



THE ECONOMICS OF EQUAL MARRIAGE (updated June 2009)

In most states, the struggle for justice for the lesbian, gay, bisexual and transgender community continues. Six states have recognized that fairness and equality are cornerstones of life, liberty and the pursuit of happiness in their state. Massachusetts, Connecticut, Iowa, Vermont, Maine, and New Hampshire now permit same-sex marriage. Presently, there are only two jurisdictions that recognize gay marriages legally entered into elsewhere: New York and the District of Columbia. Each of these states took slightly different paths to marriage equality or recognizing same-sex marriage but in every case, activists were at the core of victory and for that we salute all of you for your hard work.

Still, we have much to do to achieve the full and equal treatment provided through civil marriage. Without civil marriage, 1,138 federal benefits are not available to same-sex couples further jeopardizing the economic well-being of same-sex couples.

Until we have achieved marriage equality, same-sex couples can not access the following federal benefits:

<ul style="list-style-type: none"> • Accidental death benefit for the surviving spouse of a government employee; • Appointment as guardian of a minor; • Award of child custody in divorce proceedings; • Beneficial owner status of corporate securities; • Bill of Rights benefits for victims and witnesses; • Burial of service member's dependents; • Certificates of occupation; • Consent to post-mortem examination; • Continuation of rights under existing homestead leases; • Control, division, acquisition, and disposition of community property • Criminal injuries compensation; • Death benefit for surviving spouse for government employee • Disclosure of vital statistics records; • Division of property after dissolution of marriage; • Eligibility for housing opportunity allowance 	<ul style="list-style-type: none"> • Payment of wages to a relative of deceased employee; • Payment of worker's compensation benefits after death; • Permission to make arrangements for burial or cremation; • Proof of business partnership; • Public assistance from the Department of Human Services; • Qualification at a facility for the elderly; • Real property exemption from attachment or execution; • Right of survivorship to custodial trust; • Right to be notified of parole or escape of inmate; • Right to change names; • Right to enter into pre-marital agreement; • Right to file action for nonsupport; • Right to inherit property; • Right to purchase leases and cash freehold agreements concerning the management and disposition of public land;
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<p>program of the Housing, Finance and Development Corporation;</p> <ul style="list-style-type: none"> • Exemption from claims of Department of Human Services for social services payments, financial assistance, or burial payments; • Exemption from conveyance tax; • Exemption from regulation of condominium sales to owner-occupants; • Funeral leave for government employees; • Homes of totally disable veterans exempt from property taxes; • Income tax deductions, credits, rates exemption, and estimates; • Inheritance of land patents; • Insurance licenses, coverage, eligibility, and benefits organization of mutual benefits society; • Legal status with partner's children; • Making, revoking, and objecting to anatomical gifts; • Making partner medical decisions; • Nonresident tuition deferential waiver; • Notice of guardian ad litem proceedings; • Notice of probate proceedings; 	<ul style="list-style-type: none"> • Right to sue for tort and death by wrongful act; • Right to support after divorce; • Right to support from spouse; • Rights and proceedings for involuntary hospitalization and treatment; • Rights by way of dour or courtesy; • Rights to notice, protection, benefits, and inheritance under the uniform probate code; • Sole interest in property; • Spousal privilege and confidential marriage communications; • Spousal immigration benefits; • Status of children; • Support payments in divorce action; • Tax relief for natural disaster losses; • Vacation allowance on termination of public employment by death; • Veterans' preference to spouse in public employment; • In vitro fertilization coverage; • Waiver of fees for certified copies and searches of vital statistics.
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A. Employment

Only 20 states have laws that protect same-sex couples from employment discrimination and support equal rights in the workplace. This discrimination includes the denial of domestic benefits and the imposition of additional tax burdens for those who are able to secure domestic partnership benefits.

In part due to sex discrimination, women often have lower lifetime earnings than men, and reach retirement with smaller pension and assets. Thus, the government's denial of access to marriage can be all the more harmful for lesbian couples, whose lower wage-earner cannot access the other's earnings record and obtain the higher benefits available to married couples.¹

B. Federal Discrimination

President Clinton signed, the federal "Defense of Marriage Act" (DOMA), placing marriage discrimination against only one group of people into the federal laws for the first time ever. "Section 3" of DOMA denies valuable federal rights and protections to married same-sex couples simply because they are gay or lesbian. It limits "marriage" to one man and woman and "spouse" to a person of the opposite sex, for purposes of all federal laws. The limitations on who counts as married directly impact more than 1,138 federal laws and programs in which marital status is a factor. Section 3 effectively creates a system of first- and

second-class marriages, where the former receive all federal legal protections, and same-sex couples are denied all federal legal protections.²

The federal government does not recognize same-sex marriage; therefore, same-sex couples are denied federal rights and are not allowed to sponsor spouses for U.S. citizenship. If you apply for a visa for your partner based on a same-sex marriage, it will be denied. If your partner is not in lawful status, he could be placed in removal (deportation) proceedings.³ The 1995 Defense of Marriage Act (Public Law 104-199) provides that the federal government will honor only marriages between one man and one women.

C. Estate and Gift Taxation

Married heterosexual couples can transfer assets to each other without having to pay taxes, whether those transfers are made while they are alive or after one of them dies. Same-sex couples are not entitled to this benefit, and any transfer of an asset between members of a same-sex couple, living or dead, requires the payment of a gift or estate tax.⁴

Recognizing same-sex marriages for federal tax purposes would require people in those marriages to file income tax returns as couples, either jointly or separately. For almost all married couple, filing jointly rather than separately results in lower tax liability.

D. Adoption and Foster Care

According to the 2000 Census, 34 percent of female same-sex households and 22 percent of male households include children. The Lambda Legal Defense Fund estimates 6 million to 14 million children. There are 119,000 children waiting to be adopted in this country, about half of them racial and ethnic minorities. There about 588,000 children in foster care. However, there still legislators who push for bans on gay adoption and fostering. Only Florida categorically prohibits gay people from adopting. The state laws change frequently and while every state except Florida permits gay, lesbian, and bisexual people from adopting children, many obstacles remain and the laws vary based on how the adoption is defined (e.g., second parent adoption, stepparent adoption, joint adoption etc.) Consult an attorney in your state to determine the current laws and the best course for your case.⁵

E. Home Ownership & Estate Planning

One of the benefits to being married is that couples can choose to take title to their homes as “tenants in the entirety”, which means that each person is 100 percent owner of the house. If one dies, the house is automatically owned by the survivor without the need for probate. And it’s much more difficult for a creditor to take away the home because of the non-mortgage debts of only one owner.

When a gay partner dies without a will, the consequences can be catastrophic. Most state inheritance laws do not recognize same-sex partners, meaning the

deceased partner's assets, will likely go to siblings or other family members, even if they've been estranged.

F. Health Care

We have a patchwork health care system in our nation and state laws vary on the treatment and policies regarding same-sex couples. Many same-sex couples who are not married are denied health benefits that allow them care for their families. They are not unable to make medical decisions for an ill partner nor can they use family medical leave to care for in case their partner is ill. In many states, same-sex couples are denied access to their partners who are ill or dying in the hospital.

Even if a same-sex couple is eligible for domestic partner health care benefits from their employer, the fact that the benefit is taxed as income causes economic inequity and can put the option of health care out of reach for the couple. While our leaders debate health care reform in Congress, we must be on the front lines demanding that any reform plan include equal access to health care by same-sex couples as their heterosexual counterparts.

Inequality follows same-sex couples to their end-of-life decisions. When a member of a married couple goes into a nursing home, the government requires the couple to "spend down" most of their assets before the individual is eligible for Medicaid, a federal program administered by the states. But the formula allows the healthy spouse to keep enough money for living expenses. In addition, the married couple's home isn't counted as an asset, allowing the healthy spouse to remain in the home. That protection does not extend to gay couples. As a result, some are forced to give up their homes so one partner can qualify for Medicaid coverage.

G. Tourism & Wedding Industry

Maine's inns and tourist agencies claim legalizing same-sex marriage could possibly save the state from economic disaster. Representatives from the tourism industry began lobbying in March in support of the legislation and met with several of the state's lawmakers. The lobbyists are pointing to a recent study by the Williams Institute, from the University of California Los Angeles, which found that legalizing same-sex marriage in the state would boost Maine's economy by \$60 million over the next three years.⁶

The following is reprinted from NOW's previous Equal Marriage materials:

THE IMPACT ON LGBT PEOPLE AND THEIR FAMILIES:

Marriage is the least expensive option couples have to gain access to these economic benefits. LGBT couples do not have the option of marrying and, therefore, have to create a complex set of legal documents and contracts used to secure some measure of economic and legal protection for themselves and their families. However, this is an expensive and time consuming project that does not ensure full marriage equality. In addition, the legal

services needed to complete this project are often expensive and, therefore, inaccessible to poor and working class same-sex couples.

For all of these reasons and more, unequal and unjust marriage laws have a significant economic impact on the lives of LGBT people and their families. What follows is a list of some of the ways that LGBT people are economically impacted by a lack of access to benefits:

- **Medical emergencies** –Requirements for living wills and powers of attorney vary from state to state, and they can be expensive. And if you move to a new state, your will or powers of attorney may have to be redrafted. Doctors can leave same-sex partners out of critical decision-making processes without these documents. Marriage eliminates the need for any legal documents because spouses are not only allowed, but indeed expected, to make these important decisions for one another.
- **Divorce** – Unmarried partners do not have the benefits of divorce court to "wind-up" their relationships. Even without substantial assets to divide, issues of child support, childcare, and partner support need to be resolved in the best interest of the family.
- **Social Security Benefits**–Social Security protects married couples and their families, including spouses and children, against a variety of risks including disability, death of a working spouse or parent, death of a retired spouse and retirement with insufficient personal savings or pension coverage among others. Yet, no survivor benefits, including spousal benefits and disability benefits, are available to same-sex couples and their children. Also, same-sex partners cannot draw on the Social Security of their deceased partner. For the average wage earner, Social Security insurance benefits are equivalent to a \$322,000 life insurance policy or \$233,000 in disability insurance.
- **Housing Benefits** – Same-sex couples can not sign up for joint home insurance policies and joint rental leases with automatic renewal rights if a spouse dies or leaves.
- **Immigration Benefits** – A foreign-born national has a right to a green card when married to an American citizen or legal permanent resident. The spouse may then obtain a work permit and eventually become a U.S. citizen. Spouses of U.S. citizens and lawful permanent residents also face a far shorter waiting period than other immigrants. These spousal rights even trump the United States' ban on immigration for HIV+ individuals. Same-sex partners are denied the family respect that otherwise governs immigration law.
- **Children and Families**- Marriage protects the economic interests of children by providing an economic safety net. The children have automatic and undisputed access to the resources, benefits and entitlements of both parents, such as employer- provided dependent health care. Married couples do not have to incur any expenses, legal or otherwise, to ensure that both parents have the right to make important medical decisions for their children in case of emergency.
- **Death of a Spouse**- Spouses, in most states, receive automatic inheritance. This means that if one of the parents dies in a heterosexual marriage, the law provides

some financial security not only for the surviving spouse, but for the children as well, by ensuring eligibility to all appropriate entitlements, such as social security survivor benefits. If a same sex-couple does not have a will, the inheritance most likely will go to a distant relative or to the state. This means that the same-sex partner will be treated as a stranger.

Much of this information comes from “For Richer, For Poorer: Same-Sex Couples and the Freedom to Marry as a Civil Right” written by Evan Wolfson, Executive Director of the Freedom to Marry Coalition.

¹ From *Women and Retirement Security*, A Report Prepared by the National Economic Council Interagency Working Group on Social Security, October 1998.

http://lambdalegal.org/publications/factsheets/fs_denying-access-to-mariage-social-security.html (accessed June 8, 2009).

²“DOMA: Federal Discrimination Against Same-Sex Married Couples,” Available at:

<http://www.glad.org/uploads/docs/publications/doma-flyer.pdf> (accessed June 8, 2009).

³ *Same Sex Marriage*. <http://www.immigrationequality.org/template.php?pageid=154> (accessed June 8, 2009).

⁴ Dougherty, Terence. *Benefits of Marriage: Under Federal and Massachusetts Law*. National Gay and Lesbian Task Force. <http://www.thetaskforce.org/downloads/reports/reports/EconomicBenefitsMA.pdf> (accessed June 8, 2009).

⁵ Overview of State Adoption Laws. Lambda Legal. <http://www.lambdalegal.org/our-work/issues/marriage-relationships-family/parenting/overview-of-state-adoption.html> (accessed June 5, 2009).

⁶ Higgs, James. “Maine’s Tourism Agencies Lobby for Marriage.” 2 May 2009.

<http://www.gayagenda.com/2009/03/maines-tourism-agencies-lobby-for-marriage/> (accessed June 9, 2009).