

FROM OUR FAMILY TO YOURS: RETHINKING THE “BENEFICIAL FAMILY” AND MARRIAGE-CENTRIC CORPORATE BENEFIT PROGRAMS

LUCILLE M. PONTE* AND JENNIFER L. GILLAN**

In his *Father Knows Best* world, Jim Anderson was accustomed to clarity. Each week the show conveyed the message that the Andersons had found the most beneficial social formation in which to live: one comprised of a breadwinner father and homemaker mother in a nuclear family, living in a middle-class, suburban dwelling.¹ The Andersons inhabited a 1950s television world filled with upper-class, white-collar fathers, stay-at-home wives, and two or three children, and offered a comforting unified vision of the American family.² Given his title character status as the “father who

* Associate Professor, Department of Criminal Justice and Legal Studies, College of Health and Public Affairs, University of Central Florida, Orlando. J.D., New England School of Law.

** Associate Professor, English Department, Bentley College, and the McCallum Graduate School of Business. Ph.D., English, State University of New York at Stony Brook. The authors wish to acknowledge initial research funding for this project through the Bentley College Summer Research Grant Program.

¹ In the 1950s, Jim Anderson was the name of the title character in *Father Knows Best*, which ran from 1954-60, first on CBS and then on NBC. Christopher Paul Denis & Michael Denis, *Favorite Families of TV 37-54* (1992). Billy Gray, who played the son, Bud Anderson, laments his role in disseminating the idealized American family image, recognizing the negative impact a show like *Father Knows Best* could have had on individuals’ perceptions of their own families and of the position of their families in relation to the established norm. *Id.* at 50-52. As Gray said in 1977, “I’m ashamed I had any part of it. People felt warmly about the show and that show did everybody a disservice . . . I felt that the show purported to be real life, and it wasn’t. I regret that it was ever presented as a model to live by.” *Id.* Billy Gray was referring to the seal of approval the Andersons were given by columnists, like Bob Eddy, who characterized the Andersons as a “family that has surprising similarities to real people” and held them up as the role model for the new American family. Bob Eddy, *Private Life of a Perfect Papa*, *Saturday Evening Post*, Apr. 27, 1957, at 29. See Ruthann Robson, *Assimilation, Marriage, and Lesbian Liberation*, 75 *Temp. L. Rev.* 709, 715 (2002) (discussing the idealization of the dominant, but not majority, group, and the coercive demands for assimilation into that ideal). See also *infra* notes 2, 3, 124, 187 and accompanying text.

² The character of Jim Anderson in *Father Knows Best* was lauded as a welcome contrast to the stock television sitcom character of the henpecked husband. Eddy, *supra* note 1, at 29; Kenneth Rhodes, *Father of Two Families*, *Cosmopolitan Mag.*, Apr. 1956, at 125-27. Eddy celebrates Anderson as the new dad in town who single-handedly brought order to

knows best," Jim Anderson would expect that the way he lived would be accepted by the majority of Americans as the most advantageous way to do so.³ Corporations registered their approval of the consumeristic suburban

the new frontier of television by overturning "one of the more persistent clichés of television script writing." Eddy, *supra* note 1, at 29. Eddy was referring to the clichés of shows like *The Life of Riley* (NBC, 1953-58) that depicted "the mother as the iron-fisted ruler of the nest, the father as a blustering chowderhead and the children as being one sassy crack removed from juvenile delinquency." *Id.* Rhodes compares the weak, bumbling husband of some previous sitcoms to this new television father who always knew best. Rhodes, *supra*, at 125-27. Rhodes predicts that the wise, benevolent type dad will finally replace the "weak-willed, predicament-inclined clown" whose "doltishness" is contrasted to the beauty and intelligence of his wife. *Id.* at 126. The Andersons were certainly a marker of a transition of the representation of the American family on television: their realm was a suburban middle-class home, not a New York apartment or a star's Hollywood home; their interactions were pleasant rather than wisecracking; their focus was more on the parent-child relationship than that of husband and wife. The suburban sitcom also distanced itself from the vaudeville aspects of early television programming, as it almost never featured variety numbers, a stoppage of the action to break into song, or "surprise" visits by movie star pals. David Marc, Comic Visions: Television Comedy and American Culture 20-22 (2d ed. 1997) (discussing some of the idealized aspects of this new television family in contrast to early representations of families on television). Eddy also focuses on some of these distinctions, but he does not comment on how *The Life of Riley* also represented an earlier sitcom type in which two married couples pal around and usually relate to each other not as male-female pairs of married couples, but in terms of two opposing same-sex alliances. The Lucy/Ethel and Ricky/Fred gendered divisions on *I Love Lucy* are the classic example of this technique. See generally George Lipsitz, The Meaning of Memory: Family, Class, and Ethnicity in Early Network Television Programs, in Private Screenings: Television and the Female Consumer 71-108 (Lynn Spigel & Denise Mann eds., 1992) (exploring the new sitcom type and comparing it to earlier working-class and ethnic family types). Comedy drawing on gender divisions and same-sex bonding are staples of the vaudeville tradition out of which such early television comedies came. See Susan J. Douglas, Listening In: Radio and the American Imagination, from Amos 'n' Andy and Edward R. Murrow to Wolfman Jack and Howard Stern 5, 101-23, 165 (1999); Henry Jenkins, What Made Pistachio Nuts? Early Sound Comedy and the Vaudeville Aesthetic 61 (1992). Both Douglas and Jenkins examined the radio and vaudeville sketch tradition of women insulting their male partners; it was a dynamic picked up in the star couple sitcoms *The George Burns and Grace Allen Show* (CBS 1950-58) and *I Love Lucy* (CBS 1951-57). See Douglas, *supra*, at 144-45; Jenkins, *supra*, at 245-76.

³ Even those who had in theory been part of the "beneficial family" of the 1950s did not in practice always experience it as so beneficial. Craig W. Christensen, Legal Ordering of Family Values: The Case of Gay and Lesbian Families, 18 Cardozo L. Rev. 1299, 1309-10 (1997); Mae Kuykendall, Liberty in a Divided and Experimental Culture: Respecting Choice and Enforcing Connection in the American Family, 12 UCLA Women's L.J. 251, 265-66 (2003). John Keats and Bernard Rudofsky, among other commentators writing in the 1950s, explored how difficult it was to live up to the media image of the ideal suburban family. Keats satirized the beneficial suburbs and suburban family, offering facts about the discrepancy between the ideal and the actuality through his invention of a fictional composite couple (John and Mary Drone) and suburb (Rolling Knolls). He described how the Drones were "sold" the suburban ideal. John Keats, The Crack in the Picture Window xvii, 11-15, 63 (1957). He chose the image of developments full of identical houses with identical picture windows to stand in for his critique of the creation of "mass-produced human beings" in America's mass-produced suburbs. *Id.* at 61. Rudofsky offered a similar

way of life that the Andersons and their “beneficial family” model represented by sponsoring 1950s television sitcoms about such consumeristic nuclear families.⁴

Long after these 1950s television programs have stopped being part of networks’ scheduled programming, corporations continue to reward nuclear families that fit the narrow “beneficial family”⁵ mold in their benefits programs, largely dismissing nonnuclear family structures as nontraditional outliers undeserving of recognition and protection.⁶ This preference prevails regardless of the fact that the “beneficial family” model, comprised of a consumeristic nuclear family, is not the predominant family model.⁷ Despite media images to the contrary, the nuclear family is only one of many different and valuable family models found throughout the United States and the world.⁸ Nonnuclear family units such as extended

critique of the 1950s, examining the actuality behind the idealistic image of the 1950s house. Bernard Rudofsky, Behind the Picture Window 5 (1955). See generally Douglas T. Miller & Marion Nowak, The Fifties: The Way We Really Were 137-38 (1977); Paul A. Carter, Another Part of the Fifties 27-55 (1983).

⁴ Erik Barnouw, The Sponsor: Notes on a Modern Potentate 106-07 (1978).

⁵ See *infra* notes 76, 216-236 and accompanying text.

⁶ See *infra* notes 343, 362-372 and accompanying text.

⁷ See Stephanie Coontz, The Way We Never Were: American Families and the Nostalgia Trap 8-9 (1992) (discussing the changing meaning of the “traditional” family and outlining the process by which many people today term the 1950s-style nuclear family as “the traditional family,” thereby ignoring the fact that in many cultures “traditional” meant families that maintained extended kinship ties). See also *infra* notes 24-27, 207-215 and accompanying text.

⁸ The diversity of family formations and definitions of family in the United States has been the subject of numerous scholarly books. See, e.g., Rethinking the Family: Some Feminist Questions (B. Thorne & M. Yalom eds., 1982) (scholarly essays challenging the limited definitions of family and household); Joan Aldous & Wilfried Dumon, Family Policy in the 1980s: Controversy and Consensus, 52 J. Marriage & Fam. 1136, 1137 (1990) (defining families as “cohabiting groups of some duration composed of persons in intimate relations based on biology, law, custom, or choice and usually economically interdependent”); R. Burant, The ‘Families’ Focus of Families in Society, 70.9 Soc. Casework 523, 523-24 (1989) (defining family as “two or more persons related by mutual expectations of emotional and material support, regardless of their living arrangements, their family-like behaviors conveying mutual responsibility, intimacy and care on a continuing basis”); Robert Boutillier, Targeting Families: Marketing To and Through the New Family 4 (1993) (offering the following terse definitions of “family”: “a) emotionally connected cohabitating people with at least one parent-child type relationship (e.g., caretaking, nurturing) between two of them, and/or b) people related by blood or marriage”); Shirley Zimmerman, Family Policies and Family Well-Being: The Role of Political Culture 167 (1992) (providing a comprehensive definition of family as one based on “special relational ties reflecting the need of individuals for stability, continuity, and unconditional affection” that seeks to best meet “basic psychological, social, physical, and emotional needs”). See also *infra* notes 24-27, 208-215 and accompanying text.

family, kinship networks, and friends-as-family are often wrongheadedly referred to as “nontraditional,” despite centuries of enduring existence.⁹

This Article traces the history of how corporations have propagated cultural messages about the benefits of a monolithic conception of the ideal American family unit.¹⁰ In relation to this dissemination, the Article focuses in particular on the implications of corporate sponsorship of programming at the 1939 World’s Fair¹¹ and on 1940s and 1950s radio and television.¹² Given their role in standardizing the “beneficial family” ideal, 1950s family television shows and the particular programming and sponsorship choices that produced the dominance of the suburban family sitcom will be analyzed alongside the earlier programming and sponsorship choices that made the 1939 World’s Fair a testing ground for the dissemination of this ideal. This discussion establishes that during the mid-twentieth century, the corporate order underwrote a version of consumer citizenship, branding the

⁹ These family formations will be referred to “nonnuclear,” rather than “nontraditional,” families since this model has a well-established history in both the U.S. and elsewhere in the world. See *infra* notes 24-27, 206-215 and accompanying text.

¹⁰ For the ways that this consumer-oriented family developed, see Lizabeth Cohen, *A Consumer’s Republic. The Politics of Mass Consumption in Postwar America* 9, 112-29 (2003) (using the term “consumer’s republic” to describe how U.S. culture in the 1950s integrated consumerism and citizenship); T.J. Jackson Lears, *From Salvation to Self-Realization, in The Culture of Consumption: Critical Essays in American History, 1880-1980* 3-38 (Richard Wightman Fox & T.J. Jackson Lears eds., 1983) (analyzing the development of American consumer culture) [hereinafter *Culture of Consumption*]. The 1939 World’s Fair, attended by one-third of the U.S. population at the time, was a major site for this dissemination. Robert W. Rydell et al., *Fair America: World’s Fair in the United States* 92 (1990) [hereinafter *Fair America*]. While Rydell is the premier World’s Fair scholar, several websites, especially one at the University of Virginia, provide good introductions and sources for pictures and facts. See, e.g., *The Iconography of Hope: The 1939-40 New York World’s Fair*, available at <http://xroads.virginia.edu/~1930s/DISPLAY/39wf/front.htm> (last visited Mar. 20, 2005) [hereinafter *Iconography of Hope*]. See also *The World’s Fair and Exposition Information and Reference Guide: 1939 New York World’s Fair*, available at http://www.earthstation9.com/index.html?1939_new.html (last visited Mar. 20, 2005) [hereinafter *World’s Fair Guide*].

¹¹ See *infra* notes 76-106 and accompanying text.

¹² Sponsorship played a significant role in relation to television programming content. See Barnouw, *supra* note 4, at 105-08 (addressing early television sponsorship). See generally William Boddy, *Fifties Television: The Industry and Its Critics* 154-75 (1990) (offering an overview of the new consumer market for television advertising); Gerard Jones, *Honey, I’m Home!: Sitcoms: Selling The American Dream* 29-37 (1992) (noting sponsorship changes as radio shows became television programs); Susan Smulyan, *Selling Radio: The Commercialization of American Broadcasting 1920-1934* 163 (1994) (charting the changes in sponsors’ power as they moved from radio to television programming). For more recent work on corporate sponsorship, see generally Karal Ann Marling, *As Seen on TV: The Visual Culture of Everyday Life in the 1950s* 87-88, 121-22, 148, 158 (1994); Lawrence R. Samuel, *Brought to You By: Postwar Television Advertising and the American Dream* 102, 117, 119 (2001).

ideal American social and consumer unit as a white, middle-class, nuclear family, independent of and isolated from extended family and other social support mechanisms.¹³ Through their sponsorship of these television shows and fair displays, corporations conveyed the message that, in contrast to other existing family models, nuclear family formations were the most beneficial to individual family members as well as to the nation as a whole.¹⁴ Corporations in the 1950s adopted this kind of “beneficial family” rhetoric to represent themselves as caring providers of the best products and jobs.¹⁵

After exploring this cultural context, the Article examines the ongoing role of law in extending and sustaining privileges to the nuclear family.¹⁶ Today, legal protections and their attendant economic benefits continue to be aimed at propping up the “beneficial family” model at the expense of the growing numbers of nonnuclear household units made up of traditional extended family and kinship networks, as well as blended families, life partners, and friends-as-family.¹⁷ Consequently, few corporate benefits programs truly meet the needs of many of their employees, as these policies still premise the allocation of resources on an idealized nuclear family model,¹⁸ a family type that more closely resembles the fictional 1950s television family than the diversity of households that actually characterizes the country today.¹⁹

This Article also charts how some employers have instituted domestic partner programs as a partial response to the changing face of the family in recent years. These progressive policies, however, continue to

¹³ Cohen, *supra* note 10, at 200-02.

¹⁴ See *infra* notes 107-136 and accompanying text. See generally Nina C. Leibman, *Living Room Lectures* 56 (1995); George Lipsitz, *supra* note 2, at 71-108.

¹⁵ Jill A. Fraser, *White Collar Sweatshop: The Deterioration of Work and Its Reward in Corporate America* 97-113 (2001) (discussing the corporate paternalism of the era).

¹⁶ See *infra* notes 223-236, 296-301 and accompanying text.

¹⁷ See *supra* note 4 and accompanying text; see also *infra* notes 199-215, 274-291 and accompanying text.

¹⁸ See *infra* notes 223, 298-302, 342-344 and accompanying text.

¹⁹ See Debra Baker, *Beyond Ozzie and Harriet*, 84 A.B.A. J. 58, 60-63 (1998) (discussing the evolving face of the family in legal situations in the context of changing cultural messages found in television programming); Coontz, *supra* note 7, at 10-22 (exploring the gap between media ideas about the family and lived reality); *Changing Family Values* (Gill Jagger & Caroline Wright eds., 1999) (scholarly essays examining changes in household and family formation and composition, including domestic partnership arrangements, blended families, gay marriage, single parenthood, and a variety of custodial and parental arrangements); see also *supra* notes 7-8 and accompanying text.

reward only couple-centered family relationships that replicate the structure of the idealized “beneficial family.”²⁰ A handful of companies have recently broken away from the pack, offering benefits to other adult dependents (OAD) within a household; these individuals are not necessarily part of a nuclear family, and may not be related by blood, marriage, or adoption. These OAD plans go beyond marriage- or couple-centric strategies to recognize and protect a broader range of nonnuclear family households.²¹ This Article examines these new OAD programs and discusses the advantages and limitations of OAD policies in meeting the needs of American households today.²²

This Article concludes that corporations need to move beyond the marriage- and couple-centric paradigms of the 1950s “beneficial family” to better meet the needs of America’s diverse workforce. The Article recommends that corporations, in their caretaker roles, embrace in their benefits programs household units that function as a family, thereby fulfilling their proclaimed commitments to social caretaking and diversity awareness. Various changes to the law that affect employer-sponsored benefits programs are suggested to allow for greater recognition and protection of household units that function as a family but are not necessarily bound by ties of blood, marriage, or adoption.²³

I. CHANGING ISSUES IN CORPORATE SPONSORSHIP AND THE DEVELOPMENT OF MEDIA IMAGES OF THE IDEALIZED “BENEFICIAL FAMILY”

A. The Nonnuclear Family as the “Traditional” Model in 1940s Radio Programs

Although many in the United States refer to the nuclear family found in 1950s sitcoms as the “traditional” model, it is important to recognize that many family models exist in the world.²⁴ Historically, in global cultures, the term “family” referred to a household made up not only of blood relatives, but also a host of extended family members, nonrelative

²⁰ See *infra* notes 357-361, 373-379, 392-393 and accompanying text.

²¹ See *infra* notes 394-427 and accompanying text.

²² See *infra* notes 403-427 and accompanying text.

²³ See *infra* notes 436-372 and accompanying text.

²⁴ See Marie A. Failing, A Peace Proposal for the Same-Sex Marriage Wars: Restoring the Household to Its Proper Place, 10 Wm. & Mary J. Women & L. 195, 217-32 (2004) (providing a detailed comparative review of household units in various historical and cultural contexts).

boarders, and slaves living in a common residence.²⁵ The household members pooled together their economic resources, their individual skills, and their emotional support to promote the well-being of the household unit.²⁶ In the 1940s, anthropologist George Peter Murdock determined in his review of two hundred-fifty ethnographic reports that the extended family network outnumbered polygamous family and nuclear family units two to one in the cultures analyzed.²⁷

Similarly, extended family, kinship networks, and friends-as-family, all of which are often erroneously referred to today as “nontraditional” families, overwhelmingly characterized the ethnic urban

²⁵ Crowley v. Knapp, 94 Wis. 2d 421, 434-39 (1980). In Crowley, the court upheld the occupancy of a home by unrelated adult retarded residents after establishing both that the word “family” was undefined in the deed restriction and that the fact that the adults were not all related by blood or marriage did not violate the property covenants. Quoting from its earlier analysis in the La Salette case, the Crowley court stated,

It is to be noted that aside from the definition of the term “family” in the ordinance, the ordinary concept of that term does not necessarily imply only a group bound by ties of relationship. ‘Family’ is derived from the Latin “Familia.” Originally the word meant servant or slave, but now its accepted definition is a collective body of persons living together in one house, under the same management and head subsisting in common, and directing their attention to a common object, the promotion of their mutual interests and social happiness.

Id. at 436 (quoting Missionaries of La Salette v. Whitefish Bay, 267 Wis. 609, 615 (1954)). The court continued, noting that in La Salette it determined that the term “family” did not necessarily exclude from its meaning a group of unrelated persons living together in a home. Indeed, La Salette held that the eight priests who lived, slept, cooked, and ate upon the premises as a single housekeeping unit were not in violation of the zoning ordinance. It concluded that the term “family” would not be construed to import the requirement of consanguinity or affinity between the parties when those requirements were not expressly set forth. La Salette, 267 Wis. at 616-20. For more information on the origins of the word “family,” see Barbara J. Cox, Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation and Collective Bargaining, 15 Wis. Women’s L.J. 93, 96 (2000) (discussing the Latin roots of the term “family” and its broad application beyond nuclear and extended family members); Mary Patricia Treuthart, Adopting a More Realistic Definition of “Family”, 26 Gonz. L. Rev. 91, 96-99, 97 n.19 (1991) (reviewing the Latin meaning of family and arguing for the need to recognize family based on functional and emotional ties, not bloodlines); see also *infra* notes 324-330 and accompanying text.

²⁶ Crowley, 94 Wis. 2d at 436. See also Failingler, *supra* note 24, at 219, 225-27; Cox, *supra* note 25, at 96.

²⁷ Failingler, *supra* note 24, at 219. In reviewing anthropological perspectives on the formation of family, Professor Failingler noted that the 1940s anthropologist George Peter Murdock found that in the “study of 250 ethnographic reports of cultures . . . the nuclear family was the norm in only about twenty-five percent of the societies he studied; that the polygamous family was the norm in another twenty-five percent; and the remaining fifty percent of the societies primarily utilized the extended family.” *Id.* She adds that this 1949 anthropological analysis of the percentage of cultures with nuclear family structures is strikingly similar to current census percentage in American society today. *Id.*; see also *infra* notes 274-291 and accompanying text.

working and middle classes in the United States prior to the 1950s.²⁸ Media images initially reflected the city-dwelling, ethnic extended families and their neighbors in 1940s radio programs and early television programs.²⁹ Originally successful as radio programs, sitcoms like *The Goldbergs* and *Life with Luigi* feature nonnuclear relatives and extended “families” of nonrelatives as part of their depiction of ethnic Americans living in cities such as New York and Chicago.³⁰ *The Goldbergs*, premiering in 1929 on the radio and in 1949 on television, focused on a Jewish family living in the Bronx and had as its central character the family matriarch Molly Goldberg. While the show included Molly’s husband and two children, it most often revolved around Molly’s interactions with both her brother David, who lived with her family, and the other occupants of the Bronx apartment building.³¹ The show emphasized a female network of mutual care and concern rather than centering only on nuclear family relations. Its signature image was of Molly leaning out of her window to check in with a neighbor who, just a few feet away, was leaning out of her window. In this world, neighbors and relatives were often as close as a shout out of the alley window.³² In such an environment, mutual aid was not only provided, it was expected from an extended “family,” regardless of whether or not one was an actual blood relative.³³

When the show came to television after almost two decades on the radio (as *The Rise of the Goldbergs* on NBC radio 1929-34; as *The Goldbergs* on CBS radio 1936-46), it originally maintained these features. Yet, as a 1950s television program in competition with the “suburban WASP-coms,” it focused more on the nuclear family and less on the network of women in the urban apartment building.³⁴ After NBC cancelled

²⁸ Coontz, *supra* note 7, at 26; Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era* 50-51 (1988).

²⁹ Lipsitz, *supra* note 2, at 71-72; Vincent Brook, *The Americanization of Molly: How Mid-Fifties TV Homogenized “The Goldbergs” (and Got “Berg-larized” in the Process)*, 38 Cinema J. 45, 46-60 (1999).

³⁰ Brook, *supra* note 29, at 45, 47; Lipsitz, *supra* note 2, at 71-72, 78; Marc, *supra* note 2, at 49-50; Lynn Spigel, *Welcome to the Dreamhouse: Popular Media in Postwar Suburbs* 117-18 (2001).

³¹ Jones, *supra* note 12, at 15-16, 41; Brook, *supra* note 29, at 45; Lipsitz, *supra* note 2, at 92.

³² See Brook, *supra* note 29, at 46; Jones, *supra* note 12, at 42-43; Spigel, *supra* note 30, at 43.

³³ Lipsitz, *supra* note 2, at 84-85.

³⁴ Marc, *supra* note 2, at 54. Marc defines the WASP-com as a subgenre of nuclear family sitcom epitomized by *Father Knows Best*, a show that was so white that even the Latino gardener was named Smith. *Id.* at 44, 52-53, 55. Such WASP-coms also featured the containment of the wife, who had been an unruly figure in earlier, ethnic sitcoms. *Id.* at 55-

the show in the 1953-54 season,³⁵ Gertrude Berg, the show's star and creator, made one more attempt to tailor her show to the new suburban standard, creating *Molly* for first-run syndication, which aired in 1954-55 on the Dumont network.³⁶ The renamed show relocated the Goldberg family to Haverville, a New York suburb, but the show lasted only one season.³⁷ "From a commercial standpoint," Vincent Brook argues, "Molly Goldberg had always been an anachronism, a slice of kosher nostalgia."³⁸ Patronizing kosher butcher shops, celebrating Passover and Yom Kippur,³⁹ and sharing and exchanging goods with neighbors, the Goldbergs were not very effective marketing tools for sponsors trying to represent the benefits of a consumeristic lifestyle to a generic mass market audience. The show's new setting was an attempt to make it more commercially viable. Brook claims that the transplantation did not take, as "Molly's Yiddishisms, neighborly chats, and gefilte fish seemed out of place in the WASPish enclave, and banished completely were her window monologues delivered in direct address to the television audience."⁴⁰ In the suburban season of the show, the Goldbergs' "prosperity was achieved at Molly's expense" and at the expense of the working-class extended family and the network of working-class women; they disappeared when the show relocated and the father character, with his breadwinner status, moved from the sidelines to the center. This major change brought the show into line with the patriarchal suburban sitcom standard set when *Father Knows Best* premiered in 1954.⁴¹

59. For other sources that address these issues, see Susan J. Douglas, Where the Girls Are: Growing Up Female with the Mass Media 26 (1995); Jones, *supra* note 12, at 90; Spigel, *supra* note 30, at 118.

³⁵ This cancellation occurred after only two seasons, since NBC put the show on hiatus during the 1952-53 season. Brook, *supra* note 29, at 47.

³⁶ *The Goldbergs* was first cancelled by CBS in the midst of a red scare involving Philip Loeb, the actor who had played supporting roles on the radio show and later became Molly's husband, Jake, for the television show's first two seasons. Listed as a "dangerous subversive" by an anti-Communist publication, Loeb, who was condemned for activities such as trying to desegregate major league baseball, was never proven guilty of anything. Nevertheless, when Berg refused to fire Loeb from her show, General Foods refused to continue its sponsorship, and CBS consequently dropped it. In order to get NBC to pick up the show, Berg did replace Loeb, who was essentially blacklisted from the industry. Tragically, he committed suicide in 1955. Brook, *supra* note 29, at 53-54.

³⁷ Brook, *supra* note 29, at 46; Jones, *supra* note 12, at 90, 122; Lipsitz, *supra* note 2, at 92; Marc, *supra* note 2, at 44.

³⁸ Brook, *supra* note 29, at 52.

³⁹ *Id.* at 59.

⁴⁰ *Id.* at 45-46.

⁴¹ *Id.* at 56, 59.

Indeed, the 1955-56 season was the first time that the family matriarch was not at the center of the show.

Even when, in the 1940s, the original radio program had tested out this relocation from the Bronx to a Connecticut suburb, it remained a show about the upward mobility of the immigrant generation. The next step was captured in the title of the relocated show, *The Rise of the Goldbergs*.⁴² The new setting aside,⁴³ the radio show was one where "mother knows best," and it depicted a network of women and neighbors, all of whom were struggling immigrant strivers rather than long-established and comfortably well-off Americans living in the idealized breadwinner/homemaker family model.⁴⁴

Similar to *The Goldbergs* in its emphasis on neighborhood over nuclear family, *Life With Luigi* focused on a network of Italian American men living in Chicago. Although, like *The Goldbergs*, this show originated on radio (CBS radio 1948-53), it did not even try to adapt its premise to suit the growing predominance of the suburban nuclear family on 1950s television and, hence, did not enjoy a long television run.⁴⁵ As with its radio version, the television program centered on Luigi's extended "family" of non-blood relations. Although Luigi came from Italy without a nuclear family and lived alone, he was metaphorically absorbed into the family of his neighbors, including Pasquale, the man who sponsored Luigi's trip from Italy and wanted Luigi to marry his daughter, Rosa.⁴⁶

These ethnic radio shows lacked the potential for the visual display of goods and the middle-class, consumer-oriented spokespersons that suburban television sitcoms would offer, especially as they maintained the ethnic emphasis of the successful radio programming. Therefore, even though corporations did sponsor the earlier ethnic programming on the radio and then on early television, such shows did not provide the ideal, consumer-oriented, single-target audience of the mid-1950s television

⁴² When *The Goldbergs* arrived on television in 1949, it reverted to its Bronx setting. The television show was never as successful as its radio counterpart. Never finding a permanent network home, the live show was cancelled by 1955. Jones, *supra* note 12, at 41-42, 46, 90, 122.

⁴³ It should be noted that setting made very little difference on the radio, as there was no possibility of using it as a commodity display.

⁴⁴ Brook, *supra* note 29, at 46 (arguing that the suburban iteration of the show also worked to "Semiticize" mainstream America).

⁴⁵ Lipsitz, *supra* note 2, at 72; Marc, *supra* note 2, at 52-53; see also Jones, *supra* note 12, at 60, 80.

⁴⁶ *Life With Luigi: About the Radio Show*, at <http://www.otrcat.com/lifewithluigi.htm> (last visited Mar. 20, 2005); Carl Wittke, *The Immigrant Theme on the American Stage*, 39 *Miss. Valley Hist. Rev.* 2, 230-31 (1952).

family.⁴⁷ Television's *Mama* (CBS 1949-1957), for instance, focused on city-dwelling Norwegian Americans who were learning to assimilate into American culture but still maintained their ethnic traditions and extended family ties. With their Scandinavian accents and their holiday folk traditions and costumes,⁴⁸ the Hansens and other ethnic sitcom characters like them hardly seemed appropriate spokespersons for the kinds of corporate products that could be advertised on the set of a middle-class, suburban WASP-com.⁴⁹ However, the standardization of sponsor advertising could not occur until the mid-1950s proliferation of suitably generic suburban-centered television sitcoms.⁵⁰

At the start of the 1950s, when ethnic, urban sitcoms like *The Goldbergs* moved from radio to television, sponsors often carried over their advertising of the kinds of products that had been featured on the radio: toothpaste, body and laundry soap,⁵¹ as well as coffee, cigarettes, beer, and even meat.⁵² All of these products were necessities or, depending on the status level of the brand and the economic level of the working-class consumer, minor luxuries. As George Lipsitz puts it, "[t]he relative economic deprivation of ethnic working-class households would seem to provide an inappropriate setting for the display and promotion of commodities as desired by the networks and their commercial sponsors."⁵³ Clearly, still-striving working-class characters like Molly Goldberg and Luigi from *Life With Luigi* (CBS 1952-1953) did not have the sponsor potential of the already-arrived Andersons.

⁴⁷ Lipsitz, *supra* note 2, at 71-72.

⁴⁸ Denis & Denis, *supra* note 1, at 19.

⁴⁹ Barnouw, *supra* note 4, at 106; Lipsitz, *supra* note 2, at 71-72.

⁵⁰ Leibman, *supra* note 14, at 7, 8, 57 (discussing the proliferation of shows).

⁵¹ Samuel, *supra* note 12, at 4-5.

⁵² At first, this kind of product sponsorship did carry over from radio to early television with, for example, Philip Morris sponsoring *I Love Lucy* (premiering in 1951). By the end of the 1950s, however, the products changed. For example, the sponsorship of *Father Knows Best* switched from Raleigh cigarettes in 1954-1955 to Scott Paper in 1955-56, and in 1956 the sponsorship of *Ozzie and Harriet* changed from Listerine to Kodak. Competitor Polaroid picked up *Leave It to Beaver* in 1958. Leibman, *supra* note 14, at 58; Samuel, *supra* note 12, at 19.

⁵³ Lipsitz, *supra* note 2, at 71.

B. Fraternal Orders: Mutual Aid and Collective Action Prior to the 1950s

Corporations not only encouraged the development of the consumeristic “beneficial family” so as to promote the consumption of their products, but they also rewarded the nuclear family formation with their benefits programs. In this way, corporations assumed the role of caretakers of their employees, which was a marked shift away from their previous relationship to their workers. Prior to the 1950s, the reputations of corporations, embroiled as they often were in labor strikes and disputes, were generally negative.⁵⁴ They certainly were not viewed as caretakers, especially as few corporations provided comprehensive benefits programs; consequently, families more often relied on fraternal orders and other forms of community assistance to meet their needs.⁵⁵ Fraternal orders were central features of working-class urban life starting in the late nineteenth century.⁵⁶ Such lodge memberships provided the equivalent of corporate benefits, supplying members with medical and life insurance coverage, as well as forms of unemployment and disability benefits.⁵⁷ These lodges were popular because they were based on the concept of reciprocal aid, as opposed to hierarchical aid of the sort offered in very limited forms by the government and private charities. With their “common emphasis on mutual aid and reciprocity,”⁵⁸ working-class lodges offered aid from metaphorical “brothers.” The appeal was that “fraternal aid rested on an ethical principle of reciprocity. Donors and recipients often came from the same, or nearly the same, walks of life; today’s recipient could be tomorrow’s donor, and

⁵⁴ Robert H. Zieger, *American Workers, American Unions* 8, 13-18 (2d ed., 1994) (discussing how workers understood that they needed to take care of themselves because corporations were seen as uncaring); Kim Moody, *An Injury to All: The Decline of American Unionism* 66 (1988) (remarking that benefits were workers’ private burdens).

⁵⁵ See *infra* note 60 and accompanying text.

⁵⁶ David Beito, *From Mutual Aid to the Welfare State: Fraternal Societies and Social Services, 1890-1967* 2, 19-22, 14, 16, 59, 60 (2000). Beito claims that approximately one out of three adult males were members of fraternal organizations, but clarifies that he thinks this 1933 estimate is a very conservative one. *Id.* at 2. The estimate comes from *Recent Social Trends in the United States: Report of the President’s Research Committee on Social Trends* 935 (1933). Ethnic working men, such as Ralph and Norton from *The Honeymooners* (CBS 1955-56), were members of a fraternal lodge, but Lipsitz notes that in such sitcoms the lodge was often an object of ridicule. Lipsitz, *supra* note 2, at 90-91. See Mary Ann Clawson, *Constructing Brotherhood: Class, Gender and Fraternalism* 263-64 (1989) (discussing how lodges came to be perceived as archaic).

⁵⁷ Beito, *supra* note 56, at 19-27, 59, 213, 217, 219, 229, 389; Clawson, *supra* note 56, at 3, 18; Lipsitz, *supra* note 2, at 90.

⁵⁸ Beito, *supra* note 56, at 1-2, 59, 389; Clawson, *supra* note 56, at 3, 18; Lipsitz, *supra* note 2, at 90.

vice versa.”⁵⁹ In this way, the lodge system was essentially premised on the extended family or friends-as-family formation and was built on the assumption that a workingman and his family would at times not be able to care for or provide for themselves and would then need the aid of a community.⁶⁰ Collective community action through fraternal orders complemented collective workplace action with the rise of unions in the 1930s.⁶¹

While such fraternal orders still existed in the 1930s, they started to decline in that decade⁶² and eventually were replaced by corporations acting as shadow welfare states for most Americans.⁶³ One obvious cause was the migration of many urban Americans to the suburbs in the 1940s.⁶⁴ This migration must be seen, however, as part of a larger process of the mid-twentieth century assimilation of second-generation “white ethnics,” such as Americans from Jewish and Italian American backgrounds.⁶⁵ As the children of the original early twentieth century immigrants cycled through public primary, secondary, and often university education, they distanced themselves from the norms and values of urban ethnic communities.⁶⁶ They were less likely to participate in fraternal organizations because they associated the orders with their immigrant and working-class parents. In the era of conformity in which they were coming of age, second-generation

⁵⁹ Beito, *supra* note 56, at 3.

⁶⁰ *Id.* at 21.

⁶¹ Zimmerman, *supra* note 8, at 44. Zieger attributes the unions’ success to “a sympathetic government and union-supporting legislation” in the 1930s. Zieger, *supra* note 54, at x. He locates the great period of strength of the unions in the two decades between March 1933 and January 1953, starting with the presidency of Franklin Delano Roosevelt and ending with the presidency of Harry S. Truman, arguing that, “[f]or the first time, the nation’s central industrial core and its main transport networks became solidly organized. Mass organization dovetailed with heightened laborite political activity to such an extent that the Democratic party took on a strong working-class orientation.” *Id.*

⁶² Beito, *supra* note 56, at 223-24; Jason Kaufman, For the Common Good? American Civic Life and the Golden Age of Fraternity 175 (2002).

⁶³ See *infra* notes 271-274 and accompanying text.

⁶⁴ Brook, *supra* note 29, at 47; Marc, *supra* note 2, at 51; Kaufman, *supra* note 62, at 176.

⁶⁵ Kaufman, *supra* note 62, at 176-80; Brook, *supra* note 29, at 62.

⁶⁶ Kaufman, *supra* note 62, at 179. Jones discusses this issue in relation to *The Goldbergs*, in which daughter Rosalie is represented on the sitcom as the spokesperson for assimilation. Jones, *supra* note 12, at 42. See generally Brook, *supra* note 29, at 48-49 (discussing the way television characters “sponsored” certain viewpoints about the benefits of assimilation). See also Carole Kismaric & Marvin Heiferman, Growing Up With Dick and Jane: Learning and Living the American Dream 43, 61-70 (1996) (reviewing the impact of education on assimilation, particularly through the Dick and Jane primers).

immigrants were learning in school as well as from advertising that it was desirable to assimilate into a standardized, middle-class, white Anglo-Saxon Protestant norm.⁶⁷

As they started their own careers and families, these second generation "white ethnics" were also often physically removed from the neighborhoods and workplaces in which fraternal organizations maintained their power base.⁶⁸ By the late 1940s and early 1950s, many "white ethnics" had established themselves in suburban developments away from their extended families, whether biological or fraternal.⁶⁹ Even prior to the suburban relocation, urban "white ethnics" were being courted by corporate advertising campaigns of the 1930s and 1940s. These campaigns urged them to reimagine themselves as competition-oriented individual consumer units or nuclear family consumer units, rather than as members of extended biological, communal, or fraternal "families" oriented towards reciprocal aid.⁷⁰

Over time, suburbanites, separated from their close-knit city neighborhoods, learned to take advice from sponsors and television families, rather than from their extended families. As Thomas Hine notes, in these new suburbs, "[p]eople were physically separated, out on their own in a new muddy and unfinished landscape, but they were also linked as never before through advertising, television, and magazines."⁷¹ Corporations began to act as substitute families;⁷² as Hine puts it, "[e]ven as Americans became more and more widely dispersed geographically, they became more and more a single nation, making the same recipes found on the backs of boxes. Betty Crocker represented a new kind of authority, acting in loco parentis."⁷³ Hine explains how sponsors became the experts to whom suburban Americans turned for advice, noting that "[a]uthorities and experts" on boxes, in ads, and on television "served as national parents,

⁶⁷ Beito, *supra* note 56, at 2-6; Kaufman, *supra* note 62, at 177-78; Keats, *supra* note 3, at 65, 61; Alan Nadel, Containment Culture: American Narratives, Postmodernism, and the Atomic Age 3-5, 13-16 (1995).

⁶⁸ Beito, *supra* note 56, at 27; *see* Clawson, *supra* note 56, at 107.

⁶⁹ By moving to the suburbs, people found themselves too far away to seek assistance from the networks of care prevalent in city neighborhoods. Clawson, *supra* note 56, at 263; Keats, *supra* note 3, at 60-61, 64.

⁷⁰ Roland Marchand, Advertising and the American Dream: Making Way for Modernity, 1920-1940 217-22 (1985). *See generally* Keats, *supra* note 3, at 61, 146-47 (addressing the role of suburbs in the creation of a homogenized national culture).

⁷¹ Thomas Hine, Populuxe 3 (1986); Lipsitz, *supra* note 2, at 83-87.

⁷² Hine, *supra* note 71, at 3; *see also infra* notes 252-254.

⁷³ Hine, *supra* note 71, at 27.

telling young people separated from their families and thrown into unfamiliar contexts how to deal with their problems, raise their children, take care of their house[s] and yard[s], dress, entertain and enjoy themselves.”⁷⁴ According to Hine: “[f]olk wisdom, the kind of thing your family might tell you, was called into serious question by rapidly changing circumstances of modern life.”⁷⁵

C. World's Fair Corporate Experts: Early Efforts to Displace the Traditional Influences of the Extended Family and Fraternal Lodge

The influences leading to the replacement of the advice of the extended family and the lodge were evinced in the corporate pavilions at the 1939 New York World's Fair. An analysis of this corporate sponsorship can help trace the history of how corporations encouraged and privileged the nuclear family formation and later rewarded it in their benefits programs.⁷⁶

The American corporations that would come to dominate 1950s culture test-marketed their influence and trumpeted their expertise at the New York World's Fair of 1939-40.⁷⁷ Although on the surface it might seem that a fair in one American city could hardly have much impact on national culture, a history of the World's Fairs quickly dispels that notion.⁷⁸ The fairs were national events, despite their locations. In fact, nearly one hundred million people visited the dozen expositions held between 1876 and 1916 in larger cities like Chicago, San Francisco, and St. Louis, and smaller ones like Omaha, Portland, and Seattle.⁷⁹

The best-attended of those early fairs was the 1893 Chicago Fair, with approximately twenty-seven million visitors.⁸⁰ With these attendance numbers, it is not surprising that the fairs did much, as Robert Rydell argues, to “influence the content of many individual and collective beliefs

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Fair America*, *supra* note 10, at 1-6.

⁷⁷ Corporations were well-represented at previous fairs, but the 1939 fair had a particularly strong corporate presence. Hine, *supra* note 71, at 3-4.

⁷⁸ *Fair America*, *supra* note 10, at 4-5; Robert Rydell, *All the World's A Fair: Visions of Empire at American International Expositions, 1876-1916* 3-4 (1984); Warren I. Susman, *The People's Fair: Cultural Contradictions of a Consumer Society, in Dawn of a New Day: The New York World's Fair, 1939-40* 17-27 (Helen Harrison, ed., 1980). See generally Larry Zim et al., *The World of Tomorrow: The 1939 World's Fair* (1988) (offering a pictorial-based essay on the fair) [hereinafter *World of Tomorrow*].

⁷⁹ *Fair America*, *supra* note 10, at 3-4; Rydell, *supra* note 78, at 2.

⁸⁰ Rydell, *supra* note 78, at 40.

and values” of Americans.⁸¹ This influence reached new heights with the 1939 New York World’s Fair, which drew the greatest number of attendees of any fair, with between forty-five and fifty-five million visitors, or approximately one-third of the total United States population.⁸²

Since their inception in the late nineteenth century, the United States World’s Fairs have marketed the nation’s newest advancements and products. The fairs were the sites for the launch of such famous branded products as Aunt Jemima, Cracker Jack, Cream of Wheat, Juicy Fruit, and Jell-O. They also solidified consumer recognition of brands, which at the 1939 Fair included Sealtest, Borden, Beech-Nut, Kraft, Heinz, Lucky Strike Cigarettes, and Schaefer Beer.⁸³ The 1939 Fair was remarkable for the centrality of its corporate emphasis and the dominance of corporate pavilions by companies such as General Electric, Westinghouse, AT&T, Kodak, RCA, U.S. Steel, and all of the major automobile makers.⁸⁴ In such venues, American corporations promoted their connection to the advancements of their industry. On display, for example, were the wonders of Chrysler streamlining, RCA television, General Electric fluorescent lighting, AT&T operator-free long-distance calling, and Westinghouse robotics.⁸⁵

Corporations such as General Motors,⁸⁶ Westinghouse,⁸⁷ and General Electric stressed consumerism and traditional gender roles through their exhibits at the 1939 Fair.⁸⁸ Westinghouse’s pavilion, for example, featured a Kitchen of Tomorrow, as well as a live (staged) dishwashing competition between a woman using a Westinghouse Dishwasher and one washing dishes by hand.⁸⁹ “Mrs. Modern,” with the aid of all the latest

⁸¹ *Id.* at 2-3, 7-8.

⁸² This information is available on several websites. See, e.g., Iconography of Hope, *supra* note 10; World’s Fair Guide, *supra* note 10.

⁸³ Iconography of Hope, *supra* note 10.

⁸⁴ Fair America, *supra* note 10, at 92; Warren I. Susman, Culture as History: The Transformation of American Society in the Twentieth Century 215-20 (1984) (discussing the impact of the fair).

⁸⁵ Fair America, *supra* note 10, at 92.

⁸⁶ General Motors’ Futurama exhibit offered the corporation’s vision of the American future, with the main attraction at its exhibit being a Disney-like ride in which passengers circled a gigantic model of a future city organized around highways and automobile traffic. Fair America, *supra* note 10, at 92-93; World of Tomorrow, *supra* note 78, at 108-15; Susman, *supra* note 84, at 221, 224-25 (discussing the GM exhibit).

⁸⁷ See *infra* notes 89-96 and accompanying text.

⁸⁸ World of Tomorrow, *supra* note 78, at 43.

⁸⁹ *Id.* at 80.

Westinghouse appliances, not only always outperformed “Mrs. Drudge,” but stayed clean, pretty, and relaxed as the appliances performed kitchen drudgery for her. To highlight its message about the liberating effects of a modern American culture that offered its consumer citizens constant corporate and technological advancement, Westinghouse created a trademark appliance-age family named the Middletons. The fictional family appears in a propaganda film called *The Middletons at the 1939 Fair*.⁹⁰ At the fair, each member of the Middleton family learns of the superiority of American culture and of Westinghouse home goods.⁹¹

The Westinghouse film exemplifies how corporate self-representation and promotion at the fair played an important role in a discursive struggle through which corporations sought to reconfigure public attitudes regarding communal social networks and organizations.⁹² Anti-welfare state in tone, the film disparages the Works Progress Administration in the first few minutes and ridicules the idea of social agitation for change by painting as a communist the character in the film who champions workers’ rights.⁹³ The film dramatizes the world view that the fair offered—one that encouraged Americans to look for enemies outside rather than within American culture (especially not within American corporations).⁹⁴ It helped valorize the notion of American corporations like Westinghouse as wise leaders able to guide Americans

⁹⁰ Westinghouse produced the film, *The Middleton Family at the 1939 World’s Fair*, and showed it at the 1939 World’s Fair and other venues to promote the corporation’s exhibits at the fair. *The Middleton Family at the 1939 World’s Fair* (Westinghouse 1939), available at <http://members.tripod.com/~Moviecraft/wf.html> (last visited March 20, 2005) [hereinafter *Middleton Family*]. Moviecraft, the current distributor of this rare film, offers the following description taken from Westinghouse’s own promotional materials on its film:

Step back into the past through this rare motion picture sponsored by Westinghouse . . . See Electro, the Robot, the ‘Moto-Man’ who walks, talks, counts, and even smokes a cigarette. Don’t miss the battle of the centuries (Woman vs. Dishwasher), the Microvarium, the Junior Science Laboratories, and the Television Show. You’ll be amazed in the Hall of Power and the Hall of Electrical Living. All this intertwined with the story of the Middleton family, and Babs the college girl, whose boyfriend has Marxist/Socialist leanings.

Id.

⁹¹ This interpretation is obvious after viewing the film. *Id.*

⁹² Susman, *supra* note 84, at 221-25 (discussing general cultural issues regarding the fair). He also refers to *Tomorrow’s Propaganda*, the *New York Times* review (June 18, 1939) of the Westinghouse film. The reviewer was not convinced by Westinghouse’s claims about the inevitable benefits of the “World of Tomorrow” it was offering Americans. *Id.* at 225.

⁹³ This interpretation is obvious after viewing the film. See *Middleton Family*, *supra* note 90.

⁹⁴ Nadel, *supra* note 67, at 84-87.

willing to join a united front in their struggle against the forces of fascism and communism.

The film concludes with the daughter, Babs Middleton, choosing to marry Jim Treadwell, a boy who, although working for Westinghouse at the time, is originally from their hometown in the Midwest.⁹⁵ In doing so, she rejects her dark-skinned, dark-haired, and therefore, by 1950s parlance, "foreign-looking," Art History professor boyfriend and the socialist (read: pro-union) and anti-consumeristic viewpoints he advocates.⁹⁶ Moreover, in selecting the middle-American, loyal Organization Man⁹⁷ over the ethnic labor-agitator, Babs also implicitly espouses the barely-submerged xenophobic element in the film. Jim, the good Midwestern "native" American Westinghouse employee who represents the rational logic of science and progress, is clearly established as the ideal typical American.

As one of two suitors for the All-American girl Babs Middleton, Jim is positioned as the All-American boy in opposition to the foreign-born, multilingual professor with his pretentious fondness for abstract art and political philosophy.⁹⁸ The professor's emotional argument style and melodramatic assertions are contrasted unfavorably to Jim's dispassionate style and his ability to avoid abstractions and to speak clearly about scientific and technological advancements. Jim "talks sense," and the film is resolved when Babs finally comes to her senses. Suggesting that she has only temporarily been swayed by foreign ideas, the film ends by celebrating her conformity to the American ideal.

Focusing as it does on Babs' realization of the false promises of communist thought, the film hints at the role anticommunism would play in promoting conformity in the next decade.⁹⁹ Babs' flirtation with the communist is not really damaging to her, as she has her upper-middle-class,

⁹⁵ See *supra* notes 91-92 and accompanying text.

⁹⁶ Babs has implicitly accepted her grandmother's Westinghouse-approved advice that women should not be interested in intellectualism or careers. Instead, they should aspire to marry nice patriotic boys and acquire the latest appliances and home décor from Westinghouse (and other companies represented at the fair). *Middleton Family*, *supra* note 90; see also *infra* notes 119-120 and accompanying text.

⁹⁷ See William H. Whyte, Jr., *The Organization Man* 267-404 (1956) (taking a more critical and sociological approach in profiling the white collar worker and his home life in the 1950s).

⁹⁸ This interpretation is obvious after viewing the film. See also *supra* note 90 and accompanying text.

⁹⁹ Christina Klein, *Cold War Orientalism: Asia and the Middlebrow Imagination, 1945-1961* 32-36 (2003) (discussing how anticommunism became a structure of practices that people were encouraged to adopt in their everyday lives by conforming to a set of typical American norms); Tyler May, *supra* note 28, at 13 (addressing how the middle class defined itself through anticommunist rhetoric).

white, Midwestern, generations-old family background to proclaim her all-American status. That status would be harder to maintain for an American girl who was herself foreign-born or who was the child of foreign-born parents.¹⁰⁰ By the 1950s, conformity to the typical American, WASP “beneficial family” ideal would be seen as the badge of patriotism, especially for immigrants and their children. As poet Pat Mora has written, “immigrants wrap their babies in American flags / feed them mashed hot dogs and apple pie, / name them Bill and Daisy.”¹⁰¹ The poem supports Coontz’s assertion that the adoption of the nuclear “beneficial family” ideal was often more “a defensive move than a purely affirmative act,”¹⁰² as the family was a way to project a unified front. Often, the cost of this public affirmation was the repression of people’s ethnic, political, or personal beliefs.¹⁰³

By the 1950s, people understood that one’s status as a “True American” could be proven by one’s overt conformity to social norms and one’s vociferous denunciations of the socialist leanings of one’s immigrant parents, grandparents, or, in the case of more recent immigrants, one’s former countrymen. Christina Klein argues that popular media commonly represented “the white, middle class suburban family as one of the foundations of post-war national identity, an emblem of a prosperous and secure America.” This identification would be reinforced, Klein contends, through a contrast to communist nations that the media “represented as bent on destroying the family and replacing it with the state.”¹⁰⁴

The Middletons offers this argument in embryonic form. As such, it is an important site for the kind of ideological work involved in establishing the parameters of the “American Way of Life,” typical American identity, and the “beneficial family” with which both are associated.¹⁰⁵ The film exemplifies how companies like Westinghouse were involved in elaborating a corporate framework—one emphasizing the benefits of conformity, consumerism, and the necessity of the expert advice of corporations, with their cutting-edge scientists and inventions—for understanding American culture. Ending as it does with the promise of Jim and Babs’ marital union

¹⁰⁰ Klein, *supra* note 99, at 146-47 (addressing how immigrants were encouraged to pledge a “voluntary affiliation” to their new home country; part of that affiliation to the “American Way of Life” could be proven by the adoption of the nuclear family norm).

¹⁰¹ Pat Mora, *Immigrants*, in *Unsettling America: An Anthology of Contemporary Multicultural Poetry* 119 (Maria Mazziotti Gillan & Jennifer Gillan eds., 1994) [hereinafter *Unsettling America*].

¹⁰² Coontz, *supra* note 7, at 33.

¹⁰³ *Id.*

¹⁰⁴ Klein, *supra* note 99, at 147.

¹⁰⁵ *Id.* at 146-47.

and their intention to fill their home with the products and new technologies seen on display at the fair, the film clearly demonstrates Westinghouse's corporate investment in this "beneficial family." Focusing on the benefits not only of the nuclear family formation, but also of the suburban, consumer-oriented culture emerging in the United States, this film and the fair's other corporate-sponsored entertainments, displays, and pavilions helped to disseminate and standardize the nuclear family formation.¹⁰⁶

D. Suburban Sitcom Family: Sponsor-Approved Standardization and the Entrenchment of the "Beneficial Family" in 1950s Television

This standardization of the nuclear family reached a new level when corporations transitioned from displaying their products at fairs to advertising them on the radio and then on television.¹⁰⁷ In the 1950s, corporate-sponsored media with control over program content¹⁰⁸ would soon white-out images of traditional extended families and kinship networks and replace them with the new "beneficial family" structure: the consumer-driven nuclear family that needed its own home, products, and services.¹⁰⁹ As noted previously, the entrenchment of the idea of the nuclear family as the "beneficial family" can be seen in the transition from 1940s radio and early television shows based on city-dwelling, ethnic, extended families and their neighbors¹¹⁰ to 1950s television shows about self-

¹⁰⁶ *Fair America*, *supra* note 10, at 6; Rydell, *supra* note 78, at 3-4.

¹⁰⁷ Barnouw, *supra* note 4, at 41-42 (addressing the switch from radio to television sponsorship); *see also* Boddy, *supra* note 12, 155-59 (offering an overview of the new consumer market for television advertising); Brook, *supra* note 29, at 50 (discussing the change in product placement from radio to television in the 1940s and 1950s); Jones, *supra* note 12, at 29-37 (noting sponsorship changes as radio shows became television programs); Smulyan, *supra* note 12, at 163 (detailing shift from sponsorship to advertising); Marchand, *supra* note 70, at 164-70 (examining the development of American consumer culture with insights into radio and television advertising). *See generally* Michele Hilmes, *Radio Voices: American Broadcasting, 1922-1952* 28-29 (1997) (examining the racial implications of the limited view of American social formations depicted on the radio); Jennifer Hyland Wang, "The Case of the Radio-Active Housewife": Relocating Radio in the Age of Television, in *Radio Reader: Essays in the Cultural History of Radio* 343, 350-51 (Michele Hilmes & Jason Loviglio eds., 2002) (exploring the impact of gender on the switch from radio to television sponsorship).

¹⁰⁸ *See generally* Barnouw, *supra* note 4.

¹⁰⁹ Robson, *supra* note 1, at 800. *See* Christensen, *supra* note 3, at 1309 n.49.

¹¹⁰ *See* William Boddy, *The Studios Move into Prime Time: Hollywood and the Television Industry in the 1950s*, 24 *Cinema J.* 23, 23-35 (1985) (providing an overview of the history of early television programming); *see also* Arthur Frank Wertheim, *Radio Comedy* 263-82, 314-34 (1979) (addressing the migration of comedies from radio to television).

contained, WASP nuclear family units living in suburban, commodity-laden homes, isolated from the extended family members and kinship networks that typified family formation in the first part of the twentieth century.¹¹¹

By the 1950s, most sitcoms conformed to the family formation characterized by the male breadwinner and female homemaker¹¹² living with their children in the suburbs: *The Adventures of Ozzie and Harriet* (ABC 1952-66), *Father Knows Best* (CBS, NBC 1954-60), *Leave It to Beaver* (CBS & ABC 1957-63), *Dennis the Menace* (CBS 1959-63), and *The Donna Reed Show* (ABC 1958-66).¹¹³ Disappearing were the urban, ethnic extended family sitcoms such as *The Goldbergs* (CBS & NBC 1949-53, 1955) and the friends-as-family sitcoms such as *I Love Lucy* (CBS 1951-57).¹¹⁴ In their later seasons both *The Goldbergs* and *I Love Lucy* relocated their characters to the suburbs in order to conform to the new norm.¹¹⁵ The uniformity that characterized the families on mid-1950s

¹¹¹ Lipsitz, *supra* note 2, at 71-108. Lipsitz analyzes why "network television eliminated urban, ethnic working-class programs from the schedule" after 1958. *Id.* at 103. He contends that the sponsors were looking to target the new, predominantly white, suburban middle-class market; therefore, they wanted television programming to reflect that desired demographic. *Id.*; see also Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* 243 (1985) (examining the weakening of the extended family in America); see also *supra* note 109 and accompanying text.

¹¹² Douglas, *supra* note 34, at 42-60, 282-83 (giving a powerful account of working 1950s moms and tensions between demands of homemaker and worker, as well as the 1950s backlash against working mothers). Several other scholars examine the actualities of women working outside of the home. See Tyler May, *supra* note 28, at 75-87. In addition, scholars have explored women's attitudes toward work in the 1950s. See, e.g., Marion G. Sobol, *Commitment to Work, in The Employed Mother in America* 40-63 (F. Nye & L. Hoffman eds., 1963); Robert Weiss & Nancy Samuelson, *Social Roles of American Women: Their Contribution to a Sense of Usefulness and Importance*, 20 *Marriage and Fam. Living* 358, 358-66 (1958).

¹¹³ Harry Castleman & Walter J. Podrazik, *Harry and Wally's Favorite TV Shows* (1989) (providing information on all network shows, with dates, studios, and brief explanations). Information on the 1950s television programming is available at several Los Angeles area libraries: the University of California, Los Angeles Cinema and Television Library and Archive (<http://www.cinema.ucla.edu>), The Museum of Television and Radio Archives, Los Angeles (<http://www.mtr.org>), and the University of Southern California Cinema-Television Library (<http://www.cntv.usc.edu>). The University of Southern California Cinema-Television Library offers a wealth of archival materials on publicity and sponsorship issues in its Hal Humphrey Collection.

¹¹⁴ See *supra* note 113 and accompanying text.

¹¹⁵ Brook, *supra* note 29, at 50. Brook argues that when *The Goldbergs* was recreated as *Molly* for the 1955-56 season on the Dumont Network, it was essentially a new show. *Id.* at 56. It was also no longer a live television show, but was instead filmed for syndication. *Id.* at 50; see also Jones, *supra* note 12, at 90.

television conveyed the idea that all Americans did or would soon conform to the same norm.¹¹⁶

Each television show was sponsored by a specific corporation that benefited from the representation of the nuclear family as the American norm, such as Hotpoint's *The Adventures of Ozzie and Harriet*, Scott Paper's *Father Knows Best*, and Polaroid's *Leave It to Beaver*.¹¹⁷ The proliferation of these corporate-sponsored shows underscored the superiority of this consumeristic nuclear family and encouraged Americans not only to buy into the norm, but more importantly, to buy the products that promised to help them achieve it.¹¹⁸ An analysis of 1950s family television programming alongside its World's Fair exhibit antecedents establishes that, during the mid-twentieth century, the corporate order underwrote a version of consumer citizenship,¹¹⁹ branding the ideal typical American social and consumer unit as a white, middle-class, nuclear family.¹²⁰ Such nuclear family formations, these television shows and earlier fair displays suggested, were the most beneficial to individual family members as well as to the nation as a whole.¹²¹

Father Knows Best, *The Adventures of Ozzie and Harriet*, *Leave It to Beaver*, and other 1950s family sitcoms disseminated the idea that viewers could improve their lives by moving to the suburbs,¹²² trimming their families down to a self-sufficient nuclear unit,¹²³ and taking their cues

¹¹⁶ See *infra* notes 196-198 and accompanying text.

¹¹⁷ Leibman, *supra* note 14, at 58.

¹¹⁸ See Stuart Ewen & Elizabeth Ewen, Channels of Desire: Mass Images and the Shaping of American Consciousness 234-36 (1982) (analyzing the way media shapes American national and personal self-conceptions). The authors describe new suburbanites as "landed consumers" whose "[s]uburban homes were standardized parodies of independence, of leisure, and most important of all, of the property that made the first two possible." *Id.* at 235.

¹¹⁹ Cohen, *supra* note 10, at 194-213. The author also examines how the suburbs and the material goods associated with them were linked to patriotism and national identity. *Id.*

¹²⁰ *Id.* at 200-02. Juliann Sivulka notes that "advertising excluded not only African Americans but residents of ethnic urban neighborhoods, the single, the widowed, and single parents." Juliann Sivulka, Soap, Sex, and Cigarettes: A Cultural History of American Advertising 263 (1998).

¹²¹ Coontz, *supra* note 7, at 27-28.

¹²² See *supra* notes 120-121 and accompanying text; see also *infra* notes 172-173 and accompanying text.

¹²³ Some commentators on the family assert that much of the current concern about families is largely rhetorical. Michèle Barrett & Mary McIntosh, The Anti-social Family 148 (1982). As Barrett and McIntosh explain, "[i]n practice, those who most fervently preach the organic role of the family do least when in power to help family members. For what they are

on how to dress and decorate from the examples they saw on corporate-sponsored advertising and television programs, rather than from extended family members.¹²⁴ As more families assimilated into the idealized "beneficial family," the sharing of homes, food, clothing, and other products among extended family and other nonnuclear family or community groups decreased. The new "beneficial" or consumer-driven nuclear family needed its own home, products, and services.¹²⁵

Given that radio programming was characterized by a diversity of families from a variety of ethnic backgrounds and traditions, radio sponsors had not been able to send the same kind of standardized message that television sponsors were able to send in the mid-1950s.¹²⁶ More to the point, during the Depression years, the ideal target audience did not yet exist, as very few listeners had the money to buy the kinds of luxury goods, such as new cars, appliances, and household gadgets, that the 1950s suburbanites would possess.¹²⁷ Moreover, during the war years, most corporations, already contracted by the government to supply materials for the war effort, had few goods to sell.¹²⁸ In these decades marked by scarcity, most Americans had neither the necessary disposable income, nor the desire for

defending is precisely a family that will look after itself, whose members will not turn elsewhere for care or support, self-sufficient, self-contained, selfish." *Id.*

¹²⁴ One example of how viewers accepted style advice from television stars and sponsors involved instances in which "one million *I Love Lucy* bedroom suites" were sold in ninety days and "three thousand retail outlets carried Lucille Ball dresses, sweaters, and blouses." Bart Andrews, *Lucy & Ricky & Fred & Ethel: The Story of "I Love Lucy"* 11 (1976). In a self-reflexive moment of television sponsorship, an episode of *The Honeymooners* features Ralph and Norton hawking a gadget on a television commercial. *The Honeymooners: Better Living Through TV* (CBS television broadcast, Nov. 12, 1955). Similarly, Lucy Ricardo also sells a health tonic, named "Vitametavegamin," in an episode of *I Love Lucy*. *I Love Lucy: Lucy Does a TV Commercial* (CBS television broadcast, May 5, 1952). She also does a skit in that episode in which she makes reference to Philip Morris, *I Love Lucy*'s sponsor, when she dresses as the then-trademark Philip Morris boy. *Id.* Sponsorship surfaces again in another episode when Lucy and Ethel also buy time on a local television station to advertise the salad dressing they are selling. *I Love Lucy: The Million-Dollar Idea* (CBS television broadcast, Jan. 11, 1954).

¹²⁵ Robson, *supra* note 1, at 717-18, 800. See Christensen, *supra* note 3, at 1309 n.49. Married with children households spend at disproportionately higher rates (\$58,000 per year) than other households (\$41,000 per year). Peter Francese, *Marriage Drain's Big Cost*, 26 *American Demographics* 40, 40 (2004). Despite making up only about twenty-five percent of all households, married couples with children spend more than \$3 trillion every year, accounting for thirty-seven percent of all consumer spending, or twenty-five percent of the gross domestic product. *Id.*; see also *infra* notes 206-218 and accompanying text.

¹²⁶ Leibman, *supra* note 14, at 56.

¹²⁷ *Id.* at 27.

¹²⁸ *Id.* at 37.

consumer abundance, that would render the 1950s suburban middle class ideal consumers.

Once this audience was in place, corporations began marketing aggressively to them, with advertising increasing by four hundred percent between 1945 and 1960.¹²⁹ Even though they concentrated their direct efforts on this small market, corporations also indirectly attempted to inculcate a desire for goods in the majority of the population that could not afford the goods or the lifestyle being advertised, but who would work toward purchasing these items in the future.¹³⁰ In this way, corporations helped raise a generation of children who were primed to become abundance-oriented adults, whose American Dream involved a suburban home filled with the latest consumer goods and gadgets.¹³¹ As Nina Leibman explains, “[t]he advertising context of television programs subjected them to a continual interruption by commercials as well as an intrusive participation by sponsors and their advertising agencies.”¹³²

By the 1954-55 television season, sponsors were demanding script control, Leibman contends, so that the shows they sponsored would reflect their corporate ideals. In this era,

sponsor participation in programming was not limited to commercial interruption during a telecast. Sponsors were often the cocreators, producers, or financial backers of specific programs, and thus had enormous influence on episodic series. Because sponsors required that commercials be surrounded by an environment appropriate for their message, they encouraged a blandness among programming.¹³³

Eventually this led to the cancellation of programming not thought to reach a sponsor's target audience. According to Erik Barnouw, “[l]ower-class settings” were a source of exasperation for sponsors trying to get their consumers to “‘move up to a Chrysler’” or to “‘live better electrically’ in a suburban home.”¹³⁴ The commercials simply “looked out of place in a Bronx setting.”¹³⁵ In their privileging of suburban sitcoms, corporations were not only reflecting some aspects of the recent suburban migration, but

¹²⁹ Coontz, *supra* note 7, at 171.

¹³⁰ *Id.* at 29-30; Barnouw, *supra* note 4, at 106-07.

¹³¹ Douglas, *supra* note 34, at 23-25.

¹³² Leibman, *supra* note 14, at 57.

¹³³ *Id.* at 57.

¹³⁴ Barnouw, *supra* note 4, at 106-07.

¹³⁵ *Id.* at 107.

were also trying to encourage audiences to whom they were selling their products to adopt a *Father Knows Best* view of cookie-cutter family models.¹³⁶

The Honeymooners would be an exception to this rule if its central husband-and-wife pair, Ralph and Alice Kramden, had indeed first premiered on television in 1955-56 as many assume. While that season was the first time *The Honeymooners* aired as a sitcom, Ralph and Alice had been battling it out on television since 1950-51. Gleason first gave television the Kramdens in the form of five-minute skits on a Dumont Network variety show in the 1950-51 season.¹³⁷ In 1952, CBS offered him *The Jackie Gleason Show*, and the Kramdens and the Nortons as we remember them began to be shaped, with the skits about them eventually forming the centerpiece of the show and often stretching into half-hour sketches.¹³⁸ In 1955-56, Gleason split his allotted hour into two shows, a variety show followed by *The Honeymooners*, with the battle-of-the-sexes sketches now formalized into a half-hour sitcom format. CBS and Buick, the show's new sponsor, did not agree with Gleason's scheduling choices but reluctantly gave in because of his tremendous star power.¹³⁹ The show was not as successful in this new half-hour format, in part because the weakness of Gleason's variety show in the first half hour had audiences switching to other networks.¹⁴⁰ The competition on NBC was a breakout hit show starring singer Perry Como. By mid-season, Como was beating Gleason in the ratings game.¹⁴¹ When the 1955-56 season did not prove successful for Gleason's hour slot, he scrapped the sitcom and with it the Buick sponsorship deal. He folded *The Honeymooners* back into an hour-long *Jackie Gleason Show* format the next season, but the change came too late to save the show.¹⁴²

¹³⁶ *Id.* at 79-99, 102-07. For more recent work on corporate sponsorship, see generally Boddy, *supra* note 12, at 155-75; Marling, *supra* note 12, at 87-88, 121-22, 148, 158; Samuel, *supra* note 12, at 102, 117, 119.

¹³⁷ Jones, *supra* note 12, at 108; Lynn Spigel, *Make Room For TV—Television and the Family Ideal in Postwar America* 81-83 (1992) [hereinafter *Make Room for TV*].

¹³⁸ Jones, *supra* note 12, at 109-10; Marc, *supra* note 2, at 24.

¹³⁹ Jones, *supra* note 12, at 111.

¹⁴⁰ *Id.* at 111-12.

¹⁴¹ *The Jackie Gleason Show* was a top-rated program. In 1955, it moved in front of *I Love Lucy*, becoming the first place show. In the 1955-56 season, when the hour-long show was replaced by *The Honeymooners* half hour and the variety show half hour, the ratings dropped dramatically. Newcomer Perry Como's show came in at eighteenth, beating Gleason's, which was nineteenth in the ratings. The next season, Gleason only made it to the top thirty, while Como surged ahead to take his place in the top ten. *Id.*

¹⁴² *Id.* at 112.

The Kramdens' disappearance from television by the next year can be attributed as much to the changing tastes of audiences and sponsors as to these scheduling upheavals.¹⁴³ Audience and sponsor preference for the cardigan-clad Como and his bland musical stylings over Gleason's unkempt loud-mouth characters suggests that the compliant and contented Ozzies and Harriets, with their respective cardigans and pearls and their pleasant suburban home life, had edged out the earlier style of disruptive and discontented husbands and wives engaged in battles of the sexes.¹⁴⁴ CBS offered Americans *Leave It to Beaver* for the 1957 season. The Cleavers then moved to ABC in 1958, where they joined "beneficial family" newcomers Dr. Alex and Donna Stone and family, of *The Donna Reed Show*.¹⁴⁵ The Kramdens and the Nortons clearly did not occupy the same neighborhood as the Cleavers, the Stones, the Nelsons, and television's other "beneficial families."¹⁴⁶ Once *The Honeymooners* joined the sitcom genre during the 1955-56 season and was no longer simply a comedy skit, audiences may have watched it differently.¹⁴⁷ Viewers recognized the discrepancy between the bleak, blue-collar Kramdens and the other families, even sending Audrey Meadows (Alice) items including pretty aprons and curtain rods so she and her home would look less poor and depressing.¹⁴⁸

Certainly, *The Honeymooners'* representation of the American family was out of sync with standard corporate messages.¹⁴⁹ The show acknowledged the unpleasant aspects of family life and pointed to the dissatisfaction not only of homemakers and breadwinners, but also of blue-collar Americans. Sponsors preferred shows that did not acknowledge these problems, and they made sure not to highlight the more general lack of fulfillment many people experienced in relation to this family formation.¹⁵⁰

Ignoring the era's high rates of domestic violence, drug and alcohol abuse, and depression,¹⁵¹ 1950s television continued to promote an

¹⁴³ See *id.* at 111-14; Marc, *supra* note 2, at 24, 121.

¹⁴⁴ Douglas, *supra* note 34, at 26, 50-51.

¹⁴⁵ *The Donna Reed Show* ran from 1958-66, while *Leave It to Beaver* ran from 1957-63. Denis & Denis, *supra* note 1, at 69, 83.

¹⁴⁶ See Denis & Denis, *supra* note 1, at 25, 57, 73; *Make Room for TV*, *supra* note 137, at 129; Leibman *supra* note 14, at 245.

¹⁴⁷ See Jones, *supra* note 12, at 113-15; Marc, *supra* note 2, at 24, 121.

¹⁴⁸ Jones, *supra* note 12, at 113.

¹⁴⁹ Leibman, *supra* note 14, at 7, 245.

¹⁵⁰ Barnouw, *supra* note 4, at 106; Lipsitz, *supra* note 2, at 84, 99; Jones, *supra* note 12, at 107.

¹⁵¹ Coontz, *supra* note 7, at 35-37.

idealized image of this family formation. With the loss of battle-of-the-sexes shows such as *The Honeymooners*, 1950s family television became more uniform¹⁵² and thus more effectively disseminated a conformist approach to the “beneficial family.” In doing so, these shows suggested that the concrete benefits that Jim Anderson, a manager at an insurance company, and Ward Cleaver, an accountant in a firm,¹⁵³ received as upper-middle-class, white-collar corporate employees, and the associated abstract benefits of family stability and security, were natural features derived from these television characters’ formations of nuclear family households.¹⁵⁴ The standardization of corporate sponsorship of nuclear family-oriented television programming, along with the weeding-out of shows that offered negative or nonnuclear family representations from network schedules, left the impression that the “beneficial family” was the norm.¹⁵⁵

Having redefined the ideal family, corporations, in turn, rewarded with key economic benefits only those employees who assimilated into this beneficial and consumeristic nuclear family model.¹⁵⁶ Ignoring the deeper social and economic complexities of the times,¹⁵⁷ 1950s corporations privileged the nuclear family in their benefits programs as the most “beneficial family” formation, assuming that this kind of family and this type of household were those in which the majority of their employees would find themselves living.

¹⁵² Douglas, *supra* note 34, at 26, 50-51; Ella Taylor, *Prime Time Families: Television Culture in Postwar America* 26 (1989).

¹⁵³ Denis & Denis, *supra* note 1, at 39, 57 (giving an overview of the father characters in each show).

¹⁵⁴ The novel, *The Man in the Gray Flannel Suit*, addresses the new anxieties of white-collar workers in the corporate sector. Sloane Wilson, *The Man in the Gray Flannel Suit* (1955) (following the home and workplace anxieties of Tom Rath as he scales corporate and suburban hierarchies); *see also* Whyte, *supra* note 97, at 267-404. In the 1950s, this new breadwinner felt a tension between dedication to his family and dedication to his corporation. Hine, *supra* note 71, at 29; Wilson, *supra*, at 264-65. *See generally* Tyler May, *supra* note 28, at 5, 49, 53, 88, 176, 182 (reviewing the traditional expectations of the male breadwinner role and the new expectations of the American father).

¹⁵⁵ Leibman, *supra* note 14, at 143-44, 148-49; Lipsitz, *supra* note 2, at 71-108; Cohen, *supra* note 10, at 302-05.

¹⁵⁶ *See infra* notes 261-262, 274-276 and accompanying text.

¹⁵⁷ Although often viewed nostalgically, the 1950s saw about twenty-five percent of all families in poverty, domestic violence without criminal liability, and enormous discrimination against women and other minority groups. Christensen, *supra* note 3, at 1309-10; Kuykendall, *supra* note 3, at 265; *see supra* note 3 and accompanying text; *see also infra* notes 163, 199 and accompanying text.

II. CORPORATE EXPECTATIONS AND QUALIFICATIONS: ELIGIBILITY, RESTRICTIONS, AND LIMITATIONS OF THE “BENEFICIAL FAMILY” MODEL

Television in the 1950s did not reflect social reality as much as it helped to create it.¹⁵⁸ It encouraged people to view one type of family formation as the most beneficial and to imagine that their conformity to the ideal would naturally result in the same level of benefits the television family enjoyed.¹⁵⁹ At that time, a majority of Americans, like their television counterparts, did appear to live in a household with a married couple at its center¹⁶⁰ and a male breadwinner at its head.¹⁶¹ Married household couples purportedly made up about eighty percent of households in the 1950s.¹⁶² The 1950 Census, like 1950s family television, defined a household in patriarchal and nuclear terms, with the center assumed to be a male breadwinner heading a household of his dependent wife and children. Couple-centric families, described by the Census as “families with both the head and his wife present,” were apparently the norm, accounting for 87.1% of households.¹⁶³ The Census also counted non-couple households, either those in which the husband’s role was taken on by another male relative

¹⁵⁸ Christensen, *supra* note 3, at 1308-16 (arguing that the 1950s nuclear family is a myth and not necessarily more stable or nurturing than other types of family units); see also *infra* note 253 and accompanying text. The influence of television on family living in the 1950s was already a subject of discussion in the 1950s. See, e.g., Edward C. McDonagh et al., Television and the Family, 35.2 *Sociology and Social Research* 113, 116-17 (1950); Harry Henderson, The Mass Produced Suburbs: I. How People Live in America’s Newest Towns, *Harper’s Mag.*, Nov. 1953, at 28; Television has Become a Member of the Family, *House Beautiful*, Sept. 1951, at 118.

¹⁵⁹ See Coontz, *supra* note 7, at 27-28 (addressing the detrimental effects of overly idealized families on actual Americans and their views of their own families); Arlene Skolnick, Embattled Paradise: The American Family in an Age of Uncertainty 49-74 (1991) (exploring the anxieties produced by the gap between ideal families and families’ actualities).

¹⁶⁰ Despite its absence on 1950s television, divorce did occur in the fifties. For more on divorce and remarriage, see Susan Hartmann, The Homefront and Beyond: American Women in the 1940s 163-65 (1995); Tyler May, *supra* note 28, at 6-8, 21, 59, 117, 185. For more general discussions of women’s history of the era, see Tyler May, *supra* note 28, at 7, 136-37; Glenna Matthews, “Just a Housewife”: The Rise and Fall of Domesticity in America 265 (1987); Rochelle Gatlin, American Women Since 1945 51, 55, 61 (1987).

¹⁶¹ Michelle Conlin, Unmarried America, *BusinessWeek*, Oct. 20, 2003, (unpaginated), available at http://www.businessweek.com/magazine/content/03_42/b3854001_mz001.htm.

¹⁶² *Id.* That figure has now dropped to 50.7% of all households. *Id.*

¹⁶³ United States Census of Population 1950, 4 Special Report: General Characteristics of Families 2A-7 (1955) [hereinafter Census Special Report].

(3.6%) or in which the head of the household was an independent female (9.3%).¹⁶⁴ The 1950 Census, however, did not include households consisting of unmarried single adults living alone or with nonrelatives because they did not fit within the parameters of its definition of a family.¹⁶⁵ The Census also made no provision for households which technically conformed to the couple-centric mold but, unlike television families, also supported a variety of other dependents such as extended family relatives, adult children and possibly their families, and wards. All other possible formations were not considered households and therefore were not included in the report's statistics.¹⁶⁶

The ways in which these other households did not embody the exact kind of middle-class, suburban, nuclear, and even white status as the ideal television family made a substantial difference in their ability to access the benefits that the television families enjoyed.¹⁶⁷ Moreover, access to benefits equal to those of other employees did not just naturally accompany conformity to a single family formation; it depended not only on base salary—for most viewers usually earned much less than what the essentially upper-middle-class, white-collar television breadwinners would have earned—but also on the actual position of their household in national and local race and class hierarchies, particularly their location in the multi-tiered middle class and socially-stratified suburbs.¹⁶⁸ Contrary to the television ideal, even the solidly middle-class—those making between

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* In addressing these nonnuclear family or household units, the Census flatly concluded that, "[s]ome households, therefore, do not contain a family." *Id.*

¹⁶⁶ Today, with the prevalence of divorce and remarriage, the presence of many household members unrelated by blood, but defining themselves as family and living in one household, although sometimes only part-time, has complicated the issue even more. See *infra* notes 276-291 and accompanying text.

¹⁶⁷ To gauge the salary differential, consider that Tom Raft, the character in the film version of *The Man in the Gray Flannel Suit*, is approximately at the economic level of the Andersons. During that 1956 film he is making \$7,000, but as he climbs the corporate ladder and moves into a new job, he asks for \$10,000. This climb would move him from the upper-middle class to the lower end of the high-income class. Hine explains the variation in middle-class economic and social levels, noting that

[t]he absolute number of high-income people, which *Fortune* defined as those making more than \$7,500 annually in 1953 dollars, more than doubled from 1929 The biggest increase came in the number of families in the \$4,000-\$7,000 salary range, which was understood to be solidly middle class. There were 5.5 million families in this category in 1929, 17.9 million in 1953. They accounted for thirty-five percent of the nation's population.

Hine, *supra* note 71, at 16.

¹⁶⁸ See generally Whyte, *supra* note 97, at 267-312 (discussing this stratification and giving an unflattering picture of this conformity in the Chicago suburbs).

\$4,000 and \$7,000 annually—still accounted for only thirty-five percent of the population.¹⁶⁹ While members of the upper middle class, like the suburbanite Cleavers, Andersons, and Nelsons, lived on tree-lined streets, their neighborhoods had little in common with the treeless lots and muddy unpaved roads that characterized most of the suburban Levittowns springing up around the United States in the 1950s.

A. Ideal Qualifications: Class, Occupation, and Eligibility

While television programming represented the suburbs as upper-middle-class enclaves, most of the suburbs that developed were blue-collar Levittowns. These were the more inexpensive suburbs, populated by a mix of an emergent lower-middle class of blue-collar workers and young, middle-class professionals and their wives.¹⁷⁰ Kenneth Jackson points out that, "[a]s the aspiring professionals moved out . . . Levittowns became a community of the most class-stratifying sort possible."¹⁷¹ There was also, of course, a racial component to this suburban homogeneity. Neighborhoods were kept homogenous by the Home Owners Loan Corporation (HOLC), which, according to Jackson, employed a ratings system that "undervalued neighborhoods that were mixed, dense, or aging."¹⁷²

Despite the fact that the newer suburbs were often working-class, the suburbs were, in general, populated by those above the national median income. Not everyone was moving to the suburbs in the 1950s, Roland Marchand theorizes, as "the migration to the suburbs was primarily conducted among the top forty percent in family income."¹⁷³ Thomas Hine clarifies Marchand's claim about the upper-middle-class character of the suburbs, maintaining that the "itinerant young suburban market was far from a majority of the American people, but it was considered the cream of

¹⁶⁹ Hine, *supra* note 71, at 16.

¹⁷⁰ Jackson, *supra* note 111, at 243.

¹⁷¹ *Id.* at 243.

¹⁷² *Id.* at 197; see also Cohen, *supra* note 10, at 194-227 (2003) (examining the origins of and changes within the New York tri-state area suburbs in the 1950s); Herbert J. Gans, *The Levittowners: Ways of Life and Politics in a New Suburban Community*, 22-41 (1967) (offering a broader overview of the Levittown concept); Robert Lynd & Helen Merrell Lynd, *Middletown in Transition: A Study in Cultural Conflicts* (1937) (providing a study on an Indiana suburb as a microcosm of nationwide social, cultural, and geographic changes).

¹⁷³ Roland Marchand, *Visions of Classlessness, Quests for Dominion: American Popular Culture, 1945-1960*, in *Reshaping America: Society and Institutions, 1945-1960* 168 (Robert H. Bremner & Gary W. Reichard eds., 1982). "Most housing developments were priced out of the range of those below the median income." *Id.*

the market and it set the tone for the rest."¹⁷⁴ Hine explains, "[t]he look and accessories of casual suburban living moved quickly into older urban row-house neighborhoods, and suburbanites set the goals to strive for."¹⁷⁵ It was upon these upper-middle-class Americans that advertising types and stock sitcom characters were based. As Hine notes, "[d]uring the first years of the 1950s, the prototypical average American—the kind that is shown in magazine and television advertisements, situation-comedy programs, elementary school textbooks and almost all media that were intended to have mass appeal—moved out of the cities."¹⁷⁶ These particular suburbanites made the most attractive consumers, Hine argues,

because they were usually far from families and others who would traditionally set standards for them, [and] they were considered to be a very malleable market. They were receptive to newness and they believed that things were improving. They watched a lot of television and read a lot of magazines, from which they were believed to be taking ideas about how they should live. In short, they were ideal targets for advertising.¹⁷⁷

B. Ideal Qualifications: Gender, Dependence, and Limitations

While advertising and television might have represented Anderson-like Americans as the idyllic model, historians have demonstrated that even those who most resembled the television families had difficulty living up to this unrealistic ideal. The minor trials and tribulations that Ozzie and Harriet Nelson, Jim and Margaret Anderson, and Ward and June Cleaver experienced, for instance, had little to do with the gendered demands upon actual 1950s breadwinners and homemakers. The new breadwinner ideal left a man with the impossible task of meeting the expectation of unconditional dedication to his family as well as to his employer.¹⁷⁸ Sloane Wilson addresses this problem in *The Organization Man*, explaining how the young breadwinner, as the married head of a suburban household, "was also married to his employer and expected to uproot his family and take off to distant places to serve the company. He was, at once, more domesticated and more career-oriented than his father, and he did not have the support of old friends and nearby family to help him through difficult times."¹⁷⁹

¹⁷⁴ Hine, *supra* note 71, at 23.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 23-24.

¹⁷⁷ *Id.* at 24.

¹⁷⁸ In the 1950s, this new breadwinner was torn between dedication to his family and dedication to his corporation. *Id.* at 29. See also *supra* note 154 and accompanying text.

¹⁷⁹ Wilson, *supra* note 154, at 261-62.

Just as breadwinners were now called upon to be nurturing and dedicated family men as well as driven climbers of the corporate ladder, homemakers were expected to offer unlimited personal service to their husbands and children without feeling unappreciated and unfulfilled. A successful 1950s family, Stephanie Coontz claims, "was often achieved at enormous cost to the wife, who was expected to subordinate her own needs and aspirations to those of both her husband and her children."¹⁸⁰ As early as 1949, magazines were featuring stories on discontented housewives.¹⁸¹ As Betty Friedan would reveal in 1963 when she published *The Feminine Mystique*, a bestseller based on the 1957 surveys she took of women of the college class of 1942, suburban housewives often felt isolated and overwhelmed by the new lifestyle and its related gendered and consumeristic expectations.¹⁸²

Like their homemaker counterparts, breadwinners expressed a lack of fulfillment with the expectation that they would submerge their personal desires beneath their dedication to the suburban ideal. In naming his sociological study, *The Crabgrass Frontier*, Kenneth Jackson plays on the irony of this domesticated vision of the frontier,¹⁸³ pointing to the anxieties attendant upon reducing the boundlessness of the frontier ideal to the very limiting boundaries of a suburban patch of grass, the only wilds over which the suburban father would roam.¹⁸⁴ The term also captures the tension between the hypermasculine realm of the frontier and the feminized space of domesticity associated with the conformity-oriented suburbs.¹⁸⁵ Lewis Mumford offers the most damning indictment of the homogenization of the suburbs in this passage from *The City in History*:

In the mass movement into suburban areas a new kind of community was produced, which caricatured both the historic city and the archetypal suburban refuge: a multitude of uniform, unidentifiable houses, lined up inflexibly, at uniform distances, on uniform roads, in a treeless communal waste, inhabited by people of the same class, the same income, the same age group,

¹⁸⁰ Coontz, *supra* note 7, at 36.

¹⁸¹ *Id.* at 36; Douglas, *supra* note 34, at 51-54, 124-25.

¹⁸² Betty Friedan, *The Feminine Mystique* 15-68 (1963).

¹⁸³ See *supra* note 111 and accompanying text. With the term "crabgrass frontier" Jackson also intends to recall the romantic ways in which the frontier was sold to American settlers by effacing the harsh realities of frontier living. Jackson, *supra* note 111, at 3-8.

¹⁸⁴ *Id.*

¹⁸⁵ Jackson does not directly discuss these gendered dimensions, but his entire book, addressing as it does the typical American suburban family split along gendered lines, comments generally upon gender issues.

witnessing the same television performances, eating the same tasteless, prefabricated foods, from the same freezers, conforming in every outward and inward respect to a common mold, manufactured in the central metropolis. Thus the ultimate effect of the suburban escape in our own time is, ironically, a low-grade uniform environment from which escape is impossible.¹⁸⁶

Thus, while *Father Knows Best*, *Leave It to Beaver*, and other 1950s family sitcoms suggested that the kind of nuclear family these television families represented was the type most naturally beneficial for all of its members,¹⁸⁷ contemporary historians have documented how women in particular experienced the detrimental aspects of and expressed a high level of frustration with this isolated, suburban nuclear unit.¹⁸⁸ Many other historians and sociologists have commented on how unfulfilling suburban life could be and how impossible its contradictory, gendered demands could seem. The resulting frustration and dissatisfaction often led to tensions within families attempting to conform to these gendered and familial ideals.

¹⁸⁶ Lewis Mumford, *The City in History: Its Origins, Its Transformations, and Its Prospects* 486 (1961).

¹⁸⁷ Professor Christensen indicated that

[i]f the fifties was an atypical nuclear family era, it was also less idyllic than its media notices. One in four Americans lived in poverty. Wife battering was not even considered a "real crime," the victim sometimes regarded as a "masochist who provoked her husband into beating her." Women who sought educational or employment equality were accused of engaging in symbolic "castration" of men Unmarried men were seen as "immature," "narcissistic," or "deviant." As Coontz aptly notes, the reality of the 1950s nuclear family was neither as wholesome nor as homogenous as "the situation-comedy reruns or the expurgated memories of the nostalgic would suggest."

Christensen, *supra* note 3, at 1309-10. See Coontz, *supra* note 7, at 29, 32 (remarking that "[c]ontrary to popular opinion, 'Leave It to Beaver' was not a documentary").

Many women found the limitations of this family formation to belie this "ideal" claim. Coontz, *supra* note 7, at 35-37, 149-50; see also Douglas, *supra* note 34, at 54-55; Jackson, *supra* note 111, at 231-45. While Jackson discusses suburban migration more generally, Douglas, *supra* note 34, at 54-60, and Coontz, *supra* note 7, at 35-37, focus in particular on gendered anxieties attendant upon that migration. For more discussion of such 1950s gendered cultural tensions and television's role in mediating them, see generally Spigel, *supra* note 30, at 81-83; Taylor, *supra* note 152, at 6-13; Cecilia Tichi, *Electronic Hearth* 7-8 (1991); Leibman, *supra* note 14, at 60-72. See also *supra* note 2 and accompanying text; see also *infra* note 251 and accompanying text.

¹⁸⁸ See, e.g., Coontz, *supra* note 7, 31-37; Douglas, *supra* note 34, 43-60; Tyler May, *supra* note 28, 50-51. These authors are three of the many historians who offer a compelling evidence of the gender tensions of this era in relation to both suburban migration and nuclear family formation.

Those kinds of frustrations are absent from the idealized suburban sitcom of the 1950s exemplified by *The Adventures of Ozzie and Harriet*. The irony of the representation of the dull, yet pleasant, daily life of the Nelson family, of course, is that it is hardly an accurate depiction of what life would have been like for a family that had to “play themselves” in front of television cameras for 14 years.¹⁸⁹ Surely gender tensions must have been an issue for this real-life husband-and-wife team playing themselves in a fictionalized version of their lives. We do know that Ozzie and Harriet’s personal life history is at odds with their status on television as the ultimate “beneficial family.” The television show leaves out some important real-life dissimilitudes to the Nelsons’ position as America’s classic family led by a head-of-the-household male breadwinner and dependent female homemaker.¹⁹⁰ They met when Harriet became a singer for Ozzie’s big band, a working relationship that continued after their marriage and developed into the partnership that produced their reality star sitcom, *The Adventures of Ozzie and Harriet*.¹⁹¹

Ozzie’s role as producer and Harriet’s as his partner were effaced by the way the television show modified Harriet’s role into that of the standard homemaker and Ozzie’s into that of a standard white-collar breadwinner who, without any specific job mentioned on the show, spent most of his time at home.¹⁹² Prior to the show, however, Ozzie and Harriet were far from the embodiment of the typical “beneficial family” model. At one point Ozzie was even a stay-at-home dad to baby David, while Harriet pursued her acting career. Just a few months after David’s birth, Harriet traveled to Hollywood to film a picture while Ozzie stayed in New York with the baby. According to a 1954 article, Harriet’s only contact with the baby during her time on the road was via telephone, when Ozzie would put the phone near David’s mouth so his movie star mother could hear his attempts at making words.¹⁹³ Ironically, the publicity for *Ozzie and Harriet* implied that the show was reflective of an already existent, as opposed to an emergent, suburban nuclear family norm. The show never dealt with Ozzie’s or Harriet’s relationship to work. In real life, Harriet parlayed her

¹⁸⁹ See Denis & Denis, *supra* note 1, at 24-34.

¹⁹⁰ See Hal Humphrey, *Not All Idiots, Says Oz*, Los Angeles Mirror News, Dec. 22, 1954 (unpaginated), available at The Hal Humphrey Collection at the University of Southern California Cinema-Television Library. The Humphrey Collection offers other contemporary articles that share Humphrey’s perspective. See, e.g., Natalie Best, *Ozzie Nelson Takes His Family to TV!*, TV Trade News, Sept. 1952, at 13.

¹⁹¹ *Id.*; Denis & Denis, *supra* note 1, at 29.

¹⁹² Denis & Denis, *supra* note 1, at 25, 28.

¹⁹³ Al Stump, *Meet Hollywood’s Most Exciting Family*, American Magazine, Oct. 1955, at 24-25, 116-18.

success with the band into movie parts and enjoyed a promising career in film that continued after she became a wife and mother.¹⁹⁴ Despite their actual history, Ozzie and Harriet are remembered both for their pleasant family dynamic and their conformity to the ideal that they represented on television.

C. Ideal Qualifications: Race, Kinship Networks, and Restrictions

The pleasantness of the *Ozzie and Harriet* ideal was achieved by refusing to acknowledge both the unpleasant side of conformity and the actual diversity of the United States population.¹⁹⁵ As indicated by the satirical title *Pleasantville*, the name chosen for a 1998 movie that transitions from black-and-white film to color only when the characters choose cultural complexity over pleasant blandness, the 1950s television sitcom view of American society is an oversimplified and polarizing vision of a world in which everyone is expected to accept one definition of family and family life.¹⁹⁶ While this view might be troubling to a late twentieth-

¹⁹⁴ *Id.*

¹⁹⁵ The plot of *Pleasantville* (New Line 1998) involves the lessons learned by a twin brother and sister from a dysfunctional single parent home when the two are magically transported into the black-and-white world of a 1950s sitcom. See Coontz, *supra* note 7, at 27. Coontz's book complements Ross' widening of the lens in his film *Pleasantville* to reveal the rich life outside the margins of that which was designated the ideal family and society in the 1950s. Coontz's sociological study and Ross' film both reveal that the tight-knit character of the ideal 1950s family was achieved at the expense of difference. Coontz argues that all of this emphasis on the way families should match some ideal is detrimental to people's perceptions of their own families. *Id.* at 6, 113, 257. A society that designates one family formation as the only acceptable one will shut out the other possible ways of organizing domestic life. *Id.* at 283-88. See generally Coontz, *supra* note 7, at 108, 115, 160 (exploring the healthy diversity of family formations in the U.S.).

Alan Nadel claims that the drive to conform was related to the national foreign policy of containment. On the domestic front, a containment culture surfaced in which all differences were kept in check so that the United States could project a unified front in the global arena. Nadel categorizes 1950s America as a "containment culture," that is, one that strives to contain anxieties about the stability of categories of gender, class, race, and other areas of difference. Nadel, *supra* note 67, at xi, 3. Nadel characterizes the fifties as a decade in which "'conformity' became a positive value in and of itself." *Id.* at 4. See generally John Lewis Gaddis, Strategies of Containment: A Critical Appraisal of Postwar American National Security Policy (1982) 51-53 (examining the role of citizens in the domestic United States in furthering the foreign policy of containment); Tyler May, *supra* note 28 (offering a historical analysis of the 1950s within a cold war context).

¹⁹⁶ *The Truman Show* (Paramount 1998) has a message similar to that of *Pleasantville* about the limitations of the idealized suburban nuclear family depicted on television. The film is about a man's slow realization that at birth he was adopted by a corporation that turned his life into a 24-7 reality television show via its vast network of Big Brother-like surveillance cameras. Both films convey the message that the unpredictability of messy reality is preferable to the confinement of prefabricated artificiality. More critiques

century American population open to a variety of "shades" of family life, such a monolithic black and white world view was perfectly acceptable to the inhabitants of the 1950s family sitcom world. On shows such as *Father Knows Best*, anyone choosing nonnuclear family formations and lifestyles was represented as misguided.¹⁹⁷ To prove this point, Jim Anderson often dedicated a half hour to demonstrating why the "Andersons Know Best."¹⁹⁸

This new 1950s ideal of family also marginalized the extended family or kinship networks found in many immigrant and minority communities,¹⁹⁹ such as African Americans,²⁰⁰ Native Americans,²⁰¹ and Asian Americans.²⁰² The "beneficial family" represented on television and

of the coldness and the artificiality of the perfectly maintained surfaces of the suburban nuclear families that seem to have achieved the American Dream followed. Two standouts are *The Ice Storm* (20th Century Fox 1997) and *American Beauty* (DreamWorks 1999). Both films urge their audiences to "look closer" beneath the crystalline surfaces and behind the rose-bordered picket fences of America's affluent suburbs. These films also share with MTV's reality television sitcom *The Osbournes* (MTV 2002-current) an interest in unsettling the false dichotomy between deviant and normal.

¹⁹⁷ Leibman, *supra* note 14, at 153, 155, 197. See also *supra* note 1 and accompanying text.

¹⁹⁸ Leibman, *supra* note 14, at 143-44, 148-49 (1995) (examining the particular advice 1950s television parents offered to their audiences). Leibman also compares the simple messages of such shows to the more complicated messages of 1950s films about American families and suburbs. *Id.* at 138-39, 152.

¹⁹⁹ Cox, *supra* note 25, at 94-95, 129-30, 143-44; Debbie Zielinski, Domestic Partnership Benefits: Why Not Offer Them to Same-Sex Partners and Opposite Unmarried Partners, 13 J.L. & Health 281, 282 (1998). See also Moore v. City of E. Cleveland, Ohio, 431 U.S. 494, 507-10 (1977) (Brennan, J., concurring) (discussing continued value and importance of extended family networks in poor and minority communities in U.S.); Failing, *supra* note 24, at 206, 234-35 (outlining the importance of extended family networks in Hispanic and Micronesian families in U.S.); Barbara Bennett Woodhouse, "It All Depends On What You Mean By Home": Toward A Communitarian Theory Of the "Nontraditional" Family, 1996 Utah L. Rev. 569, 592-93, 601-03 (reviewing the key role of extended and "fictive" family networks in African American and Native American cultures in the United States); see also *infra* notes 206-218 and accompanying text.

²⁰⁰ Extended family or kinship networks became vital for African Americans seeking financial and emotional support after the brutality of slavery and the subsequent poverty and societal discrimination. Failing, *supra* note 24, at 206, 234 (discussing "augmented" families in the African American community); Woodhouse, *supra* note 199, at 592-93 (indicating that extended family networks are historically vital in African American communities).

²⁰¹ Failing, *supra* note 24, at 206 (indicating that Native Americans maintain reliance on the extended family, particularly for child care); Woodhouse, *supra* note 199, at 592-93 (discussing the centrality of extended family networks in Native American cultures in the United States).

²⁰² Robson, *supra* note 1, at 718-19 (discussing the criminalization of living and working arrangements of extended kinship networks of Chinese immigrants); Daina C. Chiu,

in World's Fairs exhibits promised that it could fulfill needs of all its members. Combatting this sentimental approach, literary texts by writers such as Toni Morrison and Carole Maso offer contemporary reinterpretations of the detrimental effects of the supposedly beneficial 1950s family ideal. Morrison's *The Bluest Eye*, a novel set in 1939-40 about an African American family disastrously isolated from its kinship networks,²⁰³ and Maso's *Ghost Dance*,²⁰⁴ a novel focused in part on an Italian American family's visits to the 1939 and 1964 New York World's Fairs, demonstrate the pressures of conformity experienced, respectively, by African Americans and Italian Americans in the 1940s and 1950s. Both novels depict attempts by ethnic Americans to assimilate and prove their patriotism by rejecting their more economically stable and socially-fulfilling extended kinship networks in favor of isolated, economically precarious, nuclear family units. These novels and other literary texts offer representations of failed attempts by immigrant and ethnic Americans to find emotional and economic sustenance in the "beneficial family" formation.²⁰⁵

In a rare judicial recognition of the damaging effects of nuclear family living patterns, Justice Brennan excoriated the socially and culturally myopic view of a city zoning ordinance that prevented two grandsons from living with their grandmother in a forceful concurring opinion in Moore v. City of Cleveland, Ohio.²⁰⁶ Asserting that society needed to recognize the

The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism, 82 Cal. L. Rev. 1053, 1076-77 (1994) (discussing the attempts at coercive assimilation of Chinese-Americans through the enactment of the Cubic Air Ordinance, which required five hundred cubic feet of air space per adult lodger in an effort to dismantle extended family living arrangements).

²⁰³ Toni Morrison, *The Bluest Eye* (1970). The author offers a strong indictment of the systematic causes of the disenfranchisement of her characters.

²⁰⁴ Carole Maso, *Ghost Dance* (1995). The novel is set at the 1964 World's Fair and looks back at the 1939 Fair, exploring the way that American identity can become an object of desire for the Americans who do not fit into the television family ideal.

²⁰⁵ See, e.g., E.L. Doctorow, *World's Fair* (1985) (offering a more subtle critique, yet nevertheless a stirring account of the growing formation of what Elizabeth Cohen calls a "consumer's republic"); Sandra Cisneros, *The House on Mango Street* (1991) (capturing a similar sense of yearning for the ideal television life in a Hispanic community). For short stories and poetry about characters and speakers viewing themselves as outside the norm of the "beneficial family" television ideal, see *Growing Up Ethnic in America* (Maria Mazziotti Gillan & Jennifer Gillan, eds., 1999); *Unsettling America*, *supra* note 101.

²⁰⁶ 431 U.S. 494, 506-11 (1977) (Brennan, J., concurring):

[T]he zoning power is not a license for local communities to enact senseless and arbitrary restrictions which cut deeply into private areas of protected family life. East Cleveland may not constitutionally define "family" as essentially confined to parents and the parents' own children. The plurality's opinion conclusively demonstrates that classifying family patterns in this eccentric way is not a rational means of achieving the ends East Cleveland claims for its

cultural specificity of the "nuclear family" as a social pattern prevalent in white suburbia, rather than the norm for society as a whole,²⁰⁷ he argued that extended family and friends-as-family have proven to be more emotionally and economically supportive than nuclear families,²⁰⁸ especially for those Americans in minority communities at lower income levels.²⁰⁹ Brennan further recognized that for generations of poor and

ordinance, and further that the ordinance unconstitutionally abridges the "freedom of personal choice in matters of . . . family life (that) is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." I write only to underscore the cultural myopia of the arbitrary boundary drawn by the East Cleveland ordinance in the light of the tradition of the American home that has been a feature of our society since our beginning as a Nation—the "tradition" in the plurality's words, "of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children. . . ." The line drawn by this ordinance displays a depressing insensitivity toward the economic and emotional needs of a very large part of our society.

Id. at 507-08 (footnotes and citations omitted).

²⁰⁷ *Id.* at 507 n.3.

²⁰⁸ *Id.* Justice Brennan noted that the extended family offers many benefits not found in the nuclear family, and that the nuclear family experiences many difficulties because it cannot offer many of the services found in an extended family setting:

The extended family has many strengths not shared by the nuclear family. . . . Extended families provide services and emotional support not always found in the nuclear family: "The troubles of the nuclear family in industrial societies, generally, and in American society, particularly, stem largely from the inability of this type of family structure to provide certain of the services performed in the past by the extended family. Adequate health, education, and welfare provision, particularly for the two nonproductive generations in modern societies, the young and the old, is increasingly an insurmountable problem for the nuclear family. The unrelieved and sometimes unbearably intense parent-child relationship, where childrearing is not shared at least in part by others, and the loneliness of nuclear family units, increasingly turned in on themselves in contracted and relatively isolated settings is another major problem."

Id. at 509 n.7 (quoting B. Yorburg, *The Changing Family* 194 (1973)). See also *infra* note 341 and accompanying text (describing the stress on the nuclear family).

²⁰⁹ *Id.* at 508-10. Recognizing the factor of economic class in family living arrangements, Justice Brennan noted that

[p]erhaps the most important—or at least the most visible—difference between the classes is one of family structure. *The working class subculture* is distinguished by the dominant role of the family circle The specific characteristics of the family circle may differ widely—from the collateral peer group form of the West Enders, to the hierarchical type of the Irish, or to the classical three-generation extended family. . . . What matters most—and distinguishes this subculture from others—is that there be a family circle which is wider than the nuclear family, and that all of the opportunities, temptations, and pressures of the larger society be evaluated in terms of how they affect the ongoing way of life that has been built around this circle.

Id. at 508 n.5 (quoting H. Gans, *The Urban Villagers* 244-45 (1962)).

minority families, extended family was not only more beneficial than the nuclear family but a necessity for daily survival.²¹⁰ Noting that these extended families were often compelled to share households and pool limited economic resources to help endure societal and economic disadvantages, especially in the African American community,²¹¹ he contended that forcing these groups to live in isolated nuclear family units would only lead to further economic disadvantages and social displacement.²¹² He concluded that “[t]he Constitution cannot be interpreted . . . to tolerate the imposition by government upon the rest of us of white suburbia’s preference in patterns of family living.”²¹³

Echoing Justice Brennan’s concerns, sociologist Ann Roschelle argues that given that access to channels of economic and political power is more limited for women and minorities than for upper-middle-class heads of patriarchal nuclear family households, the former often necessarily rely on kinship networks.²¹⁴ Roschelle builds on Carol Stack’s classic analysis, *All Our Kin: Strategies for Survival in a Black Community* (1974). In that

²¹⁰ *Id.* at 508-09. Taking a historical view of the extended family, Justice Brennan contended,

The “extended family” that provided generations of early Americans with social services and economic and emotional support in times of hardship, and was the beachhead for successive waves of immigrants who populated our cities, remains not merely still a pervasive living pattern, but under the goad of brutal economic necessity, a prominent pattern—virtually a means of survival—for large numbers of the poor and deprived minorities of our society. For them compelled pooling of scant resources requires compelled sharing of a household.

Id. at 508 (footnotes omitted).

²¹¹ *Id.* at 509-10. Regarding extended family in the African American community, Justice Brennan stated,

The “extended” form is especially familiar among black families. We may suppose that this reflects the truism that black citizens, like generations of white immigrants before them, have been victims of economic and other disadvantages that would worsen if they were compelled to abandon extended, for nuclear, living patterns. Even in husband and wife households, 13% of black families compared with 3% of white families include relatives under 18 years old, in addition to the couple’s own children. In black households whose head is an elderly woman, as in this case, the contrast is even more striking: 48% of such black households, compared with 10% of counterpart white households, include related minor children not offspring of the head of the household.

Id. (footnotes omitted).

²¹² 431 U.S. at 509; *see also supra* notes 200-202 and accompanying text.

²¹³ 431 U.S. at 508.

²¹⁴ *See generally* Ann R. Roschelle, *No More Kin: Exploring Race, Class, and Gender in Family Networks* 149-56 (1997).

study, Stack examined the disastrous effects of the mass migration of Southern, rural-dwelling African Americans, living in extended family networks to Northern cities, where they were cut off from the social and economic benefits of kinship networks. Although Daniel Patrick Moynihan, in his famous *Report on the Black Family*, insisted that only by adopting nuclear family units would American Black communities find equality, Stack's sociological study suggested that the loss of kinship networks proved to worsen the conditions of African Americans living in Northern cities.²¹⁵

D. Ideal Qualifications: Laws, Policies, and Privileges

Stack's 1974 study was a direct response to the attempted corporate and governmental imposition of a single family model on the diverse United States population. The corporate cultural messages of the 1950s about the "beneficial family" model could not have been so effective had they not been reinforced by laws that traditionally defined family as individuals related by blood, marriage, or adoption.²¹⁶ While an accurate definition should include extended family and kinship networks, in practice the concepts of blood, marriage, and adoption have been used to recognize and privilege the idealized nuclear family, made up of a husband and wife with the implicit expectation of procreation.²¹⁷ Under the law, the nuclear

²¹⁵ Ann Zollar, *A Member of the Family: Strategies For Black Community Continuity* 126-27, 152-56 (1985) (offering an update modifying Stack's findings).

²¹⁶ The U.S. Census Bureau defines a family as "two people or more (one of whom is the householder) related by birth, marriage or adoption and residing together." *Current Population Survey (CPS)—Definitions and Explanations* (unpaginated) (U.S. Census Bureau 2000), available at <http://www.census.gov/population/www/cps/cpsdef.html> (last visited March 20, 2005) [hereinafter *CPS Definitions*]. This definition has not departed from the definition of family found in the Census documents of the 1950s. U.S. Bureau of the Census, *U.S. Census of Population: 1950*. Vol. II, Characteristics of the Population, Part I, U.S. Summary, Chapter C, 43. Census *Special Report*, *supra* note 163; U.S. Bureau of the Census, [I Components of Change 1950 to 1956] *1956 National Housing Inventory* pt. 1 United States and Regions (1958). *Components of Change 1950 to 1956, 1956 National Housing Inventory*, Vol. I Part 8, New York-Northeastern New Jersey Standard Metropolitan Area, (U.S. Bureau of the Census 1958). Neither the 1950 Census materials nor the 1950-56 Special Report distinguishes between urban and suburban living, collapsing the two into the designator metropolitan area.

²¹⁷ The Supreme Court has often linked the right to marry as a fundamental constitutional right, in part based on the importance of procreation to the individual and to the continued existence of society. See, e.g., *Zablocki v. Redhail*, 434 U.S. 374, 386, 390-91 (1978) (linking the right to marry to the right to procreate); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (finding that marriage is fundamental to human existence); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (indicating that marriage and procreation are fundamental to the existence of the human race); see also Failing, *supra* note 24, at 205. However, recent surveys show that few Americans agree with the judicial view that procreation is a key reason or purpose of marriage, with 69.5% of Americans disagreeing with the notion that the

family automatically received, and continues to receive, substantial privileges not generally afforded to other family members related by blood, marriage, or adoption.²¹⁸

In criticizing the failure of laws to recognize and support extended family relationships, Professor Failingler notes that, "in the Western world, where the concept of the 'family' has been shrunk into a 'nucleus' of husband, wife, and children floating in an apparent plasma of less important relationships, a wide variety of thinkers have held up the family almost devotionally as an object for veneration."²¹⁹ Professor Robson characterizes this support for the nuclear family ideal as zealous. Looking particularly at the current rhetoric around federal welfare reforms and the Defense of Marriage Act (DOMA), she contends that it demonstrates the "zeal of elected federal officials to exalt marriage" and to provide associated benefits only to married couples.²²⁰ Moreover, she views the provision of extensive benefits to married couples as illustrative of the coercive nature of the institution of marriage.²²¹ Barrett and McIntosh would concur as they categorize the nuclear family as a powerful entity which commands social privilege. Were this family "not so massively privileged," they note, "it would not be so attractive."²²²

The privileging of, and reverential attitude toward, the nuclear family has had and continues to have clear and substantial effects on policy. According to Professor Cox, a broad range of benefits made available to

"main purpose of marriage is having children." Tom W. Smith, National Opinion Research Center, University of Chicago, The Emerging 21st Century American Family, GSS Social Change Report No. 42, Table 20 (1999), at <http://www.norc.uchicago.edu/online/merge.htm>; David Popenoe & Barbara Dafoe Whitehead, The National Marriage Project, The State of Our Unions: The Social Health of Marriage in America 23 (2004), at <http://marriage.rutgers.edu/Publications/SOOU/TEXTSOOU2004.htm>.

²¹⁸ Cox, *supra* note 25, at 94-95; Grace Ganz Blumberg, Unmarried Partners and the Legacy of Marvin v. Marvin: The Regularization of Nonmarital Cohabitation: Rights and Responsibilities in the American Welfare State, 76 Notre Dame L. Rev. 1265, 1272 (2001); Treuthart, *supra* note 25, at 92.

²¹⁹ Failingler, *supra* note 24, at 204.

²²⁰ Robson, *supra* note 1, at 709, 793-95.

²²¹ Robson, *supra* note 1, at 777-94; Angie Smolka, Note, That's the Ticket: A New Way of Defining Family, 10 Cornell J.L. & Pub. Pol'y 629, 633-35 (2001) (offering a review of relevant case law that does not provide legal recognition to unmarried couples in a diverse range of legal areas); Zielinski, *supra* note 199, at 296-98 (providing a detailed comparison between benefits provided by legal marriage versus domestic partnerships at state and federal levels).

²²² Barrett & McIntosh, *supra* note 123, at 133; see also *supra* note 204 and accompanying text; see also *infra* notes 275, 324-326, 330 and accompanying text.

nuclear families could be extended to nonnuclear families, but are not.²²³ Instead, marriage-centric policies have elevated husbands and wives over all other relationships²²⁴ in such key areas as housing,²²⁵ estate administration,²²⁶ bankruptcy,²²⁷ taxation,²²⁸ immigration,²²⁹ workers and

²²³ Cox, *supra* note 25, at 126-44 (providing an overview of benefits and case law on a broad range of benefits available to nuclear, but not nonnuclear, families).

²²⁴ Failing, *supra* note 24, at 204-05; *see also supra* notes 222-223 and accompanying text; *see infra* notes 225-233 and accompanying text.

²²⁵ Village of Belle Terre v. Boraas, 416 U.S. 1, 8-9 (1974) (upholding a local zoning ordinance limiting single dwelling unit to nuclear families or to groups of not more than two unrelated persons); Levin v. Yeshiva Univ., 96 N.Y.2d 484, 494-95 (1999) (allowing the University to bar a same-sex couple from student housing); Cooper v. French, 460 N.W.2d 2, 7, 10-11 (Minn. 1990) (upholding the denial of housing to a cohabitating opposite-sex couple); City of Ladue v. Horn, 720 S.W. 2d 745, 748-49, 752 (Mo. App. 1986) (upholding the denial of housing to a cohabitating opposite-sex couple). *See also* Failing, *supra* note 24, at 257-58; Dee Ann Habegger, Note, Living in Sin and the Law: Benefits for Unmarried Couples Dependent Upon Sexual Orientation?, 33 Ind. L. Rev. 991, 993 (2000).

²²⁶ Peffely-Warner v. Bowen, 778 P.2d 1022, 1027 (Wa. 1989) (determining that an unmarried cohabitant of twenty years was not eligible to share in the decedent's estate under the laws of intestate succession); In the Matter of Cooper, 592 N.Y.S.2d 797, 798-99 (App. Div. 1993) (denying the surviving same-sex partner the right to elect against the decedent's will as the surviving spouse); In Matter of Estate of Lasek, 545 N.Y.S.2d 668, 669-70 (1989) (denying an unmarried cohabitant recovery against the decedent's estate for practical nursing and household services she rendered before the decedent's death). Wills, trusts and other protective devices may be used to help protect loved ones left behind who do not fall within the "beneficial family" model. Matthew R. Dubois, Legal Planning for Gay, Lesbian, and Nontraditional Elders, 63 Alb. L. Rev. 263, 268-69 (1999). However, those often in the greatest need of protections, such as poor people, children, and other disadvantaged groups, often lack access to or the ability to pay for attorneys to safeguard their interests. *Id.* at 270-71; Smolka, *supra* note 221, at 637-38.

²²⁷ In re Allen, 186 B. R. 769, 773-74 (Bankr. N. D. Ga. 1995) (holding that the same-sex couple was ineligible to qualify as a "debtor and spouse" for purposes of joint filing requirements); *see also* Smolka, *supra* note 221, at 634.

²²⁸ Edgett v. Cory, 168 Cal. Rptr. 686, 687-88 (1980) (finding that a former wife who resumed cohabitation with the decedent was an unrelated transferee and not a wife for estate tax purposes); *see also* Smolka, *supra* note 221, at 634. *See generally* Patricia A. Cain, Heterosexual Privilege and the Internal Revenue Code, 34 U.S.F.L. Rev. 465, 469-90 (2000) (outlining tax privileges provided to married couples and proposing revisions to the IRS Code to equalize same-sex couples, including a discussion on healthcare benefits).

²²⁹ Nguyen v. I.N.S., 533 U.S. 53, 60-71 (2001) (upholding a statute making it more difficult for children born abroad to unmarried parents, of whom only one is a United States citizen, to claim citizenship through the child's citizen parent if that parent is the child's father); INS v. Hector, 479 U.S. 85, 86-90 (1986) (determining that the potential extreme hardship of the aunt's deportation upon her nieces did not need to be addressed since she was not a spouse, parent, or child under immigration laws). *See also* Smolka, *supra* note 221, at 652.

unemployment compensation,²³⁰ insurance policies,²³¹ tort liability,²³² and Social Security benefits.²³³ The legal interpretation and application of the term “family” has regularly ignored household units comprised of extended family members or kinship networks that clearly fall within the contours of relationships based on blood, marriage, and adoption, such as grandparents, cousins, aunts, and uncles.²³⁴ In addition, the legal interpretation of the term “family” is typically used to exclude many blended families, domestic

²³⁰ Banegas v. State Indus. Ins. Sys., 19 P.3d 245, 233 (Nev. 2001) (holding that the unmarried cohabitant, who was financially dependent on a worker who died from a work-related illness, was not entitled to death benefits as a surviving spouse); Norman v. Unemployment Ins. Appeals Bd., 663 P.2d 904, 908-10 (Cal. 1983) (holding that an unmarried partner was not entitled to unemployment compensation after voluntarily terminating her job to join her partner in a new location); Baldwin v. Sullivan, 201 Iowa 955, 957-61 (1925) (denying the unmarried cohabitant's claim for worker's compensation).

²³¹ Allstate Ins. v. Shelton, 105 F.3d 514, 516-17 (9th Cir. 1997) (deciding that the insurance policy issued to the boyfriend of the child's mother did not cover the child as a resident “relative,” even though the mother and boyfriend were living together with their children in a jointly-owned home, because the child was not related to the insured by blood or affinity); Continental Casualty Co. v. Weaver, 48 Wash. App. 607, 610 (1987) (interpreting the term “immediate family” as not including a nonmarital cohabitant for purposes of an insurance policy); Wood v. State Farm Mutual Auto Insurance Co., 429 A.2d 1082, 1083-84 (N.J. 1981) (denying the female cohabitant automobile property and personal injury insurance coverage as she was not a member of insured's family); see also Smolka, *supra* note 221, at 633.

²³² Felch v. Air Fla., Inc., 562 F. Supp. 383, 387 (D.D.C. 1983) (determining that a husband was not allowed to seek loss of consortium when his wife's injuries occurred while both were unmarried cohabitants); Elden v. Sheldon, 46 Cal. 3d 267, 273-74, 277-79 (Cal. 1988) (holding that an unmarried cohabitant cannot recover for infliction of emotional distress from witnessing the tortious death of a de facto spouse or for loss of consortium); Raum v. Restaurant Associates, Inc., 675 N.Y.S.2d 343, 344 (1998) (determining that the same-sex partner was not a spouse under the statute for purposes of bringing a wrongful death action); Harrod v. Pac. Southwest Airlines, Inc., 173 Cal. Rptr. 68, 69-70 (1981) (finding that the unmarried partner was not an heir, and was therefore ineligible to bring a wrongful death action); Garcia v. Douglas Aircraft Co., 133 Cal. App. 3d 890, 893-95 (1982) (holding that the cohabitating fiancée of the decedent was not entitled to bring a wrongful death action); see also Smolka, *supra* note 221, at 634.

²³³ Califano v. Boles, 443 U.S. 282, 293 (U.S. 1979) (determining that an unmarried cohabitant was ineligible for Social Security benefits from the decedent who fathered her child); see also Smolka, *supra* note 221, at 634.

²³⁴ Failingler, *supra* note 24, at 202 (calling for the legal recognition of household units as beneficial to families and society); Woodhouse, *supra* note 199, at 570, 579, 583-85 (proposing the legal recognition of households based on kinships of responsibility, but not those based on association of choice). Caring adults in extended family or kinship networks are often dismissed by the law, despite their providing key support functions for families in the community. Cox, *supra* note 25, at 102; Failingler, *supra* note 24, at 234, 255-56, 259; Woodhouse, *supra* note 199, at 583-85, 596-97.

partners, and friends-as-family from important legal protections and benefits.²³⁵

Professor Woodhouse notes that courts routinely sweep aside concerned adults who seek to help disenfranchised or troubled youths, merely because they lack formal legal recognition as family members. She has witnessed

[a] recurring scene played out in the courts in . . . Philadelphia, and in other cities and counties around the country. A census of the adults who show up in dependency court or juvenile and family courts on behalf of children at risk or young people in trouble would reveal that many are unrelated by either blood or marriage to the children for whom they are assuming responsibility or are so distantly related that they are under no legal obligation. Theirs are "de facto" relationships existing outside the law. They are seeking recognition as a legal "family" after the fact. By the operation of complex social structures, they have "voluntarily" assumed burdensome family obligations. They need the law's support and assistance to accomplish their task but often encounter a wall of hostility. These people—the "Godmamas" or "Aunties," the "Uncles" and "Grandaddies" and the nonbiological "Other mothers"—soon discover that they have no "standing" in courts of law and no legal status as family members. . . . [T]hey encounter a legal system structured to recognize and respond to traditional definitions of family based on marriage and lineage.²³⁶

E. The Enduring Legacy of the "Beneficial Family" Model in a Sea of Changing Media Images of Family

While the law has continued to recognize only the "beneficial family" model, in the last two decades, television has moved towards reflecting the growing variety of family formations, especially as families in the United States continue to move away from the 1950s idealized nuclear family. Television and its corporate sponsors have featured nonnuclear family formations in sitcoms including *The Andy Griffith Show* (a white widower raising his son in a Southern, rural community with the help of

²³⁵ Kuykendall, *supra* note 3, at 251, 282-83; Zielinski, *supra* note 199, at 288. The U.S. Census term "household" may best apply to these groups. See *supra* notes 8-9 and accompanying text. However, these households receive little or no legal protection despite fulfilling many of the same social, economic, and psychological needs of nonnuclear families. Failing, *supra* note 24, at 259; Habegger, *supra* note 225, at 1011; Smolka, *supra* note 221, 630-31; Woodhouse, *supra* note 199, at 585-88; see also *infra* notes 285-292, 296-318, 324-326, 330-331 and accompanying text.

²³⁶ Woodhouse, *supra* note 199, at 584; see also, e.g., *INS v. Hector*, 479 U.S. 85, 86-90 (1986); see also *supra* notes 206-211 and accompanying text.

extended family),²³⁷ *The Odd Couple* (the friends-as-family arrangement of two divorced white men sharing an urban apartment), and *Diff'rent Strokes* (a white millionaire adoptive father to the two black sons of his deceased former housekeeper; he raises them in an urban penthouse with the help of his white teenage daughter and new white, middle-aged housekeeper).²³⁸ Some more recent shows suggest different family arrangements in their titles: *Two and a Half Men* (a playboy helping his divorced brother raise a son), *Once and Again* (referring to divorce and remarriage and the resulting stepparents and blended families), and *Full House* (a widower, his three daughters, his best friend from college, his brother-in-law, and eventually the wife and children of the brother-in-law). In the twenty-first century, it is ironic that the most prominent television representative of an intact nuclear family is not a clone of the conformist, cardigan-wearing, former big band leader Ozzie Nelson and his bland wife and kids from *The Adventures of Ozzie and Harriet*, but rather *The Osbournes*, MTV's reality television show starring the rebellious, tattoo-sporting, former heavy metal front man Ozzy Osbourne and his feisty wife and kids.²³⁹

These television shows seek to capture more contemporary realities and perceptions of family not bound by archaic legalistic strictures. For example, in a 1989 national survey by Massachusetts Mutual Life Insurance Company, seventy-four percent of the respondents defined a family as "a group who love and care for each other" and not as one "related by blood, marriage or adoption."²⁴⁰ The Census Bureau's definition of "family

²³⁷ Denis & Denis, *supra* note 1, 96-107. Specifically, Sheriff Andy Taylor has help from his "spinster" Aunt Bee and his nerdy bachelor cousin (and Sheriff's Deputy) Barney Fife. Other townsfolk sometimes pitch in as well. *Id.* at 98-102.

²³⁸ Denis & Denis, *supra* note 1, 246. *The Andy Griffith Show* (CBS 1960-68), *The Odd Couple* (NBC 1978-85), and *Diff'rent Strokes* (ABC 1985-86) register nonnuclear family formations, but they are more ambivalent about other social issues. *The Andy Griffith Show* is a program set in the 1960s South that is devoid of African American characters. While race is clearly at issue in *Diff'rent Strokes*, the show manages to remain light, avoiding complicated racial or class issues. While not directly addressing the issue of the biracial family, the show does register its existence, just as *The Odd Couple*, even if unintentionally, registers the existence of the gay couple. The other show that subtly references the gay family is the more recent short-lived 1980s sitcom *My Two Dads* (two because they cannot determine which of the casual lovers of the now-deceased mother is actually the father of the implied title character), a show about a child living with two fathers and no mother.

²³⁹ See Jennifer Gillan, *From Ozzie Nelson to Ozzy Osbourne: The Genesis and Development of the Reality (Star) Sitcom*, in *Understanding Reality Television* 54-70 (Sue Holmes & Deborah Jermyn eds., 2004) (discussing linkages between Ozzie Nelson and Ozzy Osbourne and between the families of these bandleader fathers); see also Todd Gold with The Osbournes, *Officially Osbourne: Opening the Doors to the Land of Oz* 16-36 (2002) (offering a profile of the Osbourne family).

²⁴⁰ Habegger, *supra* note 225, at 991-92; Zielinski, *supra* note 199, at 284; see also *supra* note 288 and accompanying text. Professor Christensen adds,

household” or “household” may more closely reflect popular perceptions of family today. Under its guidelines, a “family household is a household maintained by a householder who is in a family . . . and includes unrelated people . . . who may be residing there.”²⁴¹ This term requires some, but not all, of the household members to be related by blood, marriage, or adoption.²⁴² A household is defined as including “all the people who occupy a housing unit as their usual place of residence,” which does not require that any of the household members be related to each other by blood, marriage, or adoption.²⁴³ In addition, courts have at times deviated from the strict definition of “family” utilized by the United States Census Bureau.²⁴⁴

Jim Anderson would have scratched his head in confusion at the contemporary American social terrain found in current television programming, crowded as it is with nonnuclear family structures.²⁴⁵ Despite the new family images flickering across television screens nationwide, legal protections and corporate benefits continue to flow disproportionately to those who fulfill the 1950s “beneficial family” ideal at the expense of the majority of our nation’s households.²⁴⁶ Policy discourse on family matters appears to be stuck in a seemingly endless loop of reruns of the fictional family life found in the 1950s television world and replayed nightly on cable’s TVLand, completely disconnected from the real lives and needs of American families.²⁴⁷ More likely to watch TVLand’s programming than to read literary or historical critiques of the idealized 1950s, most Americans

Real or imagined, the idealized nuclear family is one to which most Americans have a continuing deep attachment—albeit sometimes ambivalent. Two-thirds of those responding to a recent national poll wanted “more traditional standards of family life,” but the same percentage rejected the proposition that women should return to their “traditional role.” In another poll, nearly ninety percent claimed adherence to “old-fashioned ideas about family and marriage.” Yet less than a quarter of those surveyed about their own definition of “family” were willing to limit the term to persons related by blood, marriage, or adoption. Three-fourths chose an expansive, nontraditional meaning: “A group of people who love and care for each other.”

Christensen, *supra* note 3, at 1310.

²⁴¹ CPS Definitions, *supra* note 216; Profiles of General Demographic Characteristics A-1 (U.S. Census Bureau 2000), available at <http://www.census.gov/Press-Release/www/2001/demoprofile.html> [hereinafter Census Profiles].

²⁴² CPS Definitions, *supra* note 216; Census Profiles, *supra* note 241, at A-2.

²⁴³ CPS Definitions, *supra* note 216; Census Profiles, *supra* note 241, at A-2.

²⁴⁴ See *supra* notes 206-213, 224-233 and accompanying text.

²⁴⁵ See *supra* notes 237-239 and accompanying text.

²⁴⁶ See *infra* notes 274-292, 297-301 and accompanying text.

²⁴⁷ See *infra* notes 319-340 and accompanying text.

maintain an ahistorical understanding of the 1950s family. Consequently, a sentimental idea about the way American families used to be still prevails.

Commenting on this tendency toward ahistorical sentimentality and speaking to how such inaccurate and limited definitions of the family detrimentally impact social policy, Paul Gilbert argues that the problem with current conceptions of the family is that they take as natural and sentimental a social formation that was historically political and self-interested.²⁴⁸ The family is “not a picture of a timeless natural state but of a particular historically-located social phenomenon.”²⁴⁹ In other words, the kind of family values and family to which American politicians refer is

not a natural fact but a social construction. The actual relationships that constitute it are contingent upon historical process, not given prior to them; they are shaped for specific reasons by social agents, and the vehicle for their formation is the production of a discourse wherein they are described and valorised.²⁵⁰

III. CORPORATE BENEFIT PROGRAMS AND THE “BENEFICIAL FAMILY”

A. The Development of Corporate-Sponsored Benefits in the 1950s

The self-interested reasons that 1950s corporations promoted the specific family formation that they did were effaced by the corporations’ self-representations as “beneficial families” and wise and benevolent fathers. Fifties family television and its corporate-sponsored advertising promoted the image of the benevolent corporation looking out for the well-being of its employees and their spouses and children, all of whom were expected to be its consumers.²⁵¹ Nikki Mandell examines the way corporations often represented themselves in terms of a family hierarchy in which employees and employers had “inescapable obligations toward one another.”²⁵² Billy Wilder’s 1960 film, *The Apartment*, satirizes this idea of the corporation as a family. The main character works for an insurance company that is described in familial terms: “There may be a lot of

²⁴⁸ Paul Gilbert, *Family Values and the Nation State*, in *Changing Family Values*, *supra* note 19, at 139-43.

²⁴⁹ *Id.* at 140.

²⁵⁰ *Id.* at 141; *see also supra* note 118 and accompanying text.

²⁵¹ Nikki Mandell, *The Corporation As Family: The Gendering of Corporate Welfare, 1890-1930* 49-69 (2002).

²⁵² *Id.* at 8.

employees here, but we're one big happy family."²⁵³ Such an attitude, Anthony Sampson claims, is indicative of how 1950s corporations relied on patriarchal family authority for legitimacy.²⁵⁴

Yet the idealized images of corporations as caring patriarchs or as families were clearly at odds with the historic role of corporations before World War II. During the Depression, corporations were roundly criticized for their failure to provide adequately for their employees' basic food and housing needs.²⁵⁵ Prior to World War II, few employees had any comprehensive benefits programs, and many lacked basic healthcare coverage²⁵⁶ and/or pension benefits.²⁵⁷ Corporations often tried to display their concern for the plight of the needy by calling on the charity and collective aid of other workers to help struggling current and former employees and their families.²⁵⁸ Those corporations with benefits programs

²⁵³ The Apartment (MGM 1960). See also Anthony Sampson, Company Man: The Rise and Fall of Corporate Life 92-95 (1995).

²⁵⁴ *Id.* He also contends that this patriarchal ideal also borrowed from military hierarchies, as is implied by the names of corporations (e.g. General Foods, General Mills, and General Electric). *Id.*

²⁵⁵ For example, in the 1931-32 Ford Hunger March, protestors "asserted Ford's responsibility for unemployment, mass poverty, and lack of aid for the afflicted." Zieger, *supra* note 54, at 16. During the Depression, local authorities urged Ford to provide "space for temporary shelters for the homeless, food and medical vouchers against future earnings for unemployed autoworkers, free use of vacant company land for gardening, and recreational space for workers now experiencing increased leisure time." *Id.* at 13-14.

²⁵⁶ Prior to this era of benefits collective bargaining, "health care expenses had been entirely a private burden in the United States. A few large companies like Ford provided company clinics or doctors in the spirit of the 'welfare capitalism' of the 1920s, but these schemes were hardly comprehensive and did not cover hospitalization." Moody, *supra* note 54, at 66.

²⁵⁷ Moody argues that union bargaining in the 1930s and 1940s established the precedent for employer-sponsored pension plans. She notes that "[t]oday, virtually all labor contracts contain one or another kind of pension plan. Before 1946 very few did." *Id.* at 65-66. Agitation by the United Mine Workers, for example, resulted in a pension fund that became a model for other unions, including the Teamsters. Established in 1946, the UMW Health and Pension Fund was "[s]imilar in some respects to the older craft union funds," in that it was "controlled by the union," but "was unique in that it was employer financed." *Id.* at 66. Moody explains that "[m]ost industrial union pension plans, however, were company based and set up to supplement social security payments. This kind of plan was first won by the Steelworkers in 1949 and generalized very rapidly to other CIO unions." *Id.*

²⁵⁸ As Zieger contended, "[i]n general, industrialists, frightened themselves by their sudden plunge from prosperity to chaos, turned to their sorely beset employees for most charitable initiatives. Thus, employers launched work-sharing plans and collected contributions from employees to be distributed to the needy as company largess." Zieger, *supra* note 54, at 14. Such temporary measures did not fully alleviate what Zieger terms the "frightening insecurity experienced by auto worker families lacking access to medical facilities." *Id.* at 16.

initially covered only employees, not their spouses or children.²⁵⁹ Throughout the decade, unions continued to agitate for better benefits policies and their actions provided the foundation for today's benefits packages.²⁶⁰ In response to the pressure of unions after World War II, employers slowly began to extend benefits to employees' families²⁶¹ under the beneficial model of the breadwinner father and homemaker mother.²⁶²

Robert Zieger explains the power of unions in that era: "Depression-decade legislation underwrote labor organization and created the rudiments of a modern social welfare system in the United States. The expanding network of government programs and the impact of global conflict drew ordinary working people as never before into the national economy." Between the 1930s and the 1950s, he contends, organized labor stood at center stage as it never had before, or would thereafter.²⁶³ Corporations had to respond to their demands. Union leaders could now

²⁵⁹ Cox, *supra* note 25, at 125; Thomas F. Coleman, Workplace Benefits Should Not Hinge on Marital Status, Presentation at the Annual Conference of Equality Florida (July 22, 2000), at <http://www.unmarriedamerica.org/workplace/equality-florida.htm>; Jonathan Andrew Hein, Caring for the Evolving American Family: Cohabiting Partners and Employer Sponsored Health Care, 30 N.M. L. Rev. 19, 24 (2000).

²⁶⁰ As Stanley Kutler explains, "Whatever sense of security and well-being workers may feel today owes much to organized labor's efforts and victories from the Depression years of the 1930s through the unprecedented quarter-century of prosperity that followed World War II." Zieger, *supra* note 54, at vii. Kim Moody explains how unions succeeded in securing benefits packages, but at a cost to their other demands:

The benefits bargaining that substituted for the expansion of the welfare state following World War Two became a trademark of modern business unionism. While the Labor Department did not record "package" settlements until 1965, making it hard to quantify the change, benefits bargaining clearly gave a substantial boost to the living standards of union members and their families who were covered by high-benefit contracts. Before and during World War Two, the term *fringe benefits* referred almost exclusively to paid holidays and vacations. But benefit bargaining expanded enormously in the 1950s. Whereas in 1951 "fringes" counted for 17% of the value of compensation of blue-collar workers, by 1981 the average was 30%. In large industrial firms of the sort covered by the former CIO unions, benefits were over 50% of labor costs.

Moody, *supra* note 54, at 65. Fringe benefits were seen as a trade-off for more troubling demands for shorter work weeks and higher compensation. *Id.* at 65-66.

²⁶¹ Professor Cox contends that employers only provided such benefits after employees fought hard for them, and not out of any desire to promote marriage and nuclear families. She indicates that a similar struggle will be necessary in order for nonnuclear families to win key family benefits in the workplace. Cox, *supra* note 25, at 126. It is a struggle that has been made more difficult by the weakening of unions since their heyday in the mid-twentieth century.

²⁶² Blumberg, *supra* note 218, at 1283; Coleman, *supra* note 259, at 1; Cox, *supra* note 25, at 120, 126; Hein, *supra* note 259, at 21, 27.

²⁶³ Zieger, *supra* note 54, at x.

bargain "with once-disdainful corporate powers," Zieger argues, and thereby assert "their views at the center of political and economic decision-making."²⁶⁴

Kim Moody maintains that when major industries entered into new labor agreements, they influenced smaller industries to do so. She attributes these gains to "pattern bargaining," a process whereby all the unions would bargain following the same pattern and around the same time.²⁶⁵ This strategy was undermined during the 1950s with corporations writing union contracts so that they would expire at different times. With the big industries no longer negotiating at the same time, pattern bargaining went into decline by 1957 and the unions lost important bargaining power.²⁶⁶

Given the threat that unions posed to corporations, it is not surprising that television's suburban WASP-coms encouraged their viewers not to affiliate horizontally with working-class collectives and unions (the very unions that got them benefits to begin with), but to affiliate vertically with those next up on the ladder of success. In other words, in an era when all communal activity and ethnic ties were considered suspect, Americans were encouraged to trade union demands for consumer aspirations and to substitute family and class loyalty for brand loyalty. The change from ethnic, working-class, and interdependent friends-as-family sitcoms to WASP, middle-class, isolated, and independent nuclear family sitcoms represented a move from public- to private-sphere concerns. Viewers were encouraged to model themselves on characters who spent very little time outside the home and who sought private and familial solutions to their problems. While unions and fraternal orders sought to speak for people as a class, 1950s workers were being encouraged to speak for themselves as individuals through their personal and familial consumer choices.

Unwilling to provide the social safety net found in Europe, the United States government issued policies that encouraged the privatization and extension of employee health and welfare benefits to the "beneficial family" model through tax incentives to employers.²⁶⁷ In their role as a

²⁶⁴ *Id.*

²⁶⁵ Moody, *supra* note 54, at 67.

²⁶⁶ *Id.* at 68.

²⁶⁷ Jarrett Tomas Barrios, Note, *Growing Pains in the Workplace: Tax Consequences of Health Plans for Domestic Partners*, 47 Tax Law. 845, 861-62 (1994); Blumberg *supra* note 218, at 1266-67, 1307-08; Coleman, *supra* note 259, at 1; Zimmerman, *supra* note 8, at 14. As Zimmerman explains, "[b]ecause of the tax advantages that accrue to businesses as a result of the costs of many of these provisions, however, such provisions in effect are public, not private, business costs as commonly presented." *Id.*; see also *infra* notes 269-72 and accompanying text.

"shadow welfare state,"²⁶⁸ employers were allowed to deduct their expenses in extending health and welfare benefits to their employees.²⁶⁹ Employees then began to view their employers, not the government or fraternal orders in their community, as their social safety net, providing group benefits often prohibitively expensive for employees and their families to afford on their own.²⁷⁰ Government policies reinforced and rewarded private sector policies that supported the "beneficial family" model through preferential employment benefits, particularly with regard to key healthcare,²⁷¹ pension,

²⁶⁸ Professor Blumberg notes that employers play a key role in the American welfare state, serving as a "shadow welfare state." Blumberg, *supra* note 218, at 1266. She writes,

Incident to employment, employers provide workers and their families with a wide variety of essential welfare benefits, including health, disability, and retirement benefits. Thus, in addition to its role in the internal redistribution of cash income, the family acts as a conduit for benefits from the employee welfare state. Although the state is not involved as a direct provider in the employee welfare state, it underwrites employee benefit plans with generous tax subsidies.

Id. at 1267.

²⁶⁹ Barrios, *supra* note 267, at 860.

²⁷⁰ Blumberg, *supra* note 218, at 1308; Cox, *supra* note 25, at 120. Professor Blumberg notes that,

[u]nlike most other Western countries, the United States has never committed itself to the comprehensive goals of a fully developed welfare state. Consequently, it is not ordinarily thought to be the role of the government to guarantee the social welfare of its citizenry. This perspective may have affected the way the United States has conceptualized and rationalized family law obligations, as compared to countries that have experienced the content and ethos of a more fully realized welfare state. Specifically, American family law does not recognize or acknowledge the extent to which the law of private family obligations serves a public function. This blind spot does not follow logically from the view that the government is not obliged to guarantee the social welfare of its citizenry.

Blumberg, *supra* note 218, at 1308 (footnotes omitted). The development of corporate benefits plans is also linked to corporate attempts to inhibit the power of unions and avoid further government regulation. Sanford Jacoby, Modern Manors: Welfare Capitalism Since The New Deal 4 (1997).

²⁷¹ See, e.g., *Lilly v. City of Minneapolis*, 527 N.W.2d 107, 110-13 (Minn. 1995) (striking down a city ordinance granting health benefits to the domestic partners of city employees under a state statute); *Phillips v. Wis. Pers. Comm'n*, 482 N.W.2d 121, 212-29 (Wis. Ct. App. 1992) (upholding the denial of family health insurance coverage to the same-sex partner of an employee); *Hinman v. Dep't of Pers. Admin.*, 167 Cal. App. 3d 516, 527-31 (1985) (upholding the denial of dental benefits to the same-sex partner of an employee); *Gay Teachers Ass'n v. Bd. of Educ.*, 585 N.Y.S.2d 1016, 1016-17 (App. Div. 1992) (upholding the denial of health and dental benefits to same-sex domestic partners). See generally Barrios, *supra* note 267, at 854-66 (arguing that IRS provisions should be revised to apply equally to alternative and nuclear families with regard to employment benefits); Cain, *supra* note 228, at 472-74 (outlining tax privileges provided to married couples and

and death benefits.²⁷² In addition, the private sector today often offers soft benefits, such as bereavement and sick leave,²⁷³ relocation benefits, and family discounts on travel, recreational, and community social activities to families that conform to the "beneficial model."

B. Changing Demographics and Unchanging Benefit Plans

Over the years, employer-sponsored benefit programs have become an increasing component of employee compensation, while protecting an ever-shrinking base of nuclear families.²⁷⁴ As the American family

proposing revisions to the IRS Code to equalize same-sex couples, especially as to the provision of healthcare benefits); *see also infra* notes 273-274 and accompanying text.

²⁷² Conlin, *supra* note 161; *see also infra* notes 302-317. *See generally* Alice Rickel, Extending Employee Benefits To Domestic Partners: Avoiding Legal Hurdles While Staying in Tune With the Changing Definition of the Family, 16 Whittier L. Rev. 737, 739-74 (1995) (providing hypothetical case studies on potential sexual orientation and gender discrimination challenges to pension plans and calling for ERISA to be amended to aid both nonnuclear and nuclear families). *See also* Smolka, *supra* note 221, at 633-34. Currently, unmarried persons often subsidize the pensions of married people. Conlin, *supra* note 161. Conlin notes that,

given the gender pay gap, single working mothers often end up with far less in their old age than lifelong homemakers; one-earner married couples receive average benefit returns that are up to 85% higher than those of single males; and African Americans, who have low marriage and life-expectancy rates, sometimes end up subsidizing the retirement benefits of millionaire whites. In fact, one of every three black male youths will pay for retirement benefits they will never see.

Id.

²⁷³ Cox, *supra* note 25, at 133-44; Paul R. Lynd, Domestic Partner Benefits Limited to Same-Sex Couples: Sex Discrimination Under Title VII, 6 Wm. & Mary J. Women & L. 561, 592-98 (2000); Zielinski, *supra* note 199, at 305, 311-12; *see also, e.g., Cleaves v. City of Chicago*, 68 F. Supp. 2d 963, 967 (N.D. Ill. 1999) (finding that the termination of an employee who took leave to attend the funeral of his female domestic partner's father was not marital status or gender discrimination, despite similar bereavement leave for opposite-sex spouses and same-sex domestic partners); *Foray v. Bell Atl.*, 56 F. Supp. 2d 327, 328, 330 (S.D.N.Y. 1999) (holding that the denial of health benefits to opposite-sex domestic partners under same-sex domestic partner program is permissible and is not gender discrimination); *Brinkin v. So. Pac. Transp. Co.*, 572 F. Supp. 236, 237 (N.D. Cal. 1985) (upholding the denial of funeral leave benefits to a surviving same-sex partner); *Rutgers Council of AAUP Chapters v. Rutgers State Univ.*, 689 A.2d 828, 837-38 (N.J. Super. Ct. App. Div. 1997) (sustaining the denial of healthcare benefits to same-sex partners of University employees); *Ross v. Denver Dep't of Health and Hosps.*, 883 P.2d 516, 520-22 (Colo. Ct. App. 1994) (upholding the denial of sick leave benefits for the care of a same-sex partner who did not come within the definition of immediate family).

²⁷⁴ Coleman, *supra* note 259, at 1; Cox, *supra* note 25, at 120; Hein, *supra* note 259, at 26-27; Robson, *supra* note 1, at 777-83. Employee benefits account for about forty percent of an employee's compensation, with group health insurance becoming a major component of such programs. Cox, *supra* note 25, at 120; Hein, *supra* note 259, at 26-27;

continues to move away from the mythologized 1950s beneficial family into other extended family or non-legally sanctioned family networks,²⁷⁵ there is a growing disconnect between the allocation of benefits and the needs of diverse employee family units. Only one-tenth of all households represent the 1950s *Ozzie and Harriet* notion of a breadwinner father and stay-at-home mother.²⁷⁶ Currently, married heterosexual couples with children account for approximately twenty-five percent of all households,²⁷⁷ with those figures expected to dip to twenty percent by 2010.²⁷⁸

Relationships in United States households have expanded well beyond the nuclear family, with over fifteen million household members

Robson, *supra* note 1, at 781-83. In 2003, approximately sixty-three percent of Americans received health insurance through their employers. John A. MacDonald, Study: Nearly 9 Million Americans Lost Health Insurance from 2001 to 2003, The Hartford Courant, Aug. 3, 2004, at <http://libertypost.org/cgi-bin/readart.cgi?ArtNum=60427&Disp=7>; Mark Sherman, Public Health Insurance Picked Up 5M Kids, Associated Press, Aug. 3, 2004, available at LEXIS, Associated Press Online; Employers Offer Less Health Insurance, Reuters, Aug. 3, 2004, at <http://www.business-news.net/news.html?view=10501> [hereinafter Less Health Insurance]. However, this 2003 percentage is a decrease in employer-sponsored coverage; about sixty-seven percent of employees received health insurance through their employers in 2001. *Id.*; see also MacDonald, *supra*; Sherman, *supra*. In 2003, government health programs aided about five million children who lost employer-provided health insurance when their parents lost their jobs or their ability to pay for health insurance. MacDonald, *supra*; Sherman, *supra*; Less Health Insurance, *supra*. Job losses coupled with a weak economy and hefty increases in health insurance premiums largely accounted for the decrease, highlighting the fragility of privately sponsored safety nets for all employees. MacDonald, *supra*; Sherman, *supra*; Less Health Insurance, *supra*.

²⁷⁵ Christensen, *supra* note 3, at 1308-16 (arguing that the 1950s nuclear family is a myth and not necessarily more stable or nurturing than alternative family units); Dubois, *supra* note 226, at 273-74 (contending that gay, lesbian, and other nontraditional elders form stable family structures seldom valued in social and legal systems); Kuykendall, *supra* note 3, at 253-58 (discussing the tension between the law's *laissez-faire* approach that allows choice in family structures, and its lags in recognizing and protecting the broad spectrum of chosen family structures); Treuthart, *supra* note 25, at 93-99 (asserting that legal and economic benefits for nuclear families are out of sync with the reality of the growing number of functional families in United States society); Mary Young, The Evolving World of Work and Family: New Stakeholders, New Voices: Diverse Families: Work-Family Backlash: Begging the Question, What's Fair?, 562 Annals Am. Acad. Pol. & Soc. Sci. 32, 33-34 (1999) (indicating that nuclear family structures are rapidly becoming a minority in the United States workforce, thereby requiring revisions to work-life programs).

²⁷⁶ Conlin, *supra* note 161; Hein, *supra* note 259, at 20; see also Woodhouse, *supra* note 199, at 570. The percentage of married couples has plummeted from nearly eighty percent of all households in the 1950s to 50.7% in 2003. Conlin, *supra* note 161.

²⁷⁷ Conlin, *supra* note 161; Francese, *supra* note 125, at 40-41; Failing, *supra* note 24, at 203. Households of married couples with children fell behind the percentages of married couples without children (twenty-seven percent) and single individuals living alone (twenty-six percent). Francese, *supra* note 125, at 41.

²⁷⁸ Conlin, *supra* note 161.

categorized as “other relatives”²⁷⁹ and over fourteen million household members classified as “nonrelatives.”²⁸⁰ The U.S. Census Bureau estimates that 5.8 million, or 3.6%, of people over the age of thirty reported a co-resident grandparent, with forty-two percent of co-resident grandparents having primary childcare responsibilities for their co-resident grandchildren.²⁸¹ Non-Hispanic whites were the least likely to live with a co-resident grandparent (two percent).²⁸² Co-resident grandparents in households were more likely to be found in the homes of racial and ethnic minorities, with ten percent in the homes of Pacific Islanders; eight percent in the homes of African Americans, Native Americans, and Alaska Natives; and six percent in the homes of Asians.²⁸³ More than fifty percent of co-resident grandparents in Native American, African American, and Alaska Native homes were the ones primarily responsible for caregiving to their grandchildren.²⁸⁴ In addition, “nonfamily households” made up about 31.9 percent of all households,²⁸⁵ with almost six percent of the population living in households with nonrelatives only (“friends-as-family”).²⁸⁶

Census figures show that married-couple households have dropped from about eighty percent in the 1950s to approximately fifty-one percent today, with single adults soon to become the new majority based on Census projections.²⁸⁷ The number of unmarried partner households has skyrocketed,²⁸⁸ and the percentage of children growing up in homes with

²⁷⁹ Census Profiles, *supra* note 241, at 1, Table DP-1; see also U.S. Census Bureau, Grandparents Living with Grandchildren: 2000 1 (2003) [hereinafter Grandparents Census]. These other relatives in all households make up 5.6% of the overall U.S. population. Census Profiles, *supra* note 241, at 1, Table DP-1.

²⁸⁰ Census Profiles, *supra* note 241, at 1, Table DP-1. Nonrelatives in a household comprise 5.2% of the overall U.S. population. *Id.*

²⁸¹ Grandparents Census, *supra* note 279, at 1.

²⁸² *Id.* at 2.

²⁸³ *Id.*

²⁸⁴ *Id.* at 2-3.

²⁸⁵ Census Profiles, *supra* note 241, at 1, Table DP-1. The U.S. Census Bureau defines a “nonfamily household” as “[a] householder living alone or with nonrelatives only.” *Id.* at A-2.

²⁸⁶ *Id.*

²⁸⁷ Conlin, *supra* note 161.

²⁸⁸ Between 1960-2002, the number of unmarried partner households rose from 439,000 to 4,898,000, or about 1100%. U.S. Bureau Of The Census, Unmarried-Couple Households By Presence Of Children: 1960 To Present, Table UC-1 (2003) [hereinafter Census Table UC-1]; Popenoe & Whitehead, *supra* note 217, at 20; see also John Fetto, State of the Union: Marriages, Children and Political Agendas Go Beyond the Data,

unmarried partners has dramatically increased by 850% since 1960.²⁸⁹ In family households with children, approximately fifteen percent of children live in blended families,²⁹⁰ and twelve percent of children reside with extended family members.²⁹¹

Numerous theories have been posited to explain the demographic shift away from the 1950s nuclear family. Some commentators view this change as the natural outgrowth of an American culture that emphasizes free choice and individualism, such that people arrange their personal

Forecast, July 2003, at 5; What Happened to the Wedding Bells? Cohabitation is on the rise, new data from Census 2000 reveals, Forecast, Apr. 2003, at 1 [hereinafter Wedding Bells]. In 1990, about 3.2 million couples identified themselves as unmarried cohabitants, with that number rising to 5.5 million couples in the 2000 Census. United States Census Bureau, Married-Couple and Unmarried-Partner Households: 2000 1 (2003) [hereinafter Partner Households]. The vast majority of self-identified unmarried cohabitants were opposite-sex (4.9 million) rather than same-sex couples (594,000). *Id.* However, this number may undercount same-sex partners because of confusion over what constitutes an "unmarried partner" and reliance on people to self-identify as such. Christensen, *supra* note 3, at 1313-14. By far, the highest percentages of unmarried cohabitants were found in the Native-American (17.4), African-American (16.9), Native-Hawaiian/Pacific-Islander (12.3), Latino (12.2) and interracial (13.7) and other racial minority (13.6) households. Partner Households, *supra*, at 6, fig. 3. The lowest percentages of unmarried cohabitation were found in Asian only (4.7) and white only (8.2) households. *Id.* Attorney Hein explores some of the main reasons that couples may decide to cohabitate rather than marry:

The structure of the American family has not been isolated from the social developments of our century. Even in the last thirty years, the family has undergone profound changes. With greater societal freedom to structure families according to individual desires, the two-parent family has lost its status as the unstated norm of our society. The traditional roles of mother as homemaker and father as bread-winner are no longer the underpinnings which shape our families. . . . The number of cohabiting, unmarried individuals has also significantly increased during this evolution of the family. A significant portion of this group is comprised of heterosexual couples who choose to construct their family without state sanctioned marriage. Some may wish to structure their relationship as a "trial" marriage. Others may decide not to marry for philosophical reasons. Economic disincentives and federal income tax "marriage penalties" discourage older Americans and some disabled adults from marrying. Lesbians and gay men, in many states specifically prohibited by statute from marrying, also comprise a significant portion of this segment of our society.

Hein, *supra* note 259, at 20 (footnotes omitted).

²⁸⁹ Hein, *supra* note 259, at 20; Conlin, *supra* note 161. The number of unmarried households with children under age eighteen has risen from 1.2 million in 1996 to 1.7 million in 2002. Census Table UC-1, *supra* note 288. Children are also found in about half of all unmarried partner households. Wedding Bells, *supra* note 288, at 3. About one-third of same-sex female partner households and one-fifth of same-sex male households had at least one of their own children living with them. Partner Households, *supra* note 288, at 10.

²⁹⁰ Christensen, *supra* note 3, at 1315. Blended families were classified as those in which a child lives with at least one step-parent or with one or more step- or half-siblings. *Id.*

²⁹¹ *Id.* Extended families were defined as those in which a child lives with at least one parent and another person outside of the nuclear family.

relationships to best meet their own needs, rather than bending to inflexible or unsupportive legal strictures or social pressures.²⁹² Other theorists opine that the nuclear family is a historical anomaly in a world history in which extended family and kinship networks, often driven by social, religious, or economic circumstances, are actually the norm.²⁹³ Some recognize that certain extended family structures develop and endure more out of economic necessity or historical oppression than legal mandates.²⁹⁴ A variety of conservative groups simply consider the change an alarming sign of a downward spiral in social and moral values.²⁹⁵

Regardless of the reasons for these substantial demographic changes, the government has helped to insulate employers from the responsibility of updating their benefit plans to better suit modern family formations. Under the Employee Retirement Income Security Act (ERISA),²⁹⁶ Congress trumpeted the national importance of protecting employees and their dependents under employer-sponsored benefits plans, particularly as to health and pension benefits.²⁹⁷ Yet in crafting ERISA, Congress undercut that protection by allowing employers to place marriage requirements into their plans²⁹⁸ and by limiting ERISA challenges to

²⁹² Hein, *supra* note 259, at 20 (discussing reasons for the growth in unmarried cohabitation); Kuykendall, *supra* note 3, at 253-58 (reviewing the legal framework that permits experimentation or choice in family arrangements without proper regard for legal protections for nonnuclear families, especially children); Woodhouse, *supra* note 199, at 581-82 (discussing the concept of associations of choice in family structures).

²⁹³ Christensen, *supra* note 3, at 1308-10; Failing, *supra* note 24, at 218-21; Woodhouse, *supra* note 199, at 589-91.

²⁹⁴ See *supra* notes 206-211 and accompanying text.

²⁹⁵ James Herbie Difonzo, *Customized Marriage*, 75 Ind. L.J. 875, 882, 876-80 (2000); Failing, *supra* note 24, at 195-98. See *supra* note 156 and accompanying text.

²⁹⁶ 29 U.S.C.S. §§ 1001-03 (2004).

²⁹⁷ 29 U.S.C.S. § 1001(a) (2005). Passed in 1974, Congress's findings and declaration of policy assert the following:

that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations

Id.

²⁹⁸ 29 U.S.C.S. § 1055(f) (2005). This ERISA provision states as follows:

Marriage requirements for plan.

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and

discrimination in private employer benefit programs based on federally-recognized protected classes,²⁹⁹ with no recognition of or protection for employees in nonnuclear family structures.³⁰⁰ In addition, ERISA preempts all state laws and local ordinances that may seek to broaden the number of classes protected against discriminatory practices in healthcare, pension, and other key benefits,³⁰¹ all of which might provide opportunities to expand legal rights and protections for nonnuclear families.

Rovira v. AT&T³⁰² provides a good example of how employers can publicly claim nondiscriminatory workplace policies while insulating themselves under ERISA from liability for their unfair application of benefit programs to nonnuclear families.³⁰³ Marjorie Forlini, an AT&T sales manager, and Sandra Rovira were life partners who had entered into a long-term committed relationship in 1976, solemnizing their commitment in a 1977 ceremony.³⁰⁴ In 1978, Rovira's two sons from a previous marriage came to live with the women, and Forlini listed the two boys as dependents

survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

- (A) the participant's annuity starting date, or
 - (B) the date of the participant's death.
- (2) For purposes of paragraph (1), if—
- (A) A participant marries within 1 year before the annuity starting date, and
 - (B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death, such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

²⁹⁹ See Lee F. Bantle, Employment Benefits for Nontraditional Family Members: Challenging the Employer's Denial, 232 PLI 183, 185-86 (April-May 1994); Lynd, *supra* note 273, at 579.

³⁰⁰ Under ERISA, plan participants and their beneficiaries may bring civil actions to enforce ERISA benefits provisions. 29 U.S.C.S. § 1132 (2005). With plans that require marriage, those who cannot or do not marry, and their dependents, will not be able to bring actions for claimed ERISA violations.

³⁰¹ ERISA states that its provisions "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a) (2005). See Bantle, *supra* note 299, at 185-86; Lynd, *supra* note 273, at 574-75, 579; Rickel, *supra* note 272, at 751. See, e.g., Shaw v. Delta Airlines, Inc., 463 U.S. 85, 96-105 (1983) (determining that ERISA preempted a pregnancy discrimination challenge to an employer-sponsored benefit plan under New York Human Rights Law).

³⁰² 817 F. Supp. 1062 (S.D.N.Y. 1993).

³⁰³ See generally Bantle, *supra* note 299 (discussing various strategies for challenging employer benefit programs as marital status and sexual orientation discrimination).

³⁰⁴ Rovira, 817 F. Supp. at 1064.

on her tax returns.³⁰⁵ The partners jointly shared in financing the boys' tuition, medical treatment, food, clothing, housing, entertainment, and other living expenses.³⁰⁶ During their relationship, Rovira and Forlini shared their financial resources, jointly owned their home, made collective decisions about their lives, and took vacations together.³⁰⁷

In 1988, Forlini died of cancer.³⁰⁸ Forlini had listed Rovira as her life insurance beneficiary,³⁰⁹ and Rovira sought the death benefit provided to AT&T employees on behalf of herself and her sons.³¹⁰ However, AT&T's official plan documents under ERISA³¹¹ limited mandatory death benefit beneficiaries to legal spouses, unmarried dependent children up to age twenty-three, and dependent parents.³¹² Therefore, AT&T denied death benefits to Rovira and her sons because she was not Forlini's spouse and the boys were not Forlini's dependent children.³¹³ Despite AT&T's employment policy of not discriminating on the basis of sexual orientation or marital status,³¹⁴ the court found that the policy did not "create third party beneficiary rights" allowing any recovery of death benefits under ERISA.³¹⁵ Looking to New York law, Rovira argued that she was the functional equivalent of a spouse and her sons the functional equivalent of Forlini's

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* Forlini had listed Rovira as her "friend" under the relationship column of the life insurance designation form. Also, in Forlini's will, Rovira was named the residuary legatee and executor of Forlini's estate. *Id.*

³¹⁰ *Id.* at 1067.

³¹¹ Under ERISA, an employer must "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent" with other ERISA provisions. 29 U.S.C.A. § 1104(a)(1)(D) (2002).

³¹² Rovira, 817 F. Supp. at 1065.

³¹³ *Id.* at 1067-68.

³¹⁴ *Id.* at 1066-67.

³¹⁵ *Id.* at 1071. ERISA mandates that employers, as part of their fiduciary duties to employees, must honor promises they make to employees about their benefits plans. Bantle, *supra* note 299, at 186; Rickel, *supra* note 272, at 751. Nonnuclear families could only challenge the denial of benefits under breach of contract if the employer promised not to discriminate against nonnuclear families in its official benefit plans and included that promise in the terms of the official benefits plan. See Bantle, *supra* note 299, at 186; Lynd, *supra* note 273, at 579; Rickel, *supra* note 272, at 751.

children and, thus, should qualify as beneficiaries.³¹⁶ The court, however, indicated that pension law was completely a federal responsibility and that any New York case law suggesting additional protections for nonnuclear or functional families carried no weight.³¹⁷

Clearly, this case illustrates the fact that corporations can pay lip service to nondiscrimination policies without having to depart from their tradition of privileging and rewarding only those families that conform to the "beneficial family" mold. Therefore, in the absence of national laws requiring the legal recognition and broader protection of nonnuclear families, government authorities can continue to ignore nontraditional family units and many employers can continue to dismiss the demands of the modern family with little fear of losing in litigation.³¹⁸

C. Mixed Legal Messages on Nonnuclear Family Formations

In recent decades, courts and lawmakers have struggled to deal with the evolution of a multitude of family formations.³¹⁹ Some courts have extolled the virtues of and provided limited protection for extended family formations,³²⁰ and a few courts have more boldly flirted with notions of a "functional family," bound together by emotional and economic commitment and interdependence, rather than traditional legal factors of blood, marriage, or adoption.³²¹ The first case to introduce the notion of the functional family was Braschi v. Stahl.³²² In that case, the court applied several factors to determine the existence of a functional family in striking down a rent control eviction of a surviving domestic partner, including "the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their

³¹⁶ Rovira, 817 F. Supp. at 1070.

³¹⁷ *Id.* at 1072.

³¹⁸ Bantle, *supra* note 299, at 185; Lynd, *supra* note 273, at 578-79.

³¹⁹ Woodhouse, *supra* note 199, at 595.

³²⁰ See *infra* note 321 and accompanying text.

³²¹ See, e.g., Borough of Glassboro v. Vallorosi, 117 N.J. 421, 431-33 (1990) (considering ten unrelated male college students a "family" for purposes of a zoning ordinance due to their economic interdependence and their sharing of household chores and meals); Braschi v. Stahl, 74 N.Y.2d 201, 213-14 (1989) (striking down the eviction of the lifetime partner of the deceased tenant of a rent-controlled apartment, as they were an interdependent, functional family, with emotional and financial commitments); City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 127-34 (1980) (striking down a zoning law as unconstitutional and recognizing twelve unrelated individuals as a functional family with social, economic, and psychological ties to each other).

³²² 74 N.Y.2d 201 (1989).

everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services."³²³

Based on this concept of a functional family, some legal commentators have called for household units to receive formal legal recognition and protection to help sustain nonnuclear family structures.³²⁴ Yet sometimes, the functional approach is decried as an unwieldy system requiring a case-by-case analysis yielding *ad hoc* solutions which may not always benefit nonnuclear families.³²⁵ However, supporters contend that courts are regularly called upon to make these kinds of subjective determinations in family matters without any claim of or need for lock-step consistency in their results.³²⁶

³²³ *Id.* at 212-13. See generally Paris R. Baldacci, Pushing the Law to Encompass the Reality of Our Families: Protecting Lesbian and Gay Families from Eviction from Their Homes—Braschi's Functional Definition of "Family" and Beyond, 21 Fordham Urb. L.J. 973, 973-95 (1994) (reviewing Braschi and subsequent cases that applied functional family approaches in housing matters). Some of these factors still play a role in attestations made by domestic partners in order to receive employer-sponsored benefits. See *supra* notes 282-284 and accompanying text.

³²⁴ See generally Failing, *supra* note 24, at 253-84 (calling for formal legal recognition through attestation and reverse attestation procedures as well as greater public incentives to promote household units); Woodhouse, *supra* note 199, at 594-612 (arguing that the legal recognition of households based on "kinships of responsibility" is key to the protection and stability of alternative families). Both authors contend that nonnuclear family structures in household units are destined to be less stable and viable if they are continually deprived of legal recognition and the associated host of substantial public and private benefits that currently shore up the idealized nuclear family. Failing, *supra* note 24, at 260-61; Woodhouse, *supra* note 199, at 583-84. See also *infra* notes 349-54 and accompanying text.

³²⁵ Martha Minnow, Redefining Families: Who's In and Who's Out? 62 U. Colo. L. Rev. 269, 276-84 (1991); Smolka, *supra* note 221, at 635-36; Woodhouse, *supra* note 199, at 576-77.

³²⁶ Woodhouse, *supra* note 199, at 577-79; Treuthart, *supra* note 25, at 123. As Professor Woodhouse noted,

Some critics of such a 'functional' analysis of family believe the meaning of family is already clear. Judges—and even legislatures—have no business redefining family according to their own liberal biases. Others might recognize the indeterminacy of the term yet argue that the benefits of a contextualized interpretation are not worth the systemic costs of case-by-case scrutiny. I believe these concerns are misplaced or overstated. First, courts are masters at construing ambiguous statutory terms like 'family' and applying them to the facts of a specific case. . . . It is true, of course, that bright-line rules for defining family promote important values of efficiency, certainty, and predictability. Bright-line rules also make unambiguous statements about a society's hierarchy of values. I am not suggesting doing away with formal categories . . . [a] smoothly functioning society needs crystalline rules that operate *ex ante* so family members can know what to expect from each other, and so those who deal with the family are on notice of the family relationship. However, a just society also needs equitable mechanisms that operate *post hoc* to mitigate the damage inflicted by relentless application of bright-line rules. For example, doctrines like equitable adoption and common-law marriage illustrate the law's role in mediating tensions between *ex ante*

At times, the federal government has embraced nonnuclear family households, when doing so lessened the financial obligations of the government.³²⁷ For example, the government encourages poor individuals to form household units and pool together their economic resources for food and utilities under the Food Stamp Act and the federal Energy Assistance Program.³²⁸ Also, the government may promote group homes made up of unrelated mentally challenged or chemically dependent persons who will share food, expenses, and household obligations in a family setting.³²⁹ In other instances, such as in the provision of welfare benefits, the concept of household units is largely used to cut off or decrease state aid to groups that do not conform to the idealized "beneficial family" model.³³⁰

In a growing backlash against the realities of the changing family, President Clinton signed into law the federal Defense of Marriage Act (DOMA) in 1996, which limited marriage and its associated legal and economic benefits solely to opposite-sex couples.³³¹ Some thirty-eight states

certainty and *post hoc* individualized justice. Our commitment to bright-line rules also changes over time in response to changing social, cultural, and political realities. We have seen once sacrosanct rules—such as the rules granting the family patriarch near total authority over women, children, and household property—give way to fact-intensive principles such as the 'best interest of the child' and 'equitable distribution' of property at divorce. These changes reflect a recalculation of the benefits of bright-line rules that minimize court intervention versus the costs of failing to protect vulnerable parties.

Woodhouse, *supra* note 199, at 577-79 (footnotes omitted); see also *Elden v. Sheldon*, 46 Cal. 3d 267, 279-86 (1988) (Broussard, J., dissenting) (calling for an unmarried cohabitant to be eligible for loss of consortium and recognizing the "sensitive factual determinations" that judges and juries make regularly regarding family relationships).

³²⁷ *Failing*, *supra* note 24, at 264-67.

³²⁸ *Id.* at 265-67.

³²⁹ *Id.* at 266.

³³⁰ *Id.* at 267-68; see also Robson, *supra* note 1, at 717-18 (discussing the "assimilation imperative" in the provision of public benefits); see also *infra* note 357 and accompanying text.

³³¹ Under the federal Defense of Marriage Act (DOMA):

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship. . . . In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife.

Pub. L. No. 104-199, §§ 2(a), 3(a), 110 Stat. 2419 (codified at 1 U.S.C. § 7 (1997) and 28 U.S.C. § 1738(c) (1997)). See Jonathan Martin, *Gay Marriage: a Growing Fight*,

have enacted statutes defining marriage as a union between one man and one woman.³³² More recently, President George W. Bush, other government officials, and certain conservative organizations have called for laws to shore up the 1950s idealized nuclear family and traditional marriage, such as stricter divorce laws,³³³ as well as constitutional amendments³³⁴ and statutes³³⁵ banning the marriages of same-sex partners.

Often hidden behind calls to promote and protect the nuclear family is an inability to squarely address the underlying societal inequities that may cause both nuclear and nonnuclear family structures to fracture and fail.³³⁶ In discussing the potential legal recognition of same-sex marriages, Professor Robson indicates that marriage and its attendant benefits may serve to obscure other social and economic inequalities in society:

The unequal exclusion [of homosexuals] from marital and quasi-marital forms might not be relevant if such legal relationships did not bestow a variety of benefits. Indeed, the recitation of the

Seattle Times, Mar. 9, 2004, at A9; Bush calls for ban on same-sex marriages (Feb. 25, 2004), at <http://www.cnn.com/2004/ALLPOLITICS/02/24/elec04.prez.bush.marriage/>.

³³² Kristie Rutherford, Family Research Council, Marriage Laws: State by State (Sept. 12, 2003), at <http://www.frc.org/get.cfm?i=IF03I01>.

³³³ The conservative covenant marriage movement calls for the legal recognition of marriage contracts that will mandate more barriers to entering into marriage as well as divorce. Difonzo, *supra* note 295, at 949-54; Failing, *supra* note 24, at 197. Those parties entering into a covenant marriage typically agree to undergo pre-marriage counseling and education to ensure that the parties recognize the seriousness of their undertaking, and consent to attending marriage counseling before either party may seek a divorce. Difonzo, *supra* note 295, at 951; Failing, *supra* note 24, at 215-16. In addition, the ability to divorce would be much more restrictive, requiring a showing of fault, such as adultery or physical abuse, thereby undoing much of current no-fault divorce law. Difonzo, *supra* note 295, at 952-53; Failing, *supra* note 24, at 216. The state of Louisiana was the first in the nation to pass a covenant marriage statute. Difonzo, *supra* note 295, at 949-54. Arizona and Arkansas have also passed such statutes, and there are other covenant marriage bills proposed in about twenty other states. Failing, *supra* note 24, at 197, 216. The covenant marriage movement has been criticized as an attempt to reestablish stereotypical gender roles in marriage. Difonzo, *supra* note 295, at 960.

³³⁴ Alaska, Hawaii, Nebraska and Nevada have passed state constitutional amendments that ban same-sex marriages. Rutherford, *supra* note 332. In 2004, President Bush, supported by social conservatives, called for a constitutional amendment to prevent further legal recognition of same-sex marriages. Press Release, Remarks of President Bush, President Calls for Constitutional Amendment Protecting Marriage (Feb. 24, 2004), at <http://www.whitehouse.gov/news/releases/2004/02/20040224-2.html>; Bush calls for ban on same-sex marriages, CNN.com, Feb. 25, 2004, at <http://www.cnn.com/2004/ALLPOLITICS/02/24/elec04.prez.bush.marriage/index.html>.

³³⁵ See *supra* note 334 and accompanying text.

³³⁶ Robson, *supra* note 1, at 780-81.

tangible and intangible benefits of marriage is an integral part of the argument for same-sex marriage. . . . Yet the failure to examine matrimony, like the failure to examine heterosexuality “as an institution is like failing to admit that the economic system called capitalism or the caste system of racism is maintained by a variety of forces.” The most obvious of these forces cohere into a legal regime that provides benefits to marital partners. While the Vermont Supreme Court listed numerous tangible benefits, one of the most pronounced benefits occurs because of the perverse system of health insurance in the United States that links medical benefits with employment. Given the importance of health care, same-sex marriage and domestic partnership advocacy has understandably focused on the injustice of not allowing a same-sex partner of an employee to have the same access to health benefits as would a legal spouse of the employee. Yet the larger injustice—the lack of universal health care—remains largely imperceptible. Instead, the imposition of matrimonial devices becomes the proposed—and very partial—“solution” for the travesty of the health care system. Marriage is the “cover,” which is itself an assimilationist demand that obscures the realities of deeper inequalities.³³⁷

In the current societal tug of war, America seems torn between a yearning for the mythologized ideal family³³⁸ and a recognition that many people desire to order their family relationships in ways that better serve their actual needs.³³⁹ Instead of continuing to buttress the “beneficial family” model, policymakers should recognize that the slide in the nuclear family may arise from the fact that the tremendous pressures and duties placed on this isolated unit outstrips its ability to consistently deliver on these demands.³⁴⁰ With no consensus in sight, public policy on family

³³⁷ *Id.* at 777, 780-81 (footnotes omitted); see also *supra* notes 206-209 and accompanying text.

³³⁸ See *supra* note 7 and accompanying text.

³³⁹ Christensen, *supra* note 3, at 1318-26.

³⁴⁰ Failing, *supra* note 24, at 204-05. Professor Failing comments:

I have suggested one somewhat under-represented argument that marriages, and the nuclear families they found, are in distress not because society focuses on them too little, but because society places too much responsibility on them to resolve social problems. . . . Virtually any modern discussion of marriage will invest it with a wide array of benefits and responsibilities. Many of these benefits and responsibilities, for example the responsibilities of committed sexual expression and reproduction, have traditionally been thought to accompany marriage almost exclusively. Yet many other responsibilities, once they are more widely distributed among larger kinship groupings, are new burdens or even benefits thrust upon the nuclear family within the last few decades. For instance, although spouses, particularly husbands, have been held responsible for supporting their spouses throughout time, other vehicles for support of persons, such as extended family support and even legal

matters has focused on shoring up *The Adventures of Ozzie and Harriet* while ignoring *Full House*.

In the face of these momentous demographic shifts and heated public policy debates, most employer benefit programs have not radically shifted their focus away from 1950s "beneficial family" policies, barely registering these major societal changes.³⁴¹ Most public and private sector benefits programs continue to assist only the employee and that employee's spouse and children.³⁴² Family members outside of the nuclear family, who may be related by blood, marriage, or adoption; domestic partners; and friends-as-family may share households, financial responsibilities, and emotional support, but are still typically denied access to key employer-sponsored family benefit programs. Some commentators suggest that these nonnuclear families should not receive equal benefits treatment because they do not shoulder equal legal responsibilities found in traditional nuclear families.³⁴³ Yet this approach fails to acknowledge that public policymakers have refused to provide extended family networks and other alternative family structures with meaningful legal recognition.³⁴⁴ As a self-fulfilling

kinship responsibilities such as adult children's duty to support aging parents, have been significantly eroded in mainstream American society.

Id. (footnotes omitted). See also Woodhouse, *supra* note 199, at 587-88 (asserting that the recognition of households and "kinships of responsibility" is supporting, not threatening, the strength of family in society); see also *supra* note 208 and accompanying text.

³⁴¹ In 2004, four Fortune 500 companies—Home Depot, Sprint, Ecolab, and Waste Management—offered pet health insurance policies to their employees, but not domestic partner health insurance benefits. Press Release, Human Rights Campaign, Home Depot Announces Domestic Partner Health Insurance after HRC Reveals Pets Already Covered (Sept. 2, 2004), at http://www.hrc.org/Template.cfm?Section=Press_Room&CONTENTID=22583&TEMPLATE=/ContentManagement/ContentDisplay.cfm. After this troubling revelation, and under pressure from the Human Right Campaign Foundation (HRC), Home Depot announced the adoption of domestic partner health insurance in September 2004. *Id.* HRC President Cheryl Jacques stated that, "We now call on Sprint, Ecolab, and Waste Management to recognize that good business is putting an employee's partner above the family pet." *Id.*

³⁴² See *supra* notes 274-318 and accompanying text.

³⁴³ Blumberg, *supra* note 218, at 1288-92 (equating the call for equality in employee benefits for same-sex partners with supporting "rights, but no responsibilities"); Rickel, *supra* note 272, at 754-55 (addressing the belief that a policy favoring marriage would be undermined if unmarried partners receive legal rights without associated legal responsibilities). But see *Elden v. Sheldon*, 46 Cal. 3d 267, 273, 275-77 (1988) (holding that unmarried cohabitants, unlike spouses, are not entitled to damages for emotional distress or loss of consortium because the law favors marriage, which provides defined legal rights and corresponding legal responsibilities).

³⁴⁴ Failingler, *supra* note 24, at 260-61; Kuykendall, *supra* note 3, at 253-58; Woodhouse, *supra* note 199, at 583-84; see also *supra* notes 328-330 and accompanying text.

prophecy, current law withholds legal recognition from nonnuclear families, then denies them access to employer-sponsored benefits because they lack legal responsibilities to each other.

IV. THE MOVEMENT FOR DOMESTIC PARTNER BENEFIT PROGRAMS

A limited number of state and local government and private sector employers have voluntarily adopted domestic partner programs that illustrate at least some understanding of changing family structures.³⁴⁵ As with previous efforts to expand employee benefits after World War II, the first domestic partner program was established through the efforts of union activism and negotiation at the *Village Voice* newspaper (New York) in 1982.³⁴⁶ The City of Berkeley, California passed the first domestic partner ordinance in 1984, followed by the provision of dental and medical benefits to its employees in 1985.³⁴⁷ Other state and local governments continued these pioneering efforts in extending certain economic and legal benefits to domestic partners and their minor dependents through domestic partnership benefit programs and public registries.³⁴⁸ A small overall percentage of private sector companies then followed with their own voluntary domestic

³⁴⁵ See *supra* notes 278-295 and accompanying text. Human Rights Campaign, Domestic Partner Benefits and Obligations Act. Background Information, at http://www.hrc.org/Content/NavigationMenu/HRC/Get_Informed/Federal_Legislation/Domestic_Partnership_Benefits_and_Obligations_Act1/Background_Information1/Background_Info_on_Domestic_Partnership_and_Obligations_Act.htm (last visited Mar. 20, 2005).

³⁴⁶ *Blumberg, supra* note 218, at 1282 n.75; *Hein, supra* note 259, at 28; *Zielinski, supra* note 199, at 291; Human Rights Campaign Worknet: How to Achieve Domestic Partner Benefits in Your Workplace, 1, at <http://www.hrc.org> (last visited Mar. 20, 2005) [hereinafter *Worknet*].

³⁴⁷ *Barrios, supra* note 267, at 845; *Zielinski, supra* note 199, at 290.

³⁴⁸ *Barrios, supra* note 267, at 845-50; *Blumberg, supra* note 218, at 1282-83; *Hein, supra* note 259, at 30-31; Sally Kohn, The Domestic Partnership Organizing Manual for Employee Benefits 5, app. 40-41 (1999); *Zielinski, supra* note 199, at 281-83, 288-92. As of February 23, 2005, only about eleven state governments, 129 city and county governments, and 294 colleges and universities offer domestic partner programs. Human Rights Campaign Foundation, Employers that Offer Domestic Partner Benefits, at http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch.cfm&searchtypeid=3&searchSubTypeID=1 (last visited Mar. 20, 2005) [hereinafter *HRC Partner Benefits*]. The decision of Massachusetts' highest court in *Goodridge v. Dept. of Public Health*, 440 Mass. 309, 323-27 (2003), will likely mean that married same-sex couples will be able to access state-sponsored benefits in Massachusetts and benefits under programs issued by Massachusetts insurers. The Segal Group, Inc., Benefit Implications of the Massachusetts Court Ruling Allowing Same-Gender Marriage, Segal Bulletin, Jan. 2004, at 1-2, available at <http://www.hrc.org>. However, under ERISA, some private sector employers may argue that they are not required to provide spousal benefits to married same-sex couples. *Id.* at 1.

partner programs.³⁴⁹ Today, the United States government, the nation's largest employer, does not offer any domestic partner benefits.³⁵⁰

Many domestic partner programs were instituted to address social and economic inequalities³⁵¹ or were an outgrowth of emerging corporate diversity initiatives.³⁵² Certain employers were also motivated by more self-serving ends, such as attracting and retaining valuable employees,³⁵³ improving employee productivity,³⁵⁴ or avoiding costly litigation.³⁵⁵ Regardless of the underlying reasons, these domestic partner benefit programs and public domestic partner registries provide certain unmarried domestic partners with some of the same benefits of marriage-centric "beneficial family" policies, signaling an important step forward in aiding many nonnuclear family units.³⁵⁶

Unfortunately, some of these public and private initiatives expressly exclude unmarried heterosexual couples, who are required to

³⁴⁹ Barrios, *supra* note 267, at 847-48; Rickel, *supra* note 272, at 742-44. Levi Strauss became the first Fortune 500 company to offer domestic partner benefits that provided for both same-sex and opposite-sex couples. *Id.* at 743-44. As of Feb. 23, 2005, less than half of the Fortune 500 companies (230) and about 8,291 other private sector companies offered some form of domestic partner health benefits. HRC Partner Benefits, *supra* note 348. In addition, more than eleven state governments, 129 and county governments, and 294 colleges and universities offer domestic partner programs. *Id.* See *infra* notes 366-376 and accompanying text.

³⁵⁰ Human Rights Campaign, Domestic Partners Benefits and Obligations Act (H.R. 2426/S. 1252), at http://www.hrc.org/Template.cfm?Section=Domestic_Partnership_Benefits_and_Obligations_Act1&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=23&ContentID=25727 (last visited Mar. 20, 2005). Under the proposed Domestic Partner Benefits and Obligations Act, the federal government would grant both opposite-sex and same-sex domestic partners the same benefits provided to and obligations imposed upon spouses of federal employees. S. 1252, 108th Cong. §2(a) (2003).

³⁵¹ Hein, *supra* note 259, at 27-28; Kohn, *supra* note 348, at 9; Rickel, *supra* note 272, at 743-44; Zielinski, *supra* note 199, at 289; Employee Benefit Research Institute, Domestic Partner Benefits: Facts and Background, at <http://www.ebri.org/facts> (last modified March 2004) [hereinafter EBRI Summary].

³⁵² Coleman, *supra* note 259, at 1-2; EBRI Summary, *supra* note 351, at 1; Kohn, *supra* note 348, at 1, 9; Worknet, *supra* note 346, at 2, 4.

³⁵³ Kohn, *supra* note 348, at 9; Lynd, *supra* note 273, at 568; Rickel, *supra* note 272, at 749; EBRI Summary, *supra* note 351, at 1; Worknet, *supra* note 346, at 3-4. See John P. Fernandez, The Politics and Reality of Family Care in Corporate America 17 (1990) (arguing that "employers benefit from providing child-care assistance in decreased absenteeism, lowered turnover, enhanced recruitment, and improved productivity").

³⁵⁴ Kohn, *supra* note 348, at 9; Worknet, *supra* note 346, at 4.

³⁵⁵ Cox, *supra* note 25, at 128-31; Lynd, *supra* note 273, at 574-75; Worknet, *supra* note 346, at 7.

³⁵⁶ See *infra* notes 369-372 and accompanying text.

marry and assimilate into nuclear family units in order to receive any family benefits, thereby preventing full protection of a significant number of nonnuclear family units.³⁵⁷ Unmarried opposite-sex couples may be very committed to one another, but may not marry for a variety of reasons. Some may hold philosophical reasons for not marrying, such as upholding freedom of choice in arranging family relationships or viewing the institution of marriage as sustaining outdated gender roles and the continued oppression of women.³⁵⁸ Others may be unwilling to marry because of its common linkage to organized religions,³⁵⁹ while still others may fear the loss of much-needed disability or pension benefits if they wed.³⁶⁰ In addition, these programs do not take into account individuals who live with adult siblings, extended family members, or other adults in nonromantic relationships.³⁶¹

To date, relatively few public and private sector employers have adopted domestic partner programs.³⁶² Concerns about costs,³⁶³ complicated

³⁵⁷ Human Rights Campaign Foundation, Domestic Partner Benefits, at http://hrc.activematter.com/Template.cfm?Section=The_Issues&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=26&ContentID=13399 (last visited Mar. 20, 2005). See generally Habegger, *supra* note 225, at 1011-12 (arguing for the inclusion of opposite-sex unmarried couples in domestic partner programs as matter of fairness and equal treatment); Kohn, *supra* note 348, at 2-3, 9, 13 (asserting that domestic partner policies including same-sex, opposite-sex, and non-romantic household members lead to pay and workplace equity); Lynd, *supra* note 273, at 598-608 (contending that same-sex only domestic partner programs are a form of sex discrimination under Title VII); Zielinski, *supra* note 199, at 318-20, 323 (asserting that opposite-sex unmarried couples should be covered under domestic partner programs to avoid discrimination claims and equal protection challenges).

³⁵⁸ Habegger, *supra* note 225, at 1012; Hein, *supra* note 259, at 20; Kuykendall, *supra* note 3, at 253-58.

³⁵⁹ Habegger, *supra* note 225, at 1012.

³⁶⁰ *Id.* at 1012; Hein, *supra* note 259, at 20. See generally Robson, *supra* note 1, at 778-93 (contending that offering substantial benefits only for those who marry shows the coercive nature of the institution of marriage).

³⁶¹ Kohn, *supra* note 348, at 3, 13. See Failing, *supra* note 24, at 257 (criticizing social codes that sexualize household units in which single adults are found living together for extended periods of time); see also *supra* note 293 and accompanying text.

³⁶² Approximately one in ten employers offers domestic partner benefits. Kohn, *supra* note 348, at 1.

³⁶³ Cox, *supra* note 25, at 121-22; EBRI Summary, *supra* note 351, at 2; Hein, *supra* note 259, at 29; Kohn, *supra* note 348, at 11; Rickel, *supra* note 272, at 744-45; Worknet, *supra* note 346, at 7-8. Fearing ballooning costs, insurance companies originally assessed a surcharge to employers offering domestic partner benefits, eventually dropping surcharges when cost concerns were not borne out. Hein, *supra* note 259, at 29; Kohn, *supra* note 348, at 11; Worknet, *supra* note 346, at 9. Several studies have shown that concerns about exorbitant costs have been largely unfounded, with low overall enrollment numbers and minimal additional costs, regardless of whether the program applies to only same-sex or

payroll processing,³⁶⁴ tax compliance,³⁶⁵ fraud and abuse,³⁶⁶ and public disapproval³⁶⁷ are factors that may affect the willingness of a firm to institute domestic partner programs. Since their original inception, however, few of these issues have proved to be truly significant obstacles to the

all domestic partners of employees. EBRI Summary, *supra* note 351, at 2; Hein, *supra* note 259, at 29; Kohn, *supra* note 348, at 11; Rickel, *supra* note 272, at 744-45; Worknet, *supra* note 346, at 8-9; Zielinski, *supra* note 199, at 293-95. Concerns about protecting one's privacy or an unwillingness to disclose one's sexual orientation may play key roles in these low enrollment percentages. Worknet, *supra* note 346, at 9. Opposite-sex partners have made up about sixty-seven percent of all couples accessing domestic partner benefits. EBRI Summary, *supra* note 351, at 2.

³⁶⁴ Cain *supra* note 228, at 473-74; Cox, *supra* note 25, at 120-21; Kohn, *supra* note 348, at 12. Depending on how the program is structured, there may be few administrative differences between domestic partner and spousal benefits. Kohn, *supra* note 348, at 12.

³⁶⁵ Cain, *supra* note 228, at 473-74; *see also infra* notes 385, 391 and accompanying text.

³⁶⁶ *See infra* notes 380-386 and accompanying text.

³⁶⁷ Cox, *supra* note 25, at 123-24; Hein, *supra* note 259, at 29-30; Kohn, *supra* note 348, at 12-13; Worknet, *supra* note 346, at 10-11. As the HRC notes:

Some companies have refused to implement DP [domestic partner] benefits for fear of adverse publicity that could lead to a loss of customers. Such employers are primarily concerned about religious conservatives who may believe that homosexuality is a sin and view domestic partner benefits as an endorsement of gay relationships or as a "special right." In fact, the vast majority of companies that implement DP benefits do so entirely outside of public view. For those that do garner outside attention, experience has shown that it is far more likely that media coverage will be positive. Companies such as IBM, Wells Fargo, Eastman Kodak, BankAmerica, Xerox and Coors Brewing Co. have all received positive publicity from their domestic partner benefits plan.

Some fear of public backlash no doubt derives from the well-publicized boycott of the Walt Disney Co. by the Southern Baptist Convention. In 1996, the Southern Baptist Convention, with 15.7 million members, voted to boycott Disney because of its gay-friendly policies. The results? Disney posted record earnings that year. Heterosexual consumers very rarely make purchasing decisions based on a company's gay employment policies, and if they do, such reaction will probably be short-lived. Also, there is probably just as much potential for gaining consumers who agree with a decision to implement DP benefits.

Companies can manage public backlash by anticipating an attack and being prepared with responses. First and foremost, the employment policies of a corporation are not designed to change personal values, they are designed to foster an atmosphere of fairness and professional respect at work. . . . [D]omestic partner benefits are equal pay for equal work, a tool for attracting and keeping the best employees and a means of improving employee productivity.

Worknet, *supra* note 346, at 10-11; *see also* Kohn, *supra* note 348, at 10, 12-13 (discussing concerns about a moral backlash and the possibility of attracting GLBT and other supportive consumers to the company).

establishment of successful domestic partner programs.³⁶⁸ The majority of employers who have adopted domestic partner policies offer primarily low-cost or “soft” benefits,³⁶⁹ such as family, bereavement, or sick leave, or options to utilize employer facilities or to participate in company social functions.³⁷⁰ Only a small percentage of employers offer “hard” benefits,³⁷¹ such as substantive healthcare or pension benefits.³⁷²

Most employers offering “hard” benefits require a formal attestation or binding agreement declaring financial interdependence and an exclusive commitment to a long-term relationship.³⁷³ Domestic partners normally must reside together, often for at least six months, before they can seek such benefits.³⁷⁴ In addition, they may be required to show proof that they share household expenses and hold joint bank accounts, joint leases or mortgages, and other financial ties.³⁷⁵ Furthermore, there may be time limits on registering or deregistering one’s designated partner.³⁷⁶ Some commentators have questioned the additional verification procedures and waiting periods placed on domestic partners, since married employees are seldom required to supply a marriage license, proof of common residency, evidence of financial interdependence, or written attestations about the exclusive, long-term nature of their relationships.³⁷⁷ Legally married spouses may lead quite separate emotional and financial lives, but only domestic partners, living outside of the bounds of the “beneficial family”

³⁶⁸ See *supra* notes 363-367 and accompanying text.

³⁶⁹ Normally, “soft” benefits are low or no-cost benefits, while “hard” benefits are more costly benefits, such as medical and dental insurance, pension and retirement benefits, life and disability insurance, and day care. Kohn, *supra* note 348, at 5-6; Zielinski, *supra* note 199, at 281; see also *supra* notes 385-386 and accompanying text.

³⁷⁰ EBRI Summary, *supra* note 351, at 1.

³⁷¹ See *supra* notes 373-374 and accompanying text.

³⁷² In a 2002 Hewitt Associates survey, only nineteen percent of the firms surveyed offered critical and more costly health insurance coverage to domestic partners. EBRI Summary, *supra* note 351, at 1.

³⁷³ Cox, *supra* note 25, at 122; EBRI Summary, *supra* note 351, at 1; Kohn, *supra* note 348, at 3-5; Rickel, *supra* note 272, at 746; Worknet, *supra* note 346, at 10; Zielinski, *supra* note 199, at 288-89, 291-92.

³⁷⁴ Blumberg, *supra* note 218, at 1272; EBRI Summary, *supra* note 351, at 1; Worknet, *supra* note 346, at 5.

³⁷⁵ EBRI Summary, *supra* note 351, at 1; Kohn, *supra* note 348, at 2, 3-4; Worknet, *supra* note 346, at 10.

³⁷⁶ Kohn, *supra* note 348, at 3-5; Worknet, *supra* note 346, at 10.

³⁷⁷ Kohn, *supra* note 348, at 4; Worknet, *supra* note 346, at 10; Zielinski, *supra* note 199, at 294.

model, are thought to be in need of policing to avoid potential fraud.³⁷⁸ The fraud issue has clearly been overblown, at the expense of domestic partners and their children, as no cases of fraud in domestic partner programs have been reported since their establishment.³⁷⁹

Furthermore, there are already several strong legal deterrents to fraud in domestic partner programs. Employees signing domestic partner attestations may be binding themselves later in determining property distribution, support payments, or other financial obligations upon dissolution of the relationship.³⁸⁰ The potential for discharge and/or other civil or criminal penalties for defrauding the employer also serve as serious disincentives.³⁸¹ Most importantly, domestic partners are taxed on the provision of benefits to their partners³⁸² whether they are soft benefits, like employee discount programs,³⁸³ or hard benefits, such as healthcare insurance,³⁸⁴ while the traditional nuclear family pays no taxes for these

³⁷⁸ Kohn, *supra* note 348, at 4; Treuthart, *supra* note 25, at 99; *Worknet*, *supra* note 346, at 10; Zielinski, *supra* note 199, at 292; Cox *supra* note 25, at 121-22; see also University of California, UC Group Insurance Eligibility Factsheet 7 (2004), available at http://atyourservice.ucop.edu/forms_pubs/checklists_factsheets/giefact.pdf [hereinafter UC Factsheet] (indicating that spouses who no longer live together are still eligible for benefits until their legal separation, divorce, or annulment is finalized). It is troubling that “[b]lood relatives or spouses who share little or no emotional commitment need not demonstrate family values in order to establish their rights, while partners in stable, committed, long-term, exclusive same-sex relationships are not even given the opportunity to demonstrate that they are, in fact, a family unit.” Treuthart, *supra* note 25, at 99.

³⁷⁹ Rickel, *supra* note 272, at 746-48; Kohn, *supra* note 348, at 12; *Worknet*, *supra* note 346, at 10. Some might contend that it is just these safeguards that have prevented fraud by nonnuclear families. Yet this point begs the question since fraud may also be rampant amongst those claiming spousal status. However, these purported anti-fraud safeguards are seldom applied to those who merely self-identify as conforming to the “beneficial family” model.

³⁸⁰ Blumberg, *supra* note 218, at 1272; EBRI Summary, *supra* note 351, at 4; Rickel, *supra* note 272, at 746; *Worknet*, *supra* note 346, at 5; Zielinski, *supra* note 199, at 293. See Kathleen Burge, *Citing SJC Ruling, Judge Dissolves Gay Civil Union*, *The Boston Globe*, Mar. 25, 2004 (recounting that the probate judge dissolved a short-lived Vermont civil union between two Massachusetts citizens to clarify party concerns about any future support obligations).

³⁸¹ *Worknet*, *supra* note 346, at 5; Zielinski, *supra* note 199, at 294.

³⁸² Barrios, *supra* note 267, at 862-64; Kohn, *supra* note 348, at 15-16; Rickel, *supra* note 272, at 745-46; *Worknet*, *supra* note 346, at 5-6; Zielinski, *supra* note 199, at 294.

³⁸³ Cain, *supra* note 228, at 471-72.

³⁸⁴ Barrios, *supra* note 267, at 860-63; Cain, *supra* note 228, at 472-74. Under the current IRS Code, any healthcare options are taxed as part of the employee’s gross income if extended to persons other than the employee’s spouse or legal dependents, such as domestic partners. I.R.C. § 104(a)(3) (2005); I.R.C. § 105(b) (2005); I.R.S. P.L.R. 9603011 (Jan. 19,

benefits.³⁸⁵ Also, unless the employee's domestic partner is a dependent, a mandate not placed on spouses, the Internal Revenue Service (IRS) does not allow any pre-tax employee contributions to flexible spending accounts to be spent on the premiums of the domestic partner program or on the partner's out-of-pocket medical expenses for items such as vision care, prescriptions, or counseling services.³⁸⁶

Unlike the employer-sponsored benefits offered to the beneficial nuclear family, domestic partner benefits are only tax-exempt if the domestic partner meets the IRS requirements for a dependent.³⁸⁷ Unlike spouses, this provision requires the domestic partner to reside in the taxpayer's household and receive at least half of their support from the taxpayer.³⁸⁸ Also, the relationship with the taxpayer must not violate state or local laws.³⁸⁹ Indeed, state and local laws criminalizing fornication, unmarried cohabitation, or sodomy can be used against opposite-sex and same-sex domestic partners to deny dependent status and the accompanying tax-free benefits enjoyed by the nuclear family.³⁹⁰ Further, while domestic

1996); I.R.S. P.L.R. 9717018 (Jan. 22, 1997); I.R.S. P.L.R. 9034048 (May 29, 1990). The IRS previously ruled that employers would have to tax domestic partner benefits at the fair market value of the insurance to an individual, rather than on the employer's group rate. I.R.S. P.L.R. 9603011 (Jan. 19, 1996); Cain, *supra* note 228, at 473. Since employers primarily dealt with group rates, some were uncertain about how to determine the fair market value for an individual seeking similar coverage, and were deterred from offering these benefits. Cain, *supra* note 228, at 473. Later, the IRS revised its position to allow employers to tax the benefit on the basis of the company's group rates. I.R.S. P.L.R. 9717018 (Jan. 22, 1997); Cain, *supra* note 228, at 474; Kohn, *supra* note 348, at 15-16; *Worknet*, *supra* note 346, at 5-6; Zielinski, *supra* note 199, at 296. This same approach applies to unmarried opposite-sex cohabitants. I.R.S. P.L.R. 9034048 (May 29, 1990), amended by I.R.S. P.L.R. 9111018 (Dec. 14, 1990). See Habegger, *supra* note 225, at 1002-03; Zielinski, *supra* note 199, at 295-96, 300-02, 305-09. In addition, medical expense accounts that allow employees to apply a pre-tax salary to a fund for uninsured medical expenses may not be used for domestic partners unless they meet the IRS dependency requirements. Barrios, *supra* note 267, at 862-63.

³⁸⁵ Barrios, *supra* note 267, at 862-63; Cain, *supra* note 228, at 471-74.

³⁸⁶ Barrios, *supra* note 267, at 862-63, *EBRI Summary*, *supra* note 351, at 2; *Worknet*, *supra* note 346, at 6.

³⁸⁷ I.R.C. § 152 (2005). See Barrios, *supra* note 267, at 855-56; Zielinski, *supra* note 199, at 295-96; *Worknet*, *supra* note 346, at 6.

³⁸⁸ 26 C.F.R. § 1.152(a)(9) (2005). See Barrios, *supra* note 267, at 856-59; Zielinski, *supra* note 199, at 295-96.

³⁸⁹ *Id.* See Barrios, *supra* note 267, at 856-59; Zielinski, *supra* note 199, at 295-96.

³⁹⁰ Barrios, *supra* note 267, at 855-56; Zielinski, *supra* note 199, at 296. In several instances, tax court decisions have denied cohabitants' tax exemptions under the local law because of the existence of state fornication laws or the absence of common law marriage statutes when opposite-sex cohabitants seek tax relief. Barrios, *supra* note 267, at 856-57 n.67-70.

partners must pay taxes on these benefits, employers are allowed to deduct their expenses in extending these benefits to their employees.³⁹¹

Although progressive domestic partner programs capture some nonnuclear family structures, these programs continue to reward only couple-centered family relationships that replicate the structure of the idealized "beneficial family." These policies generally retain the assumption that there will be a romantically-involved couple at the center of the employee's family unit, either a same-sex or an unmarried opposite-sex couple and their children, who imitate the consuming unit of the heterosexual "beneficial family" model. As domestic partner benefits proliferate, these public and private sector policies seldom provide benefits for the less individually consumptive household units that do not involve romantically-involved couples, such as extended families, kinship networks, friends-as-family, or other unsanctioned family structures.³⁹² These domestic partner programs, like the public policies that preceded them, continue to ignore and fail to aid supportive individuals or groups who are not part of a couple-based model, but who may offer critical, yet largely uncredited, emotional and financial support to members of our society.³⁹³

V. BEYOND DOMESTIC PARTNER PROGRAMS: THE EMERGENCE OF OTHER ADULT DEPENDENT (OAD) POLICIES

With the changing face of family structures, a few pioneering employers appear more aware than public policymakers of the need to push their benefit options beyond the "beneficial family" model.³⁹⁴ Groundbreaking employers such as Bank of America,³⁹⁵ Prudential

³⁹¹ Barrios, *supra* note 267, at 860.

³⁹² See *supra* notes 223-235 and accompanying text.

³⁹³ Dubois, *supra* note 226, at 274-75; Failing, *supra* note 24, at 206; Habegger, *supra* note 225, at 1011; Smolka, *supra* note 221, at 630-31; Woodhouse, *supra* note 199, at 585; see also *supra* notes 25, 217 and accompanying text. In some instances, public policies recognize household units largely in order to cut off or decrease state aid to groups that do not conform to the idealized nuclear family. Failing, *supra* note 24, at 267-68; see also Robson, *supra* note 1, at 717-18 (discussing the "assimilation imperative" in the provision of public benefits). It is interesting to note that those who are not defined as part of a couple are often problematized in cultural and political discourses, making these individuals, rather than the system itself, seem at fault for any material deprivations they suffer. Kirk Mann & Sasha Rosecil, Poor Choices? Gender, Agency and the Underclass Debate, in *Changing Family Values*, *supra* note 19, at 98-118.

³⁹⁴ Coleman, *supra* note 259, at 2; Conlin, *supra* note 161; see also *infra* notes 401-402 and accompanying text.

³⁹⁵ Coleman, *supra* note 259, at 2; Conlin, *supra* note 161; Kohn, *supra* note 348, at app. 59.

Insurance,³⁹⁶ State Street Bank,³⁹⁷ Merrill Lynch,³⁹⁸ CitiGroup,³⁹⁹ and the University of California⁴⁰⁰ have moved to unlink employee benefits from

³⁹⁶ Coleman, *supra* note 259, at 2; Conlin, *supra* note 161; Prudential Financial, Inc., Form# PRUQAK (undated), available at <http://www.hrc.org> (last visited Mar. 20, 2005) [hereinafter Prudential OAD].

³⁹⁷ State Street Corporation, Domestic Partner and Other Adult Dependent (OAD) Benefits, available at http://64.233.161.104/search?q=cache:cYSoMUgUjJgJ:www.statestreetbenefits.com/find_it_fast/forms/DomPartBroch.pdf+State+Street+%22Domestic+Partner+and+Other+Adult+Dependent%22&hl=en (last visited Mar. 20, 2005) [hereinafter State Street OAD Policies]. State Street is a CitiGroup company.

³⁹⁸ Kohn, *supra* note 348, at app. 60, 71-73; Merrill Lynch, Questions & Answers on Qualified Adult Health Coverage, available at http://www.hrc.org/Content/ContentGroups/WorkNet/Sample_Policies/merrillynch.pdf (last visited Sept. 29, 2004) [hereinafter Merrill Lynch OAD Policies]. Merrill Lynch has both domestic partner and "extended family members" benefits coverage. Interview with Lorraine Meltzer, Vice President, Health and Insurance Benefits Employees (Nov. 9, 2004) (on file with authors) [hereinafter Meltzer Interview]. Employees are asked to complete a form attesting to the dependency of one extended family member. No additional financial or supportive documents are required to further substantiate the employee's attestation. Employees must also complete a form to terminate the status of an extended family member, if relevant. Employees may enroll one extended family member during open enrollment or as result of qualifying event, such as the loss of previous medical coverage. An employee may add an extended family member after that adult dependent has lived for entire calendar year with employee. About four to five percent of Merrill Lynch's employees participate in the extended family member program, which has not resulted in any significant additional costs for or administrative burdens on the firm. *Id.*

³⁹⁹ Coleman, *supra* note 259, at 2.

⁴⁰⁰ University of California, Adult Dependent Relative, available at http://atyourservice.ucop.edu/employees/life_changes/family_changes/adult_dependent/ (last visited Sept. 29, 2004); UC Factsheet, *supra* note 378, at 3-6, 8. However, as of January 1, 2004, the University of California system has closed any further enrollment under this program. UC Factsheet, *supra* note 378, at 3. See generally Blumberg, *supra* note 218, at 1288-90 (discussing the University of California adult dependent program); Telephone interview with Nancy Healey, University of California, Health & Welfare Department, Policy & Program Division (Nov. 3, 2004) (on file with authors). The University of California system had 1,230 employees, or about one percent, enrolled in its OAD program. Further enrollments were ceased due to the following reasons: 1) unprecedented cuts in coverage due to state budget limitations; 2) the view that the OAD program was not in line with industry standards in that other competitors were not offering similar benefits; 3) concerns about low utilization of the OAD program; and, 4) recognition of disproportionately higher costs than other health plan participants since OADs were often older persons, such as mothers and fathers, who had higher medical costs. As of Jan. 1, 2005, opposite-sex domestic partners who are sixty-two and have registered under California's partner registry law will be able to seek UC domestic partner benefits coverage. The age determination was based upon the desire to allow older citizens to retain their individual Social Security rights, which would be compromised if they married. *Id.* It is interesting to note that this group also involves older people who are likely to have disproportionately higher medical costs, as noted for the OAD program; yet, couple-centered benefits are expanding while OAD benefits are contracting. The fact that in three years these opposite-

solely marriage- or couple-centric policies through other adult dependent (OAD) programs.⁴⁰¹ These progressive OAD policies are the first tentative steps toward a recognition that employee households often do not mirror the “beneficial family” model or some imitation of that couple-centric approach, thereby allowing for increased recognition and protection of nonnuclear household structures.⁴⁰²

Applying current IRS code provisions on dependents, employers offering OAD benefits typically allow employees to extend benefits coverage to one adult dependent, offering some degree of parity with those employees previously permitted to cover a spouse or a domestic partner.⁴⁰³ For example, State Street’s OAD policies make it clear that an employee may elect to add only one adult dependent to their coverage, either a spouse, domestic partner, or adult dependent.⁴⁰⁴ The adult dependent is normally expected to be over the age of eighteen and under the age of sixty-five⁴⁰⁵ and must receive at least fifty percent of his or her support from the taxpayer during the calendar year.⁴⁰⁶ The IRS code also lists the potentially eligible dependent individuals,⁴⁰⁷ allowing an employee under these

sex partners will be eligible for Medicare may play a factor in allaying concerns about longer-term medical benefit costs. *See generally* Blumberg, *supra* note 218, at 1289-90.

⁴⁰¹ Coleman, *supra* note 259, at 2; Conlin, *supra* note 161.

⁴⁰² Coleman, *supra* note 259, at 2-3.

⁴⁰³ *See supra* notes 382-391 and accompanying text.

⁴⁰⁴ Meltzer Interview, *supra* note 398; State Street OAD Policies, *supra* note 397, at 1.

⁴⁰⁵ Kohn, *supra* note 348, at app. 72; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 3; University of California, Group Insurance Eligibility—2004, for Employees, Annuitants, and Eligible Family Members, available at http://atyourservice.ucop.edu/forms_pubs/checklists_factsheets/giefact.pdf (last visited February 12, 2005) [hereinafter “UC Affidavit”]. Adults aged sixty-five or older are expected to seek coverage under the Medicare program. Kohn, *supra* note 353, at app. 73; Merrill Lynch OAD Policies, *supra* note 398; State Street Corporation, Certification as Other Adult Dependent, available at https://info.plan.csplans.com/pdfs/forms/ssb/ssbhw1/certification_as_oad.pdf (last visited Mar. 20, 2005) [hereinafter State Street Certification]; UC Factsheet, *supra* note 378, at 5.

⁴⁰⁶ Kohn, *supra* note 348, at app. 72; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 4; State Street OAD Policies, *supra* note 397, at 3; UC Factsheet, *supra* note 378, at 4.

⁴⁰⁷ 26 U.S.C.A. § 152(a) (2005). Any of the following individuals, be they relatives or unrelated household members, may be included as a dependent under section 152(a):

- (1) A son or daughter of the taxpayer, or a descendant of either,
- (2) A stepson or stepdaughter of the taxpayer,
- (3) A brother, sister, stepbrother, or stepsister of the taxpayer,
- (4) The father or mother of the taxpayer, or an ancestor of either,

innovative OAD programs to elect an adult dependent related by blood, adoption, or marriage,⁴⁰⁸ or an unrelated dependent who has resided in the household throughout the calendar year.⁴⁰⁹ In addition, the eligible dependent must be an American citizen, national, or resident,⁴¹⁰ or a resident of Mexico or Canada.⁴¹¹ Lastly, the relationship between the dependent and the taxpayer must not violate local law.⁴¹²

In addition to the IRS mandates, some employers may require some form of OAD certification⁴¹³ or the completion of an OAD termination form if the dependency status ceases,⁴¹⁴ harking back to attestations favored in

-
- (5) A stepfather or stepmother of the taxpayer,
 - (6) A son or daughter of a brother or sister of the taxpayer,
 - (7) A brother or sister of the father or mother of the taxpayer,
 - (8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer, or
 - (9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 7703, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

Id. at (c)-(d).

⁴⁰⁸ *Id.* at (a)(1-8); see also Kohn, *supra* note 348, at app. 72; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 4; UC Factsheet, *supra* note 378, at 4.

⁴⁰⁹ 26 U.S.C.A. § 152 (a)(9) (2005); see also Kohn, *supra* note 348, at app. 72; Meltzer Interview, *supra* note 398; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 3; State Street OAD Policies, *supra* note 397, at 2. Unlike other private sector programs, the UC program does not apply to nonrelatives and is restricted to certain adult dependent relatives recognized under California state law, such as nieces, nephews, cousins, in-laws, and spouses of one's children or grandchildren. UC Factsheet, *supra* note 378, at 4 n.5.

⁴¹⁰ 26 U.S.C.A. § 152(b)(3) (2005); see also Kohn, *supra* note 348, at app. 72; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 4; State Street OAD Policies, *supra* note 397, at 3.

⁴¹¹ 26 U.S.C.A. § 152(b)(3)(a) (2005); see also Prudential OAD, *supra* note 396, at 4.

⁴¹² Kohn, *supra* note 348, at app. 72; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 4; State Street OAD Policies, *supra* note 397, at 3; see also *supra* notes 390-91 and accompanying text.

⁴¹³ Meltzer Interview, *supra* note 398; Prudential OAD, *supra* note 396, at 7; State Street Certification, *supra* note 405; UC Affidavit, *supra* note 405.

⁴¹⁴ Meltzer Interview, *supra* note 398; State Street Corporation, Termination of Domestic Partnership or Other Adult Dependent Relationship, available at http://64.233.161.104/search?q=cache:VVGNG06kJI:www.statestreetbenefits.com/find_it_fast/forms/Affidavit_of_Domestic_Partnership.pdf+%22State+Street+Corporation%22+%22Termination+of+Domestic+Partnership%22&hl=en (last visited Mar. 20, 2004). Some

many domestic partner programs to avoid fraud.⁴¹⁵ Employers offering OAD benefits may also require that the dependent status exist for a certain period of time, sometimes at least six months, prior to enrolling the adult dependent.⁴¹⁶ Furthermore, employees opting for OAD coverage must also select participating medical, dental, and related plans that allow for the inclusion of adult dependents.⁴¹⁷ Lastly, adult dependents cannot expect that coverage will continue if the employee should be laid off or resign from the company under the Consolidated Omnibus Budget Reconciliation Act of 1995 (COBRA).⁴¹⁸

These incipient OAD policies are the first revolutionary steps away from long-established, marriage-centric "beneficial family" regimes and more recent couple-centric domestic partner programs. This new benefit option begins to slowly open the door to providing critical benefits protection to nonnuclear household structures. Yet these OAD policies still seriously limit the reach of benefits programs, leaving out a host of nonnuclear family formations. Some of these restrictions flow from the employer's structuring of the program, while others may be derived from existing legal restrictions.

First, employers who have adopted OAD policies only allow one adult dependent to be included under the benefits program.⁴¹⁹ By limiting

employers merely require prompt notification from the employee of the change in adult dependent status. Prudential OAD, *supra* note 396, at 12; UC Affidavit, *supra* note 405.

⁴¹⁵ See *supra* note 378 and accompanying text.

⁴¹⁶ Meltzer Interview, *supra* note 398; Prudential OAD, *supra* note 396, at 3; UC Affidavit, *supra* note 405.

⁴¹⁷ Kohn, *supra* note 348, at app. 73; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 8; State Street OAD Policies, *supra* note 397, at 2. State Street notes that several of its providers offer OAD coverage, including Blue Cross Blue Shield, DeltaPremier, DeltaCare, EyeMed, and Tufts EPO. State Street OAD Policies, *supra* note 397, at 2. All of Merrill's healthcare providers allow for extended family adult dependents. Meltzer Interview, *supra* note 398.

⁴¹⁸ Prudential OAD, *supra* note 396, at 6; State Street Certification *supra* note 405. Under the Consolidated Omnibus Budget Reconciliation Act of 1995 (COBRA), employers must allow employees the opportunity to continue to pay for their health coverage if the coverage ceases due to such triggering events as discharge, resignation, or divorce. Prudential OAD, *supra* note 396, at 6; WorkNet *supra* note 346, at 6. COBRA mandates the offer of this continuation coverage only for the employee, his/her spouse, and dependent children. Barrios, *supra* note 267, at 861-62; Prudential OAD, *supra* note 396, at 6; Worknet *supra* note 346, at 6. Neither dependent adults nor domestic partners are guaranteed COBRA continuation coverage, but employers may be able to gain this coverage for their adult dependents or domestic partners upon request. Barrios, *supra* note 267, at 861-62; Prudential OAD, *supra* note 396, at 6; Worknet *supra* note 346, at 6.

⁴¹⁹ See *supra* notes 406-407 and accompanying text.

coverage to one adult dependent, employers can control their costs,⁴²⁰ but do so at the expense of employees and their nonnuclear families. Other adults sharing the household, even if dependent on the employee, are not allowed to receive coverage.⁴²¹ Conversely, unlike a spouse or domestic partner, the enrolled adult must be dependent on the employee to even be considered for benefits coverage.⁴²² Further, only the employee's own dependent children, or those of a domestic partner, would receive protection, but not any other children in the household, including the children of the adult dependent.⁴²³ Lastly, family members over the age of sixty-five in the household are not allowed to access benefits that might fill gaps in their Medicare coverage or other non-healthcare benefits that are offered to employee spouses or domestic partners and their dependent children.⁴²⁴

Similar to criticisms of some domestic partner programs, OAD policies put extra burdens on nonnuclear families that are not placed on nuclear families.⁴²⁵ The employee must attest that the adult dependent meets IRS dependency requirements and notify the employer immediately of any changes in that eligibility.⁴²⁶ Employees must also undergo a waiting period before they can enroll an adult dependent or change the adult dependent.⁴²⁷

VI. EXTENDING BENEFITS TO HOUSEHOLD UNITS UNDER EMPLOYER-SPONSORED BENEFIT PROGRAMS

Forward-thinking companies opting to move beyond couple-centered policies are further hampered by laws that fail to recognize

⁴²⁰ See *supra* notes 363, 369 and accompanying text. Employers can also provide these benefits without creating a taxable event for the employee in their payroll processing. Kohn, *supra* note 348, at app. 72; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 5; State Street OAD Policies, *supra* note 397, at 2.

⁴²¹ See Kohn, *supra* note 348, at app. 73; Merrill Lynch OAD Policies, *supra* note 398; Prudential OAD, *supra* note 396, at 8; State Street Corporation, Eligibility for State Street Benefits, available at https://info.plan.csplans.com/default.asp?cl=SSB&pl=SSBHW1PU&page=plan_informationplanhighlightsdpoadbenefitseligibilityfor2&cpl=SSBH W1&domain=ssp.csplans.com&s=206238834 (last visited Sept. 29, 2004).

⁴²² See *supra* notes 386-388 and accompanying text.

⁴²³ See *supra* notes 407-409 and accompanying text.

⁴²⁴ *Id.*

⁴²⁵ See *supra* notes 417-419 and accompanying text.

⁴²⁶ *Id.*

⁴²⁷ See *supra* note 416 and accompanying text.

nonnuclear family households in their legal glossary.⁴²⁸ Like those offering domestic partner benefits, corporations offering extended family benefits are required by IRS policy to tax employee benefits as compensation if extended to a household member who does not meet the IRS' strict dependency requirements.⁴²⁹ Secondly, the law provides easily verifiable documentation such as marriage or birth certificates to authenticate nuclear families and, in some instances, registries to recognize domestic partners; no similar official verification of extended family, kinship networks, or friends-as-family groups is available.

One approach to the issue of benefits coverage is the call for formal legal recognition of household units, rather than just nuclear families tied by blood, marriage, or adoption. Formal legal recognition would allow companies to have verifiable documentation and would make it illegal to discriminate against alternative families.⁴³⁰ If such formal legal recognition were available, companies might become less concerned with sorting out benefit issues for household units and would be more confident that they are not victims of fraud or abuse schemes.⁴³¹ However, such changes would largely need to be made on a national basis in order to effectively transform employee benefit packages, particularly important healthcare and pension benefits under ERISA.⁴³² Federally protected classes would have to be expanded to include household units,⁴³³ leading to sweeping changes in numerous areas of law, not just employer-sponsored benefits programs under ERISA.⁴³⁴ Realistically, a radical move away from privileging only the beneficial nuclear family to a more inclusive household approach to family will require leadership not readily found in the national political sphere, especially in the current polarized political environment.⁴³⁵

It may be more likely that, as demographics continue to migrate away from the idealized "beneficial family," more employers in their societal role as shadow welfare states will come under pressure⁴³⁶ to

⁴²⁸ See *supra* notes 371-372, 298-301, 331-335 and accompanying text.

⁴²⁹ See *supra* notes 387-388 and accompanying text.

⁴³⁰ See Failing, *supra* note 24, at 268-69; Rickel, *supra* note 272, at 773-74.

⁴³¹ See *supra* notes 378-379 and accompanying text.

⁴³² See *supra* notes 296-301 and accompanying text.

⁴³³ See Failing, *supra* note 24, at 268-69.

⁴³⁴ Today, ERISA does not recognize or protect employees and families in nonnuclear family structures. See *supra* notes 296-301 and accompanying text.

⁴³⁵ See *supra* notes 331-335 and accompanying text.

⁴³⁶ Failing, *supra* note 24, at 268-69; see also *supra* notes 270-273 and accompanying text.

consider new benefits structures that better serve the needs of their diverse workforce.⁴³⁷ As early as 1991, the AFL-CIO called for employer-sponsored benefits to be extended to people living together as a household unit in functional families.⁴³⁸ By basing benefits coverage on “functional family” households, employer programs will more accurately reflect the variety of family structures found in our society and better meet the benefits needs of more employees’ families.⁴³⁹ In addition, the same issues that motivated employers to voluntarily provide domestic partner benefits, such as remedying social and economic inequalities,⁴⁴⁰ aiding employee recruitment and retention,⁴⁴¹ or improving employee productivity,⁴⁴² should

⁴³⁷ See *supra* notes 275-291, 341 and accompanying text.

⁴³⁸ Kohn, *supra* note 348, at 8. In its 1991 policy resolution, entitled “Benefits for Changing Families,” the AFL-CIO stated:

Whereas, Employer provided health-care coverage, sick and family responsibility leaves, and bereavement leaves for spouses of employees are important elements of any benefit package; and

Whereas, Fewer than thirty percent of American families fit the traditional definition of family—two parents living with children; and

Whereas, Eligibility for fringe benefits is often based upon a definition of family which fails to recognize changes in family composition in the United States, resulting in a lack of coverage for many individuals; and

Whereas, These fringe benefits are, on average, equivalent to forty percent of total compensation; and

Whereas, The United States has not enacted legislation to create universal access to health insurance or family leave; and

Whereas, Jurisdictions have begun to offer fringe benefits to unmarried employees and their partners; therefore, be it RESOLVED: That AFL-CIO will work as appropriate to insure that fringe benefits are extended to all persons living in a household as a family.

Id. The importance of economic interdependence, emphasized both by Zimmerman and Aldous & Dumon in their writings, and in the *Braschi* case, is the central issue at stake (living in same house, relying on same paycheck or pool of paychecks) that should be considered when defining an employee’s “dependent” benefits. See *supra* notes 8-9 and accompanying text.

⁴³⁹ Failing, *supra* note 24, at 268-70. Professor Failing asserts that “[t]here is no logical economic reason that an employer should be legally required to support a nuclear family and not provide benefits to other households.” *Id.* at 269. Without this equal treatment between nuclear families and household units, she contends that “the public at large might end up taking up the slack.” *Id.*; see also *supra* notes 206-215 and accompanying text.

⁴⁴⁰ See *supra* note 349 and accompanying text.

⁴⁴¹ See *supra* note 353 and accompanying text.

play a similar role in advancing this restructuring process. Lastly, concerns about public disapproval may be muted if the application of household units to benefit programs will protect more families and children,⁴⁴³ without requiring any government intervention to redefine family structures.⁴⁴⁴ Voluntary company actions in this arena could ultimately become a catalyst for future legal recognition of household units in the society at large.⁴⁴⁵

Employers should take an even-handed approach to benefits for their employees, whether in nuclear or functional family structures, offering soft and hard benefits to the employee and all members of the employee's household that meet the standards of a functional family.⁴⁴⁶ All employees should attest to the contours of their household units, including nuclear families. These attestations would affirmatively state their living together in a household residence, their emotional commitment to the longevity of the household relationship, their financial interdependence and obligations towards other household members, and their sharing of household services amongst household members.⁴⁴⁷ The same serious deterrents to fraud found in domestic partner attestations would apply here also,⁴⁴⁸ including future financial obligations for household members,⁴⁴⁹ the potential for discharge,⁴⁵⁰ and/or civil or criminal penalties for defrauding their employers.⁴⁵¹ Waiting periods to add new household members could be removed or, at a minimum, the same waiting periods could be applied equally to all employee households.⁴⁵² To avoid concerns that these requirements, new to nuclear families, represent an attack on this model,

⁴⁴² Kohn, *supra* note 348, at 9; *Worknet*, *supra* note 346, at 4; *see also supra* note 354 and accompanying text.

⁴⁴³ Failing, *supra* note 24, at 258, 269-70; Kuykendall, *supra* note 3, at 284-85; Woodhouse, *supra* note 199, at 583-84.

⁴⁴⁴ *See* Woodhouse, *supra* note 199, at 583-84; *see also supra* note 163 and accompanying text.

⁴⁴⁵ *See* Failing, *supra* note 24, at 268; Lynd, *supra* note 273, at 567 (noting that private sector employers have acted voluntarily in the establishment of domestic partnership programs to respond to the demands of the market, without any government mandates).

⁴⁴⁶ Kohn, *supra* note 348, at 3-4; *see also supra* notes 370-373 and accompanying text.

⁴⁴⁷ *See supra* notes 323-326 and accompanying text.

⁴⁴⁸ *See supra* notes 380-381 and accompanying text.

⁴⁴⁹ *See supra* note 380 and accompanying text.

⁴⁵⁰ *See supra* note 382 and accompanying text.

⁴⁵¹ *Id.*

⁴⁵² Kohn, *supra* note 348, at 4; *Worknet*, *supra* note 346, at 5.

employers should clearly identify and communicate to their employees the reasons for applying these requirements to all employees, including reinforcing respect for diversity, upholding equal treatment for all employees, preventing costly lawsuits that hurt company revenues, and limiting fraud that could prove costly for both employers and employees.

The potential for increased costs is certainly a major concern for most employers,⁴⁵³ especially with regard to healthcare benefits.⁴⁵⁴ Employers could structure their programs to help control costs in an even-handed manner for both nuclear and nonnuclear families. Employers could place the same limit on the number of household members they may cover under a uniform benefits program.⁴⁵⁵ Employees could decide to cover more household members, but may have to pay additional amounts for each household member they add over the established limit. Alternatively, employers could opt for cafeteria-style plans that provide an equal dollar amount to all employees to apply to either taxable or tax-exempt benefits of their own choosing.⁴⁵⁶ These various alternatives would help remedy inequalities between those families falling under the “beneficial family” model and those with nonnuclear family structures and provide greater pay equity amongst all employees.⁴⁵⁷

The motivating force behind the taxation, continuation coverage, and flexible medical spending accounts laws was to enable employers to

⁴⁵³ Although employers may groan about benefits costs, they have only themselves to blame because they originally traded off benefits against shorter work weeks and higher compensation rates. See *supra* note 261 and accompanying text.

⁴⁵⁴ See *supra* note 363 and accompanying text.

⁴⁵⁵ Kohn, *supra* note 348, at 4.

⁴⁵⁶ Barrios, *supra* note 267, at 862; Blumberg, *supra* note 218, at 1285-87; Coleman, *supra* note 259, at 2; Conlin, *supra* note 161. Under cafeteria-style plans, employees may select from a variety of taxable or tax exempt benefits. Barrios, *supra* note 267, at 862; Blumberg, *supra* note 218, at 1285-87; Coleman, *supra* note 259, at 2. Currently, Xerox offers its employees \$10,000 in taxable income over the employee's career under its Life Cycle Assistance program, which may be used for family-related or work-related needs, such as child care and extended household healthcare. Xerox Benefits Overview (2004), available at http://www.xerox.com/downloads/usa/en/b/Benefits_Overview_2004.pdf (last visited Sept. 26, 2004). If tax provisions are properly revised to equalize tax exclusions for all household units, benefits, such as healthcare coverage, would be excluded from gross income and therefore not taxed. See *supra* notes 365, 385-391 and accompanying text.

⁴⁵⁷ See Barrios, *supra* note 267, at 865; Coleman, *supra* note 259, at 2; Kohn, *supra* note 348, at 9; Worknet, *supra* note 346, at 3-4. But see Elden v. Sheldon, 46 Cal. 3d 267, 275-76 (1988) (asserting that unmarried cohabitants, unlike spouses, are not entitled to damages in emotional distress or loss of consortium claims because the law favors marriage, which provides defined legal rights and corresponding legal responsibilities); Blumberg, *supra* note 218, at 1287-88 (recognizing the “equality of value” argument, but suggesting that benefits should be allocated based on need).

extend improved health and welfare coverage to more people.⁴⁵⁸ Without falling into a quagmire of disputes about legal recognition of household units,⁴⁵⁹ the law can aid employers by removing obstacles and offering incentives to employer-sponsored household benefits coverage, just as had been done in the 1950s for benefits coverage for nuclear families.⁴⁶⁰ Current laws should be revised to aid employers who want to extend benefits outside of current marriage-centric models in support of benefits programs to household units in furtherance of these stated government objectives.

First, IRS codes should be revised to extend tax-free employer benefits to all household units, not just to those employees whose families comply with the "beneficial family" model.⁴⁶¹ No showing of dependent status would be required, as is already the case with spouses, who need not show dependency.⁴⁶² Employers would continue to deduct their expenses for extending these benefits to employees and their households.⁴⁶³ These revisions would simplify payroll processing and tax compliance for all employers and continue to provide tax incentives to offer these benefits.⁴⁶⁴ Second, COBRA provisions should be modified to allow household members the opportunity to continue coverage if the employee ceases employment or if the relationship dissolves. Third, employees should be able to allocate pre-tax contributions in flexible spending accounts to the out-of-pocket expenses or premium costs for any member of their households, not just to spouses or dependent children.⁴⁶⁵ Fourth, employers should allow employees to designate any household member as the beneficiary of their death or pension benefits, not just spouses.⁴⁶⁶

Lastly, the government could play a role in dealing with any increased costs associated with the provision of healthcare benefits to employee household units. A 2004 Kaiser Commission report suggests that providing healthcare coverage to all uninsured people is actually much

⁴⁵⁸ See *supra* notes 267-273 and accompanying text.

⁴⁵⁹ See *supra* notes 156, 296, 329, 331-335 and accompanying text.

⁴⁶⁰ See *supra* notes 267-273 and accompanying text.

⁴⁶¹ Barrios, *supra* note 267, at 865-66. The government has already embraced nonnuclear family households in certain situations. See notes 327-330 and accompanying text.

⁴⁶² Barrios, *supra* note 267, at 865-66; Kohn, *supra* note 348, at 4; *Worknet*, *supra* note 346, at 5.

⁴⁶³ See *supra* notes 267-270 and accompanying text.

⁴⁶⁴ See *supra* note 391 and accompanying text.

⁴⁶⁵ See *supra* note 387 and accompanying text.

⁴⁶⁶ See *supra* notes 302-317 and accompanying text.

more cost-effective than the current piecemeal approach and will likely result in less than a three percent increase in the nation's total personal healthcare spending.⁴⁶⁷ The current estimated economic costs of the uninsured is about \$103 billion per year, compared to \$48 billion per year to provide healthcare coverage to all uninsured people.⁴⁶⁸ Approximately \$34.6 billion is already being spent by the government to pay for healthcare for the uninsured, of which eighty-five percent comes from the federal government.⁴⁶⁹ Most of these funds are paid to hospitals to subsidize their losses from patients who cannot pay their hospital bills.⁴⁷⁰ The Kaiser Commission report recommends that government funds being paid to hospitals for uninsured care be reallocated to pay the costs of health insurance.⁴⁷¹ Some of these funds could be used to offset increased premium costs or to offer additional tax incentives to employers who opt to broaden employee health insurance options to uninsured household members. Also, as benefits are extended to household units, employers should be able to continue to deduct the costs of extending benefits to all household members.⁴⁷²

VII. CONCLUSION

Extended family, kinship networks, and friends-as-family were all key foundations of American society prior to the 1950s. Yet the corporate-sponsored television images of the fictional 1950s "beneficial family" have endured, blotting out the recognition of our earlier family formations and denying the realities of the changing face of families in our country. The "beneficial family" has been held up as a dominant ideal, even though the majority of American households today seek nonnuclear family formations to better serve their economic, social, and emotional needs. As demographics continue to shift away from the 1950s "beneficial family," corporations, as shadow welfare states that replaced fraternal lodges and other forms of mutual aid, need to revise and update their benefits policies to meet the needs of a diverse range of employees' households.

⁴⁶⁷ See Jack Hadley & John Holahan, The Cost of Care for the Uninsured: What Do We Spend, Who Pays, and What Would Full Coverage Add to Medical Spending? 6 (Kaiser Commission 2004).

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.* at 3.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.* at 5.

⁴⁷² See *supra* notes 267-269, 391 and accompanying text.

Those employers with domestic partner programs certainly broadened protections for a host of nonnuclear families, but the approach continues to rely on replicating the consumeristic model of the 1950s "beneficial family." OAD policies move beyond marriage- and couple-centric programs to capture more diverse family structures, but are not as inclusive as those policies utilizing household units to meet the needs of today's employees. Although legal recognition of households would certainly drive benefits protection forward, it is unlikely to occur in the current divisive political climate. In voluntarily adopting domestic partner policies, employers illustrate their ability to move ahead of legal mandates to help improve social and economic equality and diversity while meeting their business goals of recruiting and retaining quality employees, thereby enhancing employee productivity and avoiding expensive litigation. To meet these asserted aims, employers should take the lead once again by adopting benefits programs with evenhanded requirements for both nuclear families and nonnuclear households. In addition, the government should provide incentives to employers equal to those offered in benefits programs for idealized nuclear families. Changes in laws dealing with benefits taxation, COBRA continuation coverage, and flexible spending accounts would allow for the equalization of treatment and protection of nuclear families and nonnuclear households under benefits programs. Without these changes, benefits policies and laws will continue to float in a fictional world of endless *Father Knows Best* reruns, completely detached from the needs of the growing majority of real families living and struggling in the real world.