

NATIONAL COMMITTEE  
FOR  
SEXUAL CIVIL LIBERTIES

Dr. Arthur C. Warner  
Co-Chairman

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22 April 1980

Dear Dean Heckel,

Enclosed are copies of what is hoped will soon emerge as two executive orders from Governor Brown of California. They were draughted at his request by Tom Coleman, co-chairman of our Committee, and his law partner, Jay Kohorn. One of them is essentially an amendment to the existing executive order, issued last year. This is presently limited to the prohibition of discrimination in employment, and the purpose of the amendments is to expand it to other areas. The other order would establish a "blue-ribbon" Commission of Inquiry to document instances of discrimination and to issue a report, which could not only serve as a model for other jurisdictions, but which could be used by state bureaucrats charged with implementing the executive orders. Accompanying this would be the appointment of several state employees in certain key departments whose specific duties would be to oversee the implementation process.

You will notice that each proposed order has its own set of annotations. These would not be published, but are intended for the use of the Governor or his staff when and if they should be called upon to explain or justify particular provisions. The April 4th date was only tentative, set originally because it was the anniversary of the first executive order. As I may have indicated to you, more time has been needed to examine the credentials of those who have been suggested for appointment to the Commission.

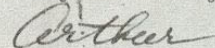
I am sure you will understand that all this material is entirely confidential. Tom Coleman has authorized my sending it to you since it may prove to be of some assistance in your good efforts on our behalf in this state.

I do hope this finds you feeling better, and that you will take care not to overdo things. I look forward to our meeting again in Princeton as soon as your schedule permits.

With all good wishes and kind personal regards, I am

Dean C. Willard Heckel  
375 Mount Prospect Avenue  
Newark, New Jersey

Very sincerely,



Arthur C. Warner

## EXECUTIVE ORDER

WHEREAS, California must embrace the full human potential of all its citizens as its most valuable resource; and

WHEREAS, to safeguard this human potential, it is necessary to protect the fundamental right to sexual privacy<sup>1</sup> against the threat of discrimination for reasons of the individual's sexual orientation or private sexual lifestyle, which discrimination contravenes the policy of this State;<sup>2</sup> and

WHEREAS, there exist certain stereotypes relating to sexual minorities which are held in common by many people;<sup>3</sup> and

WHEREAS, stereotypes result in an individual being judged without regard for that individual's own qualities and merits;<sup>4</sup> and

WHEREAS, a study of the problems of sexual minorities and of sexual privacy of all individuals is necessary so that legislative and administrative action and public attitudes may be based upon accurate information, thus encouraging protection of the civil rights of all Californians against arbitrary and unjust discrimination;

NOW, THEREFORE, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this Order to become effective immediately:

1. There is established the Commission on Sexual Privacy and Orientation. Said Commission shall be composed of not more than twenty-five (25) members appointed by the Governor.<sup>5</sup>
2. The Commission shall have a Chairperson selected by the Governor. Members shall serve without compensation and shall be reimbursed for actual expenses incurred only with approval of the Governor's Office.<sup>6</sup>
3. The Commission shall study the problems of discrimination based upon sexual orientation and invasions of sexual privacy, in both the public and private sectors,<sup>7</sup> documenting the extent of such problems, exploring in what forms the problems are manifested, noting existing remedies, and making recommendations for legislative, administrative, and other action where appropriate.
4. A preliminary report of its findings and recommendations regarding sexual orientation discrimination shall be submitted by the Commission to the Governor within one year.<sup>8</sup> The final report, including the subject of sexual privacy, shall be submitted to the Governor no later than one year after the submission of the preliminary report.
5. All state agencies, departments, boards, and commissions are hereby directed to assist and cooperate with the Commission in carrying out its responsibilities.<sup>9</sup>

IN WITNESS WHEREOF, I have hereunto set  
my hand and caused the Great Seal of the  
State of California to be affixed this 4th  
day of April, 1980.

EXECUTIVE ORDER

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## ANNOTATIONS TO EXECUTIVE ORDER

<sup>1</sup>Article I, Section 1 of the California Constitution states:

All people are by nature free and independent, and have certain inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

The argument in favor of this 1972 Amendment to the State Constitution states:

The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with people we choose.

See also: White v. Davis (1975) 13 Cal.3d 757, 774-775, in which the Supreme Court acknowledged the propriety of judicial resort to such ballot arguments as an aid in construing such amendments.

This right of privacy is self executing and operates against infringements by individuals as well as the state. Porter v. University of San Francisco (1976) 64 Cal.App.3d 825.

See also: People v. Onofre, \_\_\_ N.Y.S.2d \_\_\_, Appellate Division of the New York Supreme Court, Fourth Department, Case No. 914/1979, decided January 24, 1980, in which the Court stated that personal sexual conduct is a fundamental right, protected by the right to privacy because of the transcendental importance of sex to the human condition, the intimacy of the conduct, and its relationship to a person's right to control his or her own body.

See also: H.L.A. Hart, Law, Liberty, and Morality (Stanford, California, 1963), p. 43; State v. Pilcher (Iowa, 1976) 242 N.W.2d 348; State v. Saunders (N.J., 1977) 381 A.2d 333; Buchanon v. Batchelor (N.D.Tex., 1970) 308 F.Supp. 729, 732-733 (reversed on procedural grounds only); Mindell v. U.S. Civil Service Commission (N.D.Cal., 1970) 312 F.Supp. 584, 587; Bruns v. Pomerleau (D.Md., 1970) 319 F.Supp. 58; Stanley v. Georgia (1969) 394 U.S. 557, 564-565; Atkisson v. Kern County Housing Authority (1976) 59 Cal.App.3d 89.

<sup>2</sup>See: California Statutes, 1975, Chapter 71, Section 10 and Chapter 877, Section 2 (Consenting Adults Act); Gay Law Students Association, et al., v. Pacific Telephone and Telegraph Company et al. (Cal., 1979) 156 Cal.Rptr. 14; Stoutman v. Reilly (1951) 234 Pac.2d 449; and In re Cox (1970) 90 Cal.Rptr.; Morrison v. Board of Education (1969) 1 Cal.3d 214.

<sup>3</sup>Among these stereotypes are those dealing with the relationship between sexual orientation and gender confusion, role models, child molestation, obsession with sex, and many others.

<sup>4</sup>See the report of the Oregon Task Force on Sexual Preference, 3 Sex.L.Rptr. 39, July/October 1977.

<sup>5</sup>The members shall include representatives from among the following disciplines, professions, and interest groups: law; post-secondary education; sex education, counseling, and therapy; psychiatry/psychology; theology; sociology/criminology; law enforcement; public administration; media/communications; public relations; youth specialist; social work; finance, tax, and credit; insurance; business; labor; and medicine.

<sup>6</sup>This will encourage participation of those who would donate their time but have limited resources for travel, etc. A ceiling of one hundred (\$100.00) dollars per meeting may be imposed.

<sup>7</sup>The Commission shall initially define the parameters of its study. Those parameters should ultimately include but not be limited to the sexual problems of children, ethnic minorities, the physically or mentally disabled, and sexual minorities.

<sup>8</sup>The thrust of the preliminary report may be narrowly drawn, at the discretion of the Commission.

<sup>9</sup>This cooperation should include but not be limited to use of equipment, supplies, services, and personnel; supplying of statistical, financial, procedural, and substantive information requested by the Chairperson; and providing support and cooperation in achieving the substantive goal of this Order.

ANNOTATIONS TO EXECUTIVE ORDER B-54-79

AS AMENDED APRIL 4, 1980

<sup>1</sup>Article I, Section 1, of the California Constitution states:

All people are by nature free and independent, and have certain inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

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<sup>3</sup>California Statutes, 1975, Chapter 71, Section 10 and Chapter 877, Section 2.

<sup>4</sup>Inaugural Address, Governor Edmund G. Brown Jr., January 8, 1979; Report to the Legislature by Edmund G. Brown Jr., January 16, 1979.

<sup>5</sup>Gay Law Students Association, et al., v. Pacific Telephone and Telegraph Company, et al. (Cal., 1979) 156 Cal.Rptr. 14.

<sup>6</sup>California Civil Codes, Section 51. See also: Department of Industrial Relations, Division of Fair Employment and Housing Practices, Directive Transmittal No. 044, Revised September 25, 1979, which stated in pertinent part:

. . . The Act has also been interpreted by the California Supreme Court to prohibit arbitrary discrimination by business establishments on any basis, whether or not that basis is enumerated in the Unruh Act itself . . . . [T]he Division will accept complaints within our Unruh Act jurisdiction, i.e., complaints alleging discrimination on bases other than those enumerated in the Act or in the FEP Act or Rumford Act. This includes . . . discrimination in housing against gay people.

<sup>7</sup>These code sections were enacted by the California Legislature in 1977; however, their mandate is being realized in practice in 1980.

<sup>8</sup>Gay Law Students Association v. Pacific Telephone, note 5, *supra*.

<sup>9</sup>Stoutman v. Reilly (1951) 234 Pac.2d 449. See also: In re Cox (1970) 90 Cal.Rptr. 24.

<sup>10</sup>Morrison v. Board of Education (1969) 1 Cal.3d 214.

<sup>11</sup>This aspect of compliance parallels the protection given by the California Legislature in Government Code Sections 11135 through 11139.5. These code sections proscribe and provide remedies for discrimination on the basis of "ethnic group identification, religion, age, sex, color, or physical or mental disability."

<sup>12</sup>One duty of the Interagency Committee shall be to ensure that Article IV, Section 16 of the California Constitution is followed, both in spirit and in letter. That section states:

Laws of a general nature shall have uniform operation.

<sup>13</sup>Secretarial services; use of office supplies, equipment, and space; telephones; postage; photocopying; and library materials should be made available to the Interagency Committee by appropriate governmental entities on both a short-term and long-range basis. In addition, funds should be made available to the Interagency Committee from existing budgets of appropriate governmental entities for such expenses as consulting fees, research costs, travel expenses, or other expenses which are necessary to carry out the mandate of this Order.

<sup>14</sup>This cooperation should include but not be limited to funding; use of equipment, supplies, services, and personnel; supplying of statistical, financial, procedural, and substantive information requested by the Interagency Committee; and providing support and cooperation in achieving the substantive goal of this Order. In addition, all governmental entities should work with the Interagency Committee in its educational projects in furtherance of this Order.

<sup>15</sup>The State Personnel Board received this grant of authority from Executive Order B-54-79, issued by Governor Edmund G. Brown Jr., on April 4, 1979. The State Personnel Board has created a position within its Public Employment and Affirmative Action Division to coordinate compliance with this aspect of the Executive Order.

<sup>16</sup>The "quota" type of affirmative action is inappropriate in that it would take into account only persons who are public about their sexual lifestyles. Since a vast majority of people are private in this area and choose to remain so, this Order must take into account their right to privacy and not compel them to reveal their preference or orientation.