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Authors

Badgett, M V Lee

Sears, Brad

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PUTTING A PRICE ON EQUALITY? THE IMPACT OF SAME-SEX MARRIAGE ON CALIFORNIA'S BUDGET

M.V. Lee Badgett[†] & R. Bradley Sears^{††}

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[†] M. V. Lee Badgett, Ph.D., is an Associate Professor of Economics at the University of Massachusetts Amherst and the Research Director of the Institute for Gay and Lesbian Strategic Studies.

^{††} Brad Sears is a Lecturer in Law at UCLA School of Law and Executive Director of the Charles R. Williams Project on Sexual Orientation Law and Public Policy. The authors would like to thank Elizabeth Kukura, the Williams Project's Public Policy Fellow, and Howard Jacobs for their research assistance with this article. The authors also thank Dr. Gary Gates and Dr. Christopher Carpenter for providing data and unpublished calculations.

INTRODUCTION

Since the early 1990s, the United States has been involved in an intensified and often emotional debate about extending the right to marry to same-sex couples. Although economic concerns may seem to be the antithesis of morality and emotion, economic issues have played an important role in the debate. The contractual nature of marital responsibilities, the valuable rights provided to married people by law and custom, and the ongoing relevance of marriage in the transmission of property across generations have generated both interest among same-sex couples in having the right to marry and concern among some politicians about the financial cost of expanding access to marriage.

In one sense, economic concerns were at the heart of the first major United States marriage debate in the mid-1990s. After a 1993 Hawaii Supreme Court ruling appeared to pave the way for marriage by same-sex couples,¹ state and federal elected officials feared that Hawaii would become a tourist magnet for gay and lesbian couples.² Politicians in other states envisioned same-sex couples traveling to Hawaii to marry and returning home to claim the rights and benefits provided to married couples. Not only would same-sex couples have an economic incentive to marry, but the State of Hawaii would have had an economic incentive to encourage marriage tourism. Two studies predicted that hundreds of thousands of same-sex couples would travel to Hawaii and would bring in roughly \$200 million in annual new spending to boost the state economy, resulting in millions of dollars in state tax revenues.³

In response to the Hawaii Supreme Court's ruling, forty states eventually passed laws or constitutional amendments stating that they would not recognize the out-of-state marriages of same-sex couples,⁴ and Congress passed the Defense of Marriage Act (DOMA) to allow states to do so, as well as to affirm the federal government's policy of only recognizing marriages of different-sex

1. Baehr v. Miike, 910 P.2d 112 (Haw. 1996); *see also* Baehr v. Lewin, 852 P.2d 44 (Haw. 1993) (refusing to issue marriage licenses to same-sex couples appears to violate the Equal Protection Clause of the state constitution).

2. *See, e.g.*, STATE OF HAWAII, REPORT OF THE COMMISSION ON SEXUAL ORIENTATION AND THE LAW, ch. 2, at 4 (1995), <http://www.hawaii.gov/lrb/rpts95/sol/soldoc.html> (last visited Mar. 17, 2005).

3. Jennifer Gerarda Brown, *Competitive Federalism and the Legislative Incentives to Recognize Same-Sex Marriage*, 68 S. CAL. L. REV. 745 (1995); *How Will Same-Sex Marriage Affect Hawaii's Tourism Industry?: Hearing Before the Commission on Sexual Orientation and the Law*, 1995 Leg., 18th Sess. (Haw. 1995) (testimony of Sumner Lacroix & James Mak) [hereinafter *Hearing*].

4. HUMAN RIGHTS CAMPAIGN, MARRIAGE/RELATIONSHIP RECOGNITION LAWS: STATE BY STATE (2004), <http://www.hrc.org/Template.cfm?Section=Center&CONTENTID=20716&TEMPLATE=TaggedPage/TaggedPageDisplay.cfm&TPLID=66> (last visited Mar. 1, 2005); Kavan Peterson, *50-State Rundown on Gay Marriage Laws*, STATELINE.ORG, July 8, 2004, available at <http://www.nationalcoalition.org/legal/50staterundown.html> (last visited Mar. 20, 2005).

couples under federal law.⁵ During the DOMA debate, members of Congress openly expressed concerns that new marriages would have an adverse effect on the federal budget, since gay couples would qualify for, among other things, social security survivor benefits and employment benefits provided to spouses.⁶

A second round of debates over same-sex couples marital rights and responsibilities—either in the form of marriage or statewide civil union or domestic partnership laws—has emerged in the last few years, and fiscal issues related to marriage have become even more prominent than during the debates in the mid-1990s.⁷ A recession that battered state budgets appears to have heightened legislators' concerns that rights for same-sex couples could become an expensive proposition.⁸ Accordingly, when California first passed legislation giving same-sex couples (and different-sex couples where one party is over the age of sixty-two) the right to register as domestic partners,⁹ it primarily included only rights which would have little or no impact on the state budget.¹⁰

In 2003, when California began considering Assembly Bill (AB) 205,¹¹ a

5. DOMA is a federal law that limits the definition of “spouse” in all federal laws and regulations to refer “only to a person of the opposite sex who is a husband or a wife.” Defense of Marriage Act, Pub. L. No. 104-199, § 1, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 (1997)).

6. During the debate over DOMA, Senator Robert Byrd of West Virginia explicitly invoked concerns about the fiscal impact of letting same-sex couples marry:

Moreover, I urge my colleagues to think of the potential cost involved here. How much is it going to cost the Federal Government if the definition of ‘spouse’ is changed? It is not a matter of irrelevancy at all. It is not a matter of attacking anyone’s personal beliefs or personal activity. That is not my purpose here. What is the added cost in Medicare and Medicaid benefits if a new meaning is suddenly given to these terms?

142 CONG. REC. S10111 (1996) (statement of Sen. Byrd).

7. See, e.g., Tom Herman, *Tax Report: Same-Sex Marriages Would Add to U.S. Revenue*, WALL ST. J., July 1, 2004, at D2; Ethan Jacobs, *Love Don’t Cost a Thing*, BAY WINDOWS ONLINE, July 1, 2004, available at <http://www.baywindows.com/news/2004/07/01/LocalNews/Love-Dont.Cost.A.Thing-690966.shtml> (last visited Mar. 18, 2005).

8. For a discussion of the fiscal crisis in the states in the early part of this century see the series of reports by the Center on Budget and Policy Priorities, *State Fiscal Crisis—Causes and Impacts*, <http://www.cbpp.org/pubs/statecrisis.htm> (last visited Mar. 18, 2005).

9. 2001 Cal. Adv. Legis. Serv. 893 (Deering).

10. *Id.* (expanding the rights of domestic partnership); 1999 Cal. Adv. Legis. Serv. 588 (Deering). California’s initial pieces of domestic partnership legislation did confer one benefit of marriage on domestic partners that impacted the state budget. AB 25 eliminated state taxation on domestic partnership benefits offered by employers in the state. 2001 Cal. Adv. Legis. Serv. 893 (Deering). However, the fiscal impact of this tax exemption on the state was most likely negligible given the limited number of domestic partnership registrations; the limited number of private employers in California offering domestic partnership benefits to employees; the limited value of these benefits; and, thus, the limited amount of revenues resulting from the taxation of these benefits.

11. 2003 Cal. Adv. Legis. Serv. 421 (Deering). The rights conferred by AB 205 on domestic partners include:

The right to use step-parent adoption procedures.

The right for one domestic partner to make legal, financial, and medical decisions, to file

law that would give domestic partners almost all of the rights and responsibilities of marriage that the state can grant, legislators became concerned that these extensions might have fiscal implications.¹² In the end, the version of AB 205 signed by then Governor Gray Davis contained only two departures from the rights of marriage: domestic partners could not file as married couples on their state income tax returns, and earned income would not be considered community property of the couple.¹³ On January 1, 2005, domestic partners gained all of the other rights associated with different-sex spousal relationships under California state law.¹⁴

In 2004, Assembly Member Mark Leno introduced AB 1967, a bill that would have given same-sex couples the right to marry.¹⁵ While the bill did not reach the floor for a vote,¹⁶ AB 1967 would have given same-sex couples the remaining rights and responsibilities of marriage. We have estimated the fiscal impact of both AB 205 and of AB 1967 as each bill was debated in the California legislature.¹⁷ For the sake of clarity and ease of presentation in this

state disability benefits, and to be appointed as a conservator if the other partner is incapacitated.

The right to inherit from a partner if the partner dies without a will, the right to draft a will or trust for a partner, the ability to use form wills, and the right to automatic appointment as executor of a partner's estate.

The right to sue for wrongful death and infliction of emotional distress when a partner is killed or injured.

The right to certain employment benefits, including the right to paid leave to care for a seriously ill partner or a partner's child, the right to use sick leave to care for a partner or a partner's child, and in limited circumstances, health insurance.

12. See, e.g., *id.*; *No More Fiscal Excuse to Cheat Gay Couples*, GAY & LESBIAN TIMES, May 29, 2003, available at <http://www.gaylesbiantimes.com/?id=55&issue=805> (last visited Mar. 17, 2005).

13. 2003 Cal. Adv. Legis. Serv. 421 (Deering). Section 4 of AB 205 states:

SEC. 4. Section 297.5 is added to the Family Code, to read: 297.5. (a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses." However, some exceptions exist: "(g) Notwithstanding this section, in filing their state income tax returns, domestic partners shall use the same filing status as is used on their federal income tax returns, or that would have been used had they filed federal income tax returns. Earned income may not be treated as community property for state income tax purposes.

Id.

14. AB 205 went into effect January 1, 2005. *Id.*

15. A.B. 1967, 2003-2004 Sess. (Cal. 2004), http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_1951-2000/ab_1967_bill_20040517_amended_asm.html (last visited Mar. 9, 2005).

16. This bill was the first same-sex marriage bill in the United States to be approved by a committee of a state legislature. The bill was passed out of the Assembly Judiciary Committee, but did not receive enough votes by the Assembly Appropriations Committee. *Id.* Testimony about our studies was presented at the Appropriations Committee.

17. See M. V. LEE BADGETT & R. BRADLEY SEARS, WILLIAMS PROJECT ON SEXUAL ORIENTATION LAW, EQUAL RIGHTS, FISCAL RESPONSIBILITY: THE IMPACT OF AB 205 ON CALIFORNIA'S BUDGET (2003), <http://www1.law.ucla.edu/~williamsproj/AB205/AB205Study1.pdf> (last visited Mar. 18, 2005); R. BRADLEY SEARS & M. V. LEE BADGETT,

Article, we are combining the two analyses to present our estimates of the fiscal impact on the state budget as if California were considering moving from a situation in which the state grants no rights to same-sex couples to a situation in which same-sex couples are allowed to marry. In the final tally, we will separate out the marginal impact on the California budget from taking the final step and allowing same-sex couples to marry.

We undertake our analysis with the hope that this Article will serve as a template for other states to evaluate the impact of extending the rights and obligations of marriage to same-sex couples, either through marriage equality or a civil union or domestic partnership law. To further that purpose, we note when other states may have to consider an economic impact on the state budget that is not applicable under California law. After Part I discusses our estimate of the number of same-sex couples who would marry if they were allowed to do so in California, Parts II, III, and IV outline and estimate the impact of allowing same-sex couples to marry on the following revenue and expenditure items in the California budget:

- Changes in eligibility for means-tested public benefits provided by the state;
- Increased sales tax revenues from increased tourism;
- Increased sales tax revenues from residents' same-sex couple weddings;
- Changes in access to the family court system;
- Changes in state employees' eligibility and enrollment for employment benefits that are currently only provided to employees' spouses; and
- Changes in the tax filing status, and therefore the tax payments, of couples in domestic partnerships.

In conducting this study, we thoroughly examined the rights and obligations of marriage under California law. We decided to focus on these six areas because they were the only areas that had the potential of significantly impacting the state budget. Depending on state laws, similar studies for other states might need to consider inheritance and estate taxes. Our study of New Jersey's Domestic Partnership Act presents an example of how to do an analysis for inheritance and estate tax.¹⁸ A recent report by the Congressional Budget Office also provides such a discussion of the impact of same-sex marriage on the federal estate tax.¹⁹ In addition, we analyzed the administrative

WILLIAMS PROJECT ON SEXUAL ORIENTATION LAW, THE IMPACT ON CALIFORNIA'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2004), <http://www1.law.ucla.edu/~williamsproj/publications/CASameSexMarriage.pdf> (last visited Mar. 18, 2005).

18. M. V. LEE BADGETT & R. BRADLEY SEARS, WILLIAMS PROJECT ON SEXUAL ORIENTATION LAW, SUPPORTING FAMILIES, SAVING FUNDS: A FISCAL ANALYSIS OF NEW JERSEY'S DOMESTIC PARTNERSHIP ACT, 17-21 (2003), <http://www1.law.ucla.edu/~williamsproj/issues/NJ/NJ-DPA.doc> (last visited Mar. 18, 2004).

19. Letter from Douglas Holtz-Eakin, Director, Congressional Budget Office, to the Honorable Steve Chabot, Chairman, Subcomm. on the Constitution, U.S. House of Representatives 3-4 (June 21, 2004), <http://www.cbo.gov/showdoc.cfm?index=5559&>

costs incurred by allowing same-sex marriage. Although administrative costs, such as changing the marriage license and the application for such a license, are often raised by opponents of same-sex marriage,²⁰ we have found that such costs are nominal²¹ and are offset by marriage license application fees.²²

Based on the analysis set out in this study, we estimate that the California state budget will benefit from an annual net gain of approximately \$123 million during the first three years it extends marriage to same-sex couples—approximately \$41 million per year. This estimate is conservative. In other words, when we have had to choose between assumptions in this study in order to estimate costs or benefits to the state, we have selected the assumptions that would result in higher costs and lower benefits. Thus, the \$41 million annual savings that we estimate is at the lower end of a range of possible fiscal benefits. Our best estimate is that the benefit to the state will be significantly higher. To provide the most accurate estimates possible, we draw on the best available data. We assess the impact on California's revenues and expenditures using the most recent year for which data is available on all the components that we analyze.

I. NUMBER OF SAME-SEX COUPLES WHO WILL MARRY

One estimate that is central to our analysis is the number of same-sex couples who will marry. One basis for this analysis is California's state domestic partner registry. California currently allows same-sex couples to register as domestic partners. Different-sex couples are also allowed to register as long as one member of the couple is at least sixty-two years of age. As of

sequence=0 (last visited Mar. 18, 2005).

20. See, e.g., David R. Francis, *The Dollars and Cents of Gay Marriage*, CHRISTIAN SCI. MONITOR, Aug. 30, 2004; Josh Gohlke & Trenton Bureau, *2 Assembly Panels Pass Domestic Partnership Bill*, REC., Dec. 12, 2003, at A05; Rona Marech, *Panel Puts Same-Sex Marriage Bill on Hold; State Law Makers Want to Review Financial Impact*, SAN. FRAN. CHRON., May 13, 2004, at B3.

21. Vermont reported that its more extensive civil union legislation involved additional agency time in the first six months after passage, but that no additional staff was hired for this purpose. OFFICE OF LEGIS. COUNCIL, REPORT OF THE VERMONT CIVIL UNION REVIEW COMM'N 8-9 (2002), <http://www.leg.state.vt.us/baker/Final%20CURC%20Report%20for%202002.htm> (last visited Mar. 21, 2005); see also, CONN. GEN. ASSEMBLY, OFFICE OF LEGIS. RESEARCH, OFFICE OF FISCAL ANALYSIS REPORT ON HB 5001 (2002) (concerning minimal administrative costs resulting from Connecticut extending marriage to same-sex couples), http://www1.law.ucla.edu/~williamsproj/connstudy_files/connstudy.htm (last visited Mar. 21, 2004); OFFICE OF LEGIS. COUNSEL, REPORT OF THE VERMONT CIVIL UNION REVIEW COMM'N 7 (2001) (finding minimal start-up costs after civil unions offered in Vermont for six months), <http://www.leg.state.vt.us/baker/cureport.htm> (last visited Mar. 21, 2005).

22. The marriage license fees in California are set by each county. CAL. CONST. art. XI, § 7. Marriage fees range from \$50.00 (San Diego County) to \$97.00 (Ventura County). See Website of San Diego County, http://www.sdcounty.ca.gov/arcc/services/marriage_licenses.html (last visited Mar. 21, 2005); Website of Ventura County, <http://www.ventura.org/recorder/marriage.htm> (last visited Mar. 21, 2005).

May 2004, approximately 26,387 couples had registered as domestic partners with the state.²³ Unfortunately, California does not track how many couples registering are of the same or different sex. In this analysis, we assume that most domestic partners are same-sex couples. This assumption is reasonable given that different-sex couples are legally allowed to marry. In addition, persons over sixty-two are less likely to form non-marital cohabitating relationships with a different-sex partner,²⁴ most likely because of more widespread moral disapproval of such relationships in current cohorts.

We predict that over time the new state rights and obligations, the potential for access to federal rights and obligations,²⁵ and the increased social status that marriage provides will encourage more couples to marry than are currently registered as domestic partners. We base this prediction on the experience of Vermont's civil union legislation,²⁶ which provides those entering into civil unions with all the statewide rights and obligations of spouses in civil marriage. When compared to the number of same-sex couples identified by the 2000 U.S. Census, approximately half of Vermont's same-sex couples have entered into civil unions.²⁷ Currently, the 26,387 couples registered as domestic partners under California law represent only twenty-seven percent of the 92,138 same-sex couples identified as living in California by Census 2000.²⁸ Thus, we

23. E-mail from Ms. Sandra Snell, Office of Sec'y of State of California to R. Bradley Sears, Williams Project at UCLA School of Law (May 10, 2004) (on file with authors).

24. TAVIA SIMMONS & MARTIN O'CONNELL, U.S. CENSUS BUREAU, MARRIED-COUPLE & UNMARRIED-PARTNER HOUSEHOLDS: 2000 13-14 tbl. 6 (2003), <http://www.census.gov/prod/2003pubs/censr-5.pdf> (last visited Mar. 22, 2005) (noting that partners in opposite-sex unmarried partnerships are 12 younger, on average, than partners in marriages).

25. While currently the Federal DOMA law would prevent same-sex couples from accessing any of the federal rights and benefits of marriage, California allowing them to marry would at least give them standing to challenge the restrictions imposed by DOMA. Since entering into a California domestic partnership would not provide such standing, some same-sex couples who might gain from accessing federal rights, such as federal income tax benefits, may refrain from registering as domestic partners but would opt to marry either to challenge the Federal DOMA law themselves or to garner the benefit from such a challenge by others. In particular, if the relief granted in such Federal DOMA challenge extended back to the date of each couples' state marriage, same-sex couples would have an incentive to marry even while the Federal DOMA was still in place.

26. Vermont Civil Union Act, No. 91 (April 26, 2000), <http://www.leg.state.vt.us/docs/2000/acts/ACT091.HTM> (last visited Mar. 21, 2005).

27. In Vermont, 1933 same-sex couples identified themselves in the 2000 U.S. Census. SIMMONS & O'CONNELL, *supra* note 24, at 4 tbl. 2. As of July 2004, 998 same-sex couples, or 51.6% of couples who identified themselves on Census 2000, have entered into a civil union. E-mail from Richard McCoy, Office of Vital Records, Vermont Dep't of Health, to R. Bradley Sears (July 8, 2004) (on file with authors).

28. SIMMONS & O'CONNELL, *supra* note 24, at 4 tbl. 2. There is some evidence that the 2000 U.S. Census undercounted the number of cohabitating same-sex couples. M.V. LEE BADGETT & MARC A. ROGERS, INST. FOR GAY & LESBIAN STRATEGIC STUDIES, LEFT OUT OF THE COUNT: MISSING SAME-SEX COUPLES IN CENSUS 2000 (2003), http://www.iglss.org/media/files/c2k_leftout.pdf (last visited on Mar. 21, 2005) (noting that two surveys estimated the undercount at 16% to 19%); DAVID M. SMITH & GARY J. GATES, HUMAN RIGHTS

assume that the comprehensive set of rights provided under Vermont law and the higher social status attributed to civil unions have caused a larger percentage of couples to seek legal recognition of their relationships.

We also assume that, in the short term, the percentage of same-sex couples who marry will not equal the percentage of different-sex couples who marry (over 90%).²⁹ Some same-sex couples will not choose to marry for the same reasons that some different-sex couples choose not to marry. In addition, we assume that same-sex couples will be less likely to marry in the short term because of fears about marriage “outing” their sexual orientation, both in general and to the government.³⁰ In addition, lack of knowledge about changes in the law that permit same-sex marriage and the absence of a tradition of marriage in the gay and lesbian community may result in a smaller percentage of same-sex couples marrying. In other words, while different-sex couples have been raised assuming that they are able to marry, same-sex couples will have to learn that they now have that right and grow accustomed to the institution.³¹

Therefore, we base our analysis on the estimate that approximately one-half of the same-sex couples identified in California in Census 2000 will marry, meaning 46,000 out of approximately 92,000 couples. Stated differently, we predict that almost twice as many same-sex couples in California would marry than those who have currently registered as domestic partners with the state.³²

II. POSITIVE IMPACTS ON THE STATE BUDGET

We find that allowing same-sex couples to marry will have three positive

CAMPAIGN, GAY AND LESBIAN FAMILIES IN THE UNITED STATES: SAME-SEX UNMARRIED PARTNER HOUSEHOLDS 2 (2001) (estimating undercount at 62%), http://www.hrc.org/Template.cfm?Section=Census_20001&Template=/ContentManagement/ContentDisplay.cfm&ContentID=13396 (last visited Mar. 21, 2005).

29. SIMMONS & O'CONNELL, *supra* note 24, at 3-4 & tbl. 2.

30. For example, a teacher recently had his job threatened after students and co-workers learned he had married in San Francisco. Other teachers expressed concerns about revealing marriages. Dana Hull, *Same-Sex Educational Dilemma: To Tell or Not to Tell Schoolchildren*, SAN JOSE MERCURY NEWS ONLINE, May 7, 2004, <http://www.mercurynews.com/mld/mercurynews/news/local/8611351.htm> (last visited Mar. 21, 2005).

31. For example, to combat the gap between changes in state law and people's knowledge about those changes, California sent out three notices to registered domestic partners about the effect of AB 205 on their domestic partnerships. 2003 Cal. Adv. Legis. Serv. 421 (Deering).

32. This estimate seems consistent with the recent experience in San Francisco when the city extended marriage licenses to same-sex couples. During a one month period, approximately 4000 same-sex couples were married. MABEL S. TENG, SAN FRANCISCO ASSESSOR-RECORDER, DEMOGRAPHICS BREAKDOWN OF SAME GENDER MARRIAGES slide 2 (2004), <http://www.alicebtoklas.org/abt/samesexmarriagestats.ppt> (last visited Mar. 21, 2005). If that rate were to continue—assuming that the increase in venues and the assured validity of the marriages would roughly offset the sense of urgency and the increased capacity for providing marriages in San Francisco earlier this year—approximately 48,000 resident same-sex couples would marry in California in a year.

impacts on California's budget: (1) expenditure savings in means-tested public benefits programs; (2) increased sales tax revenues from tourism; and (3) increased sales tax revenues from expenditures on weddings by California resident same-sex couples.

A. Public Benefits Programs

Allowing same-sex couples to marry is likely to affect expenditures on California's public benefits programs. Many of these programs are means-tested, and the income of spouses is included in calculating eligibility for benefits, such as: CalWORKS or Temporary Aid to Needy Families (TANF), Medi-Cal (California's Medicaid program), SSI Disability, the California Food Assistance Program, and Healthy Families (State Child Health Insurance Program (S-CHIP)).³³ With same-sex marriage, the income of benefit recipients' same-sex spouses will be included in calculating program eligibility on the same basis as different-sex spouses. If fewer couples qualify for these programs, or if the benefits that a couple qualifies for are lower because of the income that the state will now count, then the state will spend less money.

If California allows same-sex couples to marry, the state will have the discretion to rewrite some of the regulations for determining whose income and assets count in determining eligibility for these programs. For CalWORKS or TANF (and, therefore, for individuals qualifying for Medi-Cal because they receive TANF), the California Food Assistance Program, and Healthy Families (S-CHIP), the state determines the eligibility standards and can amend them to require the state to take into account a same-sex spouse's income and assets when determining the eligibility of an individual or family.³⁴ For SSI and

33. U.S. DEP'T OF HOMELAND SECURITY, BUREAU OF CITIZENSHIP & IMMIGRATION SERVS., 2003 POVERTY GUIDELINES I-864 (2003), <http://uscis.gov/graphics/formsfee/forms/files/I-864.pdf> (last visited Mar. 21, 2005) (defining the following as federal mean-tested public benefits: Medicaid (Medi-Cal in California), Supplemental Security Income (SSI), TANF, and SCHIP (Healthy Families in California)); *see also* CAL. WELF. & INST. CODE §§ 18900, 18901, 18901.5 (Deering 2004) (describing the California Food Assistance Program); CAL. WELF. & INST. CODE § 14005.40 (Deering 2004) (describing the general provisions of the California SSI program); CAL. CODE REGS. tit. 22, §§ 50251(a)-50251(b) (2004) (describing California's Medi-Cal program); CAL. CODE REGS. tit. 22, §50373 (2004) (describing the Medi-Cal Family Budget Unit Determination).

34. Income limits are determined by the state for TANF/CalWORKS even though the federal government provides funding. Income guidelines for SCHIP/Healthy Families are determined by the federal and state governments, although states have a great deal of flexibility within the federal guidelines. *See* U.S. GEN. ACCOUNTING OFFICE, MEANS-TESTED PROGRAMS: DETERMINING FINANCIAL ELIGIBILITY IS CUMBERSOME AND CAN BE SIMPLIFIED 14 tbl. 4 (2001), <http://www.gao.gov/new.items/d0258.pdf> (last visited Mar. 21, 2005). The California Food Assistance Program is a state program; therefore, the state is entirely free to set the income guidelines. *See also* FRANK ULLMAN ET AL., URBAN INST., STATE CHILDREN'S HEALTH INSURANCE PROGRAM: A LOOK AT THE NUMBERS 3 (1998), <http://www.urban.org/UploadedPDF/occ4.pdf> (last visited Mar. 21, 2005) (noting that states define the eligibility standards under their own plans).

Medi-Cal, the federal government determines generally applicable eligibility standards, and states have more limited discretion in developing their own standards and procedures.³⁵ Because of the Federal DOMA, the state may not be able to simply redefine the term “spouse” in eligibility requirements to include recipients’ same-sex spouses.³⁶

However, in assessing eligibility for Medi-Cal, it is likely that the state will be obligated to take into account the resources of same-sex spouses under state and federal regulations. First, under California’s community property rules and Medi-Cal regulations, one-half of the community property of the same-sex spouses will be deemed to be that of the applicant. Thus, one-half of the income or assets of the same-sex spouse will be considered to be the applicant’s own resources or available income.³⁷ In addition, California regulations require the state to consider any available income, including “contributions from any source,” and the resources of third parties who are legally liable for health care costs.³⁸ Medi-Cal is a provider of last resort, and federal and state laws require the state to assure that Medi-Cal recipients utilize all other resources—that is, third parties available to them to pay for all or part of their medical care needs

35. U.S. GEN. ACCOUNTING OFFICE, *supra* note 34, at 14. The federal government determines the income limits for SSI. The state and federal governments both have a role in determining the income eligibility for Medicaid/Medi-Cal, although states have greater discretion in determining the income requirements for the disabled. *Id.*

36. DOMA limits the definition of “spouse” in all federal laws and regulations to refer “only to a person of the opposite sex who is a husband or a wife.” Defense of Marriage Act, Pub. L. No. 104-199, § 1, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 (1997)). “Spouse” is used to specify individuals whose assets and income may be counted for SSI and Medicaid eligibility purposes. Thus, arguably, DOMA would prohibit the state from interpreting the term “spouse” in the regulations to include same-sex domestic partners. This issue arose in Vermont with respect to its treatment of couples in a civil union within the Medicaid program. Federal officials have not yet issued a formal opinion as to whether a civil union partner could be treated as a spouse. David Mace, *Critics Say Rule Change Violates Civil Unions*, TIMES ARGUS (Montpelier), Apr. 17, 2003, <http://www.timesargus.com/apps/pbcs.dll/article?AID=/20030417/NEWS/304170350&SearchID=73188861933819> (last visited Mar. 21, 2005).

37. CAL. CODE REGS. tit. 22, § 50072 (2004) (defining community property); CAL. CODE REGS. tit. 22, § 50076 (2004) (“For the purposes of determining Medi-Cal eligibility, share of community property is to be treated as if each spouse owns one-half of the community property.”); CAL. CODE REGS. tit. 22, § 50420.5 (2004) (stating that where one spouse is in a long-term care facility, Medi-Cal has a rebuttable presumption that each spouse has a one-half community property interest in the total monthly gross earned and unearned income of both spouses).

38. *See, e.g.*, CAL. CODE REGS. tit. 22, §§ 50501, 50507 (2004) (defining gross unearned income to include “contributions from any source” and “any other income which is available to meet current needs”); CAL. CODE REGS. tit. 22, § 50513(a) (2004) (noting that income actually available shall be considered in determining the person’s or family’s eligibility); *see also* CAL. STATE MEDICAID PLAN, THIRD PARTY LIABILITY § 4.22, *supps.* & *attachs.* (1994), <http://www.cms.hhs.gov/medicaid/stateplans/results.asp?State=CA&Section=4.22&Type=Section&Terr=S> (last visited Mar. 21, 2005).

before turning to Medi-Cal.³⁹ Third parties are defined by federal and state law as entities or individuals who are legally responsible for paying the medical claims of Medi-Cal recipients, including any “individual who has either voluntarily accepted or been assigned legal responsibility for the health care” of a Medi-Cal applicant or recipient.⁴⁰ Examples of third parties in federal and state Medi-Cal manuals include absent and custodial parents.⁴¹ In addition, state and federal law requires that the incomes of the sponsors of immigrants be considered when determining an applicant’s eligibility.⁴² Given the inclusion of these groups, in all likelihood the state will consider the income of a same-sex spouse or registered domestic partners as a “third party” when determining eligibility for Medi-Cal.⁴³

California does not track the proportion of recipients for each benefit program who might have an unmarried same-sex partner whose status would change if they were allowed to marry, nor does it track the sexual orientation of recipients. However, one helpful source of data is the 2001 California Health Interview Survey (CHIS), a survey of 55,000 representative households in California.⁴⁴ CHIS asks respondents about their sexual orientation as well as their marital or partnership status.⁴⁵ It also asks a sub-sample of low-income

39. For example, federal law mandates that states must “take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under” Medicaid and to seek reimbursement in cases “where such legal liability is found to exist.” 42 U.S.C. § 1396a (2004).

40. See generally CENTERS FOR MEDICARE & MEDICAID SERVS., STATE MEDICAID MANUAL, §§ 3900-3910.15 (2003), <http://www.cms.hhs.gov/manuals/pub45pdf/sm3900.pdf> (last visited Mar. 21, 2005).

41. CAL. STATE MEDICAID PLAN, *supra* note 38, at attach. 4.22-A.

42. CENTERS FOR MEDICARE & MEDICAID SERVS., IMMIGRANT ELIGIBILITY FOR MEDICAID AND SCHIP (2004), <http://www.cms.hhs.gov/immigrants/> (last visited Mar. 21, 2005). For California programs that consider sponsor’s income in immigrant applications, including CalWorks and food stamps, see CAL. IMMIGRANT WELFARE COLLABORATIVE, MAJOR BENEFIT PROGRAMS AVAILABLE TO IMMIGRANTS IN CALIFORNIA (2004), http://www.nilc.org/ciwc/tbls_other-mats/Cal_Benefits_Table_9-22-04.pdf (last visited Mar. 21, 2005).

43. Support that savings will be possible if not mandated in this area is increasing. Recently, a study by the Congressional Budget Office on the fiscal impact of same-sex marriage on the federal budget included savings in SSI and Medicaid spending based on this analysis. Letter from Douglas Holtz-Eakin, *supra* note 19. In addition, the Comptroller of New York provided testimony to the New York Legislature that extending civil marriage to same-sex couples in that state would also result in savings through means-tested public benefits programs. Press Release, Testimony of N.Y. State Comptroller Alan G. Hevesi in Support of the Right to Civil Marriage for Same-Sex Couples in N.Y. State (Mar. 3, 2004), <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm> (last visited Mar. 21, 2005). In addition, Vermont has been taking advantage of these types of savings through its civil union legislation. Telephone Interview by Gail Zatz, Consultant to the Williams Project, with Theo Kennedy, Director, Div. of Pol’y Planning & Evaluation, Dep’t of Prevention, Assistance, Transition & Health Access, Vt. Agency of Human Servs. (June 22, 2004).

44. See CAL. HEALTH INTERVIEW SURVEY (2001), <http://www.chis.ucla.edu/about.html> (last visited Mar. 21, 2005).

45. CHIS asks separately about sexual orientation and partnership status, but it does not

TABLE I. Program Recipients Likely To Become Ineligible For Benefits

	Total Recipients	% of Recipients With Same-Sex Partners	Number of Partnered Recipients	50% of Couples Overall Will Marry	Deterrent Effect From Potential Loss of Benefits
Medi-Cal	5,841,455	1.00%	57,171	28,586	14,293
TANF/CalWORKS	483,500	0.20%	841	420	210
California Food Assistance Program	88,909	0.40%	348	174	87
SSI Disability	746,943	3.10%	23,247	11,624	5,812
Healthy Families	630,586	0.20%	1,261	631	315

respondents about their participation in five public benefits programs.⁴⁶

Thus, it is possible to estimate the proportion of public benefits recipients who are in same-sex partnerships.⁴⁷ We use those proportions to estimate the number of people in each program who are in a same-sex partnership. Table I shows that the proportions are small, ranging from 0.2% of TANF recipients to 3.1% of SSI/State Supplementary Payment recipients. CHIS did not ask about enrollment in Healthy Families (S-CHIP), a program that provides health insurance for children in low-income families, so we use the same 0.2% enrollment estimate found for CalWORKS, another program for families that have children. The numbers of individuals implied by the small proportions can be substantial, ranging from the hundreds to the tens of thousands.

To assess the impact of same-sex marriage, we need to know how many of these benefit recipients would marry and, as a result, how many would lose benefit eligibility because their partner's income is taken into account. Some might argue that the potential loss of eligibility could serve as a disincentive for benefit recipients to marry.⁴⁸ However, several areas of research support the expectation that benefit recipients will marry, even if doing so threatens their eligibility. Research about welfare recipients has consistently demonstrated that the threat of losing benefits has only a small impact on an individual's probability of marrying.⁴⁹ Moreover, research suggests that the marriage has deep symbolic and cultural value apart from economic considerations.⁵⁰

collect data on the sex of the partner. CAL. HEALTH INTERVIEW SURVEY, CAL. HEALTH INTERVIEW SURVEY ADULT QUESTIONNAIRE A-62 (2001), http://www.chis.ucla.edu/pdf/CHIS2001_adult_q.pdf (last visited Mar. 21, 2005). We assume that a gay or lesbian recipient's partner is of the same-sex. We omit bisexuals from this analysis since we cannot identify their partner's sex. Since some bisexual recipients will also have same-sex partners, this omission means that we are underestimating the number of recipients who would lose public benefits, and consequently, we are underestimating the decrease in state expenditures.

46. *Id.*

47. We thank Dr. Christopher Carpenter of the University of California-Irvine for tabulating these figures on our behalf from the confidential version of the CHIS.

48. Some benefit recipients will remain eligible for benefits because their partner's income is so low that, even when considered, it will not disqualify them.

49. Robert Moffitt, *Incentive Effects of the U.S. Welfare System: A Review*, 20 J. ECON. LITERATURE 1, 27-31 (1992).

50. See ELLEN LEWIN, *RECOGNIZING OURSELVES: CEREMONIES OF LESBIAN AND GAY COMMITMENT* (1998); LESBIAN AND GAY MARRIAGE: PRIVATE COMMITMENTS, PUBLIC

Finally, marriage might come with other financial advantages that outweigh this consequence, such as spousal benefits from employers.

Accordingly, to estimate the number of recipients with same-sex partners who will marry and lose their eligibility for state means-tested public benefits programs, we make two adjustments. The first adjustment predicts that only fifty percent of such partnered recipients will marry. This reflects our estimate that fifty percent of the same-sex couples counted in Census 2000 in California will marry.⁵¹ Second, we halve the number of remaining recipients to account for any deterrent effect that losing benefits might have on recipients marrying a same-sex partner and to account for the possible continued eligibility of some of the recipients who do marry. This is a very conservative adjustment because, as explained above, studies indicate that the threat of losing welfare benefits does not significantly deter different-sex couples from marrying.⁵²

In Table II below, to estimate the savings to the state each year, we take our estimates of the number of recipients who will become ineligible for each benefit program as a result of the state's recognition of same-sex marriage and multiply it by the average annual payment for each benefit.⁵³ For programs that are jointly funded by the state and federal government, we take out the savings that will accrue to the federal government.⁵⁴ The "Total Annual Savings" row of Table II shows our best estimate of California's savings from each of these five means-tested public benefits programs if it recognizes same-sex

CEREMONIES (Suzanne Sherman ed., 1992).

51. Out of the 92,138 same-sex couples in California that were counted by Census 2000, 26,387 or 29% have registered as domestic partners. SIMMONS & O'CONNELL, *supra* note 24, at 4.

52. Moffitt, *supra* note 49.

53. CAL. DEP'T OF SOC. SERVS., PUB. ASSISTANCE FACTS AND FIGURES (2003) (stating the average monthly benefits for CalWORKS, SSI/SSP Disabled, and the California Food Assistance Program), <http://www.dss.cahwnet.gov/research/res/pdf/Paff/2003/PAFFJan03.pdf> (last visited on Mar. 21, 2005). *See also* CAL. BUDGET PROJECT, BUDGET BACKGROUNDEERS: MAKING DOLLARS MAKE SENSE (2004) (listing the average monthly cost to the state for Healthy Families per child), <http://www.cbp.org/2004/0402bbhealthyfam.pdf> (last visited on Mar. 21, 2005); CAL. HEALTH CARE FOUND., MEDI-CAL FACTS AND FIGURES: A LOOK AT CALIFORNIA'S MEDICAID PROGRAM, 27 (2004) (charting the average Medi-Cal spending per beneficiary for children and adults, <http://www.chcf.org/documents/policy/MediCalFactsAndFigures.pdf> (last visited Mar. 21, 2005)). To calculate the average Medi-Cal benefit, we also assume that all of the elderly and disabled recipients who receive higher benefits will be deterred from marrying and only use the average benefits for adult and child recipients. Since same-sex couples with children in California, on average, have two children, we calculate the average benefit based on a family of one adult and two children. *Id.* We also increase the 2001 benefit rate to a 2003 rate, by including a 3% increase for 2002 and for 2003. Telephone Interview with Christopher V. Perrone, M.P.P., Senior Program Officer, California Health care Foundation (May 10, 2003).

54. UNITED STATES DEP'T OF HEALTH & HUMAN SERVS., INDICATORS OF WELFARE DEPENDENCE, app. A (2002), <http://www.aspe.hhs.gov/hsp/indicators02/appa-ssi.htm#SSI> (last visited Mar. 21, 2005); Telephone Interview with Christopher V. Perrone, *supra* note 53.

marriage—over \$50 million in savings each year.

Our estimate of the state's savings from means-tested public benefits illustrates that in obtaining same-sex marriage, same-sex couples will take on not only the benefits of marriage but also its obligations—in this case the financial obligation to care for one another if they are determined able to do so by the state. Individuals in same-sex marriages will become ineligible for benefits since they will be treated the same as members of heterosexual marriages. While these couples or individuals may or may not need the benefits that they lose, they will be no worse off than similarly situated heterosexual married couples.

TABLE II. Estimated Savings from Means-Tested Public Benefit Programs

Program	Average Monthly Payment (\$)	Average Annual Payment (\$)	Recipients Made Ineligible	Total Savings (Federal and State)	State Share of Cost	Estimated Savings
Medi-Cal	387	4644	14,293	66,375,531	0.5	33,187,766
TANF/CalWORKS	527	6324	210	1,329,621	1	1,329,621
California Food Assistance Program	75	900	87	78,300	1	78,300
SSI Disability	605	7260	5812	42,193,305	0.37	15,611,522
Healthy Families	39	468	315	147,537	0.5	73,769

Total Annual Savings: \$50,280,998

B. Tax Revenues from Same-Sex Wedding Tourism

Analyses of other states' consideration of opening marriage to same-sex couples have argued that the first state or states to do so would experience a wave of increased tourism that would bring millions of additional dollars in revenue to state businesses.⁵⁵ In addition, resident couples of California will have weddings, increasing their expenditures and leading some to spend from savings. This increase in business sales from tourism and weddings, in turn, will bring sales tax revenues to the state. Recently, *Forbes* estimated that if gay and lesbian couples throughout the country were allowed to marry, this would generate \$16.8 billion in new spending over the next several years, adding significantly to America's annual \$70 billion wedding industry.⁵⁶ Another recent estimate concludes that gay marriage will generate a billion dollars per year in spending in the United States.⁵⁷

In the spring of 2004, the issuance of gay marriage licenses in Portland,

55. For analyses of the Hawaii situation, see *Brown, supra* note 3, at 745, and *Hearing, supra* note 3, at app. I (testimony of Sumner LaCroix & James Mak). For an analysis of the Vermont situation, see M. V. LEE BADGETT, INST. FOR GAY & LESBIAN STRATEGIC STUDIES, THE FISCAL IMPACT ON THE STATE OF VERMONT OF ALLOWING SAME-SEX COUPLES TO MARRY 1 (1998), <http://www.iglss.org/media/files/techrpt981.pdf> (last visited Mar. 9, 2005).

56. Aude Lagorce, *The Gay Marriage Windfall: \$16.8 Billion*, FORBES ONLINE, Apr. 4, 2004, available at http://www.forbes.com/commerce/2004/04/05/cx_al_0405gaymarriage.html (last visited Mar. 21, 2005).

57. Shawn Hubler, *Hotels Are Hoping to Capitalize on a Gay Marriage Boom*, L.A. TIMES, Mar. 28, 2004, at C1.

Oregon and San Francisco, California provided support for these predictions. The actual experience of businesses in Portland⁵⁸ and San Francisco⁵⁹ demonstrates that allowing same-sex couples to marry does in fact generate tourism and additional revenue for businesses. For example, same-sex couples from forty-six states and eight countries traveled to San Francisco to get married during the one month that the city issued marriage licenses.⁶⁰

Furthermore, in anticipation of the availability of same-sex marriage in Massachusetts, cities in that state have experienced a spike in hotel reservations, catering requests, and other wedding-related orders.⁶¹ Estimates of Massachusetts' potential gain from out-of-state couples coming to the state to marry have exceeded \$100 million.⁶² However, Massachusetts Governor Mitt Romney has repeatedly issued statements that according to a 1913 Massachusetts state law, gay and lesbian couples from outside of the state cannot marry in Massachusetts. He has ordered clerks in Massachusetts not to issue licenses to out-of-state couples and threatened them with legal action if they fail to comply with his order.⁶³ Governor Romney's statements and actions have made uncertain how much that state will benefit from increased tourism revenues by allowing same-sex marriage.

To estimate the tourism impact of allowing same-sex marriage in California, we base our analysis on conservative assumptions in order not to

58. See Helen Jung, *Gay Marriages May Bring Joy to Tourism*, OREGONIAN, Mar. 5, 2004, at D1 (quoting Joe D'Alessandro, President of the Portland Ore. Visitors Ass'n as saying gay marriage would no doubt provide an "economic boost" to Portland as gay couples and their families fly in for weddings); David Sarasohn, *Gay Marriage, Tourism: A Package Deal*, OREGONIAN, Apr. 11, 2004, at C4 ("It's definitely having a positive impact, because more people are coming to Portland. They fly in, sometimes with families, friends, children, whatever. I've talked to the hotel people, and they say they've seen an increase in gay and lesbian customers." (quoting D'Alessandro)).

59. See Douglas Belkin, *Wedding Bell Bonanza Tourism, Marriage Industry Foresee Boom in Same-Sex Nuptials*, BOST. GLOBE, Feb. 26, 2004, at 1; Laura Bly, *Localities Cashing in on Same-Sex Marriages*, USA TODAY, Feb. 27, 2004, at D1; Jung, *supra* note 58, at D1 (noting that when San Francisco was issuing marriage licenses to same-sex couples, hotels saw an increase in occupancy rates and Macy's ran out of wedding rings); Heather Knight, *Windfall in Castro: 'Giddy' Newlyweds Have Been Boon for S.F. Neighborhood*, SAN. FRAN. CHRON., Feb. 18, 2004, at A1 (stating that gay marriages have been "great for businesses as newlyweds throw their money at the neighborhood's florists, jewelry stores, liquor shops, bookstores and photo processors"); Dean E. Murphy, *San Francisco Toasts Gay Weddings*, N.Y. TIMES, Feb. 29, 2004, at 3.

60. TENG, *supra* note 32, at slides 2-3.

61. See, e.g., Bly, *supra* note 59, at D1; Thea Singer, *Three Swank Cities Are Becoming Marriage Meccas for Gay Couples*, BOST. HERALD, Mar. 22, 2004, at 27 (reporting that hotels, banquet halls, florists, jewelers, and other wedding-related businesses in Boston, Cambridge, and Northampton have seen "an upsurge of 10 to 100 percent in inquiries and bookings from gay couples" looking to marry); Marie Szaniszlo, *P'Town Set for Gay-Wed Rush*, BOST. HERALD, Apr. 11, 2004, at 10.

62. Singer, *supra* note 61, at 27.

63. Pam Belluck, *Romney Won't Let Gay Outsiders Wed in Massachusetts*, N.Y. TIMES, Apr. 25, 2004, § 1, at 1.

overstate the revenues that would be generated. We first offer estimates of the number of out-of-state couples who might travel to California to marry. Then we multiply those numbers by the average spending per visitor to get one estimate of new business spending. Next, we multiply that figure by the state multiplier for a more realistic estimate. Finally, we multiply new spending by the state sales tax rate⁶⁴ to estimate new tax revenues.

How many couples will travel to California to get married? Given the uncertainty of whether out-of-state couples will be allowed to marry, we begin our analysis with the conservative (revenue minimizing) assumption that Governor Romney will eventually allow, or be ordered by a court to allow, out-of-state couples to marry. Based on that assumption, it is likely that Massachusetts will attract east coast and possibly midwestern couples, and that California will be most attractive to couples in the western United States. We will explore three different scenarios. In our first scenario, we assume that California's same-sex marriage tourism trade will track its current top domestic markets: Nevada, Arizona, Texas, Washington, and Oregon.⁶⁵ According to Census 2000, there are 85,409 same-sex unmarried partner couples in these states.⁶⁶ Those couples, or almost 170,818 individuals, have easy access to California and seem likely to choose it as a marriage destination.

Our second somewhat less optimistic but more realistic scenario assumes that only half of the couples in these five states will travel to California and marry. In Vermont, roughly half of that state's number of same-sex couples eventually entered a civil union.⁶⁷ In this scenario, California businesses will likely see an additional 85,409 visitors. This scenario may overestimate the number of couples traveling to California if travel is a deterrent that reduces the number of western state couples registering. However, it is likely that this travel deterrent will be more than offset by the couples who will travel from more distant states. As our third and most conservative scenario, we move away from looking at just same-sex couples in these five western states to considering same-sex couples nationally. In other words, we base this scenario on an estimate of the percentage of couples nationally that would travel to California over the next few years if the state allowed same-sex marriage.

We conservatively estimate that over the next few years ten percent of same-sex couples nationally will marry—either in California, Massachusetts, or

64. Although sales and use tax rates vary by county in California, we use the lowest rate of 7.25%. CAL. FRANCHISE TAX BD., FORMS & INSTRUCTIONS, CAL. 540 & 540A, 2003 PERSONAL INCOME TAX BOOKLET 24 (2003) (including state, local, and district taxes). This makes our tourism estimates conservative because the counties that will experience the most tourism have higher sales and use tax rates (Los Angeles: 8.25%; San Francisco: 8.5%; Orange County: 7.75%; and San Diego: 7.75%). *Id.*

65. CALIFORNIA TOURISM, CALIFORNIA'S TOP DOMESTIC MARKETS—2002, <http://gocalif.ca.gov/state> (last visited May 9, 2004).

66. SIMMONS & O'CONNELL, *supra* note 24, at 4 tbl. 2.

67. See E-mail from Richard McCoy *supra* note 27.

some other state that may extend marriage to same-sex couples. We select ten percent due to the large number of states that have enacted state DOMA laws, which may deter same-sex couples in those states from marrying. We exclude, of course, California residents in this scenario who are considered in the next Part. This results in an estimate that, outside of California, 50,225 same-sex couples will marry.⁶⁸

We assume that half of these, or five percent of same-sex couples counted in Census 2000 nationally, will travel to California to get married. This estimate is conservative, in that California is the number one tourist destination for domestic travel, accounting for 10.7% of all domestic travel in the United States in 2003.⁶⁹ Compared to Massachusetts, California has over ten times the number of visitors each year: 300 million visitors compared to 26 million.⁷⁰ All three of our scenarios are conservative to the extent that they do not take into account any fraction of the couples who were not counted in the 2000 U.S. Census⁷¹ or any fraction of couples living in foreign countries traveling to California to get married.⁷²

Table III multiplies the number of visitors from each scenario by the average length of the visit, 3.5 days, and the average spending per visitor per day, or \$91.15.⁷³ In addition, couples coming to California to marry will probably spend much more money than average tourists visiting California. Many couples will do things to mark their marriages such as buying gifts, having special ceremonies, parties, or dinners, and inviting friends and relatives from outside of the state to join them for the occasions. On average, different-sex couples spend \$22,000 on their weddings in the United States.⁷⁴ We make a much more modest assumption for estimating how much same-sex couples traveling to California will spend. We estimate that they will spend an additional \$11,000 to mark the occasion, one-half of that of straight couples.

68. SIMMONS & O'CONNELL, *supra* note 24, at 4 tbl. 2.

69. CAL. TRAVEL & TOURISM COMM'N, CTTC YEAR IN REVIEW 3 (2004), http://www.visitcalifornia.com/tourism/pdfs/T_TI_D_Overview_Year_In_Review_0304.pdf (last visited Nov. 4, 2004).

70. *Id.*; MASS. OFFICE OF TRAVEL & TOURISM, MASS. DOMESTIC VISITOR PROFILE: CALENDAR YEAR 2003 (2004), http://www.massvacation.com/html/industry_news/research/domprof03.pdf (last visited Nov. 4, 2004).

71. BADGETT & ROGERS, *supra* note 28; SMITH & GATES, *supra* note 28, at 2.

72. When San Francisco allowed same-sex couples to marry in February and March of 2004, couples from eight foreign countries traveled there to marry. Brad Sears & Lee Badgett, *Tourism and Same-Sex Marriage*, SAN DIEGO UNION-TRIB., May 27, 2004, http://www.signonsandiego.com/uniontrib/20040527/news_lz1e27sears.html (last visited Mar. 21, 2005); Dean E. Murphy, *San Francisco Married 4,037 Same-Sex Pairs From 46 States*, N.Y. TIMES, Mar. 18, 2004, at 26.

73. CAL. TRAVEL & TOURISM COMM'N, CAL. TOURISM AT THE CROSSROAD 12 (2003), http://www.gocalif.ca.gov/tourism/pdfs/BC_Insights_Fall03.pdf (last visited Mar. 21, 2005).

74. K. Kaufman, *Catering to Same-Sex Couples: Niche: Amid the Furor over Gay and Lesbian Marriage, the Wedding Industry is Finding Out There's Money to Be Made*, BALTIMORE SUN, Mar. 7, 2004, at 4A.

TABLE III. Impact On California Sales Tax Revenues From Extending Marriage To Same-Sex Couples

Tourism Nodel	Top Domestic Markets States	50% Top Domestic Markets States	5% Nationally (Excluding CA)
New Visitors	170,818	85,409	50,225
Length of Stay	3.5 days	3.5 days	3.5 days
Average Expenditure Per Day Per Visitor	\$91.15	\$91.15	\$91.15
Wedding Spending Per Couple	\$11,000	\$11,000	\$11,000
Wedding Spending in California	\$2,250	\$2,250	\$2,250
Total Spending	\$246,661,192	\$123,330,596	\$72,524,900
State Sales Tax	7.25%	7.25%	7.25%
Total Sales Tax Revenues	\$17,882,936	\$8,941,468	\$5,258,055
Multiplier	2.3	2.3	2.3
Multiplier Effect	\$567,320,742	\$283,660,371	\$166,807,270
Total Sales Tax Revenue	\$41,130,754	\$20,565,377	\$12,093,527

This conservative estimate takes into account that some couples may have already had a commitment ceremony; that same-sex couples may be less able to rely on the resources of their parents and family for wedding expenditures; and that some same-sex couples may not wish to have a public wedding because of fears about publicly revealing their sexual orientation.⁷⁵

We then assume that these couples will split their expenditures between California and their home state. Although different couples will split their expenditures in different ways, we assume that on average these couples would spend twenty-five percent of these expenditures in California and seventy-five percent in their home state. Thus, we estimate \$2,250 in additional spending for wedding celebration expenditures for each same-sex couple that travels to California to get married. Next we take into account the multiplier effect of tourism spending. Over time \$1 brought into California from out-of-state will generate more than \$2.30 of additional spending in the state.⁷⁶ Therefore, we estimate the net marriage tourism impact to be \$166.8 million to \$567.3 million in business revenue and \$12.1 to \$41.1 million in new sales tax revenues.

For our *best* estimate of the likely increase in sales tax revenues from same-sex wedding tourism, we use our two more conservative scenarios to create a predicted range of \$12.1 to \$20.6 million in additional sales tax

75. A gay wedding professional has estimated that same-sex couples spend \$15,000 on average on their weddings. Kaufman, *supra* note 74.

76. TRAVEL INDUS. ASS'N OF AMERICA, IMPACT OF TRAVEL ON STATE ECONOMIES 2000 (2002).

revenues.⁷⁷ The lower figure on this range is based on the assumption that five percent of same-sex couples in the states outside of California will visit the state to marry if it becomes one of the first states to extend marriage to same-sex couples. The high end of our range is based on the assumption that fifty percent of same-sex couples in those states that are California's chief domestic tourism markets will visit the state to marry in the first few years in which it extends marriage to same-sex couples.

In short, even a modest number of same-sex couples traveling to California to marry will bring new customers to the state's existing businesses and will perhaps lead to new business development that will cater to the same-sex marriage ceremony niche. The millions of dollars spent will add jobs and profits to the state's economy and create millions of dollars of additional sales tax revenues.

C. Increased Sales Tax Revenues from Resident Same-Sex Couples' Weddings

We also take into account that resident same-sex couples will spend money on weddings if California allows them to marry. We estimate the number of resident same-sex California couples that will get married and the amount of money, on average, that they will spend. Table IV outlines the bottom-line results of the findings explored in further detail in this Part.

TABLE IV. Additional Sales Tax Revenues Resulting From Resident Same-Sex Couples' Weddings

Number of Resident Weddings	46,069
Average Resident Spending on Weddings	\$11,000
Average Spending From Savings	\$5,500
Total Spending From Savings	\$253,379,500
Sales Tax*	0.0725
Total Sales Tax Revenues	\$18,370,013.75

*See *supra* note 79.

As explained in Part I, we assume that one-half of the same-sex couples in California counted by Census 2000 will marry. For an estimate of how much they will spend on their weddings on average, we use \$11,000, or one-half of the national average for spending on different-sex weddings.⁷⁸ We then reduce

77. To put these numbers in context, total California travel and tourism expenditures amounted to \$78.2 billion in 2003 and generated \$5 billion in state and local tax revenue. CAL. TRAVEL & TOURISM COMM'N, *supra* note 69, at 1.

78. As explained in the Part above, this lower estimate takes into account that some of these couples may have already had a commitment ceremony and therefore spend less on their wedding; that same-sex couples may be less able to rely on the resources of their parents and family for wedding expenditures; and that some same-sex couples may not wish to have a public wedding that would publicly reveal their sexual orientation.

our estimate by fifty percent to account for the fact that some of this spending will not be from savings. This may be particularly true for same-sex couples, who may be less able to rely on the savings of their parents or families for their wedding expenditures. In other words, some of the money that the couple spends on the wedding will merely be money that they are not spending on other things, thereby not generating additional business or sales tax revenues.⁷⁹ However, when couples spend money on weddings out of their savings, there is a boost to the economy since that money is otherwise out of circulation.

Based on these assumptions, we estimate that same-sex weddings in California will generate an additional \$84.5 million in business revenues and an additional \$18.4 million in sales tax revenues. Based on the predictions that the same-sex marriage business will be an annual billion dollar industry, our scenarios for increased tourism and resident wedding expenditures modestly suggest that if California is only one of a handful of states where same-sex couples could get married, it would receive approximately fourteen to eighteen percent of that business.

III. NO SIGNIFICANT FISCAL IMPACT

Based on the best data available, we estimate that extending marriage to same-sex couples will have a nominal impact on the state budget in the following two areas: costs to the state court system; and costs for additional benefits for California state employees.

A. Access to Courts

Extending marriage to same-sex couples would allow them the same access to California courts as is currently provided to spouses. Married persons can use state courts to protect wills, enforce marriage responsibilities, divorce, and provide for a child. Married persons also have certain rights to sue third parties who may have been responsible in some way for the death of their spouse. The impact of extending marriage to same-sex couples on the state's court system depends on three things: the number of cases that will be added to the dockets of the state's courts as a result; the cost of resolving these cases; and any offsetting savings or revenues that would result.

California already allows same-sex couples who register as domestic partners access to some legal proceedings and causes of action in state courts, such as the step-parent adoption process and the right to sue for wrongful death.⁸⁰ Thus, allowing same-sex couples to marry would not increase the

79. Although sales and use tax rates vary by county in California, in Table IV we use the lowest rate of 7.25%. CAL. FRANCHISE TAX BD., *supra* note 64.

80. Registered domestic partners also already have the right to become, or to object to, court-appointed conservators for their partners on the same basis as a spouse, the right to

burden on courts with regard to these proceedings and causes of action.

The only significant way same-sex marriage would augment court filings is by allowing partners to petition to terminate their relations in court under the procedures and laws applied to the termination of marriages. To estimate the number of dissolution cases that would be added to the dockets of state courts if California extends marriage to same-sex couples, we determined the dissolution rates for same-sex couples under California's current domestic partnership legislation and Vermont's civil union legislation by dividing the total number of partnerships and civil unions by the number of terminations of partnerships

TABLE V. Estimates of Dissolutions Per Year of Marriages by Same-Sex Couples

Estimate Method	Number of Unions	Number of Terminations Per Year	Rate	Estimated Same Sex Marriages in California	Estimate of Dissolutions
California Domestic Partnerships	27,165	450	1.70%	46,000	782
Vermont Civil Unions	998	10	1%	46,000	460

or unions filed each year. We multiplied these rates by our projected number of same-sex couples who would marry. Based on domestic partnership terminations currently filed with the Office of the California Secretary of State⁸¹ and the experience of Vermont under its civil union legislation,⁸² we estimate that extending marriage to same-sex couples would add 460 to 782⁸³ dissolution cases to the courts annually. Table V above outlines these findings.

inherit a share of their partner's separate property if their partner dies intestate, the same priority as a spouse to be appointed as the administrator of their partner's estate, and the right to sue for infliction of emotional distress when a partner is killed or injured. *See* 1999 Cal. Adv. Legis. Serv. 588 (Deering); 2002 Cal. Adv. Legis. Serv. 447 (Deering).

81. Since July 1, 2000, 27,165 California couples have registered as domestic partners. During that same period, there have been 1798 filings of Notices of Termination, or an average of 450 per year. Telephone Interview with "Laurie," Office of Cal. Sec'y of State (July 9, 2004) (on file with authors).

82. In Vermont over the past four years, 6945 civil unions have been recorded, of which 998 involved Vermont residents. However, Vermont's family courts have only entered 38 dissolutions of civil unions—or less than 10 per year. McCoy, *supra* note 27.

83. For several reasons, 782 overestimates the annual number of new dissolution filings that are likely to occur if California extended marriage to same-sex couples. First, while California law only requires one member of a domestic partnership to file a Notice of Termination, in some cases both partners file it, and the Secretary of State's office does not keep track of duplicate filings. Telephone Interview with "Joaney," Office of Cal. Sec'y of State (May 14, 2003) (on file with authors). Second, while under current law domestic partners are required to file a Notice of Termination with the Secretary of State if their partner dies, under AB 205 or AB 1967, they would not be required to file a dissolution proceeding in family court if their partner died. 2003 Cal. Adv. Legis. Serv. 421 (Deering); A.B. 1967, *supra* note 15.

Currently, California's superior courts handle approximately 148,000 to 165,000 marital family law filings a year.⁸⁴ Adding 782 filings to this caseload would be an increase of only one-half of one percent (0.005) of the marital family law filings for 2002-2003. In fact, as outlined in Table VI below, the annual fluctuations in marital filings are far greater than this. During the past decade, California family law marital filings have, on average, fluctuated by 4513 filings from year to year;⁸⁵ 782 new filings as a result of same-sex marriage would be an insignificant blip on this radar screen.

TABLE VI. Annual Fluctuations in Family Law
(Marital) Filings, 1993-2003

Year	Family Law (Marital) Filings	Change from Prior Year
2002-2003	148,511	11,760
2001-2002	160,271	5293
2000-2001	154,978	1100
1999-2000	156,078	449
1998-1999	156,527	6643
1997-1998	163,170	2676
1996-1997	165,846	3570
1995-1996	169,416	5293
1994-1995	164,123	3833
1993-1994	167,956	n/a

The insignificance of the cost of these filings is also evident when compared to the caseload of the average superior court judge. The average judge handles over 4100 cases each year.⁸⁶ Even if all 782 of these new cases went to one judge, it would only increase his or her docket by nineteen percent. Alternatively, if these cases are spread out among all of the almost 2000⁸⁷

84. "Family law marital filings" refers to dissolution of marriage, legal separation, and nullity of marriage filings. JUD. COUNCIL OF CAL., ADMIN. OFFICE OF THE COURTS, 2004 COURT STATISTICS REPORT, 50 tbl. 4 n.(F) (2004), <http://www.courtinfo.ca.gov/reference/documents/csr2004.pdf> (last visited Mar. 21, 2005).

85. *Id.* at 50.

86. *Id.* at 43 tbl. 1 (revealing 4174 filings per judicial position).

87. *Id.* (revealing 1915 superior court judicial positions). No official statistics are available for either the number of family court judges or their dockets. In addition, some counties do not even have family court judges. An informal estimate is that there are approximately 211 family court judges, commissioners, and referees in California, including 74 child support commissioners. Telephone Interview with Don Will, Center for Families, Children & the Courts, Jud. Council of Cal. (May 14, 2003) (on file with authors); E-mail from Don Will, Center for Families, Children & the Courts, Jud. Council of Cal. (May 16, 2003) (on file with authors). Thus, spreading the additional 762 dissolution filings among these 137 family court judicial positions (211 family court judges minus 74 child support commissioners) would only add six filings to the caseload of each judge.

judicial positions in California, only forty percent of these judges would have even one case added to his or her docket, and the remaining sixty percent would have no additional cases.

In fact, it is likely that these new cases will neither be clumped in one courthouse, nor spread evenly throughout the state. Nonetheless, the raw number of 782 cases is so small that we conclude that extending marriage to same-sex couples would not result in any actual expenditures by the state court system. In other words, the court system would not need to hire any additional judges, clerks, bailiffs, or staff, or build any additional infrastructure to handle these cases. In addition, extending marriage to same-sex couples will move some cases out of civil court and into family court where they will be handled in a more efficient legal regime. Specifically, when same-sex couples dissolve relationships under current law, they do not have access to family court and the family law rules that apply to married couples. Instead, they must resolve their disputes in civil court according to the rules devised for “palimony” cases, that is, under the rubric of contract and, possibly, quasi-contract.⁸⁸

Palimony cases are likely to impose considerably greater burdens on courts than are dissolutions in family court for several reasons:

- (1) palimony cases require a threshold fact-intensive inquiry as to whether the relationship and acts of the parties have created any legal obligations, while marriage results in specified legal obligations;
- (2) the sparsely developed rules applicable in palimony cases make them difficult to settle or litigate efficiently, so dissolution of same-sex marriages will be guided by the more determinate California Family Code;
- (3) superior court judges handling palimony cases have little experience with those cases, while family court judges will routinely apply the same law to the dissolution of domestic partnerships that they apply to marriage dissolution;
- (4) litigants in civil court do not have access to family court’s more efficient procedures, including standard forms and expedited proceedings;
- (5) parties have a right to a jury trial in civil court, but not in family court; and
- (6) in family court dissolutions, many issues are resolved by mediation, negotiation, arbitration, and private adjudication, where the parties bear most of the costs.⁸⁹

88. See *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976); *Whorton v. Dillingham*, 248 Cal. Rptr. 405 (Ct. App. 1988); *Jones v. Daly*, 176 Cal. Rptr. 130 (Ct. App. 1981).

89. Interview with Grace Blumberg, Professor, UCLA School of Law, in Los Angeles, Cal. (May 20, 2003). Blumberg teaches Property, Community Property, and Family Law. She is a Reporter for the American Law Institute’s *PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION* (2002), in which she co-authored the chapters on non-marital cohabitation. Blumberg’s recent publications include: *BLUMBERG’S CALIFORNIA FAMILY CODE ANNOTATED* (2002) and *COMMUNITY PROPERTY IN CALIFORNIA* (4th ed. 2003). See also AM. LAW INST., *Domestic Partners (Nonmarital Cohabitation)*, in *PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS* (2002); Letter from Fred Hertz, Esq. (May 19, 2003) (on file with authors). Hertz has handled a number of gay and lesbian

By transforming often-contested palimony cases in civil court into dissolution cases in family system—where they can be handled more efficiently and where, in most cases, the parties will settle and bear most of the costs—extending marriage to same-sex couples might even result in some savings for the California court system. Extending marriage to same-sex couples might also increase the revenues of the state's court system by generating new filing fees. Fees are required when couples file dissolution proceedings. Currently, the fees for an uncontested dissolution are \$297.50 and \$591.70 for a contested dissolution.⁹⁰ If, as projected, extending marriage to same-sex couples creates 762 dissolution cases, it will result in new filing fee revenues ranging from \$226,695 to \$450,875 each year.

In summary, there would be no need for additional judges, staffing, or courtrooms to handle the 762 cases that extending marriage to same-sex couples might create each year. It is probable that the savings generated from moving same-sex palimony cases out of civil court and into family court, in addition to the revenues created from additional filing fees, would offset any other administrative or marginal costs for handling these cases. Thus, we conclude that extending marriage to same-sex couples will have a negligible fiscal impact on the state court system.

B. State Employee Benefits

The State of California is an employer and, as such, provides certain benefits to employees as part of a compensation package. These include health benefits, death benefits, retirement benefits, survivor benefits, and various leave programs. Some of these benefits cover an employee's spouse and the children of the employee's spouse, as well as the employee. Extending marriage to same-sex couples would allow additional persons to be covered by these benefits. Three factors determine the fiscal impact that same-sex marriage will have on the benefits that California provides state employees: the scope of increased eligibility for benefits; the costs of providing any new benefits; and the state's share of those costs.

1. Employee Benefits Not Affected by Same-Sex Marriage

Same-sex couples who are registered domestic partners are already treated the same as spouses in civil marriage for many of California's state employee

dissolution cases and has written a number of books, including author of *LEGAL AFFAIRS: ESSENTIAL ADVICE FOR SAME-SEX COUPLES* (1998) and co-author of *LIVING TOGETHER: A LEGAL GUIDE FOR UNMARRIED COUPLES* (10th ed. 2002); *THE LIVING TOGETHER KIT* (1996); *A LEGAL GUIDE FOR LESBIAN AND GAY COUPLES* (2004).

90. See, e.g., LOS ANGELES SUPER. CT., CIVIL FEE SCHEDULE (effective July 1, 2004), <http://www.lasuperiorcourt.org/fees/pdf/fee-schedule.pdf> (last visited Mar. 21, 2005).

benefits. For example, state employees can use sick leave or take six weeks of leave with wage-replacement in order to care for an ill domestic partner, or the child of a domestic partner, on the same basis that employees can receive such benefits to care for a spouse or the child of a spouse.⁹¹ State employees can also receive unemployment benefits if they leave employment to accompany either a spouse or a domestic partner who is relocated to a place where it is impractical for the employee to commute.⁹² In addition, health benefits are already provided to the domestic partners of all state employees and retirees.⁹³ Domestic partners of employees are also eligible to continue health benefits after the death of the employee, if the domestic partner is receiving an ongoing retirement allowance.⁹⁴

Notably, during the past three years when state employees and annuitants under CalPERS have been able to enroll domestic partners for health benefits, less than one-half of one percent of state employees have done so.⁹⁵ This low enrollment rate is consistent with the experience of private companies and other public employers who have offered health care benefits to domestic partners.⁹⁶ In short, extending marriage to same-sex couples will not have any fiscal impact on any of these benefits because they are already available to same-sex couples who register as domestic partners.

2. Employee Benefits Affected by Same-Sex Marriage

State employees are entitled to death, survivor, and retirement benefits. Extending marriage to same-sex couples will increase the eligibility for death and survivor benefits, primarily by making same-sex spouses who survive an

91. 2002 Cal. Adv. Legis. Serv. 901 (Deering).

92. 2001 Cal. Adv. Legis. Serv. 893 (Deering).

93. See CALPERS, ENROLLING DOMESTIC PARTNERS, <http://www.calpers.ca.gov/index.jsp?bc=/member/health/elig-enroll/enrolldompartners.xml&pst=ACT&pca=ST> (last visited Mar. 18, 2005); CALPERS, ENROLLING ELIGIBLE FAMILY MEMBERS, <http://www.calpers.ca.gov/index.jsp?bc=/member/health/elig-enroll/enrollfamilymembers.xml&pst=ACT&pca=ST> (last visited Mar. 21, 2005). In addition, the University of California provides health and welfare benefits to the same-sex domestic partners of its employees. See UNIV. OF CAL., HUMAN RESOURCES & BENEFITS, RETIREMENT PLAN, SURVIVOR BENEFITS FOR DOMESTIC PARTNERS 3 (2002).

94. See CALPERS, HEALTH COVERAGE & REGISTERED DOMESTIC PARTNERS, <http://www.calpers.ca.gov/index.jsp?bc=/member/domestic-partner/faqs/healthfaqs.xml> (last visited Jan. 22, 2005).

95. Telephone Interview with Pamela Schneider, CalPERS Office of Gov't Affairs (May 21, 2003).

96. See M.V. Lee Badgett, *Calculating Costs with Credibility: Health Care Benefits for Domestic Partners*, 5 ANGLES 1 (2000), http://www.iglss.org/media/files/Angles_51.pdf (last visited Mar. 21, 2005); Gary J. Gates, *Domestic Partner Benefits Won't Break the Bank*, URBAN INST., Apr. 1, 2001, <http://www.urban.org/Template.cfm?Section=Home&NavMenuID=75&template=/TaggedContent/ViewPublication.cfm&PublicationID=7358> (last visited Mar. 21, 2005).

employee or retiree eligible for monthly allowances and continued health benefits coverage, benefits which are currently only provided to an employee's eligible family members, including a surviving different-sex spouse.

a. Death Benefits (Pre-Retirement)

The State of California provides benefits to the families of employees and their named beneficiaries if an employee dies prior to retirement (death benefits). There are two types of death benefits: lump-sum benefits and monthly allowances. While the domestic partner of an employee can currently receive the lump-sum benefits as a designated beneficiary,⁹⁷ he or she is not entitled to the same monthly allowances that are provided to spouses. Extending marriage to same-sex couples will make same-sex spouses eligible for such monthly allowances on the same basis as different-sex spouses.⁹⁸

We estimate that less than one additional employee each year will be eligible for death benefits. This small number is the result of the narrow eligibility criteria for this benefit. For same-sex marriage to result in a new beneficiary, the gay or lesbian state employee must: (1) be an active⁹⁹ state member enrolled in a CalPERS plan; (2) have a same-sex spouse; (3) die while working; and (4) be otherwise eligible for a monthly allowance death benefit—by being eligible to retire, having at least twenty years of state service credit, or by dying as a direct result of a violent act while performing official job duties.¹⁰⁰ Only a state member meeting these four criteria would have a same-sex spouse entitled to the automatic monthly allowance benefits.

We determine the number of people who would meet the first three of these criteria above by using CalPERS membership data, data about the age of members of same-sex couples from Census 2000, CalPERS actuarial tables, and the take-up rate for CalPERS health benefits of one-half of one percent

97. However, domestic partners are only entitled to such benefits if they are the designated beneficiary. A spouse would receive such a benefit if he or she was either the designated beneficiary or if there were no designated beneficiary at the time of death.

98. In fact, domestic partners of some state employees already receive pre-retirement death benefits on the same basis as spouses in a civil marriage. See UNIV. OF CAL. RETIREMENT PLAN, SURVIVOR BENEFITS FOR DOMESTIC PARTNERS, *supra* note 93, at 1-2.

99. Active members are those currently actively employed by the state. Inactive members have paid into a CalPERS plan, but are not currently employed by the state. Inactive members are only entitled to a Limited Death Benefit, a refund of contributions paid plus interest. This benefit, under current law, will be received by a named beneficiary or a family member in an order of precedence created by law. Thus, if extending the rights of spouses to same-sex couples has any impact on this benefit, it will merely be to change the recipient. CALPERS, COMPREHENSIVE ANNUAL FIN. REP. 116-17 (2003), https://www.calpers.ca.gov/mss-publication/pdf/xtCTINcuOVt0n_2003%20CAFR%20with%20art.pdf (last visited Mar. 21, 2005).

100. CALPERS DEATH BENEFITS OVERVIEW, <http://www.calpers.ca.gov/index.jsp?bc=/member/death/benefitoverview.xml> (last visited on Mar. 21, 2005).

(0.0052).¹⁰¹ There are currently 252,928 active CalPERS members.¹⁰² Assuming that the same percentage of these active CalPERS members will have same-sex spouses as the percentage of CalPERS employees who currently enroll same-sex domestic partners for health benefits, approximately 1315 of the members will have a same-sex spouse. Since the median age of members of same-sex relationships who identified themselves in Census 2000 is forty,¹⁰³ we use that age to determine a death rate of 0.001 for these employees using CalPERS actuarial tables.¹⁰⁴ When we apply that to our estimate of the number of active CalPERS members who will have a same-sex spouse, we produce an estimate that only one additional state employee will meet the first two criteria (death of a same-sex spouse) for receiving a pre-retirement death benefit. Table VII below summarizes these findings.

TABLE VII. Estimate of Additional California State Employees with a Same-Sex Spouse Who Will Die Each Year

Active CalPERS Members	CalPERS Domestic Partner Health Benefit Take-Up Rate for Employees	Estimate of Active Members with Same-Sex Spouse	CalPERS Actuarial Table Death Rate	Estimated Additional Deaths
252,928	0.0052	1315	0.001	1.3

However, we cannot estimate the likelihood that an employee will also meet one of the options under the fourth criterion (that he or she will be eligible to retire, have at least twenty years of state service credit, or die a violent death while working). We assume that if we could take these criteria into account the probability that same-sex marriage would result in additional monthly allowance death benefits being paid out in any given year would approach zero.¹⁰⁵ Consequently, extending marriage to same-sex couples will not have

101. Telephone Interview with Pamela Schneider, *supra* note 95 (noting annuitant's take-up rate). This low take-up rate is supported by the experience of the University of California Retirement Plan (UCRP). Telephone Interview with Nancy Partovic, UCRP (Apr. 28, 2003) (noting a take-up rate of 0.001).

102. CALPERS, COMPREHENSIVE ANNUAL FINANCIAL REPORT, *supra* note 99, at 38 (listing membership data). This figure is the number of active members in the following plans in 2003: state employees in the Public Employees Retirement Fund, members of the Legislator's Retirement Fund, members of the Judges' Retirement Fund I and II.

103. R. BRADLEY SEARS & M. V. LEE BADGETT, WILLIAMS PROJECT ON SEXUAL ORIENTATION LAW, SAME-SEX COUPLES AND SAME-SEX COUPLES RAISING CHILDREN IN CALIFORNIA (2004), <http://www1.law.ucla.edu/~williamsproj/publications/CA-SSCouples.pdf> (last visited Mar. 22, 2005) (stating that 40 is the median age of members of same-sex couples in California).

104. CALPERS, COMPREHENSIVE ANNUAL FINANCIAL REPORT, *supra* note 99, at 96-101 (providing actuarial tables).

105. Additionally, in general, AB 205 will either augment only the amount of an employee's current death benefit, and/or change the beneficiary of such benefit, as opposed

any significant fiscal impact on providing death benefits to state employees.

b. Survivor Benefits: Post-Retirement

California offers three types of post-retirement death benefits: a lump-sum benefit, a monthly allowance, and continued health benefits (survivor benefits). With regard to the lump-sum benefit, extending marriage to same-sex couples would have no impact. This benefit is already paid to a survivor of a retiree, either a designated beneficiary or a surviving family member. Same-sex marriage will only occasionally change to whom this benefit is paid, resulting in no increased cost to the State of California.

A survivor's monthly allowance can be divided into two parts: the survivor continuance and the optional portion. Part of the monthly allowance benefit is provided automatically to eligible family members of retirees as a matter of statute. Eligible family members include spouses who meet certain other criteria, natural and adopted children under the age of eighteen (if no eligible spouse), or qualifying dependent parents (if no eligible spouse or children). This part of the monthly allowance is called a survivor continuance. Domestic partners are not entitled to a statutory continuance under current law.

In addition, retirees can choose to augment this automatic statutory continuance by providing an annuity for their surviving spouse. A retiree can do this by taking a reduction in his or her own lifetime monthly allowance. If the retiree does so, the resulting annuity is called the "optional portion" of the survivor's monthly allowance. The beneficiary of the optional portion can be either a spouse or a domestic partner, or the retiree can choose not to reduce his or her allowance and not to create such an optional portion at all. In short, extending marriage to same-sex couples will impact the monthly allowance survivor benefit by making same-sex spouses eligible for a survivor continuance on the same basis as different-sex spouses currently are.

Finally, survivors of retirees can only receive continued health benefits if they receive a monthly allowance. By making same-sex spouses eligible for a survivor continuance, same-sex marriage will make some survivors eligible for continued health benefits who otherwise would not be (those who would currently receive no optional portion of the monthly allowance as a result of the retirement option chosen by their same-sex partner). Same-sex marriage will affect survivors' monthly allowance and continued health benefits.

to creating an entirely new benefit and cost. The cost of any potential new monthly allowances under AB 205 will be, in part, offset for the state by not having to pay out the lump-sum amount under current law. In addition, for some employees with registered domestic partners, the impact of AB 205 on pre-retirement death benefits will not be to create a new benefit, but, primarily, to switch the recipient of the benefit from the employee's child under 18 to their registered domestic partner. Based on the 2000 Census, approximately 32.3% of gay and lesbian couples have children who are under the age of 18. See SEARS & BADGETT, *supra* note 103, at 10.

We use a method similar to the one described above for estimating the number of people who would receive pre-retirement death benefits each year to estimate the number of people who would receive post-retirement death benefits. To estimate the total number of retirees with same-sex spouses we multiply the number of CalPERS retirees in 2003 (124,460)¹⁰⁶ by the current take-up rate for CalPERS domestic partner health benefits for annuitants (.0034), resulting in 423 retirees.¹⁰⁷ We then assume that over time the proportion of beneficiaries to retirees for members of same-sex couples will be the same as the proportion of all CalPERS survivors and beneficiaries to CalPERS retirees: twenty percent.¹⁰⁸ In other words, the estimate of the number of surviving same-sex spouses will be twenty percent of the number of retirees in a same-sex marriage. At most, an additional eighty-five people could be eligible for a survivor continuance and consequent continued health benefits. Table VII below summarizes these findings.

TABLE VIII. Estimate of CalPERS Same-Sex Spouse Retirement Beneficiaries

Number of CalPERS Retirees	CalPERS Domestic Partner Health Benefit Take-up Rate for Retirees	Number of Retirees with Same-Sex Spouses	Ratio of CalPERS Retirees to Survivors & Beneficiaries	Estimated Number of Same-Sex Spouse Survivors
124,460	0.0034	423	0.2	85

A number of interrelated variables determine a survivor's combined monthly allowance, making an accurate determination of the cost of providing enhanced survivor benefits to these eighty-five people impossible. To create the most conservative estimate, we assume that each of the potential eighty-five survivors would be in a position to receive the additional benefit that would be the most expensive for the CalPERS benefit plans. To summarize our method, we assume that the eighty-five state retirees partnered with these survivors all: (1) chose the unmodified allowance option settlement,¹⁰⁹ (2) have no family

106. CALPERS, COMPREHENSIVE ANNUAL FINANCIAL REPORT, *supra* note 99, at 38. This figure is the number of retirees in the following plans in 2003: state employees in the Public Employees Retirement Fund, retirees in the Legislator's Retirement Fund, and the Judges' Retirement Fund.

107. Interview with Schneider, *supra* note 95 (revealing a 0.0034 take-up rate for annuitants).

108. CALPERS, COMPREHENSIVE ANNUAL FINANCIAL REPORT, *supra* note 99, at 38.

109. This is a conservative estimate because presently only about 51% of retirees choose an unmodified allowance or option settlement, thereby creating no annuity for a designated beneficiary other than the survivor continuance. Interview with Schneider, *supra* note 95. Under four out of six available option settlements, a retiree with a domestic partner can already designate a domestic partner as the beneficiary and create an annuity that would be comparable to, although less than, the annuity that their domestic partner would receive as an eligible survivor under AB 205.

members that would qualify for the survivor continuance under current law,¹¹⁰ and (3) have surviving same-sex spouses who would be eligible¹¹¹ for a survivor continuance. Prior to the extension of marriage to same-sex couples, these survivors would receive no monthly allowance and would not be entitled to continued health benefits, and the state would not be paying a survivor continuance to any other survivor of the retiree. After the extension of marriage to same-sex couples, all of these survivors would be entitled to both a monthly allowance and continued health benefits.

We then use CalPERS's current average monthly retirement allowance and the average annual cost to employers for health care coverage¹¹² to estimate the cost of providing monthly allowances and continued health care coverage to these eighty-five additional survivors. Under this most expensive scenario, we estimate that extending marriage to same-sex couples in California would result in additional annual costs of, at most, \$501,712. Our most realistic estimate is that the actual annual costs will be less than this amount.

c. Retirement Allowances

Same-sex marriage will impact the lifetime allowances given to retired employees with same-sex spouses. This is true because, when selecting four of the six available options for creating an annuity for a survivor, if the retiree has a family member eligible for a survivor continuance, he or she can create a higher lifetime monthly allowance for him or herself—and a consequent higher annuity—than an employee who does not have a family member eligible for a survivor continuance. However, this impact is marginal. In making same-sex spouses eligible for survivor continuance, same-sex marriage in California would only increase any individual retiree's monthly allowance by, at most, two percent.

However, the impacts of same-sex marriage on survivor and retirement

110. In fact, some of these retirees will have an eligible family member under current law, even though their domestic partner is not currently eligible. Thus, any retiree who had a domestic partner and also had a child under 18 or a qualifying dependent parent, would be entitled to the same survivor continuance (although possibly for a different period of time) under current law as under AB 205. The impact of AB 205 for these retirees would merely be to change the recipient of the survivor continuance.

111. In the short term, this is unlikely. To be eligible, the domestic partnership must have been registered one year prior to the member's retirement and remain registered until the retiree's death. Since domestic partners have only been able to register since July 1, 2000, only members who have retired during the past two years would have domestic partners eligible for this benefit.

112. Interview with Schneider, *supra* note 95 (noting a \$1400 average monthly retirement allowance). Currently, CalPERS does not have an average cost for health benefits. *Id.* We use the national annual average for the employer contribution instead. See KAISER FAMILY FOUND. & HEALTH RES. & EDUC. TRUST, EMPLOYER HEALTH BENEFITS, 2003 SUMMARY OF FINDINGS I (2003) (noting a \$2874 national average), http://www.kff.org/insurance/upload/20688_1.pdf (last visited Oct. 21, 2005).

allowances are inversely related to each other. The scenario that we use above to calculate the cost of survivor benefits (\$560,000) maximizes the combined additional costs of both survivor and retirement benefits. Accordingly, we do not need to estimate any additional costs for retirement allowances here.

3. Paying for Additional Benefits

The funding for these additional survivor monthly allowance benefits would primarily come from investment earnings from CalPERS funds and member contributions, as opposed to state/employer contributions. Thus, the state would only pay for a fraction of the additional costs for providing benefits if same-sex couples were allowed to marry. As of June 30, 2002, the date of the most recent actuarial valuation, the funded status of PERF was 95.2%.¹¹³ At that time, the amount by which PERF actuarial assets exceeded actuarial benefit liabilities was \$7.9 billion.¹¹⁴ Thus, no additional contributions would be needed to fully fund PERF in light of the new survivor benefits for same-sex spouses. In addition, CalPERS bases its death and retirement benefits on an actuarial assumption that ninety percent of its members are married.¹¹⁵ Since same-sex marriage will only have a negligible impact on enrollment, it will not increase rates or lead to a revision of this actuarial assumption.

However, to provide a conservative estimate, we assume that the state will pay thirty percent¹¹⁶ of the increased costs in providing these benefits. This would result in annual costs of less than \$150,514 each year for the state. Since this amount is based on the most expensive scenario, our most realistic estimate is that the state would pay somewhere between \$0 and \$150,514 each year.

IV. NEGATIVE IMPACT: INCOME TAX REVENUES

Extending marriage to same-sex couples will have an impact on income tax revenues since AB 205 did not affect income tax filing status. Same-sex couples who marry will have the right to use the “married filing jointly” tax status, giving them the ability to use that status if it reduces their taxes. Marriage will also likely eliminate the ability of now “single” taxpayers with

113. CALPERS, COMPREHENSIVE ANNUAL FINANCIAL REPORT, *supra* note 99, at 5.

114. *Id.* at 16.

115. Telephone Interview with Pamela Schneider, *supra* note 95.

116. This percentage is based on the employer contributions as a percentage of benefits paid by CalPERS in 2003. Although the employer percentage was 28%, we increase it to 30% to provide for a conservative estimate and to account for fluctuations in this ratio. Employer contributions are calculated as a percentage of payroll. The percentage is actuarially determined. CALPERS, COMPREHENSIVE ANNUAL FINANCIAL REPORT, *supra* note 99, at 32, 50. For the year ending June 30, 2003, the State of California General Fund contributed to none of CalPERS' defined benefit funds except the Judicial Retirement Fund. This contribution is made pursuant to state statute and is not actuarially determined. *Id.* at 51.

dependent children from using the “head of household” filing status, which would increase the taxes that some couples owed. In this Part, we estimate the impact of these offsetting effects. Overall, we find that the net loss of revenues is likely to be approximately \$9.2 million per year.

To estimate the net tax impact of allowing same-sex couples to marry, we use the income and household characteristics of same-sex “unmarried partner” couples living in California gathered by the Census Bureau’s 1% Public Use Micro Sample.¹¹⁷ We use the Census data on total income and on the number of children in a household to estimate each couple’s taxes twice. First we estimate what couples pay now. Then we estimate their likely tax payments as a married couple. Finally, we calculate the difference between their pre- and post-marriage taxes.

A. How Many Couples Will Marry If California Extends Marriage to Same-Sex Couples?

For the purpose of this analysis, as explained in the Introduction, we assume one-half of the same-sex couples counted in California in Census 2000 will marry (approximately 46,000 couples) and that tax consequences will have no impact on who decides to marry.¹¹⁸ We make this assumption for several reasons. First, social scientists have done extensive research on the federal “marriage penalty”—the situation in which some married couples pay more in taxes when they marry than if they remained single. Overall, research suggests that the marriage penalty has, at most, a very small impact on the likelihood that a couple will marry.¹¹⁹ Therefore, it seems reasonable to assume that the smaller state tax impact of marriage will also have little effect on the number of people marrying. Second, as noted earlier, marriage might come with other financial advantages that outweigh a negative tax impact, such as gaining spousal benefits from employers. Finally, research by anthropologists and other social scientists suggests that the decision to marry or enter into another form of commitment with a partner has a deep symbolic and cultural value apart from economic considerations.¹²⁰

117. We thank Dr. Gary Gates of the Urban Institute for supplying us with an extract of the 1% Public Use Microsample Data (PUMS) from Census 2000. The 1% PUMS provides data on 935 same-sex couples in California and gives each individual’s total income from all sources in 1999. We used the CPI-U to inflate the 1999 dollars to 2002 dollars.

118. AB 205 requires the state to notify all couples currently registered as domestic partners of changes in the meaning of this status and of the procedure for dissolving the status. 2003 Cal. Adv. Legis. Serv. 421 (Deering). Therefore, by “signing up” we mean both couples who newly sign up and couples who simply retain their registration.

119. See, e.g., James Alm & Leslie A. Whittington, *For Love or Money? The Impact of Income Taxes on Marriage*, 66 *ECONOMICA* 297 (1999) (finding a very small effect of the marriage penalty on the probability of marriage).

120. See LEWIN, *supra* note 50; LESBIAN AND GAY MARRIAGE, *supra* note 50.

B. What Will the Pre- & Post-Marriage Filing Status Be for Individuals in Same-Sex Couples?

We must make several assumptions to estimate taxes for couples. First, we assume that the individual listed as the “householder” of a same-sex couple will file as “head of household” if his or her own children under eighteen years old are living in the household, and that this person’s unmarried partner will file as single.¹²¹ The “head of household” status involves lower tax rates and higher deductions compared to single filers. We also assume that after marrying, the former “head of household” will not qualify as such and the couple would then file as “married filing jointly.” Second, when the householder has no children living with him or her, we assume that both partners currently file as single and will file as “married filing jointly” if allowed to marry.

C. How Much Will Couples’ Taxes Change?

We then calculate taxes twice: pre- and post-marriage. The tax simulations were necessarily simple. To calculate adjusted gross income, we assumed each partner used the standard deduction and had one exemption to claim apiece if single, and one dependent exemption per own child. We then applied the 2003 California state tax schedule to calculate the taxes owed by each individual and couple, first when each partner files as single or as head of household (if children are present), and second when the couple files jointly. Our estimates of the state taxes paid show that fifty-four percent of same-sex couples in California would see their taxes fall if they could file jointly as married couples do. The average decrease in taxes for these couples would be \$542. For thirty-five percent of same-sex couples, filing jointly would have no impact on their state income taxes. For approximately eleven percent of same-sex couples, their state income taxes would increase if they could file jointly. The average increase in taxes for these couples would be \$866. These couples are generally those couples in which one partner previously filed as head of household.

D. Calculating the Overall Change in Tax Revenue

Table IX shows how the proportions above and predicted changes in taxes can be used to calculate the number of couples falling into each category, assuming 46,069 couples will marry.¹²² Multiplying the number of couples in

121. Head of household status determination is complex, but an unmarried person with a dependent child likely qualifies. *See* CAL. FRANCHISE TAX BD., FORMS & INSTRUCTIONS, CALIFORNIA 540 & 540A, 2002 PERSONAL INCOME TAX BOOKLET 24-28 (2002), http://www.ftb.ca.gov/forms/02_forms/02_resbk.pdf?9682 (last visited Mar. 22, 2005).

122. When we applied the census household weights to the estimates of tax revenue changes, we arrived at an almost identical figure. In Table IX, the “Number of Couples” multiplied by “Average Change” will not exactly equal the “Total Change” due to rounding.

each category by the average change in taxes shows that tax revenues are likely to fall by \$9.2 million, as shown in the lower right hand corner of Table IX.

Table IX. Summary of Income Tax Revenue Calculations

	Number of Couples	Percentage of All Couples	Average Tax Change Per Couple	Total Change
Taxes Increase	5,080	11%	\$866	\$4,399,610
Taxes Same	15,932	35%	\$0	\$0
Taxes Decrease	25,057	54%	(\$542)	(\$13,578,076)
Totals:	46,069	100%	n/a	(\$9,178,466)

CONCLUSION: IMPLICATIONS FOR CALIFORNIA & OTHER STATES

A careful analysis of the effects of marriage on California budget items suggests that allowing same-sex marriage will result in offsetting impacts. First, the state will save money from expenditures on means-tested public benefit programs. Second, out-of-state same-sex couples will visit California to marry, generating additional sales tax revenue that the state would otherwise not receive. Third, same-sex couples within the state will spend at least some of their savings on weddings, creating additional sales tax revenues.

Fourth, giving domestic partners access to the family court system will generate no noticeable impact on the demands on judges or the system. In fact, dissolutions of the relationships of same-sex couples might use fewer judicial resources if they were resolved with the procedures and laws applied to marriage than they do currently, and such dissolutions will also generate fees that would offset any increase in costs. Fifth, some state employees will gain access to survivor benefits that were previously offered only to spouses. Even high estimates of the impact of this employment benefit suggest that the budgetary impact will be minimal. Finally, marriage will affect some couples' income taxes. Some couples' taxes will rise, and some couples' taxes will fall as a result of marrying.

The final step is to calculate the overall net impact of giving domestic partners equal marriage rights. This tally requires one additional assumption about the timing of marriages, since the calculations of individual items assume that all couples marry right away. Instead, we note that in the European countries that offer some or all of the rights and responsibilities of marriage to same-sex couples, the first year of access to the institution shows the highest number of marriages or registrations by same-sex couples.¹²³ The spike in

123. Kees Waaldijk, *Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands*, in LEGAL RECOGNITION OF SAME-SEX PARTNERSHIPS: A STUDY OF

marriages or partnerships in the first year suggests a high level of pent-up demand and is usually followed by a sharp drop-off. Therefore, we assume that in the first year, half of the eventual marriages take place, followed by one quarter of the total in each of the next two years. In other words, in year one there will be 23,000 weddings of in-state couples, in year two there will be 11,500 weddings, and in year three there will also be 11,500 weddings, resulting in a total of 46,000 married same-sex couples.

TABLE X. Summary of Fiscal Impacts Allocated Over Three Years

	Year 1: 50% Married	Year 2: 75% Married	Year 3: 100% Married	Total: 3 Years
Public Benefits	\$25,140,499	\$37,710,749	\$50,280,988	\$113,132,246
Tourism Sales Tax Revenues	\$6,046,764	\$3,023,382	\$3,023,382	\$12,093,527
In-State Weddings Sales Tax Revenues	\$9,185,007	\$4,592,504	\$4,592,504	\$18,370,014
Income Tax Revenues	(\$4,589,233)	(\$6,883,850)	(\$9,178,466)	(\$20,651,549)
Total:	\$33,771,788	\$35,425,911	\$44,695,919	\$122,944,238
			Annual Average:	\$40,981,413

Table X above shows the distribution of the fiscal benefits and costs over the three years, using the lowest estimate of out-of-state tourist spending. The net impact over three years is a \$123 million net gain for the California budget. The average annual impact is a \$41 million net gain. In thinking about the robustness of these estimates, it is important to note that the totals are dominated by one item, the savings on public benefits. However, the negative effect on income tax revenues is more than offset by tourism gains in two of the three years. Therefore, even much smaller savings in public benefits than estimated here would result in budget neutrality, at a minimum. Overall, though, savings in public benefits expenditures are likely to result in a net gain to the state of California.

Because California already provides some rights and responsibilities of marriage through domestic partnerships, the state may accrue some of these savings once AB 205 goes into effect in 2005. Our estimate of the impact of those enhanced domestic partnership rights is a net positive impact of \$8 million to \$10 million per year. The marginal effect of allowing same-sex couples to marry, then, will be \$28 million to \$30 million per year, driven largely by the increased number of couples marrying, as well as the new impact on state income tax revenues.¹²⁴

Although many of these same savings and costs might accrue to other

NATIONAL, EUROPEAN AND INTERNATIONAL LAW 437, 464 (Robert Wintemute & Mads Andenæs eds., 2001).

124. The other effect of marriage would be to allow couples to count earned income as community property. That provision could have implications for couples' federal income tax payments but would have no impact on the state budget.

states, there are several factors that imply some potential differences in budgetary outcomes. First, the tourism estimates assume that there is little or no competition from other states that offer the right to marry to same-sex couples, since Massachusetts does not currently allow out-of-state couples to marry there. Even if additional states give in-state and out-of-state same-sex couples the right to marry, thus creating competition for California and other states, the new states may develop as regional wedding tourist centers. In that case, wedding tourism revenues will be lower but not necessarily zero in other states.

Second, existing California law already provides for two benefits for same-sex partners, reducing the impact of marriage on the budget. As noted above, California already provided health care benefits for the domestic partners of state employees before it considered domestic partner or same-sex marriage legislation. Similarly, the California State Board of Equalization had already amended the Property Tax Rules to allow same-sex partners to transfer real estate to a same-sex partner without triggering a reassessment of the property that would increase tax revenues to the state.

However, we have evaluated the impact of extending some or all of the rights and obligations of marriage to same-sex couples on three different states: California,¹²⁵ New Jersey,¹²⁶ and Vermont.¹²⁷ In every case, we have found that marriage equality has a positive impact on the state's budget. In addition, similar studies for Connecticut,¹²⁸ New York,¹²⁹ and the federal government¹³⁰ have also shown that marriage equality has a positive fiscal impact. To date, the evidence is undisputed that extending marriage to same-sex couples does not have a negative impact on a state's budget.

125. *See supra* note 17 (listing California reports by the authors).

126. Badgett & Sears, *supra* note 18.

127. BADGETT, *supra* note 55.

128. OFFICE OF FISCAL ANALYSIS REPORT, *supra* note 21; SUSAN PRICE-LIVINGSTON, CONN. GEN. ASSEMBLY OFFICE OF LEGIS. RESEARCH, TOURISM IMPACT OF PERMITTING SAME-SEX UNIONS IN CONNECTICUT (2003), http://www1.law.ucla.edu/~williamsproj/connstudy_files/conntourism.htm (last visited Mar. 22, 2005).

129. Testimony of N.Y. State Comptroller Hevesi, *supra* note 43.

130. Letter from Holtz-Eakin, *supra* note 19.