrust exemption* — the insurance industry should be stripped of its exemption from the state's antitrust laws; (3) *insurance consumer advocate* — an Office of Insurance Consumer Advocate should be established, with authority to intervene on behalf of consumers in any rate-related matter; (4) *good driver discounts* — insurers should be required to offer "good driver" policies to customers who have had no accidents or moving violations within the past three years; (5) *plain language policies* — insurance policies should be required to be written so that they are concise and easy to read; (6) *mid-term cancellations* — policies should not be cancelable in midterm, except for nonpayment of premiums, fraud, gross negligence or criminal convictions; (7) *conflict of interest* — the Insurance Commissioner and the Consumer Advocate should be barred from employment with any insurance company or trade association for three years after leaving office.

Seven initiative proposals for insurance reform have emerged.³⁰ Three have been offered by consumer advocacy organizations; two are sponsored by individuals; one is backed by insurance companies; and one has been drafted by trial lawyers.³¹ The Task Force believes that either of the proposals offered by two of the consumer advocacy groups — Access to Justice or Insurance Consumer Action Network — most closely promote these seven areas of reform.³²

The need for insurance reform in California became even more critical when the California Supreme Court upheld the constitutionality of the state's mandatory auto liability insurance laws.³³ Under state law, a motorist stopped for a moving violation must produce proof of insurance. Failure to do so may result in a fine and a suspension of the motorist's driver's license. In the wake of the Supreme Court ruling, Mayor Tom Bradley endorsed a proposed ballot initiative prohibiting automobile insurance redlining and requiring Insurance Commissioner approval for all rate increases.³⁴

The Task Force on Family Diversity finds that insurance reform in California is long overdue. The Task Force commends Mayor Bradley and Attorney General Van de Kamp for supporting meaningful insurance reform, even if it must come in the form of a voters' initiative. The Task Force recommends that the City Council support either the initiative proposal sponsored by access to justice or that proposed by the Insurance Consumer Action Network (ICAN).

Lifestyle Discrimination

During the course of this study, the Task Force has become aware of widespread lifestyle discrimination by insurance companies in California and throughout the nation. By "lifestyle discrimination," the Task Force is referring to situations in which insurers deny coverage, set higher rates, or cancel policies because of the sexual orientation or cohabitation status of the applicant or the insured. Complaints of lifestyle discrimination have been raised by both unmarried heterosexual couples and same-sex couples.

Widespread complaints regarding discriminatory underwriting practices by California insurance companies were confirmed by consumers, consumer advocates, civil rights advocates, the Insurance Commissioner's office, as well as insurance brokers and agents.

According to a representative of Common Cause, insurance coverage is often denied in Southern California because of the consumer's choice of neighborhood, choice of automobile, or choice of life partner. For example, a local insurance company refused to grant automobile insurance to a woman merely because she was a "military wife," i.e., her spouse was enlisted in the Navy.³⁵

In his public hearing testimony, Tony Melia, President of National Business Insurance Agency (NBIA), described lifestyle discrimination by insurance companies in property and casualty insurance.³⁶ He related that some companies refuse to issue a joint homeowner's policy in the names of two same-sex householders, as their interests may appear on a deed, although joint policies are issued routinely to married couples. Most companies will not offer a family discount on automobile insurance to an unmarried couple who live together and share cars, even though such discounts are offered to blood relatives and married couples. One company actually wrote to NBIA and complained that the agency was writing too many policies for unmarried persons.

Brendt Nance, President of Concerned Insurance Professionals for Human Rights, documented lifestyle discrimination in health, life, and disability insurance.³⁷ He reported that some companies refuse to issue a life insurance policy if the consumer names a beneficiary who is not related by blood, marriage, or adoption. One major carrier charges two unmarried 35-year-olds a total of \$213.60 per month for basic health coverage, while a married couple could purchase the same coverage for \$197 per month.

Leonard Graff, Legal Director for National Gay Rights Advocates (NGRA), testified concerning lifestyle discrimination against gays and lesbians.³⁸ Complaints received by NGRA about automobile insurance, homeowner and renter policies, umbrella or excess liability policies, and health insurance relate to outright denial of coverage, the naming of beneficiaries, and, most often, rate discrimination against unmarried couples.

One company, the Automobile Club of Southern California, recently extended family discounts for automobile insurance coverage to unmarried couples. Previously, the discount was available only to married couples.³⁹ Some companies have followed AAA's example, but others continue to extend family discounts only to married couples. The AAA reform, however, only applies to insurance but not to membership in the Auto Club. The Automobile Club of Southern California continues to maintain membership discount practices which discriminate against unmarried couples. For example, a married couple may purchase one master membership and a discounted associate membership, while an unmarried couple must pay for two master memberships. In view of changing demographics and family structures in Southern California in 1987, the Auto Club created an internal AAA Task Force to review membership rating practices and to recommend possible revisions to the Board of Directors. The AAA Task Force will recommend ways in which the club's membership rules can be amended to accommodate the needs of contemporary families.

Unmarried couples also experience lifestyle discrimination when attempting to purchase renter's insurance. Renter's insurance protects occupants of an apartment or house against property damage or liability. Most insurance companies will not issue a policy jointly to an unmarried couple renting an apartment; two policies, with two pre-

miums, are required. A married couple, however, can save money by obtaining a joint policy.

According to Leonard Graff, lifestyle discrimination in home and automobile insurance is primarily rate discrimination on the basis of marital status or sexual orientation.

California Administrative Code Section 2560.3 prohibits insurers from discriminating against consumers on the basis of marital status or sexual orientation. However, the Insurance Commissioner has interpreted the law narrowly so as not to apply to the type of lifestyle discrimination just described. According to Graff:⁴⁰

Well, they [Insurance Commissioner's Office] don't feel that those regulations cover the situation involving couples. In other words, in the examples that I have been describing — like automobile insurance — people, regardless of their sexual orientation, are not having too much trouble getting a policy because they are gay or lesbian. The problem is getting a discount because they are a couple. And in my conversations with Peter Groom [Legal Counsel to the Insurance Commissioner], he's taking the position that this is "rate discrimination" and is beyond the jurisdiction of the Commissioner.

Unmarried couples, who write to the Insurance Commissioner's Office complaining of such lifestyle discrimination,⁴¹ are simply informed that there is nothing that the Insurance Commissioner can do.⁴²

The Task Force on Family Diversity recommends several actions that the Insurance Commissioner and other agencies can take to protect unmarried couples from the continuing and widespread lifestyle discrimination.

First, the Insurance Commissioner can declare various practices against unmarried couples to be "unfair practices," such as refusal to issue a joint renter's or homeowner's policies to an unmarried couple living together in their jointly owned or rented residence. Granting discounts to cohabiting couples who are married while denying such discounts to similarly situated unmarried couples should also be declared an "unfair practice," as should the refusal of an insurance company to allow a life insurance applicant to name a lifemate as beneficiary.

The California Insurance Code provides for remedies through the Insurance Commissioner against unfair practices engaged in by those in the business of insurance.⁴³ The Commissioner should use the power provided in the code to conduct investigations of such unfair practices, and, where appropriate, commence administrative actions against violators.⁴⁴ If a company continues such practices after an administrative hearing, adverse determination, and warning,⁴⁵ the Commissioner should, through the state Attorney General, seek a restraining order against the company.⁴⁶ Any company who defies a court order, in addition to a contempt proceeding, faces fines and possible suspension of license or certificate to engage in the insurance business.⁴⁷

Although it appears that the Insurance Commissioner has the authority to address instances of lifestyle discrimination through the complaint procedure authorized by the Insurance Code,⁴⁸ such action has not been taken to date.

The Task Force on Family Diversity calls on the Insurance Commissioner to officially rule that lifestyle discrimination by insurance companies, including rate discrimination against unmarried couples, is an unfair business practice. The Mayor and the City Council should communicate with the Commissioner, expressing their concern for the protection of unmarried couples living in the city, urging the Commissioner to use the authority to regulate and restrain such practices.

Furthermore, the Unruh Civil Rights Act may provide an additional mechanism for protection.⁴⁹ The Unruh Act bars all forms of arbitrary discrimination by business establishments of every kind. Sexual orientation discrimination is prohibited by the Unruh Act.⁵⁰ It would seem that marital status discrimination is arbitrary in many contexts. California statutes forbidding such discrimination have been interpreted to prohibit discrimination against unmarried couples.⁵¹ By analogy, it would appear that discrimination by insurance companies against unmarried couples would violate the Unruh Civil Rights Act.

The Attorney General, the state Department of Fair Employment and Housing (DFEH), district attorneys and city attorneys all have jurisdiction to enforce the Unruh Civil Rights Act.⁵² Individual complaints may be investigated and processed by DFEH. The Attorney General or local district or city attorneys may bring court actions to enjoin a "pattern or practice" violating the Unruh Act; they may also bring civil actions under "unfair competition" statutes to enjoin unfair or unlawful business practices.⁵³ Thus, remedies exist beyond those found in the Insurance Code.⁵⁴ However, since consumers file their complaints primarily with the Insurance Commissioner's Office, these agencies seldom, if ever, learn of, or process, cases involving unfair practices by insurance companies. And in the case of lifestyle discrimination, the Insurance Commissioner closes case files without referring the consumer to other agencies which may have jurisdiction under the Unruh Act or Business and Professions Code.

The Task Force on Family Diversity has several recommendations about improving the way cases involving lifestyle discrimination by insurance companies are handled by government agencies.

First, as mentioned above, the Insurance Commissioner should deem such discrimination to be an unfair practice and take action under the Insurance Code.

Second, the Insurance Commissioner should routinely refer cases to other agencies with possible jurisdiction.⁵⁵ If the Commissioner receives a complaint about lifestyle discrimination and declines to take action, the letter of complaint should be forwarded to the Attorney General for possible relief under the Unruh Act. Such referrals will enable the Attorney General to determine if a discriminatory pattern or practice exists. The Attorney General can then either take direct action, or refer the matter to the appropriate district attorney or city attorney.

Third, the Los Angeles City Attorney should specifically request that the Insurance Commissioner forward to the City Attorney copies of lifestyle discrimination complaints involving transactions occurring in the City of Los Angeles. This will enable the City Attorney to determine if unfair business practices are occurring in the city so that such patterns and practices can be enjoined.

Fourth, the City Attorney should convene an Insurance Task Force on Lifestyle Discrimination. Representatives of the Attorney General's

Office, the Insurance Commissioner's Office, the state Department of Fair Employment and Housing, civil rights groups, consumer protection groups, and the insurance industry should be invited to participate on the Task Force. The purpose of the Insurance Task Force would be to make recommendations for improving the ways in which lifestyle discrimination is handled by state and local agencies with apparent jurisdiction in this area.

INSURANCE: RECOMMENDATIONS

27. The Task Force recommends that the City of Los Angeles adopt a legislative policy statement on insurance to guide its legislative program in Sacramento and Washington, D.C. The policy should: support the repeal of current state and federal exemptions of the insurance industry from antitrust laws; oppose "redlining" practices; support the adoption of a "flex-rating" system of prior approval for property and casualty insurance; and support the creation of an insurance consumer advocate's office within the California Department of Justice.

28. The Task Force recommends that the Mayor and the City Council support a 1988 insurance reform ballot initiative containing strong provisions on rate regulation, antitrust protections, consumer advocacy, and conflict of interest. The measures which most closely would meet these goals are those proposed either by the Insurance Consumer Action Network (ICAN) or access to justice (voter's revolt).

29. The Task Force recommends that the state Insurance Commissioner declare various practices against unmarried couples to be "unfair practices," including the refusal to issue a joint renter's or homeowners's policy to an unmarried couple living together in a jointly owned or jointly rented residence, the denial of discounts to unmarried couples while granting such discounts to married couples, and the refusal to allow a life insurance applicant to name a non-spousal lifemate as a beneficiary.

30. The Task Force recommends that the Mayor and the City Council communicate to the state Insurance Commissioner their concern about lifestyle discrimination by insurance companies, asking the Commissioner to outlaw lifestyle discrimination as an unfair business practice.

31. The Task Force recommends that the Insurance Commissioner routinely refer complaints of lifestyle discrimination to other agencies with possible jurisdiction. If the Commissioner receives a complaint of lifestyle discrimination from an insurance consumer and declines to take action, the letter of complaint should be forwarded to the Attorney General for possible relief under the Unruh Act. Such referrals will enable the Attorney General to determine if a discriminatory pattern or practice exists. The Attorney General can then either take direct action or refer the matter to the appropriate district attorney or city attorney.

32. The Task Force recommends that the Los Angeles City Attorney specifically request that the state Insurance Commissioner forward to the City Attorney copies of lifestyle discrimination complaints involving transactions occurring in the City of Los Angeles. This will enable the City Attorney to determine if unfair business practices are occurring in the city so that such patterns and practices can be enjoined.

33. The Task Force recommends that the City Attorney convene an Insurance Task Force on Lifestyle Discrimination. Representatives of

the Attorney General's Office, the Insurance Commissioner's Office, the state Department of Fair Employment and Housing, civil rights groups, consumer protection groups, and the insurance industry should be invited to participate on the Task Force. The purpose of the Insurance Task Force would be to make recommendations to improve the manner in which lifestyle discrimination is handled by state and local agencies with apparent jurisdiction over arbitrary or unfair business practices.

Insurance: Notes

¹ Interview with Steve Miller, June 5, 1987, at the offices of ICAN in Los Angeles.

² *Ibid.*

³ Interview with Tom Vacar, June 2, 1987, at the offices of KCBS-TV in Los Angeles.

⁴ Reich, Kenneth, "State Insurance Department Found Far Behind on Complaints," *Los Angeles Times*, May 13, 1986.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Kan, Ada, "Insurance Discrimination," *Report of the Task Force on Family Diversity: Supplement — Part Two*, p. S-871.

⁹ Letter from Lewis Keller, President of the Association of California Life Insurance Companies, dated March 26, 1987.

¹⁰ Miller, *supra*, at note; Vacar, *supra* at note 3.

¹¹ Testimony of Tony Melia, President of the National Business Insurance Agency, and Brendt Nance, Concerned Insurance Professionals for Human Rights, *Public Hearing Transcript*, pp. 189-202.

¹² Vopal & Verdugo, "Report of Research Team on Insurance Discrimination," *Report of the Task Force on Family Diversity: Supplement — Part One*, p. S-563.

¹³ Miller, Steve, "Insurance Regulation Needs Accountability," published by Insurance Consumer Action Network, 1987.

¹⁴ Commission on California State Government Organization and Economy, "A Report on the Liability Insurance Crisis of California," July, 1986, p. 1.

¹⁵ *Id.*, p. 2.

¹⁶ *Id.*, p. v.

¹⁷ United States General Accounting Office, "Auto Insurance, State Regulation Affects Cost and Availability," GAO/OCE-86-2, August 1986, p. 3.

¹⁸ National Insurance Consumer Organization, "Insurance in California: A 1986 Status Report for the Assembly," October, 1986, p. II-1.

¹⁹ Congress exempted insurance companies from federal antitrust regulation when it passed the McCarran-Ferguson Act in the 1940s (15 U.S.C. Sec. 1101).

²⁰ The McBride-Gorunsky Act was passed by the California Legislature, also in the 1940s (Insurance Code Section 1850).

²¹ Testimony of Attorney General John Van de Kamp before the Assembly Judiciary Committee in support of A.B. 1190, May 20, 1987.

²² Assembly Bill 1190 by Assemblywoman Maxine Waters would have accomplished this result. After heated debate, it failed to pass the Assembly Ways and Means Committee during the 1987 Legislative session.

²³ Reich, Kenneth, "Shopping Around for Car Insurance: It's 'Potluck'," *Los Angeles Times*, June 24, 1987.

²⁴ "Anti-redlining Bill Dies in Senate Committee," *Mt. Washington Star Review*, May 14, 1986.

²⁵ Salisbury, Lois, "Who Will Pay for Brown's Auto Insurance Tinkering?" *Los Angeles Times*, May 4, 1986.

²⁶ "Van de Kamp Urges State Insurance Rate Regulation," *Los Angeles Herald Examiner*, May 19, 1987.

²⁷ Reich, Kenneth, "Insurance Bill Clears Hurdle in Assembly," *Los*

Angeles Times, May 20, 1987.

²⁸ Dresslar, Tom, "Alternative Insurance-Rate Measure Would Rely on Consumers," *Los Angeles Daily Journal*, June 29, 1987; "Insurance: Open the Books," *Los Angeles Times*, July 1, 1987; Dresslar, Tom, "Prospects Darken for Reform of State Insurance Laws in '87," *Los Angeles Daily Journal*, August 27, 1987.

²⁹ Braun, Gerry, "State's Insurance Storm Passes," *San Diego Union*, February 9, 1987.

³⁰ "Summary of Seven Measures on Insurance Reform," *California Political Week*, January 25, 1988.

³¹ *Ibid.*

³² *Ibid.* The measure sponsored by Access to Justice calls for a 20% automobile insurance rate rollback, elimination of antitrust exemption, rate regulation by the Insurance Commissioner, and rates based on driving records and not zip codes. The initiative offered by Insurance Consumer Action Network calls for similar reforms, but extends to all kinds of insurance coverage, with special senior citizen protections.

³³ *King v. Meese* (1987) 43 Cal.3d 1217; Carrizosa, Philip, "State High Court: Car Insurance is Now Mandatory," *Los Angeles Daily Journal*, October 27, 1987.

³⁴ Reich, Kenneth, "Three Officials Back Proposed Initiative on Car Insurance," *Los Angeles Times*, November 3, 1987.

³⁵ Interview with Wally Zelman, Common Cause, June 3, 1987.

³⁶ Testimony of Tony Melia, "Lifestyle Discrimination in Property/Casualty Insurance," *Public Hearing Transcript*, p. 189.

³⁷ Testimony of Brendt Nance, "Lifestyle Discrimination in Health/Life/Disability Insurance," *Public Hearing Transcript*, p. 196.

³⁸ Testimony of Leonard Graff, "Lifestyle Discrimination by Insurance Companies," *Public Hearing Transcript*, p. 114. See also, Freiberg, Perter, "Antigay Insurance Company Sued," *The Advocate*, June 10, 1987.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Interview with Peter Groom, Legal Counsel to the state Department of Insurance, March, 1987.

⁴² *Ibid.*

⁴³ Insurance Code Section 790 *et seq.*

⁴⁴ Insurance Code Section 790.06.

⁴⁵ Insurance Code Section 790.06(a).

⁴⁶ Insurance Code Section 790.06(b).

⁴⁷ Insurance Code Section 790.07.

⁴⁸ Insurance Code Sections 1292L3-1292L4; Section 790 *et seq.*

⁴⁹ Civil Code Section 5L.

⁵⁰ *Rolon Kukwitzky* (1984) 153 Cal.App.3d 289; *Curran v. Mount Diablo Council of Boy Scouts* 1985 147 Cal.App.3d 712.

⁵¹ *Hess v. Fair Employment and Housing Commission* (1982) 138 Cal.App.3d 232; *Department of Fair Employment and Housing v. Boy Scouts of America*, Before the Fair Employment and Housing Commission, Precedent Decision No. FEP 78-709, filed August 6, 1981.

⁵² Government Code Sections 12948, 12960-12976; Civil Code Section 52(c).

⁵³ Business and Profession Code Section 17200 *et seq.*; *Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 930.

⁵⁴ Insurance Code Section 12994.

⁵⁵ When the Insurance Commissioner receives information that an insurance company may be violating a statute from a code other than the Insurance Code, such as the Unruh Civil Rights Act or provisions of the Business and Professions Code, public policy contemplates that the Commissioner will refer the matter to the appropriate agency with authority to investigate and take action. (Cf. Insurance Code Section 12928).

CITY GOVERNMENT

The government of the City of Los Angeles has a powerful institutional influence on local family life. The city passes ordinances, adopts policies, collects and spends revenues, manages programs, lobbies other branches and levels of government, and employs tens of thousands of workers. These government activities directly and indirectly affect families throughout the city.

This portion of the Task Force report focuses on how the City of Los Angeles, in its various administrative and legislative capacities, can better serve the needs of local residents and their families.

The City as Employer

The City of Los Angeles, through its various agencies and departments, employs about 40,000 workers.¹ The primary civilian workforce of city government consists of about 20,000 employees. An additional 10,000 sworn personnel work for the Police Department and Fire Department. Another 10,000 people are employed by the Department of Water and Power. As an employer, the city can assure respect for family diversity and ensure that family status or household composition is not used as a basis for discrimination.

Minimum Wage

Research by the staff of the California Industrial Welfare Commission indicates that it would be necessary to raise the minimum wage to \$5.01 per hour to lift minimum wage workers to the standard of living they had in 1967.² Statistics show that about 30% of minimum-wage workers are heads of households, a majority of them being women or minorities.³

Last year, attempts by the state Legislature to raise the minimum wage from \$3.35 per hour resulted in a governor's veto after receiving strong opposition from groups such as the California Chamber of Commerce.⁴ Other local organizations such as the Mexican Chamber of Commerce, United Neighborhoods Organizing Committee, and the East Valleys Organization asserted the need for an increase.⁵

The state Industrial Welfare Commission recently approved an increase in the minimum wage to \$4.25 per hour. While any increase will help workers with dependents, a higher minimum wage is still needed. The Task Force on Family Diversity commends the City of Los Angeles for increasing the pay of its own minimum-wage workers to \$5.01 per hour.⁶ The Task Force recommends that the City Council and the Mayor continue to press Congress, the California Legislature and the Industrial Welfare Commission to increase the minimum wage for all workers to \$5.01 per hour in 1989.

Flexible Scheduling

Because of extraordinarily dense freeway traffic, commuting to and from work is already a major problem for many employees. Unless some innovative actions are taken, work-related commuting will only become more time consuming. Between now and the year 2000, the greater Los Angeles area is expected to experience the nation's largest overall population growth.⁷ The region will also gain some 805,000 new jobs in that period.⁸ Demographers predict that the labor force also will become older and more diverse by the turn of the century.⁹

Shifting workers away from the standard 9-to-5 work schedule could help ease transportation problems.¹⁰ Not all work needs to be done during these hours, not all work needs to be done at the jobsite, and not all employees must work fulltime.¹¹ Rearranging work schedules to allow for more flex-time, part-time, and home-based work could also fit the lifestyle needs of workers with dependent children,¹² and those who care for elderly parents.¹³ The city encourages ridesharing and has adopted some flexibility in scheduling; much more is necessary.

For several years, Councilwoman Joy Picus, chair of the council's Personnel and Labor Relations Committee, has suggested ways to bring the workplace into line with the needs of today's family. She has called for revised employment practices, such as dependent care, "cafeteria-style" benefits packages, and flexible work hours. The Task Force on Family Diversity commends Councilwoman Picus for her leadership in developing and promoting a "Family Economic Policy" for the City of Los Angeles.

Child Support Payments

Councilwoman Ruth Galanter and City Controller Rick Tuttle have proposed that the city help collect child support payments from city employees with support obligations.¹⁴

Under the plan, the city controller's office would provide the names of all city employees to the district attorney's office to be cross-referenced against names of parents who are delinquent in child support payments. City employees with child support obligations, whether delinquent or not, could also request that the city withhold the monthly payment from their paychecks and forward it to the custodial parent.

Two years ago, the controller exchanged names with the district attorney, identifying 185 city employees who together owed more than \$1 million in past due child support.

The Task Force on Family Diversity commends Councilwoman Ruth Galanter and Controller Rick Tuttle for their leadership in developing and promoting the child support payroll deduction program. The Task Force recommends that the City Council and the Mayor approve the plan.

Employee Benefits

The structures and demographics of local families have changed over the years. A recent survey of the civilian workforce demonstrates that city workers and their families have been a part of this change.

Last year, the Personnel Department sent a questionnaire to 20,000 civilian workers, 8,000 of whom responded.¹⁵ The results show that the city has a diverse workforce:¹⁶

- * About 11% have a "traditional" marital arrangement with one employed spouse and one homemaker spouse.
- * About 49% are part of a dual-income household, with both spouses employed outside the home.
- * About 5% live with a domestic partner.
- * About 35% are single.

The city's present employee benefits package favors employees with homemaker spouses over all other living arrangements; about two-thirds of those responding to the survey predictably favored the city switching to a flexible benefits plan.¹⁷

The Task Force has studied existing and proposed benefit programs involving family sick leave, family bereavement leave, health and dental plans, and dependent care. The findings and recommendations of the Task Force are based on student research,¹⁸ public hearing testimony¹⁹ and research done by Task Force members,²⁰ as well as information provided by the City Personnel Department, the City Administrative Officer, and the Office of the Chief Legislative Analyst.

Historical Background. The terms "employee benefits," or "fringe benefits," have been used interchangeably to refer to the extra payments, services, and insurance that, together with salary, comprise an employee's total compensation. Health insurance, sick leave, leaves for personal purposes such as maternity or bereavement, pension plans, and vacation benefits are traditional components of employee benefits programs. However, in today's competitive employment marketplace, the purpose and point of employee benefits is often overlooked or ignored; in the context of the city, as elsewhere, a circumspect examination reveals that the traditional benefits package no longer meets the needs of most current employees.

Years ago, the paycheck or weekly wage represented the total remuneration for an employee's services. During the Industrial Revolution, pension plans, with long deferred vesting and strict employee controls, were introduced in an attempt to keep an employee tied to a particular job.²¹ During the World War II labor shortages, salary alone was no longer a sufficient inducement to attract the desired personnel; something more had to be offered. Since wages and salaries were subject to the federal stabilization rules that had been enacted during the Depression, employers were compelled to offer different kinds of employee benefits in order to compete for the limited labor supply.²²

Benefits were originally designed, in other words, as a tool to attract and hold the desired type and number of employees. Contemporary analysts still acknowledge that benefits plans "should aid (or at least not impede) the hiring of desired people."²³ After the employee has been attracted to a particular employer by the offer of certain types of benefits, the agreement by the employer to compensate the employee with such benefits becomes a contractual obligation. Indeed, California courts have held that benefits, such as retirement benefits, "do not derive from the beneficence of the employer, but are properly part of the consideration earned by the employee."²⁴

Since the philosophy of employee benefits is to satisfy some of the employee's needs, in addition to the need for monetary compensation, it is critical that the employer understand the nature of those needs. If a workforce were homogeneous, the needs of all employees would be fairly easily discernible by the well-informed employer, and the design of an attractive benefits package would pose no problem;²⁵ an employee heading a single-wage-earner family traditionally needed life, medical, and accident insurance plans covering the employee, and sometimes the employee's dependents.²⁶

In today's workforce, women compose 45% of those employed.²⁷ While the number of working women who have young children is increasing, the average working woman still earns only about 60% of

what the average working man earns.²⁸ Perhaps even more significantly, with the number of elders in our society growing steadily, employees, and female employees in particular, face increased demands to care for aging family members.²⁹ Both children and family elders present examples of financial dependency that create special hardships for women whose salaries are based on the traditional male head-of-household nuclear family model. A realistic assessment of employee needs would require breaking with tradition.

Demographics cited throughout this report demonstrate how much family structures have changed over the years.³⁰ To be competitive, an employer must now compensate an employee with a total compensation package that meets the employee's particular needs and that the employee can utilize fully. For example, the single working mother needs child care benefits and sick leave to care for family members, but may not need, or be in a position to utilize, a deferred compensation plan or spousal medical coverage.

Yet, the most important problem with current benefits programs remains the inequity in total compensation for two employees performing the same job. Discrimination has been defined as the making of decisions based on criteria other than productivity.³¹ The decision to compensate one employee in the form of employee benefits at a higher level than another employee is discriminatory when the only basis for making the decision is the fact that the privileged employee conforms to an outdated societal norm which the benefits package was originally designed to serve. Many employers, including the City of Los Angeles, need to reexamine their traditional program with an eye toward developing a means of assuring that each employee is compensated at a level equal to the compensation given other employees doing the same job in the same job classification. Those employers who refuse to recognize the changing family lifestyles of today's employees will find themselves not only out of the competition for the most desired workers, but also burdened with a benefits program that can only be described as wasteful.³²

Current City Programs. The basic benefits currently available to city employees include health and dental care, retirement, vacation, sick leave and bereavement leave. Employees have a choice of four health plans, under each of which the city subsidizes monthly premiums at a rate agreed upon in each employee group's Memorandum of Understanding.³³ Retirement benefits are available to all employees, and several options are available upon retirement for payment of accrued benefit funds.³⁴ Vacation leave is available at a rate based on the employee's number of years of city service.³⁵ Sick leave due to illness of the employee is also available with the number of days being negotiated between the city and the employee's group and memorialized in the Memorandum of Understanding. Sick leave is also available for the employee to care for an ill family member, as that term is defined by ordinance.³⁶ Finally, bereavement leave is offered for the death of a family member, as defined by ordinance.³⁷

With these basic benefits available to all city employees, the quality, and in some cases, the quantity, of benefits, may be directly related to the employee's marital status. In the area of health benefits, for example, the subsidy negotiated by the city is generally intended to cover the cost of the monthly premium for the lowest cost health care plan for the employee, spouse, and one dependent.³⁸ The total benefit subsidy negotiated, therefore, is considered part of each employee's total compensation package, but not every employee receives the full benefit. In

1986, for example, a city employee who was a member of the clerical unit, received a maximum monthly subsidy for health care of \$253.00.³⁹ If the employee were to elect the Kaiser program, this subsidy would have been sufficient to insure the employee, the employee's spouse, and one dependent child.⁴⁰ A single employee electing Kaiser coverage, however, would not have received any monetary reimbursement for the unexpended part of the subsidy which, in this example, would total more than \$160.00. From this one example, it appears clear that single employees are not treated fairly by the benefit plan.

In addition to treating single employees differently than married employees, employees with domestic partners also receive fewer benefits than married employees. While an employee may have his or her spouse covered free of charge on the basic health plan, not so for domestic partners. An employee may take sick leave to care for a needy spouse, but not for an ailing domestic partner.⁴¹ An employee is entitled to bereavement leave upon the death of a spouse, but not when his or her domestic partner dies.⁴² Also, an employee may elect to have survivor benefits paid to a spouse from the employee's retirement fund after the employee's death, but survivor benefits are not available to a surviving domestic partner.⁴³

Meeting Employees' Needs. Single workers and employees with domestic partners are not being compensated fairly under the current employee benefits plan. The needs of dual-income married couples are not being met either. For example, a city employee with a working spouse will not apply for spousal medical coverage if the spouse has medical coverage through his or her own employer. Many of these workers would prefer a flexible benefits plan that would allow substitution of a needed and usable benefit, such as dependent care, for an unusable one.

In addition to increased demand for child care services, employees are beginning to ask for dependent care for aging parents. In fact, employees who must become elder-caregivers may soon outnumber those who care for dependent children.⁴⁴ Adult children provide 80% of the health and social services needed by their aging parents, and the great majority of these caregivers are women.⁴⁵ Recent studies reveal work-related problems with those workers who care for elders, such as lateness, absenteeism, excessive personal phone use, and excessive stress.⁴⁶

Other employee problems and concerns run the gamut from substance abuse, marital problems, and financial stress, to mid-life crisis. These problems are manifested in such forms as depression, anger, anxiety, sleeplessness and exhaustion. The result can be costly to the employee in terms of physical and mental well-being, and to the employer in terms of lost time and impaired work performance.

As an employer with a commitment to the well-being of its employees, as exemplified by programs such as the annual "Wellness Fair," the City of Los Angeles should develop more Employee Assistance Programs to help employees during times of personal or family crises. The Task Force recommends that the city contract with an outside agency to establish programs that would provide employees with confidential counseling on a variety of matters, including substance abuse, relationship problems, retirement planning, financial investing, and dependent care.

Solutions and Recommendations. The city has recognized that its benefits programs need to be revised. Last year, the City Council

hired a consulting firm to assess the feasibility of adopting a flexible or "cafeteria style" benefits program.⁴⁷ A survey of city workers showed that two-thirds wanted the city to adopt such a flexible benefits program.⁴⁸

A flexible benefits plan (also known as "cafeteria" plan) would allow employees more choice in which benefits they receive, such as health insurance, dental insurance, life insurance, dependent life insurance, accidental death and dismemberment insurance, long term disability insurance, child care, elder care subsidy, vision insurance, group auto insurance, savings plan contributions, and cash.

There are three basic types of cafeteria plans. The first, the modular design, presents employees with a choice of several preselected benefits packages. The second, or flexible spending account, gives the employee a choice between taxable cash and pretax payment of nontaxable expenses. The third, or "core-plus" options plan, allows employees to select among various options which complement a fixed core of benefits for all employees.

Whatever type of plan is selected, these benefits plans are beneficial to employees only if the plan chosen meets the employee's particular needs. The Task Force on Family Diversity recommends that the City Council give approval to the Personnel Department to move forward with the implementation phase of the proposed flexible benefits program. The Task Force further recommends that the City Council resolve to eliminate marital status discrimination in the distribution of benefits pursuant to its benefits programs.

Since the issues of child care and elder care pose similar problems for employees, the Task Force recommends that any plan extending child care benefits to employees be expanded to include elder care, in essence, making both "dependent care" benefits.

The city should also take a more active role in the development and implementation of dependent care programs. The city could use its internal systems of communication to disseminate medical findings, estate planning information, and other information relating to aging and the care of elders. Workshops could be provided and support groups formed to help employees deal with elder care. The city might also develop a regionwide network of resources and referral services to provide caregivers with information about available child care and elder care centers and encourage employees to make use of these services.

The Task Force on Family Diversity recommends that the Mayor issue an executive order directing the Personnel Department to review current city personnel practices and authorizing it to take whatever steps are necessary, including meeting and conferring with employee groups, to modify and enhance the city's role as a model employer in the area of dependent care, flexible work schedules, expanded maternity and paternity leave, and the use of leaves to care for elderly dependent relatives. Additionally, the Mayor should direct Project Restore, which is presently working to restore City Hall, to study the feasibility of including an on-site dependent care center in its restoration plans.

Unfairness to Domestic Partners. The facts are in, and the city should recognize that a significant number of its employees are living in domestic partnerships, be they same-sex or opposite-sex relationships. The Task Force on Family Diversity estimates that about 8% of the city's civilian employees have domestic partners.⁴⁹ The Task Force finds that

these employees are being treated unfairly under the present benefits system.

In recent years, several municipalities have extended benefits to government employees and their domestic partners.⁵⁰ In other cities, such proposals are under consideration.⁵¹ The City of Los Angeles should now take positive action on the domestic partnership benefits issue.

Some unfairness would be eliminated if the city were to adopt a flexible benefits plan that does not discriminate on the basis of marital status in the extension of benefits. Other inequities to domestic partners should also be remedied immediately.

For example, it is patently wrong to deny an employee either family sick leave or bereavement leave when his or her domestic partner is seriously ill or dies. Presently, the City Administrative Code does just that.⁵² To implement reform in the area of family sick leave and bereavement leave in a responsible manner, the city must first define the term "domestic partners." The Task Force on Family Diversity recommends that the City Council amend the City Administrative Code to include the term "domestic partner" in the list of "immediate family" relationships for which an employee is entitled to take family sick leave and bereavement leave. The following definition of "domestic partner" should be adopted, and the city's Personnel Department should be authorized to establish appropriate procedures to verify the domestic partnership status of employees who claim eligibility for sick leave or bereavement leave.⁵³

Domestic partners are two persons who declare that:

- (1) They currently reside in the same household, and have been so residing for the previous 12 months.
- (2) They share the common necessities of life.
- (3) They have a mutual obligation of support, and are each other's sole domestic partner.
- (4) They are both over 18 years of age and are competent to contract.
- (5) Neither partner is married.
- (6) Neither partner is related by blood to the other.
- (7) They agree to notify the appropriate agency within 30 days if any of the above facts change.

The extension of family sick leave and bereavement leave to employees who have domestic partners does not require complex legal analysis or extensive fiscal debate. Legally, the city has the discretion to grant such benefits, and the financial impact to the city would be negligible.⁵⁴

Granting retirement benefits to surviving domestic partners has a potentially greater financial impact and more complex legal considerations. Before any proposals move forward in this area, the Government Operations Committee of the City Council could request the City Attorney for a legal analysis and the City Administrative Officer for a financial review of the matter.

City Departments and Commissions

During the past fiscal year, the City of Los Angeles reported nearly \$2.5 billion in revenues. Almost \$2 billion of this revenue was appropriated to city departments.⁵⁵ A list of some departments and a brief summary of their authority shows how departmental services and programs affect local families:⁵⁶

- * **Department of Aging:** plans, coordinates, and manages the city's senior citizen activities.
- * **Building and Safety Department:** enforces all ordinances and laws related to the construction or alteration of homes, apartments, and other buildings, as well as the installation, use and repair of appliances therein; enforces zoning laws.
- * **City Attorney:** prosecutes all misdemeanor cases, including family violence and abuse, and some substance abuse.
- * **Community Development Department:** administers the housing and community block grant, community services block grant, and rent control programs.
- * **Cultural Affairs Department:** sponsors exhibitions and community art events; conducts youth and adult choruses and community sings; sponsors band concerts.
- * **Fire Department:** enforces fire prevention laws; implements a fire prevention program; provides rescue services; extinguishes fires.
- * **City Planning Department:** regulates the use of privately owned property through zoning laws; provides advice and assistance relative to environmental matters.
- * **Police Department:** engages in patrol and prevention of crime; investigates crimes and makes arrests.
- * **Public Works Department:** collects and disposes of household refuse; maintains all sanitation sewers and storm drains; maintains street lighting; maintains streets and sidewalks.
- * **Transportation Department:** develops plans to meet the ground transportation needs of the public; studies parking and traffic problems; controls traffic and pedestrian movement at all intersections; oversees crossing guard services.
- * **Library Department:** purchases, catalogues, maintains, and circulates library materials; provides services at 63 libraries and throughout the city by bookmobiles.
- * **Recreation and Parks Department:** operates parks, beaches, zoo, observatory, travel town, and cultural sites; operates sports, camping, and other recreational programs for youth, seniors, families and individuals.

The responsibility of governing and administering the City of Los Angeles is shared among various participants.⁵⁷ Elected officials write laws, set policies, adopt budgets, and hold occasional oversight hearings. Daily implementation of city services and programs is the duty of department heads. Ideally, however, ongoing oversight of government operations should be attended to by appointed city commissioners.

More than 200 appointed commissioners serve on about 45 boards and commissions created by city charter or ordinance. Most of the appointments are made by the Mayor, with approval by the City Council. Although many commissions exercise authority that has a direct or indirect effect on local families, the Task Force has taken a special interest in the work of the following panels:

* **Commission on the Status of Women:** promotes the general welfare of women in the community and in the city workforce.⁵⁸

* **Human Relations Commission:** promotes intergroup harmony through public hearings, research, education or by recommending legislation or programs.⁵⁹

* **Handicapped Access Appeals Commission:** receives complaints, holds hearings, and makes rulings on buildings lacking access for people with disabilities.⁶⁰

* **Board of Public Works:** issues permits for filming by media on city-owned property; enforces laws prohibiting nondiscrimination by city contractors.

The Task Force commends the city's Commission on the Status of Women for its efforts to improve the quality of life for women and families in Los Angeles. The Commission has developed and the City Council has approved an excellent "Policy Statement on Women's Issues," to guide the city's legislative programs in Sacramento and Washington, D.C.⁶¹ The Task Force also commends the Women's Commission for its leadership in promoting the extension of family benefits to domestic partners.

The Task Force is aware that the city's Human Relations Commission annually prints and distributes a calendar noting various holidays and observances of interest to constituencies in this multicultural city. The Task Force commends the Commission for choosing "Family Diversity" as the theme for its 1988 Human Relations Calendar. Having studied various aspects of the Commission's operations, the Task Force suggest several modifications in the Commission's operations. In keeping with the Commission's mandate to propose legislation and programs promoting intergroup harmony, the Task Force recommends that the Human Relations Commission develop and annually update a "Policy Statement on Human Relations" for inclusion in the city's legislative policy statements. The Task Force also recommends that the Commission take whatever steps are necessary to insure that its Annual Report is filed with the Mayor and distributed to interested parties in a timely manner. Finally, the Task Force recommends that the Human Relations Commission adopt a plan of action to revitalize its operations. A consultant might be hired to assist the Mayor and the Commission in facilitating such a revitalization program.

The Handicapped Access Appeals Commission was created last year. It will doubtless build upon and augment the work of the Mayor's Advisory Commission on Disabilities. The Task Force commends the

Mayor and the City Council for elevating the access issue to full commission status. The Task Force recommends that the Mayor review the needs of the Advisory Commission on Disabilities, including its budget and staffing, so that it can deal effectively with numerous disability issues that do not fall within the jurisdiction of the newly created Access Appeals Commission. As mentioned elsewhere in this report, the Task Force also recommends that as soon as possible, the mayor's Advisory Commission be replaced by a commission on disabilities created by ordinance.

The Board of Public Works plays an important role in administering the city and state nondiscrimination laws. Equal opportunity is an important issue in a city with so many minorities and constituencies. The city recently affirmed its commitment to nondiscrimination when it passed an ordinance prohibiting discriminatory membership practices by certain private clubs.⁶²

Years ago, the city resolved not to award city funds to vendors or contractors who engage in discriminatory employment practices that violate federal, state, or local nondiscrimination laws. This ordinance is administered by the Board of Public Works. Under the ordinance, as amended in 1975, funds may not be awarded to contractors who discriminate on the basis of race, religion, national origin, ancestry, sex, age, or physical handicap.⁶³ Although other forms of discrimination have been prohibited in subsequent years, the ordinance has remained the same since 1975. Now, however, discrimination on the basis of "medical condition," "marital status," and "sexual orientation" is illegal under state or local laws.⁶⁴ If the city "intends to deal only with those contractors who comply with the nondiscriminatory . . . provisions of the laws of United States of America, the State of California, and the City of Los Angeles,"⁶⁵ then the Administrative Code should be updated. The Task Force recommends that the City Council amend the Administrative Code provisions dealing with nondiscrimination by city contractors, adding "marital status," "sexual orientation," and "medical condition" to appropriate subdivisions of Section 10.8, Division 10, Chapter 1 of that code. The Task Force also recommends that the City Attorney and the Board of Public Works keep the City Council and the Mayor apprised of any additional categories that should be added if state, federal, or local nondiscrimination laws are augmented in the future.

In addition to its specific comments on these four commissions, the Task Force offers a few additional observations about the commission process in general. With varying degrees of authority, city boards and commissions oversee departmental operations. Some have the authority to approve or reject departmental policies. Others serve in a more limited advisory capacity. Some have substantial budgets and adequate staffing. Others are significantly underbudgeted and understaffed. Most commissioners serve without compensation, receiving token "per diems" to cover expenses in attending meetings.

One critical observer recently suggested the attributes of effective commissions, which she called, "the lifeblood of our government."⁶⁶ The City of Los Angeles would benefit by employing the following criteria in any evaluation of the commission system which might be undertaken in the future:⁶⁷

* The process of selecting commissioners should be open, with broad based recruitment efforts.

* Appointees should be selected for their integrity and ability; not for purely political reasons.

* A limit of two terms should be the rule. With so many qualified people to choose from, more individuals should be given an opportunity to serve.

* Commissioners should listen to conscientious staff members, should not be puppets of department heads, and should exert independent effort to find out what is really going on within their jurisdiction.

* Commissioners should be visible in the community, thus encouraging broad citizen participation.

* Commissions should be adequately budgeted and have adequate and competent staffing.

* To determine whether a given commission is doing its job, annual reports should be required.

With these criteria in mind, the Task Force on Family Diversity recommends that the Mayor and the City Council conduct a thorough review of the city's commission process for the purpose of making the commissions more representative and effective. The Task Force notes that some constituencies are underrepresented.⁶⁸ It is recommended that the Mayor review the representativeness of current city commissioners and correct any gross imbalances with the next set of scheduled vacancies in June, 1988.

Although this report touches upon many of the major areas of concern to diverse family groups in Los Angeles, the Task Force on Family Diversity is fully aware that many other important areas have not been addressed. It should be apparent that the study of changing family demographics and problems should be an ongoing process for the City of Los Angeles. Unfortunately, there is no existing city agency dealing with family issues on a holistic basis. Los Angeles families deserve more attention, and the City Council, the Mayor, and city departments need ongoing advice related to family concerns. To fulfill this important function, the Task Force on Family Diversity recommends that the City Council and the Mayor establish a Commission on Family Diversity to begin operating in budget year 1989-90. This report, and its background documents, could serve as a foundation for the initial operations of such a commission.

In the interim, the Task Force recommends that the Mayor direct all department managers and all commission presidents to review the report of the Task Force on Family Diversity so that they are aware of current family demographics and needs and can therefore continue to improve policies, programs and services affecting local families.

CITY GOVERNMENT: RECOMMENDATIONS

Employee Benefits

98. The Task Force recommends that the City Council and the Mayor continue to press Congress, the California Legislature and the Industrial Welfare Commission to increase the minimum wage for all workers to \$5.01 per hour in 1989.

99. The Task Force recommends that the City Council adopt the child support payment deduction program that has been proposed by Councilwoman Ruth Galanter and Controller Rick Tuttle.

100. The Task Force recommends that the City Council give approval to the Personnel Department to move forward with the implementation phase of the proposed flexible benefits program. The Task Force also recommends that the City Council resolve to eliminate marital status discrimination in the distribution of benefits pursuant to its benefits programs.

101. The Task Force recommends that any plan extending child care benefits to employees should be expanded to include elder care, in essence, making both "dependent care" benefits.

102. The Task Force recommends that the Mayor issue an executive order directing the Personnel Department to review current city personnel practices and authorizing it to take whatever steps are necessary, including meeting and conferring with employee groups, to modify and enhance the city's role as a model employer in the area of dependent care, flexible work schedules, expanded maternity and paternity leave, and the use of leaves to care for elderly dependent relatives. Additionally, the Mayor should direct Project Restore, which is presently working to restore City Hall, to study the feasibility of including an on-site dependent care center in its restoration plans.

103. The Task Force recommends that the city contract with an outside agency to establish an Employee Assistance Program that would provide employees with confidential counseling on a variety of matters, including substance abuse, relationship problems, retirement planning, financial investing, and dependent care.

104. The Task Force recommends that the City Council amend the City Administrative Code to include the term "domestic partner" in the list of "immediate family" relationships for which an employee is entitled to take family sick leave and bereavement leave. The following definition of "domestic partner" should be adopted, and the city's Personnel Department should be authorized to establish appropriate procedures to verify the domestic partnership status of employees who claim eligibility for sick leave or bereavement leave:

Domestic partners are two persons who declare that:

- (1) They currently reside in the same household, and have been so residing for the previous 12 months.
- (2) They share the common necessities of life.
- (3) They have a mutual obligation of support, and are each other's sole domestic partner.
- (4) They are both over 18 years of age and are competent to contract.
- (5) Neither partner is married.
- (6) Neither partner is related by blood to the other.
- (7) They agree to notify the appropriate agency within 30 days if any of the above facts change.

Departments and Commissions

105. The Task Force recommends that the following actions be taken in connection with the city's Human Relations Commission:

(a) In keeping with the Commission's mandate to propose legislation and programs promoting intergroup harmony, the Commission should develop and annually update a "Policy Statement on Human Relations" for inclusion in the city's legislative policy statements.

(b) The Commission should take whatever administrative action is necessary to insure that its Annual Report is filed with the Mayor and distributed to interested parties in a timely manner.

(c) The Commission should adopt a plan of action of revitalize its operations. A consultant might be hired to assist the Mayor and the Commission in facilitating such a revitalization program.

106. The Task Force recommends that the Mayor review the needs of the Advisory Commission on Disabilities. Pending the creation by ordinance of a full Commission on Disabilities, the Advisory Commission needs a budget and staff members of its own so that it can effectively deal with numerous disability issues which do not fall within the jurisdiction of the newly created Access Appeals Commission.

107. The Task Force recommends that the City Council amend the Administrative Code provisions dealing with nondiscrimination by city contractors, adding "marital status," "sexual orientation," and "medical condition" to appropriate subdivisions of Section 10.8, Division 10, Chapter 1 of that code. It is further recommended that the City Attorney and the Board of Public Works keep the City Council and the Mayor apprised of any additional categories which should be added as state, federal, and local nondiscrimination laws may be augmented in the future.

108. The Task Force recommends that the Mayor and the City Council conduct a thorough review of the appointment process and operations of the city's commissions, for the purpose of making the commissions more representative and effective.

109. The Task Force recommends that the City Council and the Mayor establish a Commission on Family Diversity to begin operating in budget year 1989-90. This report, and its background documents, will serve as a foundation for the initial operations of a Family Diversity Commission.

110. The Task Force recommends that the Mayor direct all department managers and all commission presidents to review the report of the Task Force on Family Diversity so that they are aware of current family demographics and needs and therefore can improve policies, programs and services affecting local families.

City Government: Notes

¹ Interview with Henry Hurd, Employee Benefits Manager, Personnel Department, City of Los Angeles.

² "Wage Hike Endorsed," *Los Angeles Times*, December 1, 1987.

³ Weinstein, Henry, "Mahony and Kennedy Lead Rally for Hike in Basic Wage," *Los Angeles Times*, July 13, 1987.

⁴ "Legislative Outlook," *Alert*, California Chamber of Commerce, July 10, 1987.

⁵ *Ibid.*

⁶ "L.A. Increases Minimum Wage for City Workers," *Los Angeles Daily Journal*, January 29, 1988.

⁷ "L.A. Will Gain 800,000 Jobs by Year 2000," *Los Angeles Herald Examiner*, September 21, 1987.

⁸ *Ibid.*

⁹ Bernstein, Harry, "Work in the Year 2000," *Los Angeles Times*, May 17, 1987.

¹⁰ West, Steven, "Traffic Congestion Threatens to Stall the Economic Engine," *Los Angeles Times*, November 15, 1987.

¹¹ Christensen, Kathleen, *Women and Home-Based Work: The Unspoken Contract* (Henry Holt, 1987).

¹² Hertz, Rosanna, *More Equal Than Others: Women and Men in Dual-Career Marriages* (University of California Press, 1986).

¹³ Freudenheim, Milt, "Help in Caring for the Elderly," *New York Times*, July 1, 1986.

¹⁴ Sackett, Kacy, "L.A. to Consider Child Support Plan," *Los Angeles Daily Journal*, November 24, 1987.

¹⁵ City of Los Angeles, "Employee Benefits Survey," administered by Towers, Perrin, Forster & Crosby, an independent consulting firm hired by the City Council. Results reported in a memorandum dated January 28, 1988, from Keith Comrie, City Administrative Officer, to Mayor Tom Bradley.

¹⁶ *Ibid.*; The number of employees with domestic partners may be somewhat higher than 5%. A recent survey by the Commission on the Status of Women estimated that 11% of city employees lived with domestic partners. The actual number probably lies between these two figures.

¹⁷ *Ibid.*

¹⁸ Ross, David, "Securing Benefits for the Domestic Partners of Los Angeles City Employees," *Report of the Task Force on Family Diversity: Supplement — Part Two*, p. S-564; Bautista, Rummell, "One-Person Households," *Report of the Task Force on Family Diversity: Supplement — Part Two*, p. S-619; Link, David, "Status of Gay and Lesbian Couples," *Report of the Task Force on Family Diversity: Supplement — Part Two*, p. S-832; Green, Matthew, "Defining Family," *Report of the Task Force on Family Diversity: Supplement — Part Two*, p. S-600.

¹⁹ Harris, Charles, "Feasibility Study: Flexible Benefits for City Employees," *Public Hearing Transcript*, p. 122; Achtenberg, Roberta, "Gay and Lesbian Couples and Families," *Public Hearing Transcript*, p. 253; Nordquist, Joyce, and Weinberger, William, "Employee Benefits for Domestic Partners," *Public Hearing Transcript*, p. 185.

²⁰ The remainder of this section on "Flexible Benefits" is taken from the team report: Michelle Buehler, Diane Goodman, Katherine J. Hamilton, "Report on Governmental Employee Benefits," *Report of the Task Force on Family Diversity: Supplement — Part One*, p. S-450.

²¹ Goodman, Isidore, "An Overview of Employee Benefit Plans," *Pension Plan Guide*, No. 395, part II (Commerce Clearing House, Inc., 10-22-86).

²² Goodman, Isidore, "The Compensation Package," *Pension Plan Guide*, No 354, part II, (Commerce Clearing House, Inc., 1-8-82).

²³ Mamorsky, Jeffrey, *Employee Benefits Handbook* (Warren, Gorham & Lamong, 1987).

²⁴ *In re Marriage of Fithian* (1974) 10 Cal.3d 592, 596.

²⁵ Klein, James P., "Tax Effective Total Compensation," *Tax Law & Practice Course Handbook Series Number 237*, p. 7. (Practicing Law Institute, 1985).

- ²⁶ *Id.*, p. 11.
- ²⁷ Willborn, Steven L., *A Comparable Worth Primer* (Lexington Books, 1986).
- ²⁸ *Id.*, p. 7.
- ²⁹ Berne, Suzanne, "Elder Care: *The Issue of the 21st Century*," *Los Angeles Downtown News*, Vol. 16, No. 35 (August 24, 1987).
- ³⁰ In a survey of the city's workforce conducted last year by the Los Angeles Commission on the Status of Women, 11% of about 6,000 respondents reported that they lived with a domestic partner.
- ³¹ Willborn, *supra*, note 27, at p. 10.
- ³² Klein, *supra*, note 25, at pp. 11-12.
- ³³ *Health and Dental Care Program*, Employee Benefits Office, Personnel Department, September 1, 1986, pp. 1, 22.
- ³⁴ City Charter, Section 509.
- ³⁵ Los Angeles Administrative Code, Section 4.245.
- ³⁶ Los Angeles Administrative Code, Section 4.127.
- ³⁷ Los Angeles Administrative Code, Section 4.127.1.
- ³⁸ *Health and Dental Care Program*, *supra*, note 33, at pp. 19, 22.
- ³⁹ *Id.*, pp. 21-22.
- ⁴⁰ *Id.*, p. 19.
- ⁴¹ Los Angeles Administrative Code, Section 4.127.
- ⁴² Los Angeles Administrative Code, Section 4.127.1.
- ⁴³ City Charter, Section 508.2.
- ⁴⁴ Berne, *supra*, note 29.
- ⁴⁵ Jackson, Dennis, "Dependent Care in the City of Los Angeles," Los Angeles City Department of Aging.
- ⁴⁶ Friedman, Dana, "Eldercare: The Employee Benefit of the 1990s," *Across the Board*, p. 46 (June, 1986).
- ⁴⁷ Testimony of Charles Harris, *supra*, note 19.
- ⁴⁸ Comrie, *supra*, note 15.
- ⁴⁹ The survey by the Personnel Department estimated about 5%; the Women's Commission survey estimated about 11%. The Task Force estimate of 8% is the average of these two figures.
- ⁵⁰ See previous chapter on Domestic Partnership Families.
- ⁵¹ *Ibid.*
- ⁵² Los Angeles Administrative Code Sections 4.127 and 4.127.1.
- ⁵³ Ross, *supra*, note 18; Link, *supra*, note 18.
- ⁵⁴ Hurd, *supra*, note 1.
- ⁵⁵ "Budget for the City of Los Angeles for Fiscal Year 1987-88," as proposed by Mayor Tom Bradley.
- ⁵⁶ *Ibid.*
- ⁵⁷ Harris, Ellen, "Government's Lifeblood: Commissions with Clout," *Los Angeles Times*, August 16, 1987.
- ⁵⁸ "Detail of Departmental Programs with Financial Summaries," Supplement to the 1987-88 Proposed Budget.
- ⁵⁹ Administrative Code, Div. 22, ch. 6, Sec. 22.94.
- ⁶⁰ City Council File No. C.F. 86-1757; "Access Panel for Disabled," *Los Angeles Times*, October 6, 1987.
- ⁶¹ "1987-88 Legislative Policy Statements," prepared by the Chief Legislative Analyst.
- ⁶² City Council File No. 87-0288, adding Article 5.9 to Chapter IV of the Los Angeles Municipal Code.
- ⁶³ Los Angeles Municipal Code, Div. 10, Ch. 1, Art. I, Section 10.8.2.
- ⁶⁴ Government Code Section 12940; Labor Code Sections 1101, 1102; 69 *Cal.AttyGen.Op.* 80 (1986); Los Angeles Municipal Code Section 49.70, et seq.
- ⁶⁵ Los Angeles Municipal Code, Div. 10, ch. 1, Art. I, Section 10.8.
- ⁶⁶ Harris, *supra*, note 3.
- ⁶⁷ *Ibid.*
- ⁶⁸ The Task Force is not advocating a rigid quota system in the

appointment process. However, it has come to the attention of the Task Force that there are only four known gay or lesbian commissioners and only a handful of disabled commissioners presently serving on boards and commissions created by charter or ordinance. Each of these constituencies constitute from 10 to 15 percent of the local population. This imbalance could be corrected when the Mayor and the City Council fill vacancies scheduled for June, 1988.

TASK FORCE ON FAMILY DIVERSITY

City of Los Angeles

SUPPLEMENT

(Part One)

REPORTS OF RESEARCH TEAMS

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LOS ANGELES CITY TASK FORCE ON FAMILY DIVERSITY
RESEARCH TEAM ON INSURANCE DISCRIMINATION

Submitted by:

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May 20, 1987

TABLE OF CONTENTS

| | PAGE(S) |
|---|---------|
| I INTRODUCTION | 1-2 |
| II SUMMARY OF RECOMMENDATIONS | 2-3 |
| III DISCRIMINATION BY THE INSURANCE INDUSTRY AGAINST THE NON-TRADITIONAL FAMILY UNIT OR LIFESTYLE DISCRIMINATION | 3-5 |
| IV RECOMMENDATIONS CONCERNING WHAT THE CITY OF LOS ANGELES CAN DO TO CURB DISCRIMINATION AGAINST THE NON- TRADITIONAL FAMILY UNIT BY THE INSURANCE INDUSTRY | 5 |
| A. Current Regulatory Practices and Existing Law | 5-11 |
| B. Recommendations | 12-14 |

I INTRODUCTION

While many forms of discrimination which are alleged to be engaged in by the insurance industry were suggested for study by various members of the Task Force, the team members concluded that the scope of their inquiry should be limited by the mandate of the Task Force which is to focus on issues of family diversity. As such, although worthy of study, topics such as "redlining," and the effect that the skyrocketing of insurance rates has on the availability of affordable and quality childcare services in the City of Los Angeles, are not the subject of this report.

Given the Task Force's mandate that "family is a broad and expansive concept, capable of encompassing a wide range of committed relationships" and that "government itself should not foster discrimination against families nor should it tolerate unfair private discrimination against families," it was decided to focus this report on discrimination against the non-traditional family unit by the insurance industry. While a non-traditional family unit may include a variety of "committed relationships," this report is further focused on what is commonly referred to as "lifestyle" discrimination. Lifestyle discrimination, for purposes of this paper, means discrimination against a domestic partnership, other than a married couple. This could include gay and lesbian couples and heterosexual couples living together but unmarried. The terms lifestyle discrimination and discrimination against the non-traditional family unit are used interchangeably in this report.

In order to prepare this report, testimony was taken at the public hearings conducted by the Task Force. Those who testified included Leonard Graff, Legal Director of the National Gay Rights Advocates, who addressed the topic of illegal practices and legal recourse which is presently available to combat lifestyle discrimination. Also testifying was Tonia Melia, President of the National Business Insurance Agency, who addressed the topic of lifestyle discrimination in homeowners, renters, automobile and business insurance. Lastly, Brendt O. Nance, President of Concerned Insurance Professionals for Human Rights, addressed the topic of lifestyle discrimination in life, health and disability insurance policies. A representative from the State Insurance Commissioner's Office, although invited to the public hearings, could not attend. In any event, information regarding that office's handling of lifestyle discrimination complaints was provided to this team by Special Consultant to the Task Force, Thomas F. Coleman, who spoke with representatives from that office regarding lifestyle discrimination. Additionally, team

member, Jeff Vopal, though his contacts in the insurance business, collected a variety of complaints alleging lifestyle discrimination.

Lastly, it should be acknowledged that University of Southern California Law Center Student, Ida Kan, provided the team with legal research and a report which was of assistance to the team in preparing this paper. Her assistance was greatly appreciated.

Below, this team will set forth a summary of its recommendations, a summary of its findings regarding lifestyle discrimination, a summary of the laws which might be utilized to combat lifestyle discrimination, and its recommendations.

II SUMMARY OF RECOMMENDATIONS

1. IT IS RECOMMENDED that the City Attorney carefully evaluate the possibility of using the Unruh Civil Rights Act and/or Business and Professions Code section 17200 et seq. to combat lifestyle discrimination in insurance opportunities.
2. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the State Insurance Commissioner for the referral to the City Attorney's Office of complaints lodged with the Commissioner by Los Angeles residents wherein discrimination on the basis of lifestyle is alleged.
3. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with both the Attorney General's Office and the Los Angeles County District Attorney's Office for the exchange of information regarding complaints of lifestyle discrimination by the insurance industry which are lodged with each agency.
4. IT IS RECOMMENDED that the City Attorney seek to establish a cooperative relationship with the Department of Fair Employment and Housing for the exchange of information regarding alleged instances of lifestyle discrimination by those engaged in the insurance business in the City of Los Angeles.
5. IT IS RECOMMENDED that the City Attorney seek to establish working arrangements with local civil rights organizations to exchange information regarding complaints of lifestyle discrimination by the insurance industry