Article

The Poly Problem in Zoning: Redefining "Family" for a Changing Society

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Single-family zoning has long dictated not only where people may live but also with whom. Although extensively critiqued for perpetuating racial and economic exclusion, these laws also privilege relationships defined by blood, marriage, or adoption and marginalize nontraditional families. This Article focuses on a particularly overlooked group: polyamorous families who often face legal uncertainty, social exclusion, and housing discrimination due to restrictive zoning definitions of "family."

As polyamory gains cultural visibility and increasing legal recognition—through West 49th Street, LLC v. O'Neill *and municipal reforms in cities like Somerville and Cambridge—now is the time to examine zoning's role in reinforcing outdated conceptions of family. Drawing on recent demographic data on poly relationships and broader shifts in family structure, this Article traces how zoning definitions have evolved from early functional approaches to rigid frameworks that exclude nontraditional households. It then argues for reform, proposing a new definition that recognizes relationships of mutual support, care, and commitment, aligning with* Obergefell v. Hodges *and modern family realities.*

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Updating zoning definitions is both a legal necessity and a recognition of how families actually function today. By removing outdated barriers, municipalities can create inclusive, equitable housing policies that reflect the full spectrum of familial relationships. This Article provides a path toward reform to ensure every family, regardless of structure, has the right to call a place home.

INTRODUCTION

Single-family zoning has long been hailed as the "hallmark" of American land use policy[1] and the "cornerstone" of municipal zoning.[2] It evokes images of quiet, low-density neighborhoods—tree-lined streets, fresh air, minimal traffic, and a safe, nurturing environment for raising children. But achieving this vision relies on a fundamental principle: exclusion.[3] Zoning laws separate compatible from incompatible uses, shielding these idyllic enclaves from the perceived threats of industrial and commercial activity.[4] As the Supreme Court famously put it, the goal is to prevent "a pig in the parlor instead of the barnyard."[5]

But single-family zoning laws exclude more than incompatible land uses—they exclude people, too. Studies on the discriminatory effects of exclusionary zoning reveal that it perpetuates residential segregation and economic disparity for immigrant, racial minority, and low-income communities.[6] The exclusionary impacts of single-family zoning, however, extend even further. American zoning laws have long dictated not only where people may live but also who may live together. Modern ordinances remain largely anchored in the traditional family model, privileging relationships based on blood, marriage, or adoption. While some municipalities allow unrelated individuals to cohabitate, these households must often meet strict criteria to be treated

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1. David R. Burch & Stephen M. Ryals, *Land Use Controls: Requiem for Zoning and Other Musings on the Year 1982*, 15 URB. LAW. 879, 880 (1983).

2. Edward H. Ziegler, Jr., *The Twilight of Single-Family Zoning*, 3 UCLA J. ENV'T L. & POL'Y 161, 164 (1983).

3. Frank S. Alexander, *The Housing of America's Families: Control, Exclusion, and Privilege*, 54 EMORY L.J. 1231, 1257 (2005) (noting that, "[b]y its nature, zoning tends to be exclusionary").

4. *Id.* (explaining that zoning "is designed to segregate activities so as to minimize harm and conflict"); Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365, 394 (1926) (citing with approval reports indicating that municipal zoning increases the safety and security of home life, prevents automobile accidents, reduces noise and traffic in residential areas, and "preserve[s] a more favorable environment in which to rear children").

5. *Euclid*, 272 U.S. at 388.

6. *See, e.g.*, Sarah J. Adams-Schoen, *The White Supremacist Structure of American Zoning Law*, 88 BROOK. L. REV. 1225, 1231–32, 1297–1303 (2023) (arguing that "facially race neutral" zoning laws have created multigenerational harms by driving racial segregation); Bethany R. Berger, *Race to Property: Racial Distortions of Property Law, 1634 to Today*, 64 ARIZ. L. REV. 619, 650–51 (2022) (discussing zoning laws that divided communities by race, ethnicity, and class).

like traditional families.[7] Even then, zoning laws frequently impose arbitrary and low numerical caps on the number of unrelated individuals that can occupy a single-family zoned dwelling, effectively excluding many nontraditional families from desirable residential areas.[8]

These restrictions place a significant burden on polyamorous families, which often include multiple committed adult partners living together and (in some cases) raising children.[9] By narrowly defining family, zoning laws create legal uncertainty, reinforce social exclusion, restrict housing options, and undermine the fundamental principle that land use regulations should govern property use—not police personal relationships.[10]

Now is a crucial moment to address the rights of poly families in zoning law.[11] In recent years, polyamory has gained significant cultural visibility, with mainstream magazines, television shows, films, and books exploring poly relationships and lifestyles.[12] This surge in media, entertainment, and academic discourse suggests a broader cultural shift toward recognizing and accepting polyamory.[13]

As public discourse around polyamory expands, legal recognition for poly individuals and relationships has begun to take shape. In 2022, a New York court in *West 49th Street, LLC v. O'Neill* ruled that succession rights for rent-stabilized housing cannot be limited to monogamous couples, allowing a member of a poly triad to claim tenancy rights.[14] At the municipal level,

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7. *See infra* Part III.

8. *See infra* Part II.B.2.

9. *See, e.g.*, John-Paul Boyd, *Polyamory in Canada: Research on an Emerging Family Structure*, VANIER INST. OF THE FAM. 6–9 (2017), https://ucalgary.scholaris.ca/server/api/core/bitstreams/35ed4238-928d-4637-88e3-d561ddd2cafa/content [https://perma.cc/F6S7-2Y7C] ("The responsibilities of people involved in long-term, committed polyamorous families tend to be complicated, especially when those responsibilities must intersect with . . . the law."); *see also infra* Part I.C.

10. Boyd, *supra* note 9, at 6–9.

11. Throughout this Article the word "poly" is used interchangeably with "polyamorous." *See* ELISABETH SHEFF, THE POLYAMORISTS NEXT DOOR: INSIDE MULTIPLE—PARTNER RELATIONSHIPS AND FAMILIES 2 (2013).

12. *See infra* Part I.B.

13. *See* CHRISTOPHER M. GLEASON, AMERICAN POLY: A HISTORY 2 (2024) (discussing how the increase in mainstream attention on polyamory "has led some cultural commentators to ask whether polyamory represents a new stage in an ongoing sexual revolution").

14. W. 49th St., LLC v. O'Neill, 178 N.Y.S.3d 874, 882 (Civ. Ct. 2022).

cities, such as Somerville and Cambridge, Massachusetts, have extended domestic partnership protections to poly families, granting them hospital visitation rights and the ability to confer insurance benefits on their partners.[15] More recently, cities like Oakland and Berkeley, California, have enacted the nation's first anti-discrimination laws explicitly protecting poly individuals.[16] Although these legal strides mark progress, poly individuals still face disproportionately high rates of harassment and discrimination.[17] This fact is particularly salient in housing, where restrictive definitions of family continue to create barriers to stable living arrangements.

While this Article focuses primarily on how zoning restrictions exclude poly families, narrow definitions of family in zoning ordinances also marginalize a broad spectrum of nontraditional households. LGBTQ+ chosen families, co-parenting partnerships, intergenerational caregiving arrangements, unmarried cohabitating couples, veterans' support households, and other communal living structures often operate no differently than nuclear families related by blood, marriage, or adoption, in terms of financial interdependence, caregiving, and neighborhood stability.[18] Yet, in jurisdictions that rigidly limit unrelated

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15. Ellen Barry, *A Massachusetts City Decides to Recognize Polyamorous Relationships*, N.Y. TIMES (July 2, 2020), https://www.nytimes.com/2020/07/01/us/somerville-polyamorous-domestic-partnership.html [https://perma.cc/HT7W-PYYY]; Elizabeth Nolan Brown, *Cambridge Will Recognize Polyamorous Partnerships and Other Domestic Arrangements with More than 2 Adults*, REASON (Mar. 10, 2021), https://reason.com/2021/03/10/cambridge-will-recognize-polyamorous-partnerships-and-other-domestic-arrangements-with-more-than-2-adults [https://perma.cc/XT6W-SS7J].

16. Ally Markovich, *Berkeley Law Extends Legal Protections to Polyamorous People and Non-Nuclear Families*, BERKELEYSIDE (May 22, 2024), https://www.berkeleyside.org/2024/05/22/berkeley-law-antidiscrimination-relationship-family-structure-polyamory [https://perma.cc/8XTX-3FJ9]; *Transcript of All Things Considered: Polyamorous Families are Recognized and Protected in Oakland, CA*, NPR (May 31, 2024) [hereinafter *All Things Considered*], https://www.npr.org/2024/05/31/nx-s1-4966296/polyamorous-families-are-recognized-and-protected-in-oakland-ca [https://perma.cc/5L4T-2SQ2].

17. *See infra* Part I.B. and notes 101–107.

18. *See* Press Release, Polyamory Legal Advoc. Coal., Cambridge Becomes 2nd US City to Legalize Polyamorous Domestic Partnerships (Mar. 9, 2021), https://static1.squarespace.com/static/602abeb0ede5cc16ae72cc3a/t/6047c7f856dc6d6501ec8e10/1615316984759/2021-03-09+PLAC+Press+Release+revised.pdf [https://perma.cc/6WQY-9CQC] ("Legal recognition of [poly] families reduces social stigma and provides families with the stability we all deserve."); *see also infra* Part I.A.

cohabitants, these families face the same legal uncertainty and exclusion as poly households—despite embodying and living out the same fundamental dynamics as traditional families.[19]

Single-family zoning has faced extensive critique, particularly, for its restrictive definitions of family in municipal codes.[20] Yet, little attention has been given to the specific harms these definitions impose on poly families[21]—or to practical zoning-based reforms that could address these inequities for all nontraditional households.

This Article, drawing on recent demographic data on poly relationships, poly families, and broader shifts in family structure, examines the historical, legal, and constitutional dimensions of family-based zoning restrictions. It argues for an inclusive framework that reflects the realities of modern households. Part I explores the history, principles, and legal challenges of polyamorous relationships within a system designed for monogamy. Part II traces how zoning laws have evolved in a general arc from broad functional definitions of family to more rigid frameworks that marginalize nontraditional households. Part III advocates for redefining family in zoning laws to ensure protections for poly families and other nontraditional arrangements. Drawing on *Obergefell v. Hodges* and other Supreme Court precedents, this Article contends that, just as marriage law evolved, zoning laws must also evolve to prevent the arbitrary exclusion of diverse families. Specifically, this Article argues that zoning laws should define a family as "a single person or any number of people related by blood, marriage, or adoption, or who are in a relationship of mutual support, caring, and commitment." Modernizing zoning definitions to align with contemporary family realities would ensure municipalities define a home not by outdated legal formalities, but by the people who share it.

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19. *See infra* Part III.B.1.d. and notes 351–54.

20. *See, e.g.*, Kate Redburn, *Zoned Out: How Zoning Law Undermines Family Law's Functional Turn*, 128 YALE L.J. 2412 (2019); Sara C. Bronin, *Zoning for Families*, 95 IND. L.J. 1, 5 (2020); Rigel C. Oliveri, *Single-Family Zoning, Intimate Association, and the Right to Choose Household Companions*, 67 FLA. L. REV. 1401, 1411–16 (2016); Alexander, *supra* note 3, at 1257.

21. *But see* Douglas A. Pinheiro, Note, *Monogamy Zoning: Single-Family Zoning and the Exclusion of Polyamorous Relationship Groups*, 2023 U. ILL. L. REV. 279, 279 (2023) (recommending that "local governments [ ] adopt antidiscrimination measures that would prevent the discriminatory application of single-family zoning ordinances against polyamorous relationship groups").

I. UNDERSTANDING POLYAMOROUS RELATIONSHIPS

To appreciate the discriminatory effects of restrictive zoning practices on poly families, as well as possible ways to address them, it is necessary to first understand exactly what polyamory involves. Although polyamory may be relatively simple to define, its practice, structure, and dynamics are more complex. This Part explores the historical roots, core principles, and diverse structures of polyamory, highlighting how these relationships function in practice and the legal challenges they face within a system designed around monogamy.

A. STRUCTURES AND DYNAMICS OF POLYAMORY

Polyamory, which comes from the Greek word *poly* (many) and the Latin word *amor* (love), describes "the practice, state[,] or ability" of each person[22] to have multiple romantic or sexual relationships simultaneously.[23] Humans have pursued non-monogamous relationships "throughout history and across cultures."[24] Polyamory, as a label, was coined in the 1990s,[25] but groups advocating for multiple partner relationships trace back to the mid-1800s in the United States.[26] New Harmony in Indiana and Brook Farm in Massachusetts are two examples of

22. Gender equality in the ability to engage with multiple romantic partners is both a cornerstone of polyamory and one of the features that distinguishes polyamory from polygamy. *See* SHEFF, *supra* note 11, at 1, 28 (discussing what polyamory is and the impact gender equality can have on poly relationships); GLEASON, *supra* note 13, at 3.

23. Hadar Aviram, *Make Love, Not Law: Perceptions of the Marriage Equality Struggle Among Polyamorous Activists*, 7 J. BISEXUALITY 261, 264 (2008); Elisabeth Sheff, *Polyamorous Women, Sexual Subjectivity and Power*, 34 J. CONTEMP. ETHNOGRAPHY 251, 252 (2005). *But see* MIMI SCHIPPERS, POLYAMORY, MONOGAMY, AND AMERICAN DREAMS: THE STORIES WE TELL ABOUT POLY LIVES AND THE CULTURAL PRODUCTION OF INEQUALITY 2 (2020) (arguing that contemporary articulations of polyamory "rely too heavily on romance and sex" and that the definition of polyamory should include asexual and non-romantic poly relationships). It is also possible to practice "solo polyamory," which refers to individuals who have multiple relationships but do not seek cohabitation or marriage with any partner. *See* Jiale Man, Exploring Polyamorous Relationship Experiences of Lesbian, Gay, Bisexual, and Pansexual Individuals (June 2023) (Ph.D. dissertation, Virginia Commonwealth University) (VCU Scholars Compass) https://scholarscompass.vcu.edu/etd/7429 [https://perma.cc/RLU9-PEFM] ("Due to the diversity of polyamorous relationship structures, a rigid conceptualization of polyamory should be cautioned.").

24. SCHIPPERS, *supra* note 23, at 1; GLEASON, *supra* note 13, at 6.

25. GLEASON, *supra* note 13, at 3.

26. *See* SHEFF, *supra* note 11, at 46 (discussing the early history of non-monogamy in the United States).

utopian communal experiments that rethought traditional marriage and briefly flourished.[27] In 1848, John Humphrey founded the Oneida community whose complex internal structure rejected all monogamous marriage.[28]

Later, in the 1960s and 1970s, various countercultural efforts arose that involved increased sexual and gender latitude.[29] One specific form of countercultural expression was the commune.[30] This version of the community movement, which had originally existed in the late nineteenth century, maintained a focus on creating a chosen family for people who were disillusioned with dominant lifestyle choices of the time.[31] During this era, John and Barbara Williamson established the Sandstone community, which "served to network polyamorous clergy, researchers, writers, and artists on the East coast."[32] The "Kerista" commune, which is "possibly the most influential nonmonogamous, protopolyamorous intentional community, was based in the San Francisco Bay Area between 1971 and 1991."[33] Among other practices, it emphasized group marriage, shared parenting, and interwoven household finances.[34]

Professor Elizabeth Emens has identified five principles of polyamory that are both aspirational and descriptive:

> (1) self-knowledge (including understanding and processing one's own sexual identity, sexual orientation, and related emotions);
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> (2) radical honesty (about what the parties involved feel and do);
>
> (3) consent (all parties must be able to make an informed decision to participate);

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27. GLEASON, *supra* note 13, at 8.

28. *See* SHEFF, *supra* note 11, at 46. One notable aspect of the Oneida community was its practice of asking all adults to treat all children in the community as their own, without special preference for their biological children.

29. *See* Christopher M. Gleason, *The Surprising Political Evolution of American Polyamory*, TIME (Nov. 13, 2023), https://time.com/6331379/polyamory-history [https://perma.cc/8D84-E65T].

30. *Id.*

31. SHEFF, *supra* note 11, at 47.

32. *Id.* (citation omitted).

33. *Id.*; *see also* Gleason, *supra* note 29.

34. SHEFF, *supra* note 11, at 47, 48 (citation omitted).

(4) self-possession (emphasizing autonomy in all aspects of the relationship); and

(5) privileging love and sex ("when it comes to sex and love, more expression and experience may truly be better than less").[35]

While these approaches to defining polyamory emphasize behavioral or character-based dimensions,[36] some argue that polyamory is best described as a facet of sexual orientation—one "hardwired or constructed" as a part of one's identity.[37]

Because honesty and consent among the parties involved is a core aspect of polyamory,[38] it is considered one form of "consensual" or "ethical" non-monogamy.[39] Adultery would be considered another example of non-monogamy, but, because of the fundamental dishonesty associated with the behavior, it would not qualify broadly as consensual non-monogamy (CNM) or narrowly as polyamory.[40]

Another practice—polygamy—is sometimes included by scholars writing on poly issues.[41] Polygamy is one person married to multiple other people.[42] Given the well-documented history of the Mormon Church in this country,[43] most people thinking of the general concept of plural marriage imagine the specific

35. Elizabeth F. Emens, *Monogamy's Law: Compulsory Monogamy and Polyamorous Existence*, 29 N.Y.U. REV. L. & SOC. CHANGE 277, 320–30 (2004).

36. *See* SHEFF, *supra* note 11, at 24 (describing the perspective that polyamory is a lifestyle choice that gives polyamorists greater relationship flexibility than monogamists usually allow themselves).

37. *See generally* Ann E. Tweedy, *Polyamory as a Sexual Orientation*, 79 U. CIN. L. REV. 1461, 1483 (2011).

38. Hadar Aviram & Gwendolyn M. Leachman, *The Future of Polyamorous Marriage: Lessons from the Marriage Equality Struggle*, 38 HARV. J.L. & GENDER 269, 273 (2015); *see* SHEFF, *supra* note 11, at 61 (discussing the social rules in poly communities); GLEASON, *supra* note 13, at 3 (discussing the importance of consent and honesty within polyamorous relationships).

39. Ryan Scoats & Christine Campbell, *What Do We Know About Consensual Non-Monogamy?*, 48 CURRENT OP. PSYCH. 1, 1 (2022).

40. Sally F. Goldfarb, *Legal Recognition of Plural Unions: Is a Nonmarital Relationship Status the Answer to the Dilemma?*, 58 FAM. CT. REV. 157, 160 (2020).

41. *See generally* Casey E. Faucon, *Third Parties with Benefits*, 17 STAN. J.C.R. & C.L. 185, 194–213 (2021) (discussing different ways in which poly families structure their relationships); SCHIPPERS, *supra* note 23, at 18–38.

42. SHEFF, *supra* note 11, at 1.

43. Goldfarb, *supra* note 40, at 159–60.

example of polygyny, or one man marrying more than one woman.[44] But polyandry also exists: one woman married to multiple men.[45]

In any case, polygamy in its various forms is illegal in all fifty states.[46] And America's history with polygamy has generated the conclusion that it is marked by "spousal and child abuse"[47] and "rank inequality and female subservience" and that it "invites exploitation of and degrading competition among wives, with often baleful social and familial consequences."[48] Because serious questions exist about the ethical nature of polygamy, this Article does not consider it CNM or an example of polyamory, as defined above.[49] For this reason, polygamy will not be addressed further.

From a practical perspective, polyamory encompasses an extraordinarily wide and fluid set of individual decisions and practices, ranging from internal relationship dynamics to cohabitation choices of the parties involved.[50] The nearly limitless combinations that poly families choose has led one practitioner to describe them as "designer relationships."[51]

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44. Seventy-eight percent of polygamists in the world practice polygyny. Faucon, *supra* note 41, at 196 (citing Casey E. Faucon, *Marriage Outlaws: Regulating Polygamy in America*, 22 DUKE J. GENDER L. & POL'Y 1, 3 (2014)); Adrienne D. Davis, *Regulating Polygamy: Intimacy, Default Rules, and Bargaining for Equality*, 110 COLUM. L. REV. 1955, 1966 (2010).

45. Goldfarb, *supra* note 40, at 168 n.18.

46. *See* GLEN W. OLSON & TERRY LEE BRUSSEL-ROGERS, FIFTY YEARS OF POLYAMORY IN AMERICA: A GUIDED TOUR OF A GROWING MOVEMENT 16 (2022) (discussing polygamy as a "crime of fraud").

47. Faucon, *supra* note 41, at 197 (noting that "[p]olyamorists politically and socially distinguish themselves from the traditional religious polygynists because of the latter's negative perceptions regarding spousal and child abuse and its connection to fundamentalist religions").

48. Charles Krauthammer, *When John and Jim Say, "I Do,"* TIME (July 22, 1996), https://time.com/archive/6729333/when-john-and-jim-say-i-do [https://perma.cc/TN5E-5LXK].

49. *But see* Tweedy, *supra* note 37, at 1481 (arguing that "[t]o the extent polygamists ascribe to the basic definition of polyamory, adhere to the values associated with polyamory, and identify themselves as polyamorists, they fall within the scope of polyamory").

50. One of the most common poly structures is the open marriage, in which two people in a relationship agree that one or both of them may also pursue relationships with other individuals. SHEFF, *supra* note 11, at 6, 165.

51. *See id.* at 21 (discussing polyamorists ability to shape their relationships however they wish).

As a starting point, a "polycule" refers to a network of interconnected partners—some or all of whom may be romantically connected (and even married).[52] One common polycule is a "vee" relationship, in which one individual (the "hinge") is romantically involved with two others who are not romantically involved with each other.[53] Other variations include "triads" (three people in a romantic relationship), and "quads" (four people in a romantic relationship),[54] although there is no theoretical limit on the number of parties in a polycule.[55]

There are at least two additional practical dimensions to any polyamorous relationship that drive how its members intertwine their lives with one another and engage with the outside world. First, any poly relationship can be described by whether its members look exclusively to the polycule for romantic connections or whether they are open to forming such relationships with outside individuals.[56] Polycules that are essentially closed to outside relationships are sometimes described as practicing "polyfidelity."[57] In contrast, one of the most common forms of poly relationship is the "open couple," in which two people live together and also have, or at least are open to, additional outside romantic relationships.[58]

Second, the members of any polycule may agree among themselves to some sort of hierarchical arrangement. In those relationships, some partner(s) might occupy designated primary, secondary, or even tertiary roles.[59] Primary partners typically share deep emotional commitments, and they often live together, jointly manage their finances, make major life decisions

52. OLSON & BRUSSEL-ROGERS, *supra* note 46, at 126 (explaining that a polycule "describes the connections or links between people involved intimately with each other, sometimes described as a network of people in polyamorous relationships").

53. SHEFF, *supra* note 11, at 12.

54. *Id.* at 13.

55. *Id.* at 5. While this statement is true, most poly families combine into groups ranging from two to five people. *Id.* at 2.

56. Emens, *supra* note 35, at 308; *see* SHEFF, *supra* note 11, at 3–17 (discussing different levels of sexual exclusivity).

57. SHEFF, *supra* note 11, at 3.

58. *Id.* at 6, 165.

59. Faucon, *supra* note 41, at 201 ("Many polyamorous relationships have what is called the 'primary' couple, who often share a household and who each may have a series of secondary or tertiary relationships with other adults that do not live within the household.").

as a unit, and, in some cases, raise children together.[60] In contrast, secondary partners maintain an emotional bond but tend to keep their lives more independent—possibly having separate residences and finances, as well as potentially less intense emotional bonds.[61] Tertiary relationships receive less time and energy compared to primary and secondary partnerships, with tertiary partners often playing a more peripheral role in the other members' lives.[62] Secondary and tertiary partners often live separately from the partners in the primary relationship.[63] Regardless of relationship structure, "many polyamorists emphasize chosen family as central to their lives."[64]

An alternative internal structure would be to consciously adopt a non-hierarchical dynamic in which all partners would be considered equal.[65] So, for example, a vee relationship might involve Sara as the hinge and Greg and Rachel as the other members. In this dynamic, Greg and Rachel would be described as "metamours," a term used to describe individuals who share a partner in common but do not have a romantic or sexual connection with one another.[66] If this polycule decided that Rachel would be primary and Greg secondary, that might manifest as Rachel being able to spend more time with Sara than Greg, or it could manifest as Rachel, but not Greg, regularly sharing a bedroom with Sara. Alternatively, if this vee were non-hierarchical, the default assumption would be that Sara's relationship with Greg would be on equal footing to that of Sara's relationship with Rachel in terms of time spent together, living arrangements, emotional investment, and other considerations. Of course, the specific details of any poly relationship—or non-poly relationship, for that matter—may vary widely and resist easy compartmentalization.

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60. SHEFF, *supra* note 11, at 17. Nesting partners typically refers to those individuals who live together. *Id.* at 18.

61. *Id.* at 17.

62. *Id.*

63. Faucon, *supra* note 41, at 201.

64. SHEFF, *supra* note 11, at 41.

65. *See generally* Aviram & Leachman, *supra* note 38, at 298–99 (discussing various structures of polyamorous relationships); Christian Klesse, *Marriage, Law and Polyamory. Rebutting Mononormativity with Sexual Orientation Discourse?*, 6 OÑATI SOCIO-LEGAL SERIES 1348, 1352 (2016), https://ssrn.com/abstract=2891035 [https://perma.cc/GMJ6-HGS3] (explaining that polyamorous relationships can take on many forms).

66. SHEFF, *supra* note 11, at 20.

B. FROM MARGINS TO MAINSTREAM: CULTURAL VISIBILITY AND SOCIAL TRENDS

CNM, and polyamory in particular, have emerged lately as focal points of extensive mainstream media and entertainment coverage, highlighting potentially shifting societal values and practices. In April of 2024, *The New York Times Magazine* featured a story on a twenty-person polycule in Boston, exploring its internal structure, boundaries, and physical and emotional dynamics.[67] Similar articles were published in *New York Magazine* in 2024[68] and in the *New Yorker* in 2023.[69] Not to be outdone, *The Atlantic* published an article critiquing polyamory in 2024.[70] Since 2023, feature articles on CNM, with a special emphasis on polyamory, have also been published in *Cosmopolitan*,[71] *San Diego Magazine*,[72] *Maclean's*,[73] and *Vanity Fair*,[74] to name a few.

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67. Daniel Bergner, *Lessons from a 20-Person Polycule*, N.Y. TIMES MAG. (Apr. 15, 2024), https://www.nytimes.com/interactive/2024/04/15/magazine/polycule-polyamory-boston.html [https://perma.cc/U2AA-42DJ].

68. Allison P. Davis et al., *A Practical Guide to Modern Polyamory: How to Open Things up for the Curious Couple*, N.Y. MAG.: THE CUT (Jan. 16, 2024), https://www.thecut.com/article/how-polyamorous-relationships-work-ethical-non-monogamous-rules.html [https://perma.cc/8FXJ-BF3L] (providing a "[p]ractical [g]uide . . . for the curious couple").

69. Jennifer Wilson, *How Did Polyamory Become So Popular?*, NEW YORKER (Dec. 25, 2023), https://www.newyorker.com/magazine/2024/01/01/american-poly-christopher-gleason-book-review-more-a-memoir-of-open-marriage-molly-roden-winter [https://perma.cc/7CC9-LGQV] (noting polyamory's move from hippie communes to more affluent communities).

70. Tyler Austin Harper, *Polyamory, the Ruling Class's Latest Fad*, ATLANTIC (Feb. 1, 2024), https://www.theatlantic.com/ideas/archive/2024/02/polyamory-ruling-class-fad-monogamy/677312 [https://perma.cc/H8X5-NGDK] (labeling polyamory "the Ruling Class's Latest Fad").

71. Kayla Kibbe, *There Are Literally So Many Ways to Polyamory*, COSMOPOLITAN (Feb. 6, 2025), https://www.cosmopolitan.com/sex-love/a63677625/polyamory-terms [https://perma.cc/NJZ2-GG4M].

72. Nicolle Monico, *Unhinged, a Dating Series: Consensual Non-Monogamy*, SAN DIEGO MAG. (Aug. 30, 2024), https://sandiegomagazine.com/everything-sd/unhinged-dating-column-polyamory [https://perma.cc/H7Z6-6SNP].

73. Rosemary Counter, *How Polyamory Became the New Normal*, MACLEAN'S (Aug. 26, 2024), https://macleans.ca/society/how-polyamory-became-the-new-normal [https://perma.cc/5M4Q-F4BE].

74. Caroline Rose Giuliani, *Love, Liberty, and the Pursuit of Polyamory: A Look Under the Covers of Nonmonogamy and Its Burgeoning Civil Rights Battle*, VANITY FAIR (July 25, 2023), https://www.vanityfair.com/style/2023/07/love-liberty-and-the-pursuit-of-polyamory [https://perma.cc/VGT8-B9D6] (provocatively referring to polyamory as, "The New Normal").

Television has jumped onto the CNM bandwagon lately, as well. Peacock launched a ten-episode season of *Couple to Throuple* in 2024;[75] *Succession*, the HBO hit series, featured a nod to an open marriage between two main characters;[76] and *Riverdale*, a recent television adaptation of the classic Archie Comics, ended its series by revealing that the main characters comprised a poly quad.[77] Hollywood has contributed recent movies addressing similar themes, including *Passages*[78] and *Challengers*.[79] In addition, a number of recent books—some of which have received significant attention—have addressed CNM and polyamory, including *Open: An Uncensored Memoir of Love, Liberation, and Non-Monogamy* by Rachel Krantz.[80] This topic has also been the subject of various TED Talks.[81]

Polyamory has also become a mainstream topic of academic study. In 2016, the American Psychological Association established a task force on CNM with the goal of generating research, education, and training "that would lead to increased awareness and acceptance of consensually non-monogamous lifestyles, including but not limited to polyamory."[82] And a number of recent academically inclined books have been published on polyamory and related themes.[83]

This recent attention on CNM and polyamory in news, entertainment, and research may suggest that poly lifestyles are

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75. COUPLE TO THROUPLE (Peacock TV, released Feb. 8, 2024).

76. Wilson, *supra* note 69.

77. Becca Holland, *Riverdale's Finale Quad is the Right Way to Handle a Ship Endgame Debate*, COLLIDER (Sept. 2, 2023), https://collider.com/riverdale-series-finale-quad [https://perma.cc/H787-4E4X].

78. Dana Blythe, *Passages (2023) — Another Triad on Trial.*, MEDIUM (May 16, 2024), https://medium.com/under-the-umbrella/passages-2023-another-triad-on-trail-18b3220fe707 [https://perma.cc/6SKL-QS67].

79. Alex Abad-Santos, *Challengers is the Best Thing That Could Happen to Polyamory*, VOX (May 2, 2024), https://www.vox.com/culture/2024/5/2/24147291/challengers-polyamory-ending-movie [https://perma.cc/8WPF-BPBE].

80. Ilana Masad, *"Open" Explores Polyamorous Relationships Through Personal Experience*, NPR (Jan. 29, 2022), https://www.npr.org/2022/01/29/1076053514/open-explores-polyamorous-relationships-through-personal-experience [https://perma.cc/5F2L-NNAS].

81. *E.g.*, TEDX TALKS, *Free Your Love: Beyond Monogamy and Polyamory* (YouTube, May 23, 2023), https://www.youtube.com/watch?v=iR0vbbi7VIY [https://perma.cc/Z4NV-4TA6].

82. GLEASON, *supra* note 13, at 2.

83. *See, e.g.*, *id.*; SHEFF, *supra* note 11; SCHIPPERS, *supra* note 23.

widespread in practice. Some cultural commentators have even asked whether polyamory "represents a new stage in an ongoing sexual revolution."[84] It is challenging to determine with precision how many people practice polyamory (or any form of CNM). To some extent, that is simply because of a lack of large-scale surveys in this area,[85] as well as the fear of discrimination and harassment that may prevent people who identify as polyamorous from making their relationship practices public.[86]

Nevertheless, available data begins to paint a picture of both the broader practice of CNM and the narrower poly dynamic. A 2017 study reported on two separate surveys of nearly 9,000 single adults to gauge their experiences, if any, with CNM relationships.[87] Just over twenty-one percent of respondents reported engaging in some form of CNM during their lives.[88] Furthermore, the authors found that this percentage remained "roughly constant across age, education level, income status, religion, region, political affiliation, and race."[89] Men and those

84. GLEASON, *supra* note 13, at 2.

85. M. L. Haupert et al., *Prevalence of Experiences with Consensual Nonmonogamous Relationships: Findings from Two National Samples of Single Americans*, 43 J. SEX & MARITAL THERAPY 424, 426 (2017).

86. *See* Jim Fleckenstein et al., *What do Polys Want?: An Overview of the 2012 Loving More Survey*, LOVING MORE (June 21, 2013), https://www.lovingmorenonprofit.org/polyamory-articles/2012-lovingmore-polyamory-survey [https://perma.cc/7NFG-TTQM] (noting that nearly twenty-six percent of polyamorous respondents indicated that they had experienced discrimination related to their poly lifestyle in the past ten years); SHEFF, *supra* note 11, at 31 ("The stigma associated with nonmonogamy means that being exposed as a polyamorist can result not only in strained relationships with families of origin and friends but also job loss, eviction from housing, and losing custody of children.").

87. *See* Haupert et al., *supra* note 85, at 430–31 (discussing the methodology of both surveys).

88. *Id.* at 435–36. In a Pew Research study, thirty-six percent of men and thirty percent of women surveyed reported that open marriages are "at least somewhat acceptable." Kim Parker & Rachel Minkin, *Public Has Mixed Views on the Modern American Family*, PEW RSCH. CTR. 27 (Sept. 14, 2023), https://www.pewresearch.org/wp-content/uploads/sites/20/2023/09/ST_2023.09.14_Modern-Family_Report.pdf [perma.cc/Q3CB-XZKJ].

89. Haupert et al., *supra* note 85, at 436. *But see id.* at 428 ("Several researchers have speculated that people in CNM relationships in the United States are overwhelmingly White and socioeconomically upper-class."); SHEFF, *supra* note 11, at 23 ("Most people in mainstream polyamorous communities in the United States and those who volunteer to participate in research on poly relationships . . . are white, middle or upper-middle class, highly educated, and employed in professional fields such as information technology, counseling, or education.").

identifying as gay, lesbian, or bisexual were more likely than average to report personal involvement in CNM.[90] Extrapolated out to the current U.S. population of roughly 335 million people, this study suggests that approximately 70 million Americans may have practiced some form of CNM.[91] The U.S. data on CNM is roughly consistent with findings in other countries, although the practice may be more commonly reported in the United States.[92]

Narrowing the focus to polyamory, specifically, slightly less data exists from which to draw. A 2021 study of approximately 3,500 U.S. citizens investigated respondents' experiences with polyamory.[93] Overall, 10.7% of respondents reported "previous engagement in polyamory," while 16.8% reported a desire to "try or be in a polyamorous relationship."[94] And 6.5% reported "knowing someone who has been or is currently in a polyamorous relationship."[95] Within the group of respondents who had engaged in polyamory, 30.4% reported that they would participate

90. Haupert et al., *supra* note 85, at 436.

91. Other windows into current relationship practices further suggest that non-monogamy is relatively widespread. *See Singles in America*, MATCH (2023), https://web.archive.org/web/20240629103215/https://www.singlesinamerica.com [https://perma.cc/UVW8-EKVC] (reporting that nearly a third of respondents in a 2023 study of 5,000 U.S. singles had been involved in a consensually non-monogamous relationship).

92. *See, e.g.*, *How Common Is Polyamory in the UK?*, POLYAMORY UK, https://polyamoryuk.co.uk/how-common-is-polyamory-in-the-uk [https://perma.cc/U6G7-LKD6] (reporting on a 2019 study finding that seven percent of UK adults had engaged in a consensual non-monogamous relationship); Nichole Fairbrother et al., *Open Relationship Prevalence, Characteristics, and Correlates in a Nationally Representative Sample of Canadian Adults*, 56 J. SEX RSCH. 695, 698–99 (reporting that a survey of over 2,000 Canadian adults found that 2.4% of all respondents, and 4.0% of the respondents currently in a relationship, were in open relationships; that 19.6% of all respondents reported prior involvement in an open relationship; and that 11.9% identified an open relationship as their ideal relationship structure); Milaine Alarie et al., *"It's Someone Who Means a Lot to Me, and Who Means Even More to Mom:" Children's Views on the Romantic Partners of Their Polyamorous Parents*, 41 J. SOC. & PERS. RELATIONSHIPS 3525, 3526 (2024) (reporting that approximately one in five people in Canada and the United States have been in a consensual non-monogamous relationship); Tweedy, *supra* note 37, at 1480 n.74 (providing bibliography on an increase in polyamory in Great Britain, Canada, and New Zealand).

93. Amy C. Moors et al., *Desire, Familiarity, and Engagement in Polyamory: Results from a National Sample of Single Adults in the United States*, 12 FRONTIERS IN PSYCH. 1, 4–5 (2021).

94. *Id.* at 5.

95. *Id.*

in another polyamorous relationship in the future.[96] As before, these results were consistent across race, political affiliation, income, religion, and geography.[97] Once again extrapolating out, this study suggests that approximately fifty-six million Americans may have a desire to try polyamory, approximately thirty-six million may have tried polyamory, and nearly twenty-two million may know someone who is or has been in a poly relationship. Furthermore, the data suggests that, of the thirty-six million Americans who may have been in a poly relationship, almost eleven million of them would likely choose to be in one again.[98]

Existing studies and surveys also provide a sense of how those who self-identify as polyamorous compare to the general U.S. population on various issues. A 2012 survey of over 4,000 self-identified polyamorists indicated that 62.4% of poly individuals had attained a bachelor's degree or higher, compared to 28.3% of the general population.[99] Polyamorous-identifying individuals reported a statistically significant difference in health and happiness outcomes compared to the general population, with polyamorous individuals reporting slightly better outcomes.[100] However, they reported much higher rates of discrimination, with 28.5% experiencing some form of discrimination over the past ten years, as compared to 5.5% of the general population.[101] And 25.8% of respondents reported that, in the past ten years, they had faced discrimination for being polyamorous, in particular.[102]

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96. *Id.* To put these results into context, the authors explained that "desire to engage in polyamory is as common as how many Americans would like to move to another country, and previous engagement in polyamory is as common as holding a graduate degree in the United States." *Id.* at 7 (citations omitted). And the number of Americans who would like to be in a polyamorous relationship is approximately the same as those that own a cat. *Polyamory and Consensual Non-Monogamy in the US*, KINSEY INST. (June 17, 2022), https://news.iu.edu/kinseyinstitute/live/news/44946-polyamory-and-consensual-non-monogamy-in-the-us [perma.cc/6DYU-YXD6].

97. Moors et al., *supra* note 93, at 7.

98. Elisabeth Sheff reports that "between 1.2 and 9.8 million people in the United States are polyamorous and/or non-monogamous." SHEFF, *supra* note 11, at 3.

99. Fleckenstein et al., *supra* note 86.

100. *Id.*

101. *Id.*

102. *Id.* Another study of over 1,000 consensually non-monogamous individuals found that "[s]lightly less than two-thirds of this sample (61.6%) reported experiencing at least one form of anti-CNM discrimination in their lives to-date,

Discrimination against poly individuals cuts across many aspects of their lives. Overall, the law frequently favors monogamy, in general, and the married nuclear family, in particular.[103] Courts have stripped poly parents of custody over their biological children solely on the basis of moral disapproval of polyamory, even in the absence of any evidence demonstrating harm to the child.[104] Moreover, due to the lack of federal protections and minimal state safeguards for individuals in poly relationships, they may face termination of employment under morality clauses if their relationship status is disclosed.[105] Individuals who are unmarried and in long-term poly relationships have also been denied hospital visitation with their loved ones.[106] And because they are unmarried, those same individuals do not enjoy inheritance rights.[107] Similar limitations exist in the context of health insurance coverage.[108] Housing, explored more in Parts II and III, is another area in which poly individuals lack legal protection and face inequality. That may

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and almost half (44.5%) reported experiencing two or more forms." Ryan G. Witherspoon & Peter S. Theodore, *Exploring Minority Stress and Resilience in a Polyamorous Sample*, 50 ARCHIVES SEXUAL BEHAV. 1367, 1381 (2021).

103. *See, e.g.*, Joanna L. Grossman & Lawrence M. Friedman, *The Chosen Few: Polyamory and the Law*, JUSTIA: VERDICT (Apr. 6, 2021), https://verdict.justia.com/2021/04/06/the-chosen-few-polyamory-and-the-law [perma.cc/NH3Y-JV6X] ("Rights accrue, in law, to combinations that constitute a *family*. That . . . used to mean husband and wife and children, primarily.").

104. *See* Elisabeth A. Sheff, *Child Custody Issues for Polyamorous Families*, PSYCH. TODAY (May 22, 2017), https://www.psychologytoday.com/us/blog/the-polyamorists-next-door/201705/child-custody-issues-polyamorous-families [perma.cc/FTA2-9YHL] (discussing the negative effect of polyamorous status in child custody hearings); SHEFF, *supra* note 11, at 59 (discussing the case of April Divilbliss, who lost custody of her child to the child's paternal grandmother when it was discovered that Divilbliss lived in a triadic relationship).

105. *See* Elaine McArdle, *Polyamory and the Law*, HARV. L. TODAY (Aug. 3, 2021), https://hls.harvard.edu/today/polyamory-and-the-law [perma.cc/ZLN9-FXCP] (describing the lack of legal protections for polyamorous individuals in most of the country); Elisabeth A. Sheff, *The Five Most Common Legal Issues Facing Polyamorists*, PSYCH. TODAY (Jan. 18, 2014), https://www.psychologytoday.com/us/blog/the-polyamorists-next-door/201401/the-five-most-common-legal-issues-facing-polyamorists [perma.cc/6RHW-Z9DP] (noting the discriminatory use of morality clauses in employment contracts).

106. *See* McArdle, *supra* note 105 (describing a woman who had to claim to be her sick partner's sister in hospital visits).

107. Grossman & Friedman, *supra* note 103 ("Will members of a polyamorous family have any inheritance rights? As of now, the answer clearly seems no.").

108. *See* McArdle, *supra* note 105 (discussing the difficulties in obtaining insurance through a polyamorous partner's employer).

be because of animosity directed towards them or because the one-size-fits-all approach that is common in law has a difficult time adapting to the diverse array of poly relationships that can exist.

C. EMPIRICAL INSIGHTS INTO POLYAMOROUS FAMILIES

As with polyamory generally, robust data about poly families does not exist.[109] Researchers have surmised that poly individuals, like other sexual minorities, are often closeted because revealing their poly status can bring serious consequences, like the loss of friendships, jobs, and even custody of their children.[110] However, existing data suggests that these nontraditional family structures offer benefits to children and adults that are unique to the poly setting and that the identified drawbacks of poly relationships are present in traditional and other nontraditional families as well.[111]

Dr. Elisabeth Sheff's Longitudinal Polyamorous Family Study (LPFS)—which is the largest available study of poly families, involving four waves of data collection from 1996 through 2022 that drew on interviews with both adults and children—illustrates this point well.[112] According to Sheff, "[a]cross all age cohorts, the children [in poly families] had abundant physical, material, and emotional resources, and could be described as healthy and self-confident."[113] When asked whether they would have preferred to grow up in a different type of family, all the children interviewed affirmed that they would not change their

109. *See* Alarie, *supra* note 92, at 3526 (noting that "[t]he literature on families with CNM-practicing parents is still scarce").

110. *See* SHEFF, *supra* note 11, at 2 (explaining the lack of statistics on polyamorous people).

111. Children in Dr. Elisabeth Sheff's "Longitudinal Polyamorous Family Study" identified a few disadvantages with their family structures, including the potential loss of their own relationships with adults when romantic connections between adults ended, as well as the social stigma that sometimes attaches to poly relationships. Elisabeth Sheff et al., *A Whole Village: Polyamorous Families and the Best Interests of the Child Standard*, 31 CORNELL J.L. & PUB. POL'Y 287, 318 (2021). Children in traditional families also have the potential to lose adult connections when romantic relationships between adults end, and children in all types of families that diverge from monogamous nuclear families—such as those with single parents, divorced parents, and LGBTQ parents—face similar challenges. *Id.*

112. *Id.* at 307–08.

113. *Id.* at 310.

poly family structure.[114] Children identified a number of benefits of poly families, including fostering their ability to forge strong social connections and persevere in life.[115] Children also reported that their poly families provided them with significant interpersonal and financial resources because multiple adults were actively involved in their lives.[116] This involvement of multiple adults translated into practical advantages for the LPFS children, such as having more rides to activities and more consistent help with homework.[117]

More adult attention also resulted in increased diversity and varied perspectives available to children when dealing with personal issues.[118] Furthermore, because poly families generally emphasize open communication, children in the LPFS noted emotional and personal benefits, including "parental honesty and emotional intimacy . . . about difficult topics."[119] The recognized benefits experienced by LPFS children are consistent with the conventional motivators for adults to enter into poly relationships. According to Sheff's research, "[b]y far the most common reason respondents gave for wanting multiple partners was to get more of their needs met in a more humane way. . . . Polys point out that loading all relational needs on a single relationship is a recipe for disaster."[120]

A 2024 study of poly families from Canada yielded similar results.[121] In particular, children raised in those settings

114. *Id.* While some children were overwhelmingly positive about their family structures, others were less so. However, even those children preferred their poly families to more traditional ones. *Id.* at 311.

115. *Id.* at 310.

116. *Id.* at 312; *see* SHEFF, *supra* note 11, at 196 ("Larger family units are often able to keep a parent at home because they have multiple adults doing waged work.").

117. Sheff et al., *supra* note 111, at 312; *see* SHEFF, *supra* note 11, at 199 ("It is clear that, in general, polyamorists perceive themselves to be happier when they are getting more of their needs met, and they are able to get a wider range of needs met through multiple partners. This same dynamic appears to extend to nonsexual familial relationships as well." (footnote omitted)).

118. Sheff et al., *supra* note 111, at 312. Another expressed benefit experienced by children in poly families is having a wide range of adult role models available to them. *See* SHEFF, *supra* note 11, at 203–05 (discussing the value of "nonparental trusted adults").

119. Sheff et al., *supra* note 111, at 314.

120. SHEFF, *supra* note 11, at 38.

121. *See* Alarie et al., *supra* note 92, at 3533–37 (discussing the results of interviews with children about their poly parents' romantic partners).

reported positive impressions of their parents' romantic partners who they viewed as resources who made "a positive contribution to their lives."[122] The children who saw their parents' partners frequently reported strong feelings of attachment to them and a sense that those adults were important parts of their lives.[123] In particular, those partners cared for the children, providing them both emotional and material support.[124] These specific impressions of children in poly families are important because of the "well-documented evidence that access to quality social support from the extended family and entourage has a direct positive impact on the parent-child relationship."[125]

Anecdotal evidence reported in the popular press generally supports these scientific studies and their findings.[126] In the words of one of these authors, "[d]espite common misconceptions that multiple partners can only create confusion or instability, many children in polyamorous families thrive and appreciate the

122. *Id.* at 3533.

123. *Id.* at 3534.

124. *Id.* at 3538.

125. *Id.* at 3539.

126. *See, e.g.*, Mark Travers, *The Reality of Growing up with a Polyamorous Parent, by a Psychologist*, FORBES (Aug. 15, 2024), https://www.forbes.com/sites/traversmark/2024/08/15/the-reality-of-growing-up-with-a-polyamorous-parent-by-a-psychologist [perma.cc/R3AV-B7GZ] (arguing that children tend to view the partners of their polyamorous parents' positively); Jennifer Martin, *I'm Polyamorous and Live with My Partners and Our Children*, BUS. INSIDER (Aug. 30, 2022), https://www.businessinsider.com/im-polyamorous-and-live-with-my-partners-and-our-children-2022-8 [perma.cc/6RTR-UFDV] (providing an account of a polyamorous family with two children); Briony Smith, *Polyamorous Parenting: The Surprising Benefits of the Ultimate Modern Family*, TODAY'S PARENT (June 24, 2020), https://www.todaysparent.com/family/parenting/polyamorous-parenting-the-surprising-benefits-of-the-ultimate-modern-family [perma.cc/J8XR-JBGC] (describing the lives of several polyamorous Canadian families); Vicki Larson, *What We Can All Learn from Polyamorous Parents*, GREATER GOOD (Feb. 28, 2024), https://greatergood.berkeley.edu/article/item/what_we_can_all_learn_from_polyamorous_parents [perma.cc/UDX9-WB2Q] (arguing that poly families may provide a parenting model in which parents can "create a village of loving, nurturing, and ongoing caregivers" for themselves and their children); Lucy Fry, *'There's Zero Evidence That It's Worse for Children': Parenting in a Polyamorous Relationship*, GUARDIAN (Feb. 1, 2020), https://www.theguardian.com/lifeandstyle/2020/feb/01/zero-evidence-worse-for-children-parenting-in-polyamorous-relationship [perma.cc/ZLK8-D6UW] (explaining that "[i]n many ways, polyamorous couples face the same challenges or rewards as blended families where divorced parents remarry").

unique support and love they receive from their parents' partners."[127]

As demonstrated in this Section, a substantial number of individuals identify as polyamorous and express a desire to form poly relationships in the future. These relationships exhibit diversity in structure and internal dynamics, often evolving fluidly over time. At their foundation, however, they are built by individuals who share meaningful emotional bonds and intentionally integrate their lives in significant ways, including financial arrangements, cohabitation, domestic obligations, and child-rearing responsibilities. While poly families may present distinctive relational complexities, they function in important respects like traditional nuclear or extended families. They commonly share meals, divide household duties, support children with educational and extracurricular activities, and provide emotional and practical support to one another.[128] Of course, not every family—whether a polycule, a monogamous couple, or a single-parent household—conforms to a single model of domestic life. And families should have the autonomy to structure their lives in ways that best suit their needs.

II. THE ROLE OF ZONING IN DEFINING FAMILY

Zoning laws have long played a pivotal role in shaping American communities by regulating land use to promote order and minimize conflicts between residential, commercial, and industrial spaces. From their inception, however, zoning regulations have also functioned as tools of exclusion, reinforcing racial, economic, and social divides under the guise of preserving neighborhood character.[129] This Part explores the historical evolution of zoning laws, their persistent role in defining—and often restricting—who qualifies as a "family," and the implications of these legal frameworks for nontraditional households, including poly families.

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127. Travers, *supra* note 126. There are, of course, a number of challenges commonly experienced by poly families, including societal stigma, feared rejection from family members, household crowding, and jealousy. *See* SHEFF, *supra* note 11, at 217–54 (analyzing the numerous difficulties experienced by polyamorous families).

128. *See supra* notes 109–27 and accompanying text.

129. *See, e.g.*, Alexander, *supra* note 3, at 1257 (explaining that "zoning laws . . . embraced the social, cultural, and normative assumptions" underlying earlier discriminatory measures).

A. THE EVOLUTION OF ZONING LAWS

From the beginning, zoning efforts have been fundamentally about one concept: exclusion.[130] Ostensibly, zoning ordinances are designed to separate *uses* of land to minimize harm and conflict—for example, segregating industrial land use out of residential neighborhoods.[131] But the use of zoning to regulate *occupiers* of land—in particular, to exclude immigrants and non-Whites from desirable residential areas, especially those zoned for single-family use—is also well-documented.[132] Municipal ordinances that explicitly discriminate based on race are, of course, unconstitutional,[133] even when they are shrouded with the pretense of police power-like justifications, such as to "promote the general welfare."[134] But problems associated with

130. *See id.* (noting that, "[b]y its nature, zoning tends to be exclusionary"); PATRICK J. ROHAN & ERIC DAMIAN KELLY, 1 ZONING AND LAND USE CONTROLS § 3.01 (2025) [hereinafter ZONING AND LAND USE CONTROLS] (observing that "concepts of exclusion . . . are inherent in the scheme of zoning").

131. *See* Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365, 392 (1926) (recognizing such segregation of uses "may bear a rational relation to the health, morals, safety and general welfare" of a community (quoting City of Aurora v. Burns, 149 N.E. 784, 788 (1925))).

132. *See* Adams-Schoen, *supra* note 6, at 1231–32, 1297–1303 (arguing that "facially race neutral" zoning laws have created multigenerational harms by driving racial segregation); Berger, *supra* note 6, at 650–51 (discussing zoning laws that divided communities by race, ethnicity, and class); Priya S. Gupta, *Governing the Single-Family House: A (Brief) Legal History*, 37 U. HAW. L. REV. 187, 213 (2015) (recognizing that, during Jim Crow, many cities forced segregation by passing zoning ordinances that separated residential areas by race); Peter L. Abeles, *Planning and Zoning*, *in* ZONING AND THE AMERICAN DREAM 122, 127 (Charles M. Haar & Jerold S. Kayden eds., 1989) ("As the waves of immigrants washed up on the doorsteps of the cities, they often lapped at the edges of established neighborhoods. This was before the middle class had the alternative of suburbia and thus something had to be done. The solution was to create residential districts in which it was impossible to introduce immigrant housing. That type of early use of planning is evident in the *Euclid* decision, where Justice Sutherland wrote about the danger of apartment houses."); Yale Rabin, *Expulsive Zoning: The Inequitable Legacy of* Euclid, *in* ZONING AND THE AMERICAN DREAM, *supra*, at 101 (noting the use of zoning "to reinforce long-standing patterns and practices of racial discrimination and segregation").

133. *See* Buchanan v. Warley, 245 U.S. 60, 71, 82 (1917) (finding unconstitutional a city ordinance that made it "unlawful for any white person to move into and occupy . . . any house upon any block upon which a greater number of houses are occupied . . . by colored people than are occupied . . . by white people").

134. *See id.* at 70 (noting that the stricken ordinance was titled: "An ordinance to prevent conflict and ill-feeling between the white and colored races . . . and to preserve the public peace and promote the general welfare").

"exclusionary zoning" persist today.[135] Furthermore, the exclusionary effect of single-family zoning laws extends beyond race and socioeconomic status.[136] Today, the structure and language of modern zoning codes create significant uncertainty for nontraditional families, including polyamorous ones. In many jurisdictions across the country, these restrictive laws operate to exclude such families altogether. In this way, zoning ordinances superficially focused on regulating land use are operating to regulate family relationships.

The legal framework of zoning in the United States traces its origins[137] to the early twentieth century, as industrialization and urbanization led municipalities to regulate land use more systematically.[138] Before formal zoning laws, American cities frequently employed nuisance regulations as one way to address conflicts between residential and industrial uses.[139] As cities

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135. A significant amount of scholarship exists on the topic of exclusionary zoning, or the use of zoning to exclude low- and moderate-income families or minorities from desirable neighborhoods. *See, e.g.*, RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 53–54 (2017) (describing the use of income-based zoning ordinances after *Euclid* to conceal racial segregation); J. Gregory Richards, *Zoning for Direct Social Control*, 1982 DUKE L.J. 761, 764 (1982) (recognizing that zoning laws have forced working-class families and racial minorities to live in communities that are "separated" from employment opportunities, which pushes them into lower income levels).

136. *See, e.g.*, Brian J. Connolly, *The Black Box of Single-Family Zoning Reform*, 65 B.C. L. REV. 2327, 2332–33 (2024) (discussing how exclusionary zoning reduces the availability of affordable housing); Tooba Naveed, Note, *The End of Single-Family Zoning in California: How Chapter 162's Impact Is More Symbolic Than Transformative*, 54 U. PAC. L. REV. 168, 174 (2023) (noting that exclusionary zoning creates environmental harms by encouraging urban sprawl, which in turn increases reliance on automobiles).

137. The historical roots of zoning can be traced at least as far back as the European practice of dividing cities into districts, which was largely done to minimize the spread of fire and disease. Abeles, *supra* note 132, at 125.

138. *See* ZONING AND LAND USE CONTROLS, *supra* note 130, § 1.02[1] (detailing the historical development of land-use controls); SARA C. BRONIN & DWIGHT H. MERRIAM, 1 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 1:2 (2023) [hereinafter THE LAW OF ZONING AND PLANNING] (providing an overview of the history of zoning in the early twentieth century).

139. *See* ZONING AND LAND USE CONTROLS, *supra* note 130, § 1.02[1] ("Early land-use regulation emphasized the elimination of nuisances and the protection of the 'higher' uses . . . from undesirable land uses that . . . could make extremely undesirable neighbors."); THE LAW OF ZONING AND PLANNING, *supra* note 138, § 1:1 (explaining that before zoning, "there were four main ways in which land use issues could be addressed: nuisance litigation, the imposition of

grew denser, local governments sought a more structured approach to land-use planning.[140] The first comprehensive zoning ordinance in the United States was enacted in New York City in 1916, driven by concerns over incompatible land uses, overcrowding, and the preservation of property values.[141] Modern zoning ordinances typically divide land use into three classes: residential, commercial, and industrial.[142] Each zoning use is usually subdivided further into narrower use restrictions including, for example, single-family districts.[143]

In *Village of Euclid v. Ambler Realty Co.*, the Supreme Court reviewed a landowner's challenge to a Euclid, Ohio, zoning ordinance that divided the city into residential, commercial, and industrial districts.[144] Ambler Realty, owner of a sixty-eight-acre parcel, challenged the ordinance, arguing that restrictions on industrial use diminished the land's value, resulting in an unconstitutional taking under the Fifth and Fourteenth Amendments.[145] In a 6-3 decision, the Supreme Court upheld the ordinance, affirming zoning as a legitimate exercise of the police power, even at the expense of individual property rights.[146] The Court appeared unwilling to second guess the reasons why any particular municipality might adopt zoning to address its unique

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restrictive covenants, special-purpose laws regulating specific uses, and building codes").

140. *See* BEVERLEY J. POOLEY, PLANNING AND ZONING IN THE UNITED STATES 41–42 (1982) (discussing the shift from nuisance regulations to zoning ordinances); *cf.* THE LAW OF ZONING AND PLANNING, *supra* note 138, § 1:2 (discussing the "city beautiful" movement, with its focus on paving of streets and sidewalks, establishment of city parks, and the creation of attractive residential areas, as one impetus for comprehensive zoning efforts).

141. SONIA A. HIRT, ZONED IN THE USA: THE ORIGINS AND IMPLICATIONS OF AMERICAN LAND-USE REGULATION 35 (2014); *see* Rabin, *supra* note 132, at 101 (noting that zoning was a "public mechanism for promoting and stabilizing private development, reducing risk in property investment, and protecting the character and quality of single-family residential neighborhoods"). Earlier zoning ordinances enacted in the 1870s were narrower. *See* Alexander, *supra* note 3, at 1251 (identifying the enactment of ordinances in San Francisco and New York City directed at boarding houses and tenements).

142. RUTHERFORD H. PLATT, LAND USE AND SOCIETY: GEOGRAPHY, LAW, AND PUBLIC POLICY 265 (rev. ed. 2004).

143. *Id.*

144. *See* Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365, 379–81 (1926).

145. *See id.* at 379, 384 (citing the Fourteenth Amendment and invoking the Fifth Amendment's prohibition on deprivation of "liberty and property without due process of law").

146. *See id.* at 395, 389–90.

needs, concluding that if the validity of a zoning ordinance "be fairly debatable, the legislative judgment must be allowed to control."[147] In particular, only if the ordinance had "no substantial relation to the public health, safety, morals, or general welfare" would it be stricken as arbitrary and unreasonable and, therefore, unconstitutional.[148] Five years after the *Euclid* decision, all fifty states had authorized zoning, and over one thousand cities had adopted zoning codes.[149]

B. FAMILY-BASED ZONING RESTRICTIONS

Zoning for "single-family" or "one-family" homes, a subset of residential zoning, has traditionally been framed around a specific definition of family chosen by each municipality and included in its zoning code.[150] Most municipalities include in their definition of family an unlimited number of individuals related by blood, marriage, or adoption.[151] Beyond this core definition, however, municipal zoning regulations exhibit significant inconsistency and unpredictability in their articulation of what qualifies as a family.[152] In fact, in the words of Justice Stevens, there are "almost endless differences in the language used in [zoning] ordinances."[153] Does family refer only to the nuclear or extended family? Or does it encompass family-like groupings of individuals? If it does, are there occupancy limits on those groupings, and what are the criteria they must satisfy to be treated like a

147. *See id.* at 388 (noting that land-use restrictions aim to prevent problems caused by keeping the "pig in the parlor instead of the barnyard").

148. *Id.* at 395. The court adopted this highly deferential approach despite trial court findings that the underlying purpose of the city's zoning ordinance was "to promote economic segregation: excluding the poor and working class from middle-class areas." *See* Joshua Braver & Ilya Somin, *The Constitutional Case Against Exclusionary Zoning*, 103 TEX. L. REV. 1, 7 (2024).

149. THE LAW OF ZONING AND PLANNING, *supra* note 138, § 1:2.

150. *See, e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 733 (1995) ("To limit land use to single-family residences, a municipality must define the term 'family'; thus family composition rules are an essential component of single-family residential use restrictions.").

151. *See, e.g.*, sources cited *infra* note 178. Some ordinances have gone further, restricting their definitions of "family" to place limits, for example, on intergenerational families living together. *See, e.g.*, Moore v. City of E. Cleveland, 431 U.S. 494, 496 (1977) (plurality opinion) (describing the ordinance at issue as containing "an unusual and complicated definitional section that recognizes as a 'family' only a few categories of related individuals").

152. *See Moore*, 431 U.S. at 515 (Stevens, J., concurring).

153. *See id.*

traditional family for zoning purposes? Navigating that last question has been described as a "quagmire."[154]

This Section provides a brief overview of some of the primary ways that municipalities and courts have addressed zoning for families. Given space constraints, it cannot be an exhaustive or complete treatment of this expansive topic.[155] Furthermore, given that somewhat idiosyncratic zoning practices exist in every state across the country, it is challenging to summarize or categorize those approaches with precision.

Overall, however, there has been somewhat of a rough arc of evolution in family zoning. With exceptions, the broad trend is from an expansive and functional approach to defining family to one that is narrower and focused, for the most part, on if the inhabitants of the dwelling are related to one another by blood, marriage, or adoption.[156] The practical result is that today, if you are related by blood, marriage, or adoption, you have little need to confirm your ability to occupy a single-family dwelling anywhere in the country. But the inconsistent, unpredictable patchwork of zoning definitions of family create, at the very least, significant uncertainty for nontraditional families. At the worst, such families are barred from occupying single-family housing altogether. As a result, single-family zoning has largely evolved from being focused on separating incompatible land uses to controlling the identity and relationships of occupiers.[157]

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154. *See* ZONING AND LAND USE CONTROLS, *supra* note 130, § 3.06[1]; *see also* Adams v. Town of Brunswick, 987 A.2d 502, 507–08 (Me. 2010) (noting its reluctance "to adopt a definition of 'household unit' that would require code enforcement officers to investigate the nature of the personal relationships that may exist among the residents of a dwelling unit" and that to hold otherwise "would open an inquiry into what is of no concern to the Town: are the tenants blood relatives; married; engaged; significantly committed; how committed and for how long; and if not any of those things, then why are they living together?").

155. For a more complete treatment of residential zoning, see ZONING AND LAND USE CONTROLS, *supra* note 130, § 3.06[1] and THE LAW OF ZONING AND PLANNING, *supra* note 138, § 1:2.

156. *See generally* Redburn, *supra* note 20 (describing the general shift in zoning definitions of family from functional to more restrictive).

157. *See* Barbara J. Cox, *Alternative Families: Obtaining Traditional Family Benefits Through Litigation, Legislation and Collective Bargaining*, 15 WIS. WOMEN'S L.J. 93, 119 (2000) ("Many communities may hope, under the guise of objecting to noise or parking, that they can keep alternative families out of their neighborhoods and not have a different family-type next door."); Alexander, *supra* note 3, at 1257 ("[Z]oning has done more than focus on segregation of activities. It has also focused on the segregation of families and relationships that defines families.").

1. Early Functional Approaches to Family[158]

The original 1916 zoning ordinance in New York City used the word "family"[159] without defining what constituted a family. That omission was common in early zoning ordinances.[160] Many of the first zoning codes either left the term family undefined[161] or defined it with reference to a "single-housekeeping unit."[162] In those situations, courts frequently read in a broader or functional interpretation of family, allowing groupings of individuals to occupy single-family dwellings even though they would not be

158. Expansive and functional definitions of family in reported decisions predate the first zoning ordinances. *See* Wilson v. Cochran, 31 Tex. 677, 680 (1869) (referring to a "family," in the context of a homestead, as embracing "every collective body of persons living together within the same curtilage, subsisting in common, directing their attention to a common object, the promotion of their mutual interests and social happiness").

159. N.Y.C., N.Y., BLDG. ZONE RESOL. §§ 2–5 (July 25, 1916). For example, the ordinance stated that "dwellings . . . for one or more families" were a permissible use in residence districts, and it allowed "one-family residence[s]" to receive a special exemption to extend their cornices and eaves into their neighbors' yards. *See id.* §§ 3, 18.

160. Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd., 207 A.3d 886, 889 (Pa. 2019) ("Early zoning ordinances, however, generally failed to define the term 'family,' requiring the judiciary to provide its meaning." (citing *In re* Miller, 515 A.2d 904, 906 (Pa. 1986))). In the absence of an included definition of family in zoning ordinances, courts often read in "functional families," which are groups of people "living together as a relatively stable and bona fide single-housekeeping unit." THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23:9.

161. *In re Miller*, 515 A.2d at 906–07 (noting that initially, a significant number of zoning ordinances left the word "family" undefined).

162. *Id.* at 907 (citing Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)); *see* Borough of Glassboro v. Vallorosi, 568 A.2d 888, 889 (N.J. 1990) (per curiam) (interpreting a zoning code that defined family as "one or more persons occupying a dwelling unit as a single non-profit housekeeping unit, who are living together as a stable and permanent living unit, being a traditional family unit or the functional equivalen[t] thereof"); City of W. Monroe v. Ouachita Ass'n for Retarded Child., Inc., 402 So. 2d 259, 262 (La. Ct. App. 1981) (interpreting a zoning ordinance that defined a family as "one or more persons living together as a single housekeeping unit which may include not more than four lodgers or boarders"). In addition, the ordinance in *Village of Euclid v. Ambler Realty Co.* defined family as "any number of individuals living and cooking together on the premises as a single housekeeping unit." VILL. OF EUCLID, OHIO, ZONING ORDINANCE NO. 2812 § 2(k) (Nov. 13, 1922); *see also* TWP. OF CHERRYHILL, N.J., ZONING ORDINANCE NO. 2013-18 art. II, § 202 (2013) (defining "family" as "[a] group of individuals not necessarily related by blood, marriage, adoption, or guardianship living together in a dwelling unit as a single housekeeping unit under a common housekeeping management plan based on an intentionally structured relationship providing organization and stability").

considered a family in a literal sense.[163] This result was allowed when the grouping could prove that it operated and interacted like a traditional family—particularly when it did things like live, cook, and eat meals together and share expenses and responsibilities associated with the dwelling.[164] This broad approach to interpreting family was common through at least the 1950s.[165]

Neptune Park Association v. Steinberg, a 1951 decision from the Connecticut Supreme Court of Errors, is illustrative of this approach.[166] In *Neptune Park*, four married sisters, along with their husbands and eight children, sought to occupy a fourteen-room house zoned for "one-family detached dwelling[s]."[167] The New London County zoning code defined family as, "any number

163. *See City of W. Monroe*, 402 So. 2d at 265 ("Where municipal ordinances have defined family simply as a single housekeeping unit, state courts have generally refused to read into the ordinance any requirement that the members of the household be related."); *see also* Brady v. Superior Ct. in San Mateo Cnty., 19 Cal. Rptr. 242, 247–48 (Cal. Dist. Ct. App. 1962) (construing the otherwise undefined term, family, as requiring that the "parties must live together in the same relationship or manner of a family" and rejecting the argument that a family must have a "head" or some blood relationship); Aaron v. City of Baltimore, 114 A.2d 639, 641 (Md. 1955) (interpreting "two or more persons living together as a housekeeping unit" in a zoning code as requiring that they "constitute a separate household maintaining separate housekeeping facilities"); Robertson v. W. Baptist Hosp., 267 S.W.3d 395, 396–97 (Ky. 1954) (holding that a group of twenty nurse employees living in a home purchased by the hospital, who shared the home's parlor, kitchen, and "housemother," qualified as a "single housekeeping unit"); THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23:18 ("[W]here the term family is undefined in an ordinance or defined by reference to a single-housekeeping unit, courts will generally allow in a district households which would not otherwise qualify as families within the term's literal or traditional meaning.").

164. *E.g.*, *City of W. Monroe*, 402 So. 2d at 265 (holding that a group of developmentally disabled individuals living together "constitute[d] a single housekeeping unit composed of persons who are living and working together toward common goals and who will . . . emulate the lifestyle of the traditional family as we know it"); *Brady*, 19 Cal. Rptr. at 247–48 (stating a single housekeeping unit does not require "consanguinity or affinity" but does require living "in the same relationship or manner of a family," as distinguished from an "organizational" relationship, like members of social clubs or fraternities); *cf. In re* Laporte, 152 N.Y.S.2d 916, 918 (N.Y. App. Div. 1956) (holding that a zoning ordinance that defined "family" as "one or more persons occupying a dwelling unit as a single, non-profit housekeeping unit" did not preclude a college from constructing a sixty-student dorm).

165. Alexander, *supra* note 3, at 1258.

166. *See generally* Neptune Park Ass'n v. Steinberg, 84 A.2d 687 (Conn. 1951).

167. *Id.* at 689.

of individuals living and cooking together as a single housekeeping unit."[168] The parties challenging the occupation made a simple argument: "[A] family is a group of persons living together as a unit with one head[;] . . . therefore, the defendants are violating the ordinance [because] their property is occupied by four separate families."[169] After noting that the term family "is one of elastic meaning, and is used in a great variety of significations,"[170] the court clarified that the relevant question is not whether the house is being occupied by "one-family unit as that term might be otherwise defined," but if it is being occupied by "only one housekeeping unit."[171] In this case, where there was one kitchen and all members of the four sisters' families lived and cooked together, the court concluded that it was "clear" that the individuals satisfied the zoning definition of family.[172]

2. Tilting Towards Formalism

A gradual shift began to occur beginning in the 1950s through the 1970s, as zoning codes became more restrictive in their definition of family. A number of factors likely contributed to this trend. The term "nuclear family"—referencing a married man and wife—was coined in 1949 by George Murdock and began to enter the popular vocabulary as a way of conceptualizing family.[173] In addition, some areas of the country were concerned

168. *Id.*

169. *Id.* at 690.

170. *Id.*

171. *Id.* at 691.

172. *Id.* at 689, 691. For decisions employing similar reasoning see, for example, Missionaries of Our Lady of La Salette v. Vill. of Whitefish Bay, 66 N.W.2d 627, 629, 631 (Wis. 1954) (concluding that, where local zoning code defined family as a single housekeeping unit, a group of five priests and brothers living, cooking, and cleaning together satisfied that definition); Robertson v. W. Baptist Hosp., 267 S.W.2d 395, 396–97 (Ky. 1954) (finding that a group of approximately twenty nurses who lived and ate some meals together constituted a single housekeeping unit); Carroll v. City of Miami Beach, 198 So. 2d 643, 644 (Fla. Dist. Ct. App. 1967) (concluding that, where a zoning code defined family as any number of persons occupying a dwelling as a single housekeeping unit, "the question before [the court] is not what the word 'family' means in common parlance," but what the code "says it means" and holding a small group of applicants to a religious order satisfied that definition).

173. *See* Michael J. Higdon, *When Informal Adoption Meets Intestate Succession: The Cultural Myopia of the Equitable Adoption Doctrine*, 43 WAKE FOREST L. REV. 223, 226 (2008); *see also* Marie A. Failinger, *A Peace Proposal for the Same-Sex Marriage Wars: Restoring the Household to Its Proper Place*,

about communal living and its sometimes-perceived relationship to drug use and anti-government sentiment.[174] One solution to that problem was to zone for single-family use in certain neighborhoods, along with defining family narrowly to include only individuals related by blood, marriage, or adoption.[175] That approach created buffers between communes, with their perceived ills, and other neighborhoods, with quiet, safe residential areas carved out for the nuclear family.[176]

By around 1970, many zoning ordinances had shifted away from exclusively functional definitions of family,[177] although the older approach that focused on a "single housekeeping unit" or similar language still exists in some jurisdictions.[178] In this evolution, a new and narrower definition of family emerged: one where a specified legal relationship among the occupants was

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10 WM. & MARY J. WOMEN & L. 195, 218–20 (elaborating on the origins of the term "nuclear family").

174. *See, e.g.*, Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934, 1980–81 (2015) ("[C]itizens who supported the repeal of a zoning ordinance in Ohio allowing construction of a low-income housing project expressed concerns . . . that the development would cause crime and drug activity to escalate . . . ." (internal quotations omitted)).

175. Rebecca M. Ginzburg, *Altering "Family": Another Look at the Supreme Court's Narrow Protection of Families in* Belle Terre, 83 B.U. L. REV. 875, 880 (2003).

176. *Id.* at 881 (noting that communes, which were usually made up of unrelated individuals, would be unable to satisfy these new zoning definitions).

177. *See* Richards, *supra* note 135, at 771 ("[C]ases considering traditional-family definitions in zoning ordinances . . . became commonplace in the 1970s.").

178. *See, e.g.*, Armstrong v. Mayor of Balt., 979 A.2d 98, 99 (Md. 2009) (citing a Baltimore City Zoning Code provision that includes several definitions of "family," one of which is "[f]our unrelated (and no more) who live together comprise a 'family,' if they form a 'single housekeeping unit'"); Linn County v. City of Hiawatha, 311 N.W.2d 95, 99 (Iowa 1981) (applying a zoning ordinance that defined family as "one or more persons occupying and living as a single housekeeping unit, as distinguished from a group occupying a boarding house . . . or hotel" and noting that the ordinance "does not require any kind of biological or legal relationship among members of a 'family'"); Borough of Glassboro v. Vallorosi, 568 A.2d 888, 889 (N.J. 1990) (referring to the Glassboro Borough Ordinance that had been amended in 1986 to define "family" as "one or more persons occupying a dwelling unit as a single non-profit housekeeping unit, who are living together as a stable and permanent living unit, being a traditional family unit or the functional equivalen[t] thereof").

necessary.[179] Today, while the details vary from jurisdiction to jurisdiction, most zoning codes include at least one definition of family that requires a showing of relationship among the occupants by blood, marriage, or adoption.[180]

In some of those jurisdictions, the narrower definition of family peacefully coexists alongside a functional definition. In those codes, groupings of people can prove their family status by satisfying either a narrow or a broader definition of family. For example, Burlington, Vermont, includes "single-family detached dwellings" in its city zoning descriptions.[181] It then defines "family" in five separate and distinct ways,[182] including "[m]embers of a single family, all of whom are related within the second degree of kinship (by blood, adoption, marriage[,] or civil union),"[183] as well as "[n]o more than four unrelated adults and their minor children."[184] Another definition of family in Burlington is the "functional family unit," which is explained as "a group of adults living together in a single dwelling unit and functioning as a family with respect to those characteristics that are consistent with the purposes of zoning restrictions in residential neighborhoods . . . ."[185] One noteworthy, although not unique,

179. *E.g.*, ST. LOUIS, MO., CODE OF ORDINANCES § 26.08.160 (2025) (defining "[f]amily" as "[a] person or group of persons immediately related by blood, marriage or adoption, living as a single housekeeping unit"); Havel v. Bd. of Zoning Appeals, Kent, 253 N.E.3d 752, 758 (Ohio Ct. App. 2024) (quoting the City of Kent's zoning code definition of "[f]amily" as "[i]ndividuals who are related by marriage, legal recognized civil union, adoption, or are within three (3) degrees (or fewer) of consanguinity"); Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Bd., 207 A.3d 886, 892 (Pa. 2019) (citing section 204.1 of the 1985 Hamilton Township Zoning Ordinance, which "defines 'family' as '[o]ne or more persons, occupying a dwelling unit, related by blood, marriage, or adoption, living together as a single housekeeping unit and using cooking facilities and certain rooms in common'").

180. Bronin, *supra* note 20, at 5; *see, e.g.*, STURGEON BAY, WIS., MUN. CODE § 20.03 (2025) (defining a single-family dwelling as one "designed for or occupied exclusively by one family" and defining "family" as "[a]n individual or two or more persons related by blood, marriage, guardianship, foster care, or adoption, or a group of not more than four persons not so related, living together in one dwelling unit as a single housekeeping entity").

181. BURLINGTON, VT., COMPREHENSIVE DEV. ORDINANCE art. 4, § 4.4.5(a)(2) (2025).

182. Burlington also includes, in its definition of "family," persons with disabilities under federal law and state licensed or registered day care facilities with six or fewer children. *Id.* at art. 13, § 13.1.2F.

183. *Id.*

184. *Id.*

185. *Id.*

aspect of Burlington's family definition is that, while it places a numerical restriction on families of unrelated adults and their children, no such limitation exists for either traditional or functional families.[186]

Like many other jurisdictions retaining a functional family approach, Burlington's zoning code lists specific criteria that must exist for a group of adults to qualify as a functional family. In particular, (1) "[t]he occupants must share the entire dwelling" (as opposed to renting separate rooms within the dwelling); (2) the household must be stable (evidence of which can include "school-age children enrolled in local schools"; sharing of expenses for rent, food, and utilities; and the occupiers having the same address for purposes of drivers' licenses, voter registration, and the filing of taxes); (3) furniture and appliances must be commonly owned among the occupiers; (4) occupiers must be employed in the local area; and (5) there must be a showing that the household has lived together for at least one year.[187] Given the use of the conjunctive "and" in Burlington's zoning code, as well as a lack of any indication in the ordinance that these are "among the factors to be considered," it appears that these criteria are all requirements of qualifying as a functional family.

Although the specific language of zoning ordinances can vary widely, most municipalities place no numerical limitations on traditional families but do impose a numerical cap on other types of families. For example, similar to Burlington's Ordinance, Fort Worth, Texas, includes "single housekeeping unit" as a part of its zoning code's definition of family, but it limits the number of unrelated persons who can qualify for that designation.[188] In Fort Worth, if any group of unrelated individuals wants to occupy a family-zoned dwelling, it must qualify as a "single housekeeping unit"[189] and must contain no more than

186. *Id.*

187. *Id.* The burden is on the occupiers claiming functional family status to submit information to the local code enforcement office, proving their entitlement to this status. *Id.* While some ordinances require occupiers to submit proof, others do not. *See* Bronin, *supra* note 20, at 7, 10–12, 36 (describing "character model" of zoning, in which occupants must meet regulatory requirements to prove functional family status, and "privacy model," in which occupants are not subject to any formal review by zoning officials prior to occupancy).

188. FORT WORTH, TEX., CODE OF ORDINANCES, app. A, ch. 9, § 9.101 (2025).

189. Under Fort Worth's Code of Ordinances, a "single housekeeping unit" is defined as:

five unrelated individuals.[190] Fort Worth's code determines family groupings through a number of relevant considerations identified in the code's definition of "single housekeeping unit," such as whether the individuals have "established ties and familiarity with each other," jointly lease or own the property, "jointly use common areas," and share household expenses and activities.[191] These criteria, like those in the Burlington ordinance, appear to all be required to establish a functional family.[192] Fort Worth also includes the narrower, traditional definition of family in its zoning code: "[a]ny individual or two or more persons related by blood, adoption, marriage, or guardianship . . . ."[193] As this code language makes clear, an extended family of two parents, three children, and one grandparent would be allowed to occupy a single-family home in Fort Worth, but six unrelated persons who planned to jointly lease a house (even a very large house) and share cooking, cleaning, and maintenance responsibilities would not. This zoning approach to defining family—including both a traditional definition of family with no numerical cap and a functional definition with a low cap—is common across the country.[194]

> Individuals occupying a dwelling unit that have established ties and familiarity with each other; share a lease agreement, have consent of the owner to reside on the property, or own the property; jointly use common areas and interact with each other; and share the household expenses, such as rent or ownership costs, utilities, and other household and maintenance costs, or share responsibility for household activities. If the unit is rented, all residents over the age of 18 have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises.

Id.

190. *Id.* Fort Worth also explicitly excludes some groups from the definition of "family," including lodging, boarding, fraternity, and sorority houses. *Id.*

191. *Id.*; *see supra* note 189 and accompanying text.

192. Like Burlington, Fort Worth uses the conjunctive "and" in its list and does not include language suggesting these criteria are among the ones that would be evaluated. *See* FORT WORTH, TEX., CODE OF ORDINANCES, app. A, ch. 9, § 9.101 (2025).

193. *Id.*

194. Additional examples include the City of Ladue, Missouri, which defines "family" as "(a) One or more persons related by blood, marriage[,] or legal adoption, or (b) any number of persons so related plus one unrelated person, or (c) two unrelated persons, occupying a dwelling unit as an individual housekeeping organization." LADUE, MO., ZONING ORDINANCE 1175, § XVII (2025) (cross-referencing Ordinance 1697). Similarly, the Baltimore City Code defines "family" as:

3. A Modern Snapshot

Although some jurisdictions originally adopted broad but vague zoning definitions of family, such as "family-like living arrangement," modern zoning ordinances frequently contain specific criteria.[195] The criteria tend to be similar to those articulated by Burlington and Fort Worth for groups of individuals seeking the status of functional family.[196] While the specific requirements may vary from jurisdiction to jurisdiction, they frequently appear to serve as proxies for permanence and stability of the family unit[197]—reflecting the implicit but erroneous assumption that families related by blood, marriage, or adoption always remain permanent and stable.[198]

> one of the following, together with customary household helpers:
>
> (i) an individual;
>
> (ii) [two] or more people related by blood, marriage, adoption, or State-supervised foster care, living together as a single housekeeping unit in a dwelling unit; or
>
> (iii) a group of not more than [four] people, who need not be related, living together as a single housekeeping unit in a dwelling unit.

BALTIMORE, MD., CITY CODE, art. 32, tit. 1, subtitle 3, § 1-306(g)(1) (2025); *see also* City of Santa Barbara v. Adamson, 610 P.2d 436, 437–38 (Cal. 1980) (involving a zoning code definition of family that included both a traditional family and a grouping of not more than five persons living as a single housekeeping unit).

195. THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23:17.

196. *See id.*

197. *Id.*; *see* Bronin, *supra* note 20, at 10–11 ("[A] functional family sanctioned by the zoning code to live in Ames[, Iowa,] must act like a traditional family, or at least an idealized version of one."); *cf.* Northwood Sch., Inc. v. Joint Zoning Bd. of Appeals, 97 N.Y.S.3d 787, 789–90 (N.Y. App. Div. 2019) (upholding a determination that the school's proposed use of a property as housing for headmaster and students did not meet the code's definition of "family" as "[a] group of people, related or not related, living together as a common household, with numbers of persons and impacts typical of those of a single family" largely due to "the relative lack of 'permanence' in the groups of persons who would be in residence").

198. *See* Cherry Hill Twp. v. Oxford House, Inc., 621 A.2d 952, 964 (N.J. Super. Ct. App. Div. 1993) (recognizing that "life is transitory, related family units experience change as children grow, spouses die and other family members join and expand the basic household"). This reality—which also includes the high rate of divorce and remarriage in this country—is conveniently overlooked, as many courts impose requirements related to stability and permanence on nontraditional families but not on families related by blood, marriage, or adoption. *See, e.g.*, *Northwood Sch., Inc.*, 97 N.Y.S.3d at 790 (finding a rational basis for the zoning board's determination that a proposed student house lacked characteristics of a traditional household, including permanence and shared household responsibilities).

In other zoning codes, "single-housekeeping unit" is used to define family but—unlike the Fort Worth example just discussed—the phrase single-housekeeping unit is not defined further.[199] In those situations, some courts have interpreted that phrase expansively to include "any living arrangement that makes use of unified housekeeping facilities."[200] In those cases, courts have sometimes expanded family to include "extended family groups, religious groups, and other groups of unrelated persons,"[201] assuming they operate in a manner similar to a traditional family-like structure. In particular, courts consider whether the grouping functions as a cohesive and integrated economic unit and can demonstrate bonds similar to traditional families.[202]

Although it is unusual, some jurisdictions today use the term "family" in their zoning rules but do not define it further.[203] When that has occurred, some (but not all) courts have stepped

199. Some jurisdictions use superficially broad language, such as "single housekeeping unit," but define it narrowly in a way that is similar to the jurisdictions that rely on traditional "single-family" definitions. *See, e.g.*, SAN MARCOS, TEX., LAND DEV. CODE, ch. 8, art. 1, no. 100 (2025) (defining "family" as "any number of individuals living together as a single housekeeping unit who are related by blood, legal adoption, marriage, or conservatorship").

200. THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23:14; Costley v. Caromin House, Inc., 313 N.W.2d 21, 25 (Minn. 1981) (qualifying a planned group home for mentally disabled residents as a single family residential use because it would operate as a single housekeeping unit); City of Takoma Park v. Cnty. Bd. of Appeals, 270 A.2d 772, 775 (Md. 1970) (finding, *inter alia*, that the occupant and his friend, along with her two children, met the city's residential zoning ordinance's definition of "family").

201. THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23:14; Armstrong v. Mayor of Balt., 979 A.2d 98, 99 (Md. 2009) (four unrelated tenants); Linn Cnty. v. City of Hiawatha, 311 N.W.2d 95, 100 (Iowa 1981) (foster home with married couple and six developmentally delayed children); Twp. of Washington v. Cent. Bergen Cmty. Mental Health Ctr., Inc., 383 A.2d 1194, 1201, 1206, 1209 (N.J. Super. Ct. Law Div. 1978) (residential home occupied by five former mental patients).

202. *See, e.g.*, Genesis of Mount Vernon, N.Y., Inc. v. Zoning Bd. of Appeals of City of Mount Vernon, 579 N.Y.S.2d 968, 1005–06 (N.Y. Sup. Ct. 1991) (concluding that a group home for elderly persons who live independently in a stable, permanent setting "bears the generic character of family unit, and should be recognized as a family equivalent"); THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23:15.

203. *E.g.*, ALTURAS, CAL., MUN. CODE OF ORDINANCES ch. 28, art. 8, div. 1, § 28.80.030 (2025) (using the terms "Multi-Family" and "Single Family" in its definitions of dwelling types without defining "Family"; also using the term "households" in the definitions of "Multi-Family" and "Single Family" dwelling types without defining "households").

in to interpret that term broadly—just as they did when interpreting the undefined family in early zoning ordinances.[204] Those courts often look at factors, such as the number of individuals, their relationship to one another, the nature of the living arrangements, and if those arrangements would likely have a negative impact on the neighborhood's residential character.[205]

For example, in *Hamner v. Best*,[206] a Kentucky court of appeals was asked to determine whether a single-family certificate of occupancy should be granted to a couple who planned to take care of up to eight juveniles with mental health problems and who lacked any other stable living environment.[207] No definition of family or single-family existed in the zoning code.[208] Noting that the occupiers of the house would operate as one housekeeping unit—cooking, eating, and sleeping there—the court concluded that the residents "would function as, and resemble that of, any other single-family household."[209] Indeed, "the entire purpose of the group home is to provide a traditional home environment for the children."[210] In reaching its conclusion, the court of appeals approvingly quoted language from the Kentucky Supreme Court, which explained that although family generally includes parents and children, "the word is often given a broader meaning, that is, it may and does sometimes mean a collection of persons living together in a home, though none of them [are] married."[211]

Even in jurisdictions that take a more expansive approach to family and single-housekeeping unit, however, limits exist. In particular, certain identifiable groups of people living together are frequently found not to constitute a family for zoning purposes. For example, groups of college students—specifically, sorority and fraternity members—have been seen as unstable and

204. *See* Region 10 Client Mgmt., Inc. v. Town of Hampstead, 424 A.2d 207, 209 (N.H. 1980) (concluding that "family" should "retain its historical and traditional definition of persons living together related by blood, marriage, or adoption" and rejecting the argument that a group home for developmentally impaired individuals constituted a family for zoning purposes).

205. THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23:9.

206. 656 S.W.2d 253, 253 (Ky. Ct. App. 1983).

207. *Id.* at 254.

208. *Id.* at 255.

209. *Id.* at 254, 255.

210. *Id.* at 255.

211. *Id.* at 256 (quoting Mullins v. Nordlow, 185 S.W. 825, 828 (Ky. 1916)).

inconsistent with the residential character of neighborhoods.[212] In addition, group homes that involve a significant amount of treatment or counseling have been excluded.[213]

The examples above involve zoning ordinances that either incorporate some form of the "single housekeeping unit" concept into their definition of family or where courts have relied on that concept to interpret "family" in the absence of an express definition. However, some jurisdictions define family in their zoning codes, but they do so in an exclusively narrow way, effectively zoning out functional and nontraditional families.

Those jurisdictions define family to include only individuals related by blood, marriage, adoption, or conservatorship.[214] Courts in some jurisdictions have generally upheld the narrow definition of family.[215] For example, in *Laudue v. Horn*, a court of appeals in Missouri considered if a functional family should be recognized in a jurisdiction whose narrow definition of family extended only to "persons related by blood, marriage, or adoption, occupying a dwelling unit as an individual housekeeping

212. *See, e.g.*, FORT WORTH, TEX., CODE OF ORDINANCES app. A, ch. 9, § 9.101 (2025) (defining family as "[a]ny individual or two or more persons related by blood, adoption, marriage[,] or guardianship, or not more than five unrelated persons operating as a single housekeeping unit and *expressly excluding lodging, boarding, fraternity, and sorority houses*" (emphasis added)); Glassboro v. Vallorosi, 568 A.2d 888, 889 (N.J. 1990) (noting that the city "concedes that a primary purpose of the ordinance was to prevent groups of unrelated college students from living together in the [city's] residential districts"); THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23.12.

213. *See, e.g.*, Lakeside Youth Serv. v. Zoning Hearing Bd., 414 A.2d 1115, 1116 (Pa. Commw. Ct. 1980) (concluding that a home housing six women under court supervision—where they would be overseen by house parents, a permanent staff of caseworkers, and psychologists and psychiatrists who would regularly visit—was "too far removed" from the concept of a "single family dwelling").

214. *E.g.*, SAN MARCOS, TEX., LAND DEV. CODE ch. 8, art. 1, § 100 (2025) (defining "family" as "any number of individuals living together as a single housekeeping unit who are related by blood, legal adoption, marriage, or conservatorship").

215. *E.g.*, City of Ladue v. Horn, 720 S.W.2d 745, 752 (Mo. Ct. App. 1986). *But see* White Plains v. Ferraioli, 313 N.E.2d 756, 757–59 (N.Y. 1974) (invalidating a zoning definition of "family" limited to nuclear and extended family members in a situation involving a group home occupied by a married couple, their two children, and their ten foster children; and concluding that "an ordinance may restrict a residential zone to occupancy by stable families occupying single-family homes, but neither by express provision nor construction may it limit the definition of family to exclude a household which in every but a biological sense is a single family").

organization."[216] In that case, the occupants were an unmarried man and woman and their children, two of whom were the woman's and one of whom was the man's.[217] The couple "shared a common bedroom, maintained a joint checking account for the household expenses, ate their meals together, entertained together, and disciplined each other's children."[218] Nevertheless, the court rejected the couple's argument that despite the municipality's restrictive zoning definition of family, their behavior was sufficiently family-like to be considered a housekeeping unit and, as a result, a family.[219] Instead, the court pointed to the "precise language" the city had used to craft its definition of family in a way that "comports with the historical and traditional notions of family."[220]

* * *

In summary, family-based zoning regulations have shifted over time from functional, inclusive definitions to narrower, more formalistic approaches that prioritize legal status over how households actually operate. While some jurisdictions continue to recognize "single housekeeping units" or similar constructs, many others define family strictly in terms of blood, marriage, or adoption—effectively excluding a range of stable, family-like households. Courts have responded unevenly, sometimes embracing functional interpretations but often deferring to restrictive statutory language. The result is a fragmented and unpredictable legal landscape in which nontraditional families face legal uncertainty, exclusion, or both, despite occupying dwellings in ways that mirror traditional families.

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216. *See Horn*, 720 S.W.2d at 752.

217. *Id.* at 747.

218. *Id.* at 745.

219. *See id.* at 751–52 (describing the "reasonable basis" for Ladue's ordinance and other states' decisions supporting the court's conclusion).

220. *Id.* at 751. For similar approaches involving traditionally narrow definitions of family in zoning codes, see Step-By-Step, Inc. v. Zoning Hearing Bd., 543 A.2d 1293 (Pa. Commw. Ct. 1988) (determining that community living arrangements for mentally handicapped individuals are outside the definition of "family"). *But see* State *ex rel.* Harding v. Door Cnty. Bd. of Adjustment, 371 N.W.2d 403, 404 (Wis. Ct. App. 1985) (interpreting an ordinance that defined "family" to require relatedness by blood or marriage as not precluding a timeshare type sale to thirteen families, each of whom would occupy the home exclusively with their own family for four weeks per year).

C. CONSTITUTIONAL LIMITS: SUPREME COURT PRECEDENT

The U.S. Supreme Court has issued three decisions that address the definition of family or household in ways that are relevant to this Article—two in the context of zoning and one in the context of a federal food assistance program.[221] This Section examines those decisions, identifying the relevant legal principles and policy themes that emerge from them. As discussed later in Part III, these cases collectively support an expansive interpretation of "family" within zoning codes—one that accommodates diverse family structures, including poly relationships.

Prior to 1974, courts disagreed about the constitutionality of zoning ordinances that contained narrow definitions of family based on blood or marriage.[222] Nearly fifty years after *Euclid*, however, the U.S. Supreme Court reentered the zoning fray in *Village of Belle Terre v. Boraas*.[223] In *Belle Terre*, the Court considered constitutional challenges to Belle Terre's zoning ordinance that restricted residential occupancy to no more than two unrelated individuals or an unlimited number of persons related by blood, marriage, or adoption.[224] A landlord and three unrelated college students challenged the ordinance.[225] Writing for the majority, Justice Douglas concluded without much reasoning or discussion that the zoning ordinance did not burden a fundamental right[226] and was reasonably related to achieving Belle Terre's valid police power goals.[227] In particular, the Court read into the police power the ability "to lay out zones where family

221. Other scholars have discussed the relevance of these three cases in the construction of municipal zoning law definitions. *See, e.g.*, Bronin, *supra* note 20; Oliveri, *supra* note 20.

222. *Compare* Palo Alto Tenants Union v. Morgan, 321 F. Supp. 908, 912 (N.D. Cal. 1970) (upholding a zoning ordinance that allowed occupation by family members, related by blood or marriage, and not more than four unrelated individuals), *with* Boraas v. Vill. of Belle Terre, 476 F.2d 806, 818 (2d Cir. 1973) (rejecting a similar ordinance as not appearing "to be supported by any rational basis that is consistent with permissible zoning objectives"), *rev'd* 416 U.S. 1 (1974).

223. *See generally* Vill. of Belle Terre v. Boraas, 416 U.S. 1 (1974).

224. *Id.* at 2–3. The ordinance required that either related or unrelated individuals seeking to qualify as a family, for zoning purposes, must also live and cook together "as a single housekeeping unit." *Id.* at 2.

225. *Id.* at 2–3. Although six students lived in the house, only three joined the suit. *Id.*

226. *Id.* In particular, the Court concluded that no right of association or privacy was involved in this zoning ordinance challenge. *Id.* at 8.

227. *Id.* at 9.

values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."[228] The Court contrasted the single-family use envisioned by the zoning definition with "regimes of boarding houses, fraternity houses, and the like," which present urban problems, such as human and automobile congestion and related noise.[229] The Court largely sidestepped the argument that the narrow family definition unconstitutionally burdened an unmarried couple's freedom of association, noting that two unrelated people would still be considered a family under the zoning code and "may, so far as the ordinance is concerned, entertain whomever [they] like[ ]."[230]

Justice Marshall issued a thoughtful and substantive dissent, arguing that the ordinance unjustifiably infringed on the right to privacy and freedom of association by restricting household composition based on familial relationships.[231] He criticized the law as both under- and overinclusive and, therefore, not narrowly tailored.[232] He observed that, while an extended biological family "of a dozen or more" could lawfully reside in a small bungalow, "three elderly and retired persons could not occupy the large manor house next door."[233] While Belle Terre's concerns about congestion and noise were valid, Justice Marshall reasoned that its goals could be better achieved through less-burdensome and neutral occupancy limits, rather than by excluding families with more than two unrelated members.[234] Looking to the practical effect of Belle Terre's definition of family, Justice Marshall observed that the ordinance "reaches beyond control of the use of land or the density of population, and undertakes to regulate the way people choose to associate with each other within the privacy of their own homes."[235] The result is that Belle Terre "has, in effect, acted to fence out those individuals

228. *Id.*

229. *Id.*

230. *Id.* at 8–9. In dissent, Justice Marshall observed that freedom of association "involve[es] far more than the right to entertain visitors." *Id.* at 17 (Marshall, J., dissenting).

231. *Id.* at 13 (Marshall, J., dissenting).

232. *Id.* at 18–19.

233. *Id.*

234. *Id.* at 19–20.

235. *Id.* at 17.

whose choice of lifestyle differs from that of its current residents."[236]

Two years later, the Supreme Court revisited a zoning definition of family in *Moore v. City of East Cleveland*.[237] In *Moore*, the Court struck down East Cleveland's "unusual and complicated" definition of family that prohibited extended families of blood relations from living in single-family dwellings.[238] In particular, the municipality's definition of family triggered a criminal charge against a grandmother living with her two grandsons who were cousins.[239] Writing for a plurality, Justice Powell distinguished *Belle Terre*.[240] He noted that Belle Terre drew a permissible occupancy line, defining families as individuals who were related and excluding individuals who were not related.[241] In contrast, East Cleveland chose to define permissible occupancy by "slicing deeply into the family itself"—allowing only nuclear family members to qualify and excluding extended family.[242] The Court emphasized the deep historical and cultural significance of extended families, highlighting that "the accumulated wisdom of civilization, gained over the centuries and honored throughout our history, . . . supports a larger conception of the family."[243] When considering East Cleveland's stated police power goals, the Court followed Justice Marshall's reasoning in his *Belle Terre* dissent and found East Cleveland's zoning definition of family both over- and underinclusive.[244] The law

236. *Id.* at 16–17.

237. 431 U.S. 494, 498–99 (1977) (plurality opinion).

238. *Id.* at 496. In particular, the ordinance allowed a married couple with certain children of the "nominal head of the household or the spouse of the nominal head of the household" to qualify as a family. *Id.* at 496 n.2.

239. *Id.* at 497.

240. *Id.* at 498.

241. *Id.*

242. *Id.*

243. *Id.* at 505.

244. *Id.* at 506–07. Justice Stevens concurred in the judgment but took a narrower approach, distinguishing *Moore* from *Belle Terre* by arguing that zoning laws may regulate transiency but should not dictate the internal composition of a household. *Id.* at 520 (Stevens, J., concurring). In his analysis, Justice Stevens noted that a number of state courts had ruled that certain groupings of unrelated persons could live together in single-family zones, even where an ordinance prohibited such results: "The state decisions have upheld zoning ordinances which regulated the identity, as opposed to the number, of persons who may compose a household only to the extent that the ordinances require such households to remain nontransient, single-housekeeping units." *Id.* at 519.

permitted large nuclear families to cohabitate yet barred extended families of equal or smaller size from doing so—despite no rational basis for the distinction.[245]

A third case, *United States Department of Agriculture v. Moreno*, rounds out the Supreme Court's consideration of family-related definitions.[246] Although *Moreno*, which was decided the year before *Belle Terre*, did not address zoning but, instead, the Food Stamp Act of 1964,[247] its reasoning and conclusion are relevant here. In *Moreno*, the Court considered federal statutory language that defined households eligible for food assistance as any "group of related [individuals] . . . living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common."[248] Groups of "unrelated individuals" had been included in the original statutory language of the Food Stamp Act but had been removed by a congressional revision to the law.[249] Among the plaintiffs was Jacinta Moreno, a fifty-six-year-old diabetic, who lived with Ermina Sanchez and Ms. Sanchez's three children.[250] The group shared expenses, and Ms. Sanchez took care of Ms. Moreno.[251]

Considering the plaintiffs' equal protection challenge to the revised statute, the Court focused on the legislative purpose of the original law: to alleviate hunger and malnutrition, strengthen the agricultural economy, and improve the orderly marketing and distribution of food.[252] Differentiating between related and unrelated persons when defining "household" in the law was "clearly irrelevant to the stated purposes of the Act," according to the Court.[253] Quoting the district court's opinion, the Court explained that "the relationships among persons constituting one economic unit and sharing cooking facilities have nothing to do with their abilities to stimulate the agricultural economy by purchasing farm surpluses, or with their personal nutritional requirements."[254] The Court also identified the

245. *Id.*
246. 413 U.S. 528, 530 (1973).
247. *Id.* at 529.
248. *Id.* at 530 (citation omitted).
249. *Id.*
250. *Id.* at 531.
251. *Id.*
252. *Id.* at 533.
253. *Id.* at 534.
254. *Id.* (citation omitted).

purpose of Congress's decision to delete "unrelated individuals" from the statutory language, finding an intent "to prevent so-called 'hippies' and 'hippie communes' from participating in the food stamp program."[255] In response, the Court explained that "if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest."[256]

Read together, these three Supreme Court cases offer important—but incomplete—guidance on the constitutionality of family-based zoning restrictions. *Belle Terre* upheld a zoning ordinance that imposed occupancy limits on unrelated individuals, but it did so with minimal analysis and no serious engagement with associational or privacy rights.[257] Its value as precedent is therefore limited, particularly in light of *Moore* and *Moreno*. *Moore* struck down a zoning code that excluded extended biological families, affirming constitutional protection for familial associations beyond the nuclear family.[258] While the plurality in *Moore* did not address unrelated individuals, its reasoning emphasized functional support networks and cultural traditions over rigid legal categories.[259] And in *Moreno*, the Court invalidated a federal law that excluded "unrelated" households from food assistance, condemning the law's animus against marginalized groups and reaffirming that bare moral disapproval cannot justify exclusion.[260] Alongside Justice Marshall's dissent in *Belle Terre*, these decisions raise questions about whether zoning laws may constitutionally disregard households without formal legal ties that are nevertheless rooted in stable, mutually dependent living arrangements.

III. EXPANDING THE DEFINITION OF FAMILY IN ZONING CODE

As explained to this point, municipal zoning codes have long relied, and frequently continue to rely, on restrictive definitions

255. *Id.* at 534.

256. *Id.*

257. *See supra* Part II.C. and accompanying notes.

258. Moore v. City of E. Cleveland, 431 U.S. 494, 496 (1977) (plurality opinion).

259. *Id.* at 506–07.

260. U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 534 (1973).

of "family" that fail to reflect the diversity of modern relationships. By privileging relationships based on blood, marriage, and adoption, these definitions exclude nontraditional household structures, including poly families, effectively denying them equal access to single-family housing in many cases. This Part argues that zoning definitions of family should expand to encompass relationships of mutual support, care, and commitment. Such reform both aligns with the growing recognition of poly legal rights and corrects outdated zoning policies. Doing so would also reaffirm zoning's fundamental purpose: regulating land use compatibility, rather than scrutinizing the identities or relationships of those who choose to share a home as a family.

A. LEGAL TRENDS AND THE FUTURE OF POLYAMOROUS RIGHTS

This Section begins with a brief overview of several recent advances for poly legal rights, before turning to a specific recommendation for addressing the current exclusion of poly families from single-family zoning definitions.

1. Emerging Legal Recognition and Protections

As described earlier, people who identify as poly report significantly higher rates of discrimination and harassment than do non-poly identifying individuals.[261] To a large extent, that may be because, until just a few years ago, there were no legal protections or anti-discrimination laws in the United States that specifically addressed polyamory or those in polyamorous relationships.

On the judicial front, courts have done little to expansively interpret existing laws to protect poly relationships.[262] One exception is *West 49th Street, LLC v. O'Neill*, a 2022 decision from the New York Civil Court.[263] In *O'Neill*, the court considered if one of the surviving members of a poly triad could assert

261. *See supra* notes 101–08 and accompanying text.

262. By far the most common context in which poly status arises is in the family law setting, where a person's poly relationship may, for example, be cited by a parent as justification for the termination of parental or custodial rights. *See* Sheff et al., *supra* note 111, at 291 (noting the frequency with which lower courts "have determined that polyamorous parents or polyamorous parented families, merely by virtue of their engagement in polyamory, do not meet [best interest of the child] standards and therefore, it could not be in the child's best interest for a polyamorous parent to retain custody of their child").

263. 178 N.Y.S.3d 874 (N.Y. Civ. Ct. 2022).

succession rights to a rent-stabilized apartment, following the death of the tenant of record, Scott Anderson.[264] The respondent, Markyus O'Neill, argued that he had developed deep emotional connections through a long-term romantic, committed relationship with Anderson, despite Anderson's commitment to another partner, Robert Romano.[265] The petitioner, West 49th Street, LLC, contended that O'Neill had no legal claim to the apartment because succession rights under New York's rent-stabilization laws traditionally recognized only spouses and immediate family members.[266]

In denying the petitioner's motion for summary judgment, the *O'Neill* court relied on *Braschi v. Stahl Associates Co.*,[267] a 1989 New York Court of Appeals decision that dealt with the succession rights of a non-married same-sex partner following the death of the tenant of record.[268] In its decision, the *Braschi* court concluded that "family," as used in the relevant New York statute, "should not be rigidly restricted to those people who have formalized their relationship" through marriage or adoption.[269] Instead of focusing on "fictitious legal distinctions or genetic history," the court looked to the couple's "reality of family life" and concluded that family should be read to include "two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence"—in other words, "households having all of the normal familial characteristics."[270]

While the *O'Neill* court approved of *Braschi*'s functional and practical approach to defining family, it critiqued *Braschi* as being unnecessarily limited to two-person relationships. In the words of the New York Civil Court in *O'Neill*, "[w]hy does a person have to be committed to *one other person* in only certain prescribed ways" to receive rent stabilization protection?[271] Recognizing that "the definition of 'family' has morphed considerably" since *Braschi*, the *O'Neill* court asked, "[d]o all nontraditional relationships have to comprise or include only two primary

264. *Id.* at 875–76.
265. *Id.* at 876–78.
266. *Id.* at 876–77.
267. 543 N.E.2d 49 (N.Y. 1989).
268. *Id.* at 50–51.
269. *Id.* at 53.
270. *Id.* at 53–54.
271. *O'Neill*, 178 N.Y.S.3d at 881 (emphasis added).

persons?"[272] In answering "no" to that question, the court concluded that O'Neill's involvement in this poly triad did not automatically disqualify him from rent stabilization protection.[273]

The rights of poly individuals have received more attention and recognition at the municipal level. Two years before *O'Neill*, Somerville, Massachusetts became the first city to adopt an ordinance granting domestic partner recognition to individuals in multi-party relationships.[274] Individuals qualify for domestic partner status in Somerville, if they "are in a relationship of mutual support, caring[,] and commitment and intend to remain in such a relationship."[275] Registering individuals must also live together and "consider themselves to be a family."[276] Polyamorous families that register under this ordinance enjoy certain rights that were previously held only by spouses, including the right to confer health insurance benefits and the ability to visit loved ones in the hospital.[277] Two additional Massachusetts towns—Arlington and Cambridge—adopted similar local laws extending domestic partnership protection to poly families soon after.[278]

Extending legal protections one step further, Somerville also enacted the nation's first anti-discrimination law protecting poly individuals and others practicing CNM in 2020.[279] The

272. *Id.*

273. *Id.* at 883–84.

274. Barry, *supra* note 15.

275. SOMERVILLE, MASS., ORDINANCE ch. 2, art. IX, § 2-502(c) (2025); Note, *Three's Company, Too: The Emergence of Polyamorous Partnership Ordinances*, 135 HARV. L. REV. 1441, 1441 (2022) [hereinafter *Three's Company*] (citing the Domestic Partnerships Ordinance in Somerville, Massachusetts).

276. SOMERVILLE, MASS., ORDINANCE ch. 2, art. IX, § 2-502(c) (2025).

277. *Id.*; Elisabeth A. Sheff, *Legal Protections for People in Polyamorous Relationships*, PSYCH. TODAY (July 23, 2020), https://www.psychologytoday.com/us/blog/the-polyamorists-next-door/202007/legal-protections-people-in-polyamorous-relationships [https://perma.cc/U2MG-C269].

278. Jesse Collings, *Town Meeting Approves Domestic Partnership for Relationships with More than Two People*, WICKED LOC. (Apr. 30, 2021), https://www.wickedlocal.com/story/arlington-advocate/2021/04/30/arlington-approves-domestic-partnerships-polyamorous-relationships/7410640002 [https://perma.cc/XF2H-2U7M]; Brown, *supra* note 15. While similar, the Cambridge ordinance does not require registrants to live together. *See Three's Company*, *supra* note 275, at 1441–42.

279. Meredith Goldstein, *Somerville Celebrates Another First for Polyamorous People*, BOS. GLOBE (Mar. 24, 2023), https://www.bostonglobe.com/2023/03/23/lifestyle/somerville-celebrates-another-first-polyamorous-people [https://perma.cc/28R5-DPX3].

ordinance protects, in particular, against employment and police discrimination.[280] Two additional cities—Oakland and Berkeley, California—enacted similar ordinances in 2024.[281] Both cities included family and relationship structure as a protected class against discrimination in housing, the provision of city services, and access to public accommodations and commercial services.[282]

2. Proposal: Beyond Outdated Conceptions of Family

Because zoning codes often use inconsistent or restrictive language, nontraditional families—including polyamorous ones—face, at best, significant uncertainty about their right to live in single-family homes and, at worst, outright exclusion. The most effective way to ensure inclusion within single-family zoning is for municipalities to adopt more expansive definitions of family. An expansive definition would recognize the diverse ways people live together and sustain enduring relationships grounded in care and mutual responsibility. In particular, this Article recommends that municipalities adopt zoning code language defining family as "a single person or any number of people related by blood, marriage, or adoption, or who are in a relationship of mutual support, caring, and commitment." This proposal does not include numerical limits on the groupings of individuals who qualify as a family; however, if a municipality determines that such a cap is necessary, it should be imposed uniformly on all families.[283] The following Subsections provide a number of arguments to support this inclusive approach to defining family for zoning purposes.

280. *Id.*

281. Markovich, *supra* note 16; *All Things Considered*, *supra* note 16.

282. Markovich, *supra* note 16 ("The law . . . protect[s] people in diverse relationships and families from discrimination in housing, businesses, and city services."); *All Things Considered*, *supra* note 16 ("New protections will prevent discrimination based on family and relationship structure in housing, business and civil services.").

283. Occupancy limits in building codes are a more logical way to impose restrictions on the number of individuals who can occupy a single-family dwelling. *See* State v. Baker, 405 A.2d 368, 373 (N.J. 1979) (observing that the goals of reducing overcrowding and congestion are better addressed through restrictions on size and area).

a. Improves Fit Between Zoning Language and Goals

The Supreme Court and various lower courts[284] have consistently underscored a key structural principle: Governmental objectives should be pursued through language that is closely tailored to those objectives.[285] There must be a clear and precise fit between a government's legitimate aims and the specific terms it adopts to implement them. Without that careful drafting—which is absent in many jurisdictions across the country that define family narrowly—zoning language is unconstitutionally over- and underinclusive.[286] Incorporating the phrase "in a relationship of mutual support, caring, and commitment" into definitions of family strengthens the fit between zoning language and the goals sought to be achieved by those codes.

In *Moore*, the city of East Cleveland argued that its narrow nuclear-only definition of family was necessary to prevent overcrowding, reduce congestion associated with traffic and parking, and avoid unnecessary burdens to local schools[287]—all valid

284. *See, e.g.*, City of Santa Barbara v. Adamson, 610 P.2d 436, 442 (Cal. 1980) ("The fatal flaw in attempting to maintain a stable residential neighborhood through the use of criteria based upon biological or legal relationship relationships is that such classifications operate to prohibit a plethora of uses which pose no threat to the accomplishment of the end sought to be achieved." (quoting *Baker*, 405 A.2d at 371)); McMinn v. Town of Oyster Bay, 66 N.Y.2d 544, 549 (N.Y. 1985) ("[R]estricting occupancy of single-family housing based generally on the biological or legal relationships between its inhabitants bears no reasonable relationship to the goals of reducing parking and traffic problems, controlling population density and preventing noise and disturbance.").

285. *See* Moore v. City of E. Cleveland, 431 U.S. 494, 499–500 (1977) (plurality opinion) (stating that ordinances cannot simply serve government interests to a marginal extent); Vill. of Belle Terre v. Boraas, 416 U.S. 1, 20 (1974) (Marshall, J., dissenting) (stating that the proposed ordinance is unconstitutional but could be tailored to fit the goals).

286. Under a rational basis equal protection review, the governmental classification that differentiates between individuals or groups must be rationally related to a legitimate state interest. City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439–42 (1985); U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 533 (1973); Jefferson v. Hackney, 406 U.S. 535, 546 (1972). The Court in *Belle Terre* applied a rational basis standard of review, concluding that no fundamental right was implicated. 416 U.S. at 7–8. However, the Court in *Moore* employed strict scrutiny, stating that when a municipality "undertakes such intrusive regulation of the family . . . the usual judicial deference to the legislature is inappropriate." 431 U.S. at 499. While it appears that strict scrutiny is the appropriate standard when reviewing the constitutionality of zoning definitions of family, the textual discussion does not hinge on one standard or the other. Instead, it emphasizes the importance of fit between governmental goals and language chosen, regardless of the standard of review.

287. *Moore*, 431 U.S. at 499–500.

police power ends under *Euclid*.[288] However, Justice Powell, writing for the majority in *Moore*, emphasized that "when the government intrudes on choices concerning family living arrangements, this Court must examine carefully . . . the extent to which [the governmental interests] are served by the challenged regulation."[289] The Court then illuminated the lack of fit between East Cleveland's definition of family and the municipality's stated goals.[290] For example, the city's definition would have allowed a husband and wife, with several unmarried children, to live in a single-family home, even if each member of the household drove their own car; however, the same definition would have prohibited an adult brother and sister from sharing that home, even if neither owned a car and, instead, used public transportation.[291] In the Court's view, East Cleveland's zoning definition of family had only "a tenuous relation to alleviation of the conditions mentioned by the city"[292] and served the city's stated police power goals "marginally, at best."[293]

Moore's emphasis on the lack of fit between a city's zoning language and its goals was foreshadowed in Justice Marshall's dissent in *Belle Terre*. In that dissenting opinion, Justice Marshall pointed out that Belle Terre's definition of family would have allowed a family "of a dozen or more" who were related by blood to lawfully occupy a small home, but "three elderly and retired persons could not occupy the large manor house next door."[294] As a result, he concluded that the zoning definition of family was both over- and underinclusive, when judged against the city's stated police power goals.[295]

A similar concern surfaced in *Moreno*, where the government justified its limitation of federal food aid to "*related* individuals . . . living as one economic unit" by citing several policy goals.[296] Those priorities included the alleviation of hunger,

288. Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

289. *Moore*, 431 U.S. at 499.

290. *Id.* at 500.

291. *Id.*

292. *Id.*

293. *Id.*

294. Vill. of Belle Terre v. Boraas, 416 U.S. 1, 19 (1974) (Marshall, J., dissenting).

295. *Id.*

296. U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 530 & n.2 (1973) (emphasis added).

strengthening of the agricultural economy, and improvement in the orderly marketing and distribution of food.[297] As the Court pointed out, requiring that members of a household who receive federal food aid to be related did not advance the government's policy goals.[298] In fact, because the statutory language excluded food aid from needy, unrelated individuals living as one economic unit, the language actually undercut the government's goals.[299] In other words, the requirement that individuals be related was "clearly irrelevant to the stated purposes of the Act."[300] Furthermore, in response to legislative history suggesting that the exclusion of unrelated individuals from the aid program was "to prevent so-called 'hippies' and 'hippie communes' from participating in the food stamp program,"[301] the Court noted that laws designed to "harm a politically unpopular group" violate equal protection.[302]

As described earlier, modern zoning laws should be carefully tailored to achieve valid police power goals, which typically include ensuring low population density and vehicle traffic, reasonable amounts of noise, and safe and livable spaces that can be enjoyed by adults and children.[303] Whether occupants of a single-family home are related by blood, marriage, or adoption or are otherwise in a relationship of "mutual support, caring, and commitment" is irrelevant to whether those valid zoning goals are furthered. To make this clear, a poly triad that is unmarried with three young children would likely have significantly less density, traffic, and noise impact on a neighborhood than would a family consisting of a married couple with three high-school aged children, each with their own car. But if the jurisdiction's

297. *Id.* at 533–34.

298. *Id.* at 534.

299. *See id.* ("[T]he relationships among persons constituting one economic unit and sharing cooking facilities have nothing to do with their abilities to stimulate the agricultural economy by purchasing farm surpluses, or with their personal nutritional requirements." (quoting Moreno v. U.S. Dep't of Agric., 345 F. Supp. 310, 313 (D.D.C. 1972))).

300. *Id.*

301. *Id.*

302. *Id.*

303. *See* Moore v. City of E. Cleveland, 431 U.S. 494, 498 (1977) (plurality opinion) ("[W]e sustained the [Village's] ordinance on the ground that it bore a rational relationship to permissible state objectives."); Vill. of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974) ("The police power [may be used] to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.").

zoning definition of family included an unlimited number of related individuals and no more than two unrelated persons, for example, the poly family would be zoned out while the monogamous couple and children would be zoned in. Such a pronounced disconnect between zoning goals and chosen language raises constitutional concerns.

If it is irrelevant that family members are related by blood, marriage, or adoption when evaluating the extent of their density, traffic, and noise impact on a residential neighborhood, then why do so many municipalities restrict single-family zoning to those relationships—occasionally allowing only a limited number of unrelated individuals as an exception? One plausible explanation is bias. For some, the presence of poly families may provoke discomfort or fear, grounded not in evidence of harm but in unfamiliarity or disapproval of nontraditional relationships.[304] This apprehension echoes the motivations behind Congress's 1971 amendment to the Food Stamp Act, excluding unrelated groups—such as so-called hippie communes—from the statutory definition of family.[305] As the Court recognized in *Moreno*, a law enacted out of a bare desire to "harm a politically unpopular group"[306] is constitutionally suspect. If similar animus underlies exclusionary zoning definitions—and no other explanation appears clear for the existing disparate treatment of nontraditional families in zoning codes—that provides further constitutional reason to reconsider and expand the definition of "family" in zoning regulation.

b. Defers to Family Structure Choices

Another thread linking *Moore* and *Moreno* is the importance of respecting individual choice when it comes to intimate decisions about family composition.[307] Sometimes, a nuclear family chooses to live together. At other times, there are reasons for wider groupings of people—including extended family members and even individuals without any blood, marriage, or adoption

304. As discussed earlier, poly individuals report significantly higher rates of discrimination and harassment as compared to the general population, including discrimination and harassment related directly to their poly status and relationships. *See supra* Part I.B and accompanying notes.

305. *See supra* Part I.B and accompanying notes.

306. *Moreno*, 413 U.S. at 534.

307. *Moore*, 431 U.S. at 503–05; *Moreno*, 413 U.S. at 541–42 (Douglas, J., concurring).

relationship with the other occupants—to live together as a single household.[308] Those personal choices might be made for financial reasons—to pool money for rent or to share the cost of household expenses, for example—or for personal reasons, such as a close affinity with one another or a desire to take care of a friend who needs extra support.[309] Regardless of why they are made, those choices are deeply personal and should be protected from governmental intrusion.[310]

In *Moore*, the Court discussed at length the choice of many Americans to live in families made up of extended relatives—aunts, uncles, cousins, and grandparents.[311] The Court recognized that the "accumulated wisdom of civilization . . . supports a larger conception of the family" beyond the nuclear family.[312] Because of necessity, a sense of responsibility to family, or other reasons, "it has been common for close relatives to draw together and participate in the duties and the satisfactions of a common home."[313] More broadly, the *Moore* Court emphasized that it has "long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment."[314]

Similarly, in *Moreno*, the Court's ruling recognized that groups of unrelated individuals who had chosen to live together to help take care of one another should be considered "households" for purposes of federal food assistance.[315] In the words of Justice Douglas, who concurred in the judgment, the case involved "desperately poor people with acute problems who,

308. *See supra* Part III.A.2 and accompanying notes; *infra* Part III.B and accompanying notes.

309. See *supra* Parts I–II and accompanying notes for a discussion of nontraditional families that would benefit from the proposed zoning definition of family.

310. *See* Obergefell v. Hodges, 576 U.S. 644, 657–66 (2015).

311. *Moore*, 431 U.S. at 504.

312. *Id.* at 505 (emphasis omitted).

313. *Id.*

314. *Id.* at 499 (citing Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639–40 (1974)). The *Moore* Court also cited to a long list of Supreme Court cases emphasizing the "private realm of family life which the state cannot enter." *Id.* (quoting Prince v. Massachusetts, 321 U.S. 158, 166 (1944) and collecting other cases that emphasize the same point).

315. U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 535–36 (1973).

though unrelated, come together for mutual help and assistance."[316]

One theme emerging from these decisions is a judicial recognition that the American family is evolving—and that "[t]he word 'family' is an elastic term and is applied in many ways."[317] In truth, the concept of "family" in the United States has never been static, and a number of lower court opinions, over the years, have emphasized an expansive and flexible reading of the term to include families of choice.[318] Broader zoning definitions of family in some jurisdictions "recognize the changing nature of households and housing preferences—including that the once-idealized nuclear family is becoming more rare."[319]

Recent census data reinforces the fluid nature of "family" in this country.[320] Between 1970 and 2022, the percentage of family households—defined as those including "at least two members related by birth, marriage, or adoption"[321]—decreased from 81% of all households to approximately 64%.[322] Family households composed of married couples and their children dropped dramatically from 40.3% to 17.8% during that time.[323] And "other family households"—households that included at least two people related by blood, marriage, or adoption but not a married couple—increased from 10.6% to 17.4% in the same timeframe.[324] There was also a sizable increase in nonfamily households—those consisting of a person living alone or only

316. *Id.* at 541 (Douglas, J., concurring).

317. Robertson v. W. Baptist Hosp., 267 S.W.2d 395, 396 (Ky. 1954).

318. *See, e.g.*, Stafford v. Inc. Sands Point, 102 N.Y.S.2d 910, 913 (N.Y. Sup. Ct. 1951) (noting that the accepted definition of family now 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"); Carmichael v. Nw. Mut. Benefit Ass'n, 16 N.W. 871, 872 (Mich. 1883) ("'[F]amily' . . . is an expression of great flexibility. It is applied in many ways. It may mean the husband and wife, having no children and living alone together, or it may mean children, or wife and children, or blood relatives, or any group constituting a distinct domestic or social body.").

319. THE LAW OF ZONING AND PLANNING, *supra* note 138, § 23:1.

320. *See* PAUL F. HEMEZ ET AL., U.S. CENSUS BUREAU, P20-587, AMERICA'S FAMILIES AND LIVING ARRANGEMENTS: 2022, at 2 (2024).

321. *Id.*

322. *Id.* at 5.

323. *Id.* at 4.

324. *Id.* at 4–5.

with persons who are nonrelatives.[325] In particular, nonfamily households that included only nonrelatives increased from 1.7% to 6.9%.[326] In addition, there has been an increase in the past twenty years in the number of unmarried cohabitating couples—both with and without children.[327] Furthermore, in 1980, 77% of children lived with two parents; in 2023, that percentage had dropped to 66%.[328] In short, more and more people are choosing to arrange themselves into relationship structures beyond the traditional, idealized family.

The decisions in *Moore* and *Moreno* can be read as deferring to the practical choices that families make to constitute themselves in ways that are meaningful and valuable to them.[329] In other words, *because* individuals choose various family groupings, those groupings should be respected by the state. Those private decisions about how to construct a family—whom to live with, share resources with, and intertwine lives with—implicate "deeply personal considerations as to the kind and quality of intimate relationships" a person chooses to create within the home.[330] They fall squarely "within the ambit of the right to privacy protected by the Constitution."[331] As the Court observed in *Moore*, the Due Process Clause of the Fourteenth Amendment

325. *Id.* at 4.

326. *Id.*

327. *Parents' Living Arrangements*, U.S. CENSUS BUREAU (2023), https://www.census.gov/library/visualizations/interactive/parents-living-arrangements.html [https://perma.cc/W9DD-453G].

328. *FAM1.A Family Structure and Children's Living Arrangements: Percentage of Children Ages 0–17 by Presence of Parents in Household and Race and Hispanic Origin, 1980–2023*, FED. INTERAGENCY F. ON CHILD & FAM. STAT., https://www.childstats.gov/americaschildren/tables/fam1a.asp [https://perma.cc/4ZLH-X954].

329. Moore v. City of E. Cleveland, 431 U.S. 494, 503–05 (1977) (plurality opinion); U.S. Dep't of Agric. v. Moreno, 413 U.S. 528, 541–42 (1973) (Douglas, J., concurring).

330. Vill. of Belle Terre v. Boraas, 416 U.S. 1, 15–16 (1974) (Marshall, J., dissenting).

331. *Id.* at 16 (Marshall, J., dissenting). To be clear, the Court in *Belle Terre* affirmed the municipality's narrow definition of family, but it did so without any meaningful discussion of competing constitutional rights. *See id.* at 2–10 (majority opinion). Instead, the Court summarily concluded, without analysis, that the case "involve[d] no 'fundamental' right guaranteed by the Constitution, such as . . . the right of association . . . or any rights of privacy . . . ." *Id.* at 7. As demonstrated by both Justice Marshall's thorough dissent in *Belle Terre* and the Court's own analysis in *Moore*, significant constitutional issues were, in fact, implicated by *Belle Terre*'s narrow definition of family.

protects freedom of choice in areas of marriage and family life.[332] In particular, the right to "establish a home" is a fundamental dimension of the Fourteenth Amendment's guarantee of liberty.[333] As Justice Marshall explained in his *Belle Terre* dissent, the "choice of household companions—of whether a person's 'intellectual and emotional needs' are best met by living with family, friends, professional associates, or others"—is deeply personal and should be outside the government's reach.[334] Although the family is not always immune from government regulation,[335] it is a "private realm" that the state should not normally enter.[336] When such government intrusion "on choices concerning living arrangements" occurs, courts "must examine carefully the importance of the governmental interests advanced and the extent to which they are served by the challenged regulation."[337]

Some of these same themes played a powerful role in the Court's 2015 decision in *Obergefell v. Hodges*, which held that same-sex couples have a constitutional right to marry.[338] In support of its decision, the Court observed that the "history of marriage is one of both continuity and change."[339] Although earlier concepts of marriage in our country included arrangement by parents and the law of coverture, marriage transformed over time to abandon those concepts.[340] As the Court noted, "changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new

332. *Moore*, 431 U.S. at 499 (citations omitted); *see Belle Terre*, 416 U.S. at 15 (Marshall, J., dissenting) (observing that "[t]he right to 'establish a home' is an essential part of the liberty guaranteed by the Fourteenth Amendment" (first citing Meyer v. Nebraska, 262 U.S. 390, 399 (1923); and then citing Griswold v. Connecticut, 381 U.S. 479, 495 (1965) (Goldberg, J., concurring)).

333. *Belle Terre*, 416 U.S. at 15 (Marshall, J., dissenting) (first citing *Meyer*, 262 U.S. at 399; and then citing *Griswold*, 381 U.S. at 495 (Goldberg, J., concurring)).

334. *Id.* at 16 (Marshall, J., dissenting).

335. *See, e.g.*, Prince v. Massachusetts, 321 U.S. 158 (1944) (upholding a state prohibition on certain conduct by children in streets or public places).

336. *Moore*, 431 U.S. at 499 (quoting *Prince*, 321 U.S. at 166). Professor Rigel Oliveri has persuasively argued that the right of intimate association, guaranteed by the Constitution, protects any choice of household companions and that the police power justifications underlying zoning definitions of family fail to stand up to strict scrutiny. *See* Oliveri, *supra* note 20.

337. *Moore*, 431 U.S. at 499 (citation omitted).

338. Obergefell v. Hodges, 576 U.S. 644, 670–72 (2015).

339. *Id.* at 659.

340. *Id.* at 659–60.

generations."[341] Despite these significant changes in the structure of marriage, continuity in what marriage meant and symbolized remained: A "lifelong union . . . always [] . . . promised nobility and dignity to all persons."[342] In the Court's view, "[r]ising from the most basic human needs, marriage is essential to our most profound hopes and aspirations."[343] The right to marry is a "personal choice . . . inherent in the concept of individual autonomy."[344] The Court positioned that right within the context of other equally important and constitutionally protected rights: "Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make."[345] Core to the Constitution's promise of liberty is the right of all persons "to define and express their identity."[346]

Like marriage, the structure of families has undergone change in this country over the years,[347] moving from one dominated by two spouses and their children to more diverse arrangements that reflect the needs and identities of the people involved. At the same time, as with marriage, the core meaning of family has remained constant. While the concept of family can be expressed in different ways, the proposed language—relationships "of mutual support, caring, and commitment"—captures its enduring core. And as with marriage, the right of a person to define family for themselves and their loved ones is inherently personal, private, and constitutionally protected. As the Court in *Moore* observed, the Constitution prevents a municipality

341. *Id.* at 660. The Court discussed a similar evolution in "the Nation's experiences with the rights of gays and lesbians," from early condemnations based on claims of immorality to "a shift in public attitudes toward greater tolerance." *Id.* at 660–61.

342. *Id.* at 656.

343. *Id.* at 657.

344. *Id.* at 665.

345. *Id.* at 666.

346. *Id.* at 651–52.

347. *See supra* Part I and accompanying notes. *See also* SHEFF, *supra* note 11, at 274 ("Families change. They have for the entire history of the human race, and they continue to do so. Contemporary shifts in families are simply a continuation (and acceleration) of endless variation, not the abrupt shift from a previously homogenous and unchanging form of family that some conservatives claim.").

from "standardizing its children—and its adults—by forcing all to live in certain narrowly defined family patterns."[348]

c. Accurately Captures the Meaning of Family

The proposed language—"in a relationship of mutual support, caring, and commitment"—succinctly reflects contemporary understandings of family, as recognized by both courts and society. It also aligns with functional criteria already adopted in the zoning codes of various jurisdictions to assess the legitimacy of nontraditional households.[349] As discussed earlier, many municipalities require groups of people wanting to occupy single-family housing as a functional family to prove that members of the household eat together, share domestic responsibilities, intertwine finances, and have established roots in the community.[350] Those kinds of specific activities and behaviors are evidence of a relationship of mutual support, caring, and commitment.

Furthermore, when courts discuss the nature of families, they frequently emphasize these same characteristics. For example, the court considering the rent control succession claim of a surviving same-sex partner in *Braschi* looked beyond the couple's legal status to examine the "reality of [their] family life,"[351] noting that the two men had been in a "long term [relationship] characterized by an emotional and financial commitment and interdependence,"[352] which it described as "having all of the normal familial characteristics."[353] The *O'Neill* court adopted the spirit of the *Braschi* court's analysis and expanded it to the context of the poly triad, recognizing that "what was 'normal' or 'nontraditional' [when *Braschi* was decided] is not a barometer for what is normal or nontraditional now."[354]

When courts try to describe what constitutes a family in various contexts, they frequently use language that tracks the

348. Moore v. City of E. Cleveland, 431 U.S. 494, 506 (1977) (plurality opinion).

349. *See, e.g.*, SOMERVILLE, MASS., CODE OF ORDINANCES ch. 2, art. IX, § 2-502 (2025) (defining one of the criteria for a domestic partnership as being in a relationship of "mutual support, caring and commitment").

350. *See supra* Part II.B.

351. Braschi v. Stahl Assoc. Co., 74 N.Y.2d 201, 211 (1989).

352. *Id.*

353. *Id.*

354. W. 49th St., LLC v. O'Neill, 178 N.Y.S.3d 874, 881 (Civ. Ct. 2022).

proposed "relationship of mutual support, caring, and commitment" phrasing. For example, a New York court in 1951 described family as a "collective body of persons living together . . . subsisting in common, and directing their attention to a common object, the promotion of their mutual interests and social happiness."[355] A Missouri court struggling with the definition of family used similar language: "To approximate a family relationship, there must exist a commitment to a permanent relationship and a perceived reciprocal obligation to support and to care for each other."[356] These and other judicial attempts to condense the meaning of family emphasize the same core dimensions as the suggested zoning definition.

The proposed language so accurately describes the modern family in all of its traditional and nontraditional forms that municipalities could eliminate from their zoning codes wording about blood, marriage, or adoption altogether. Instead, all families wishing to occupy single-family housing could be judged against the "relationship of mutual support, caring, and commitment" language. While protecting all families, this streamlined approach could strip away unnecessary and overlapping family definitional language in zoning codes that would be redundant, given the proposed revision.

d. Opens Single-Family Neighborhoods to Other Nontraditional Families

The core of the proposed language is derived from municipal ordinances in Massachusetts that were the first to extend domestic partnership recognition to poly relationships.[357] Given that polyamory advocates, including the Polyamory Legal Advocacy Coalition, contributed to drafting those ordinances,[358] there is strong reason to believe that the proposed terminology reflects the priorities and lived realities of poly families. Their input

355. Stafford v. Inc. Sands Point, 102 N.Y.S.2d 910, 913 (Sup. Ct. 1951).

356. City of Ladue v. Horn, 720 S.W.2d 745, 748 (Mo. Ct. App. 1986). Of course, traditional families created by marriage, for example, are not always "permanent." *See supra* Part II.B.3 and accompanying notes.

357. *See* Goldstein, *supra* note 279 ("The ordinance [is] the first of its kind, according to those involved . . . .").

358. *See Cambridge Becomes 2nd US City to Legalize Polyamorous Domestic Partnerships*, *supra* note 18 ("The ordinance was developed with detailed input from the newly formed Polyamory Legal Advocacy Coalition . . . .").

should guide the selection of zoning language to ensure that it meaningfully protects the households it intended to include.

However, another advantage of the proposed language is its applicability well beyond poly families. By anchoring the definition of family in clear, broad, descriptive terms, it extends housing availability to a wide range of nontraditional households that operate in ways analogous to traditional families. For instance, chosen families formed by LGBTQ+ adults, many of whom have experienced rejection by their families of origin, frequently rely on each other for financial, emotional, and caregiving support.[359] In the absence of legal recognition, these families are vulnerable to housing instability and may be excluded from both their desired neighborhoods and the health, education, and transportation infrastructures associated with them. Likewise, aging individuals who form long-term caregiving partnerships—often friends committed to cohabitation and reciprocal support—constitute familial units in every meaningful sense.[360] Their arrangements not only provide security and companionship but also reduce strain on public services.[361] Finally, this proposed language would also protect a non-married cohabitating couple, with or without children, in their use of single-family housing—even though they are not related by blood, marriage, or adoption. Framing the definition of family around "mutual support, caring, and commitment" affirms these and other nontraditional household forms, ensuring they are not arbitrarily excluded from residential zones that claim to promote and protect family life.[362]

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359. *See id.*

360. *See* Rhaina Cohen, *The Friends Who Are Caring for Each Other in Older Age*, ATLANTIC (Feb. 12, 2024), https://www.theatlantic.com/family/archive/2024/02/caregiving-friendship-dependence-elder-care/677410 [https://perma.cc/6C8D-PP44] (highlighting one such story of long-term friends turned cohabitants and caregivers).

361. *See* Marilyn Macdonald et al., *Co-Housing and Aging-in-Place for Older Adults*, WORLD EVIDENCE-BASED HEALTHCARE DAY (Oct. 10, 2024), https://worldebhcday.org/blog/2024/co-housing-and-aging-place-older-adults [https://perma.cc/S5GL-UQF3] (observing that senior citizen co-housing allows older adults to remain in their homes with fewer formal health and support services, thereby reducing strain on long-term care and health-care systems).

362. Many other forms of nontraditional families would benefit from this recommended change to zoning definitions of family, including co-parenting relationships, intergenerational support households, and veterans' support homes.

B. ALTERNATIVE APPROACHES TO PROTECTING NONTRADITIONAL FAMILIES IN ZONING

This Article recommends revision of zoning codes to include relationships of "mutual support, caring, and commitment" as a way to expand single-family housing to nontraditional families. However, other scholars have critiqued single-family zoning and proposed reforms that, in some instances, could have the practical effect of including poly and other nontraditional families, rather than excluding them.[363] While those proposals present compelling alternatives, they also come with limitations and drawbacks. Two of those recommendations are briefly explored below.

One alternative approach to ensuring that poly families can lawfully reside in single-family homes is to encourage cities to adopt a functional definition of family.[364] Functional families are groupings of people that behave in ways similar to traditional families and, as a result, are allowed to occupy housing reserved for families.[365] As described earlier, some municipal zoning codes permit groups of unrelated individuals to occupy single-family housing if they function as a "single housekeeping unit" or a similar construct.[366] Courts interpreting such undefined language typically inquire if the group lives, cooks, and eats meals together, among other considerations.[367] A subset of municipalities recognizing functional families require that specific criteria—usually involving evidence of interconnectedness of group members and plans to remain in the area for the foreseeable future—must be satisfied for the unrelated group to be allowed to occupy such housing.[368] While some poly families may be able to satisfy the functional family requirements in some jurisdictions, this approach is not ideal.

Zoning codes usually impose requirements on functional families that do not exist for families related by blood, marriage,

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363. *See, e.g.*, Redburn, *supra* note 20, at 2468, 2470 (suggesting both legislative and judicial solutions).

364. *See id.* at 2469 ("[T]he resulting ordinances brought an end to local discrimination on the basis of family form.").

365. Bronin, *supra* note 20, at 6.

366. *See supra* Part II.B.

367. See *supra* Part II.B and accompanying notes for examples of courts accounting for these kinds of considerations when evaluating single housekeeping units.

368. Bronin, *supra* note 20, at 6.

or adoption. In particular, functional families are frequently capped at a relatively low number, whereas families related by blood, marriage, or adoption are not.[369] As discussed earlier, for example, while the City of Fort Worth allows functional families who meet its definition of a single housekeeping unit to occupy single-family dwellings, its zoning code limits those groups to no more than five people.[370] But the city imposes no numerical limit on traditional families.[371] Such caps operate to exclude larger poly families, while similarly large traditional families are included. In addition, functional families usually have to prove their similarity to traditional families, by satisfying specific criteria or providing evidence of family-like behaviors, while no such requirements exist for traditional families. For example, while a functional family might have to prove that it cooks and eats together, a traditional family is free to occupy a single-family home regardless of whether they do so. Beyond being unfair, such disparate treatment may be an unconstitutional invasion of the privacy rights of functional families.[372]

Requiring poly families to prove their right to live in single-family dwellings by qualifying as functional families also ignores the reality that poly families are actual families.[373] While they are formed by more than two adults, they share the same domestic behaviors, responsibilities, and commitments that traditional families do.[374] In significant ways that matter for occupancy in a residential neighborhood, poly families are nearly identical to traditional families. In contrast, poly families are quite different than other groupings of individuals—unrelated college students, for example—that might qualify as functional families if specific criteria are satisfied.

Another critique of single-family zoning, consistent with Justice Marshall's dissent in *Belle Terre* and the Court's opinion in *Moore*, is that zoning code definitions that specify the

369. *See supra* Part II.B.

370. *See supra* Part II.B.3; FORT WORTH, TEX., CODE OF ORDINANCES app. A, ch. 9, § 9.101 (2025).

371. *See supra* Part II.B.3; FORT WORTH, TEX., CODE OF ORDINANCES app. A, ch. 9, § 9.101 (2025).

372. *See* Oliveri, *supra* note 20, at 1435 ("[W]hat might seem to be a benefit of the functional family . . . may be a detriment because it creates the potential for a tremendous invasion of privacy.").

373. *See supra* Part II.B.3.

374. *See supra* Part I and accompanying notes.

acceptable occupants of housing run the risk of violating important constitutional rights.[375] Professor Rigel Oliveri explored this argument in a 2015 article,[376] in which she argued broadly that household composition, as a general matter, is not an "appropriate subject for zoning regulation" because any such regulation impermissibly intrudes into the constitutionally protected right of intimate association.[377] As a result, while she accepted that expansive functional family definitions in zoning codes would protect nontraditional families, she believed that such definitions would be unconstitutional, for the same reason that narrower definitions of family would be.[378] Professor Oliveri further argued that functional family definitions "may [actually] be a detriment because [they] create[] the potential for a tremendous invasion of privacy. In essence, [they] require[] courts and zoning boards to review the intimate particulars of people's lives in order to determine whether they can live together."[379]

The wholesale invalidation of family composition rules in zoning codes because of their inherent unconstitutionality would, of course, eliminate all narrow (and broad) definitions of family. The result would be that no zoning impediments would exist to limit poly families' (or any other group's) occupation of single-family dwellings. However, Professor Sara Bronin has described this constitutional argument as possibly "ahead of its time," noting that "[f]ew courts seem to be ready to declare liberty, intimate association, or privacy as supreme over a community's right to govern who lives within the community."[380] As a result, although this approach has a theoretical and doctrinal appeal, it may have practical limitations.

C. CRITIQUES AND RESPONSES

Despite the utility of this Article's proposal, observers may raise two obvious critiques. First, zoning is local and inherently

375. *See* Vill. of Belle Terre v. Boraas, 416 U.S. 1, 15 (1974) (Marshall, J., dissenting); Moore v. City of E. Cleveland, 431 U.S. 494, 499 (1977) (plurality opinion).

376. *See* Oliveri, *supra* note 20.

377. *Id.* at 1434–36.

378. *Id.* at 1405, 1434.

379. *Id.* at 1435–36.

380. Bronin, *supra* note 20, at 28.

fragmented.[381] Because each municipality crafts its own definitions, all families, including poly ones, currently face a patchwork of inconsistent legal frameworks. Even if some jurisdictions adopt the proposed inclusive language, the broader national landscape would nonetheless remain uneven. As a result, poly families would still face significant uncertainty about zoning rules, and they would need to continue to check each jurisdiction's code to ensure that they are able to occupy single-family housing. Second, the proposed expanded language may create added burdens or risks for the very families it is intended to protect. Whereas families related by blood or marriage are presumed to qualify for single-family housing automatically, poly families—and other non-traditional ones—might now be required to provide evidence to demonstrate their "mutual support, caring, and commitment," exposing them to invasive inquiries that more traditional families do not face.[382]

The patchwork critique has some merit, but it discounts the frequently incremental nature of legal change.[383] The fact that zoning is local does not diminish the importance of reform; instead, it underscores how small-scale shifts can meaningfully expand options for families. The domestic partnership ordinances in Somerville and Cambridge, for example, did not resolve uncertainty nationwide; however, they did provide immediate protections for residents and furnished models for replication elsewhere.[384] Similarly, adopting inclusive zoning definitions city by city would gradually increase the number of jurisdictions where poly families can live openly without fear. More importantly, the proposed reform would replace today's fragile, discretionary protections—dependent on sympathetic courts or zoning

381. *See supra* Part II.B.1 and accompanying notes (discussing the somewhat idiosyncratic zoning practices that exist in every state).

382. Jurisdictions that adopt the proposed language could avoid unequal treatment of nontraditional families by structuring their "single family" definitions to exclude reference to families created by blood or marriage and use only the language "relationship of mutual support, caring, and commitment."

383. *See* Saul Levmore, *Title VII to Tinder: Law's Antidiscrimination Asymmetry and Occasional Market Superiority*, 68 ALA. L. REV. 877, 886–89 (2017) (discussing "the tendency of the law to change in incremental fashion").

384. See *supra* Part III.A.1 and accompanying notes for a discussion of local ordinances in Somerville and Cambridge.

boards[385]—with clearer and more durable rights. A patchwork that contains pockets of certainty is preferable to one defined by pervasive ambiguity.

It is also true that the proposed reform might bring poly families out of the shadows, potentially inviting more official scrutiny. But the question should not be whether nontraditional families should be visible or invisible; it should be whether our single-family zoning rules should encourage concealment of family structure or should extend housing opportunities to all families. Today, given the inhospitable nature of zoning laws in many jurisdictions,[386] poly families may choose to reside in single-family neighborhoods by misrepresentation—posing as roommates, splitting leases, or otherwise distorting their arrangements to "pass" under restrictive codes.[387] This concealment leaves them vulnerable to complaints, selective enforcement, and eviction, and it forces those families to live a lie. The proposed inclusive definition would offer a legal shield: families would not need to provide evidence that they mimic traditional households—such as proving that they eat together or share finances—only that they share mutual support, care, and commitment.[388] Properly drafted, this approach should decrease the opportunities for invasive inquiries, replacing a presumption of illegality with a presumption of legitimacy.

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385. As described earlier, courts and zoning boards have sometimes adopted expansive interpretations of family to include nontraditional ones, even where the relevant zoning code language was narrow. *See supra* notes 161–63 and accompanying text.

386. *See supra* Part II.B.3 and accompanying notes.

387. Similarly, before they gained modern legal protections, LGBTQ+ partners frequently concealed their relationships to secure housing and family-related rights, sometimes presenting themselves as "roommates" to avoid adverse legal consequences. *See* Henry Giardina, *The Fascinating Origin of "And They Were Roommates,"* INTO (June 11, 2024), https://www.intomore.com/the-internet/memes/the-fascinating-origin-of-and-they-were-roommates [https://perma.cc/6W9K-MCPQ] ("[M]any queer couples had to pretend to just be roommates in order to safely share a home together and avoid speculation.").

388. It seems unlikely that jurisdictions adopting the proposed language would then target nontraditional families with invasive questions not broadly applicable to all families; however, that possibility does exist. Nevertheless, poly and other nontraditional families face more certain invasive inquiries in jurisdictions that require families not of blood or marriage to prove their status as functional families by addressing specific factors listed in the zoning codes. See *supra* notes 181–83, 188–93 and accompanying text for a discussion of the specific factors that must be addressed by nontraditional families to qualify for single-family zoning in Burlington, Vermont and Fort Worth, Texas.

CONCLUSION

Most polyamorous families that wish to cohabitate, like most other kinds of families that do so, seek stability, security, and a place to call home. Yet, outdated zoning laws that narrowly define "family" based on blood, marriage, or adoption continue to exclude poly households from single-family neighborhoods, reinforcing structural discrimination that no longer reflects the diverse ways in which people form meaningful domestic relationships. As this Article has demonstrated, zoning should regulate land use, not police the private relationships of those who share a home.

Expanding the definition of family to include relationships of "mutual support, caring, and commitment" is a practical reform that aligns with emerging legal recognition of poly rights and ensures that zoning laws reflect a variety of family structures rather than restrict them. Indeed, the Supreme Court's decisions in *Moore*, *Moreno*, and *Obergefell*, along with state and local legal developments, indicate a growing recognition that individuals have a fundamental right to define their own family units. While some municipalities have taken steps toward inclusion, the legal landscape remains inconsistent, leaving many poly families in an uncertain and precarious position. Moreover, the benefits of this expanded definition extend far beyond the polyamorous community, providing stability and security to a range of nontraditional families, from LGBTQ+ chosen families to intergenerational caregiving households, veterans' support homes, and communal living arrangements. By revising zoning definitions to reflect contemporary realities, lawmakers can eliminate legal uncertainty, reduce discriminatory enforcement, and uphold the fundamental principle that family should be defined not by legal formalities, but by the lived experience of love, care, and shared commitment.