

PUBLIC LAW RESEARCH INSTITUTE

UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF THE LAW



REPORT

THE ROLE OF THE CALIFORNIA ATTORNEY GENERAL IN ENFORCING CIVIL RIGHTS STATUTES

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I. Introduction

For almost forty years the United States and California have demonstrated a strong

public commitment to eradicating racial, ethnic and gender discrimination in all areas of public life, particularly housing, lending, employment, public accommodations and education. A large body of law, both statutory and case law, testifies to this commitment. And in recent years the commitment to fairness and equality has expanded to include additional categories of historically disadvantaged persons, most notably disabled persons.

Despite this effort, discrimination remains a very serious problem in our nation and state. Study after study confirms that racial discrimination, in particular, continues to exist and continues to create significant economic and personal hardships for those who are subject to such discrimination. For example, a 1997 study of unemployment in the San Francisco Bay Area concluded that race was the "dominant factor" in unemployment in the region, and that racial discrimination played a significant part in that finding.¹ A recent book that examined housing discrimination in this country concluded that "the cost imposed on blacks and Hispanics by current housing discrimination comes to \$4.1 billion a year."²

Even more recently, in a report dated February of this year titled "America's Homeownership Gap," the U.S. Conference of Mayors said that statistics collected by the Federal Reserve Board show that "minority households applying for mortgage credit were much more likely to be rejected than white households with similar income." The report further stated:

Despite a dramatic surge in the nation's homeownership rates, academics and housing experts continue to document discriminatory lending practices in inner cities today. The long and infamous history of housing and lending discrimination in this country scarred the lives of millions of families seeking to realize the dreams and aspirations of all Americans—to own a home. Unfortunately, such practices remain with us, in the form of urban redlining, mortgage steering, and other discriminatory actions....The denial of mortgage credit does more than limit the home buying aspirations of families, it limits efforts to revitalize urban areas.³

Clearly, much work remains to be done to ensure that the laws prohibiting discrimination are effectively enforced.

This paper examines one aspect of the enforcement of civil rights laws: the role of the California Attorney General in enforcing California's civil rights laws. More specifically, it addresses the scope of the Attorney General's authority to enforce those laws. The paper first looks directly at the sources and scope of authority for the California Attorney General. Then it briefly describes the role of the United States Attorney General in enforcing the federal civil rights statutes. That inquiry is important because many of the California laws are modeled on the federal laws, and an understanding of the scope of authority for the Attorney General at the federal level lends significant insight to the authority of the state counterpart. This paper then compares the federal and state authority in each of the main areas of concern: housing, lending, employment, education, and public accommodations.

Finally, the paper concludes that under current law the California Attorney General has very broad and significant authority to enforce California's civil rights laws. However, such authority is not clearly spelled out in any one place in the statutes; it must be inferred from looking at the whole picture. Given the ongoing problems of discrimination in our

society, it would be helpful to clarify the situation.⁴

II. Authority of the California Attorney General

A. Sources and Scope of Authority

The California Attorney General has a very broad general grant of authority from both the California Constitution and the Government Code. In addition, certain sections in the civil rights statutes delineate specific mandates for the Attorney General. The California Unfair Competition Law also provides an additional broad grant of authority. This section looks at each of these sources of authority.

1. General Authority: The Constitution & Government Code [§12511](#)
The California Constitution establishes the general, broad grant of authority to the Attorney General. It establishes that

Subject to the powers and duties of the Governor, the Attorney General shall be the Chief Law Officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced.⁵

Statutory law, in establishing the general operating structure of the Attorney General and the Department of Justice, reiterates the broad grant of authority:

The Attorney General has charge, as attorney, of all legal matters in which the State is interested, except the business of the Regents of the University of California and of such other boards or offices as are by law authorized to employ attorneys.⁶

Case law in this area has generally interpreted both the Constitutional and statutory grants of authority in unison. The courts have interpreted the provisions expansively. The Attorney General's authority is limited only when the legislature expressly deprives the Attorney General of the authority to pursue an action in a specified area through a legislative enactment.

The Attorney General has the authority to file any civil action which he or she deems necessary for the enforcement of the laws of California, the preservation of order, and /or the protection of the rights and interest of the public.⁷ In addition, the Attorney General may file any civil action which directly involves the rights and interests of the State.⁸ Since the Attorney General is the chief law officer of the state, "he possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest."⁹ The courts have held unequivocally that it is

the settled rule in California that the Attorney General is authorized "to file any civil action for the enforcement of the laws of the state or the United States Constitution, which in the absence of legislative restriction to the contrary, he deems necessary for the protection of public rights and interests."¹⁰

Federal law also recognizes the broad authority of states' attorney generals. In any suit in federal court where the constitutionality of a state law is at issue, the state attorney general has an absolute right to intervene in that case and have all the rights of a party to the case.¹¹

In addition to these broad grants of authority, many California statutes specifically

delineate the Attorney General's authority.

2. Unruh Act and Bane Act

The Unruh Act deals generally with discrimination in public accommodations and services. It was passed in 1959 and provided that any person denied the rights guaranteed by the Act could sue for damages. Subdivision (c) of §52 of the Civil Code was added in 1976 to specifically authorize the Attorney General to bring a cause of action under the Act.

The Unruh Act specifically states that

Whenever there is reasonable cause to believe that any person or group of persons is engaged in conduct of resistance to the full enjoyment of any of the rights hereby secured, and that conduct is of that nature and is intended to deny the full exercise of the rights herein described, *the Attorney General*, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint.¹²

In 1990, the Legislature enacted the Bane Act,¹³ which expanded the specific authority granted in the Unruh Act. The Bane Act, often called an "anti-hate crime" statute, specifies that the Attorney General, or any district attorney or city attorney, may bring an action for injunctive relief whenever a person "interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion," with the exercise of another person's civil or constitutional rights. The Act specifies that actions under its provisions are independent of any other remedies available under law.¹⁴

3. The Fair Employment and Housing Act

The California Fair Employment and Housing Act (FEHA) establishes several specific roles for the Attorney General. First, it establishes that the Department of Fair Employment and Housing (DFEH) can elect to have the Attorney General prosecute a case if the case is transferred to court from an administrative proceeding.¹⁵ Second, the Attorney General can bring an administrative complaint regarding housing discrimination.¹⁶ The statute also places the following specific mandate on the Attorney General:

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a *pattern or practice* of denying to others the full enjoyment of any of the rights granted by this article, or that any group of persons has been denied any of the rights granted by this article and that denial raises an issue of general public importance, the Attorney General shall commence a civil action in any court.¹⁷

This "pattern or practice" mandate applies specifically in the housing discrimination context; it is not clear whether it applies also in the employment context. The Fair Housing and Employment Act establishes slightly separate procedures for the enforcement of employment discrimination (Chap.7, Article 1) and for the enforcement of housing discrimination (Chap. 7, Art. 2). The above-cited language in §12989.3 refers to the article (Article 2) that addresses housing, rather than employment. However, elsewhere in the same article it states that "where the provisions of this article provide greater rights and remedies to an aggrieved person than the provision of Article 1 [employment discrimination], . . . the provisions of this article shall prevail."¹⁸

4. The Unfair Competition Law

The Unfair Competition Law in the California Business and Professions Code prohibits "unlawful, unfair or fraudulent business practices."¹⁹ The Attorney General, a district attorney, or, when authorized, a city attorney may prosecute acts of "unfair competition."²⁰ An implied right of action also exists to allow private parties to bring suit under these provisions.

The subject matter of the Unfair Competition Law has been interpreted broadly to include "anything that can properly be called a business practice and that at the same time is forbidden by law."²¹ The California Attorney General has utilized this authority to combat violations of Proposition 65,²² and violations of the Insurance Code,²³ among other things. In the latter case, the Attorney General was permitted to prosecute violations of the Insurance Code even though a separate enforcement scheme had been set out in that Code.

Similarly, a district attorney was permitted to prosecute violations of the Mobilehome Parks Act pursuant to his unfair competition authority in *People v. McKale*,²⁴ despite the fact that the district attorney had not been granted enforcement authority under the Mobilehome Parks Act. In *McKale*, the defendants argued that "maintenance of a cause of action in unfair competition for violations of the Mobilehome Parks Act circumvents the specific statutory enforcement scheme provided by the act. The act calls for enforcement by the Department of Housing and Community Development or any city or county which has assumed responsibility under Health and Safety Code section 18300."²⁵ The court determined that this separate enforcement scheme did not preclude an action by the district attorney to prosecute violations of the act as an unfair business practice, and endorsed the People's argument that "even though a specific statutory enforcement scheme exists, a parallel action for unfair competition is proper pursuant to applicable provisions of the Business and Professions Code."²⁶ The court reached this conclusion in part because, under Business and Professions Code section 17205, the remedies and penalties available in an unfair competition action are cumulative to those available pursuant to other state laws. Thus, unless the Mobilehome Parks Act expressly provided that violations of the statute *could not* be prosecuted as acts of unfair competition, the *McKale* court observed that the district attorney could bring suit under its unfair competition authority.²⁷

In an Opinion of the Attorney General written in 1980, the Attorney General answered the question of whether a district attorney was permitted, pursuant to its unfair competition authority, to file civil charges to combat employment discrimination under what is now the Fair Employment and Housing Act.²⁸ According to the opinion, two threshold questions were raised: whether employment discrimination could properly be called a business practice, and whether it was unlawful. The opinion answered both questions in the affirmative, and concluded that a district attorney may file civil actions in response to discriminatory employment practices pursuant to its "unfair practices" authority. The opinion noted several other contexts, including the Mobilehome Parks Act, the Collection Agency Act, and the Accountancy Act, in which the California Supreme Court had permitted district attorneys to file suit pursuant to section 17204.

In *McKale*, the California Supreme Court provided support for the argument that unfair competition authority may be relied upon to prosecute acts of discrimination. In *McKale*, the court concluded that a district attorney had adequately stated a cause of action for discriminatory conduct by the defendant mobile home park owner and managers. In a

brief discussion, the court stated:

Discrimination in housing and business establishments on the basis of religion or ancestry is clearly unlawful [citing former Health and Safety Code provisions that have since been incorporated into FEHA]. Such unlawful business practices constitute unfair competition pursuant to Business and Professions Code section 17200. The People have adequately stated a cause of action capable of withstanding demurrer.²⁹

This logic should also apply to the Attorney General, because it and the district attorney share the same enforcement power under the Business and Professions Code.

B. There Is No Legislative Restriction on the Attorney General's Authority to Enforce the Civil Rights Statutes

The above discussion reveals that under its general constitutional and statutory grant of authority, the Attorney General has the authority to prosecute violations of civil rights laws, even if there were not specific grants of additional authority in the civil rights laws. However, that general grant of authority is conditioned: the Attorney General is authorized to file any civil action he deems necessary, as long as there is no "legislative restriction to the contrary."³⁰ The question then arises: is there a legislative restriction on the Attorney General to enforce California's civil rights statutes?

Generally, legislative repeal of previously granted authority can be accomplished by express or implicit preemption.³¹ However, the courts have applied strict standards when resolving the issue of whether the legislature intended an enactment to strip the Attorney General of Constitutional and statutory authority to bring suits in the public interest.

Our research revealed only one case in which the Supreme Court has found legislative restriction on the Attorney General's authority. In *People ex rel. Deukmajian v. Brown*,³² the Attorney General sued the Governor in a controversy regarding a newly enacted statute. The Attorney General had previously represented the Governor against a public interest group who was suing about the same issue; the Attorney General withdrew from that case. The Attorney General claimed an unrestrained right to sue any public official, including the Governor, due to his role as the "People's legal counsel."³³ The Court held that the Attorney General's constitutional grant of authority to bring suit is limited by the Constitutional provision granting the Governor's powers, and by the express language of the Constitutional grant of power to the Attorney General. The Constitution specifically states that the Governor has "the supreme executive power" of the State,³⁴ and that the Attorney General shall be the Chief Law Officer "subject to the powers and duties of the Governor."³⁵ The Court held that these provisions provided the express language necessary to affirmatively strip the Attorney General of the power to bring suit against the Governor in a case in which he had acted as the Governor's counsel in a related matter.

Courts have been notably reluctant to find that the Attorney General's broad authority has been constrained by statutory regulatory schemes. One case where such constraint was found was *Van de Kamp v. Gumbiner*.³⁶ In that case, the court held that the statutory scheme governing medical non-profit corporations did strip the Attorney General of authority in the area. The general rule, the court stated, was that statutes do not supplant the common law, and thus the Attorney General's common law authority in a field, "unless it appears that the Legislature intended to cover the entire subject or, in other words, to §occupy the field."○³⁷ The court discussed the legislative history of the Nonprofit

Public Benefit Corporation Law in depth, noting that the Attorney General's former authority to bring suits and intervene in suits had been purposely eliminated from the statute. Indeed the express purpose of various statutory enactments had been to vest all authority to regulate the area in the Department of Corporations, rather than the Attorney General. Interestingly, the Attorney General had been one of the main proponents of such legislation.³⁸ The court further noted that express provisions of the new statute specifically granted enforcement authority to the Department of Corporations instead of the Attorney General.³⁹

No cases have addressed whether the FEHA similarly impacts the general authority of the Attorney General. However, as discussed above, the FEHA, rather than stripping the Attorney General of authority, specifically delineates a role for the Attorney General in many places. Also, the Supreme Court has held in the case of *Rojo v. Kliger* that "the FEHA does not supplant other state laws."⁴⁰ The issue in that case was whether individuals could sue for sexual discrimination in employment without first exhausting their remedies under FEHA. The Court held that they could. It noted that FEHA expressly disclaims any intent to repeal other state laws regarding discrimination.⁴¹ The Court also addressed the impact of another FEHA section, which states:

While it is the intent of the Legislature to occupy the field of regulation of discrimination in employment and housing encompassed by the provisions of this part, exclusive of all other laws banning discrimination in employment and housing by any city, city and county, county or other political subdivision of the state, nothing contained in this part shall be construed in any manner or way, to limit or restrict the application of Section 51 of the Civil Code [the Unruh Act].⁴²

The Court called this language "ambiguous," but concluded that it did not evince a legislative attempt to "occupy the field" of combating discrimination to the extent that other state laws were preempted, but instead "indicate[s] a legislative intent to preempt only local law."⁴³ Although the authority of the Attorney General was not an issue in this case, it follows from the Court's analysis that the FEHA is not the sort of comprehensive scheme that was at issue in *Van de Kamp v. Gumbiner*, and thus would not impinge on the general authority of the Attorney General.

III. Role of the Attorney General at the Federal Level

The Civil Rights Division of the Department of Justice was established in 1957. Despite the crucial roles of the Equal Employment Opportunity Division (EEOC) and Department of Housing and Urban Development (HUD) in implementing the civil rights laws, the Civil Rights Division is "the primary institution within the federal government responsible for enforcing federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin."⁴⁴

The Housing and Civil Enforcement Section of the Division enforces Title VIII and Title II, relating to housing, lending, and public accommodations. In the housing context, the Section states, "Consistent with the broad reach of the Statute, the Section has undertaken an array of enforcement activities pursuant to its pattern or practice authority."⁴⁵ The Section has undertaken a major initiative focused upon discriminatory activities by lending institutions, and has settled thirteen lawsuits against banks and mortgage companies since 1991 for a cumulative total of \$33 million in damages to victims, civil penalties and remedial action. In 1992, the Section initiated a program "to

ferret out illegal discrimination in the sale or rental of housing through the use of testers."⁴⁶ Investigatory testing "provides a sophisticated means to detect discriminatory practices which otherwise are unlikely to be discovered." Based on evidence gathered through that program, the Section has commenced 46 lawsuits in 12 states. In the 34 cases in which the Section has obtained a judgment or entered into a settlement, defendants have paid a combined total of nearly \$6.8 million in damages, civil penalties, and other remedies. In the public accommodations context, the Section has "filed and successfully resolved" cases throughout the nation against owners of hotels, health clubs, restaurants and other places of public accommodation. The most notable recent case was against Denny's Restaurants, which resulted in a consent decree aimed at ensuring that no further discrimination will occur.

The Employment Litigation Section within the Civil Rights Division enforces Title VII, which prohibits discrimination in employment, against state and local employers, both when the EEOC refers a case and when the Section independently determines that there is reason to believe that a pattern or practice of discrimination exists. The Section does not provide statistics on the numbers of cases it has pursued in this area, but does briefly describe some of the cases. They include challenging the residency requirements of 35 suburban communities that had the purpose or effect of excluding minorities living in nearby communities.⁴⁷ The Section recently settled a case against the Arkansas Department of Corrections that resulted in \$7.2 million in back pay for more than 1,200 individuals who had been denied employment due to gender discrimination.

The Civil Rights Division also has a section devoted to enforcing laws against discrimination in education -- the Educational Opportunities Section. The Section handles suits referred by the Office of Civil Rights in the Education Department (OCR). It can choose to intervene in private suits alleging discrimination in education and monitors over 400 school districts currently covered by desegregation orders in over 200 desegregation cases. The Section also challenges discrimination and disparities in higher education systems. "The Section has also focused its efforts on addressing such priority issues as sexual and racial harassment, discriminatory student assignments and misuse of tests."⁴⁸

IV. Comparison of State Attorney General's and Federal Attorney General's Authority in Specific Civil Rights Enforcement Areas.

As Section II of this paper demonstrates, the California Attorney General has very broad authority to enforce the civil rights statutes of this state. The Constitution and the Government Code establishes the fundamental authority of the Attorney General to bring suits to enforce the laws of the state. The various civil rights laws mandate specific roles for the Attorney General, while at the same time they do not evince a legislative intent to "occupy the field" to such an extent that the Attorney General's authority is limited by the specifically delineated mandates. In addition, the Unfair Competition Law provides an additional grant of authority.

Even with this conclusion, it is useful to compare the authority of the federal Attorney General with that of the California Attorney General in each of the main areas of civil rights that have been considered. Since the statutes they enforce are quite similar, such a comparison can provide further insight into the appropriate role of the attorney general. Further, while the sources of authority for the Attorney General in California law provide significant guidance in the area of when the Attorney General can file suits, they do not provide much guidance on the closely related issue of the extent of the Attorney General's power to investigate violations of statutes prior to filing suit. A comparison with

the federal system is helpful in that area.

A. Housing and Lending.

The federal Fair Housing Act is similar in both purpose and content to FEHA.⁴⁹ The Secretary of HUD has certified that FEHA is substantially similar to the rights and remedies provided under the federal Act.⁵⁰

Beyond the similarities in the general statutes, the Attorney General's statutory authority under [§ 3614\(a\)](#) of the federal Act is substantially similar to the State Attorney General's authority under [§ 12989.3\(a\)](#) of FEHA. The language in the FEHA granting the Attorney General the "pattern or practice" authority to commence civil actions is nearly identical to the analogous section in the Fair Housing Act. Consequently, the California Attorney General should have same authority to independently investigate housing discrimination as the federal Attorney General.

The federal Attorney General has used its authority to, among other things, institute a program of using testers to investigate discriminatory practices in housing and lending.⁵¹ Since the California Attorney General's authority is as broad as its federal counterpart in this area, it should also have the authority to institute such a program.

B. Employment.

As in the housing context, the California law on employment discrimination is similar to the federal law, and courts will look to cases interpreting one law to aid in interpreting the other.⁵² The Federal Attorney General, citing its authority under the "pattern or practice" language of Title VII, has independently instituted many suits to combat discrimination in employment. It is not entirely clear, however, whether the California Attorney General has been specifically granted such "pattern or practice" authority under the FEHA.⁵³ Further, the Unruh Act has been held not to apply to employment.⁵⁴

Even without the Unruh Act and with the ambiguity in the FEHA, the Attorney General still has authority under the Unfair Competition Law, as well the general constitutional authority, to independently pursue the investigation and prosecution of cases of employment discrimination. This is an area where it would be particularly helpful to have legislative clarification of the specific authority of the Attorney General. Please see the accompanying paper, "Investigatory Testing as a Tool for Enforcing Civil Rights Statutes: Current Status and Issues for the Future," for suggestions on clarification of the Attorney General's authority on that issue.

C. Public accommodations.

At both the federal and state level, the administrative procedure is less involved in this area than in housing or education, and the Attorney General is given the primary responsibility for enforcement.⁵⁵ The federal Attorney General enforces Title II, but has not been as aggressive with this Title as with others because Title II is "limited in scope and relief."⁵⁶ The Unruh Act, in contrast, is quite broad in scope and allows for damages and injunctive relief.

Although the Unruh Act does not use the same "pattern or practice" language as the federal law uses in Title II, the role specified for the Attorney General in the Unruh Act appears to be just as broad. The Unruh Act provides that

Whenever there is reasonable cause to believe that any person or group of

persons is engaged in conduct of resistance to the full enjoyment of any of the rights hereby secured, and that conduct is of that nature and is intended to deny the full exercise of the rights herein described, the Attorney General, any district attorney or city attorney, or any person aggrieved by the conduct may bring a civil action in the appropriate court by filing with it a complaint.⁵⁷

Arguably a "conduct of resistance to the full enjoyment of any of the rights here secured" is even a lower standard than that established in Title II: the federal Attorney General can file suit whenever he or she

has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described.⁵⁸

Therefore, the California Attorney General has as much or greater authority to enforce the laws prohibiting discrimination in public accommodations as the U.S. Attorney General.

D. Education.

At both the federal and the state level the statutory mandates on the Attorney General are less clear in the education context than in the other contexts. The U.S. Attorney General is authorized to file suit when the OCR cannot resolve a case administratively, but there does not appear to be the broad, specific grant of "pattern or practice" authority that exists in the other areas. Nonetheless, the Education Opportunities Section of the Civil Rights Division of the U.S. Attorney General maintains a significant presence in this field.⁵⁹

Similarly in California, the statutes prohibiting discrimination in schools do not provide for a specific role for the Attorney General. The general grant of authority appears to have been enough to allow the California Attorney General to bring suits in the past. In *Lynch v. San Diego Unified School District*,⁶⁰ the Attorney General brought a mandamus action against a school district seeking to require the district to exercise its discretion to alleviate and eliminate racial imbalance in its schools. The District contended that the Attorney General lacked standing to bring the suit. The Court rejected that contention, citing the "settled rule" that the Attorney General is authorized to file any civil action he deems necessary for the enforcement of the laws of the state, absent a legislative restriction.⁶¹ The court went on to state that it is in the public interest to "require a school district to comply with the provisions of the United States Constitution guaranteeing equal protection of the laws. There is no legislative restriction in the premises."⁶² The same can be said for California's statutory laws prohibiting discrimination.

V. Conclusion

Based on general grants of authority, specific statutory grants of authority, and a comparison of how similar grants of authority to the federal Attorney General have been interpreted at the federal level, the California Attorney General has very broad and significant authority to enforce California's civil rights laws. In most areas of civil rights law, such authority clearly includes the ability to bring suits when the Attorney General has reasonable cause to believe that a pattern or practice of discrimination is occurring. Less clear is the authority to conduct independent investigations as necessary to uncover

such patterns or practices. A strong argument can be made that such investigatory authority is a necessary and logical adjunct to the clear authority to bring an independent action. But such authority is not clearly spelled out in any one place in the statutes; it must be inferred from looking at the whole picture. Further, while the Attorney General's authority appears to be incontrovertible in some areas, such as enforcing laws against housing discrimination, it is less clear in other areas, such as enforcing laws against employment discrimination.

Given the ongoing problems of discrimination in our society, it would be helpful to clarify the situation and specifically state that the California Attorney General has the authority to independently investigate and, if necessary, prosecute, violations of the statutes protecting the civil rights of Californians. The accompanying paper looks in more depth at the issue of investigatory testing and provides specific suggestions on how legislation could clarify the appropriate role for the Attorney General in this area.



[FRAN.HTM]

FOOTNOTES

1. News Release, Dec. 2, 1997, University of California at Berkeley, "New evidence points to Bay Area job discrimination, according to UC Berkeley researchers." ([back to text](#))
2. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination*, John Yinger (1996), at p. 103. See also, "Housing California's Families: The End of the American Dream?" report of the Joint Select Task Force on the Changing Family, June 1990 (states that discrimination is still rampant in California and that state and federal discrimination statutes are not deterring discrimination as intended, mainly because of their lax enforcement and minimal penalties.) ([back to text](#))
3. Quoted in, "HUD Secretary Announces Investigation of Mortgage Lending Discrimination," U.S. Newswire, Mar. 10, 1998, available in 1998 WL 5683670. ([back to text](#))
4. For a brief overview of the applicable civil rights laws, both state and federal, please see Appendix A, "Overview of Federal and State Civil Rights Laws." ([back to text](#))
5. Cal. Const. Article V ♦13. ([back to text](#))
6. Cal. Govt. Code ♦12511. ([back to text](#))
7. *Pierce v. Superior Court*, 1 Cal. 2d 759 (1934). ([back to text](#))
8. *Id.*; *People v. Birch Sec. Co.*, 86 Cal.App. 2d 703 (1948); *Lynch v. San Diego Unified School District*, 19 Cal.App. 3d 252 (1971). ([back to text](#))
9. *D'Amico v. Board of Medical Examiners et al.*, 11 Cal.3d 1, 15 (1974). ([back to text](#))
10. *Lynch v. San Diego Unified School District*, *supra*, 19 Cal.App. 3d at 258, citing *People ex rel. Lynch v. Superior Court*, 1 Cal.3d 910, 912, fn.1; ([back to text](#))
11. 28 U.S.C. 2403(b). ([back to text](#))
12. Cal. Civ. Code ♦ 52(c) (emphasis added). ([back to text](#))
13. Cal. Civ. Code ♦52.1. ([back to text](#))

14. Cal.Civ.Code ♦52.1(g). ([back to text](#))
15. Cal. Govt. Code ♦ 12965(c)(2); 12989(c). ([back to text](#))
16. Cal. Govt. Code ♦12980(b). ([back to text](#))
17. Cal. Govt. Code ♦12989.3(a), (emphasis added). ([back to text](#))
18. Cal. Govt. Code ♦12980(c). ([back to text](#))
19. Cal. Bus. & Prof. Code ♦♦ 17200-17209. These provisions may be referred to collectively as the "Unfair Competition Law" ("UCL"). See *Stop Youth Addiction, Inc. v. Lucky Stores*, 17 Cal.4th 553, 558 n.4 (1998). ([back to text](#))
20. Cal. Bus. & Prof. Code ♦17204; "unfair competition" is defined in ♦17203. ([back to text](#))
21. *Bank of the West v. Superior Court*, 2 Cal.4th 1254 (1992). ([back to text](#))
22. *People ex rel. Daniel E. Lungren v. Superior Court*, 41 Cal. Rptr. 2d 903, 912 (1995). ([back to text](#))
23. *Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377 (1992). ([back to text](#))
24. 25 Cal.3d 626 (1979). ([back to text](#))
25. *Id.* at 632. ([back to text](#))
26. *Id.* at 633. (citing *Barquis v. Merchants Collection Assn.*, 7 Cal.3d 94 (1972)). ([back to text](#))
27. *Id.* ([back to text](#))
28. See Op. Att'y Gen, No. 80-301 (1980), available in 1980 WL 96865. ([back to text](#))
29. *McKale, supra* at 637. ([back to text](#))
30. *Lynch v. San Diego Unified School District, supra*, at 258. ([back to text](#))
31. Recently the Supreme Court distinguished between the doctrine of preemption and that of "implied repeal." *Stop Youth Addiction, Inc. v. Lucky Stores* 17 Cal.4th 553 (1998). The implied repeal doctrine applies when two or more states concern the same subject matter and are irreconcilably in conflict, whereas the preemption doctrine primarily concerns preemption of state law by federal law. ([back to text](#))
32. 29 Cal.3d 150 (1981). ([back to text](#))
33. *Id.* at 157. ([back to text](#))
34. Cal.Const. Art. V, ♦1. ([back to text](#))
35. Cal.Const. Art. V, ♦13. ([back to text](#))
36. 221 Cal.App.3d 1260 (1990). ([back to text](#))
37. *Id.* at 1283, internal citations omitted. ([back to text](#))
38. *Id.* at 1284-85. ([back to text](#))
39. *Id.* at 1284. See, e.g., Cal. Corp. Code ♦10821. ([back to text](#))
40. 52 Cal.3d 65 (1990). ([back to text](#))
41. *Id.* at 73, citing Cal. Govt. Code ♦12993(a). ([back to text](#))

42. Cal. Govt. Code [◆12993\(c\)](#). ([back to text](#))
43. *Id.* at 78. ([back to text](#))
44. US Dept. of Justice Homepage, Activities and Programs of the Civil Rights Division, at www.usdoj.gov. ([back to text](#))
45. *Id.* ([back to text](#))
46. *Id.* ([back to text](#))
47. *Id.* ([back to text](#))
48. *Id.* ([back to text](#))
49. *Walnut Creek Manor v. Fair Employment and Housing Commission*, 54 Cal.2d 245, 278 (1991). ([back to text](#))
50. *Id.* ([back to text](#))
51. See Section III, *supra*. ([back to text](#))
52. *Pereira v. Schlage Electronics*, 902 F.Supp.1095 (N.D.Cal. 1995); *Carr v. Barnabey's Hotel Corp.*, 23 Cal.App.4th 14 (1994); *but see, Page v. Superior Court*, 31 Cal.App.4th 1206 (1995) (not appropriate to follow federal decisions where distinct language of FEHA evidences legislative intent different from that of Congress). ([back to text](#))
53. See Section II.A.3., *supra*. ([back to text](#))
54. *Rojo v. Kliger, supra*, at 77, *citing, Alcorn v. Anbro Engineering, Inc.*, 2 Cal.3d 493 (1970). ([back to text](#))
55. Although in California a person claiming to have his or her rights under the Unruh Act violated may choose to file a complaint with the DFEH and utilize that administrative procedure. ([back to text](#))
56. US Dept. Of Justice Homepage, *supra*. ([back to text](#))
57. Cal. Civ. Code [◆52\(c\)](#). ([back to text](#))
58. 42 U.S.C. [◆2000a-5\(a\)](#). ([back to text](#))
59. See Section III, *supra*. ([back to text](#))
60. 19 Cal.App.3d 252 (1971). ([back to text](#))
61. *Id.* at 258. ([back to text](#))
62. *Id.* ([back to text](#))