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# The Impact on Rhode Island's Budget of Allowing Same-Sex Couples to Marry

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## EXECUTIVE SUMMARY

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**Recognizing marriage between same-sex partners in Rhode Island would positively affect the state budget by \$1.2 million over three years.**

This analysis by UCLA's Williams Institute estimates the impact on Rhode Island's state budget of introducing marriage rights for same-sex couples. Using the best data available, we estimate that a measure recognizing marriage between same-sex partners will garner the State \$1.2 million in 2010 dollars over the three years following the measure. The benefits accrued will change every year, as the number of married same-sex couples each year will change. The State will gain approximately \$358,000 in the first year after offering these rights (Year 1), \$416,000 in the second year (Year 2), and \$421,000 in the third year (Year 3). This net impact will be the result of savings in expenditures on state means-tested public benefit programs and an increase in state marriage license fees and income and sales tax revenue.

We base this analysis on the following estimates:

**Marriages of approximately 1,048 of Rhode Island's same-sex couples would be recognized in the next three years.**

According to 2009 American Community Survey Data, Rhode Island has 2,097 same-sex couples. Based on existing surveys, we believe that 440 couples have already married in neighboring states that grant marriage licenses to same-sex couples. We therefore estimate that 608 same-sex couples will marry over the next three years, based on the experiences of other states. Of these 608 couples, 231 couples will marry in Year 1, 220 couples will marry in Year 2, and 157 couples will marry in Year 3. Over a three year period, the State will recognize the marriages of 1,048 couples.

**Income tax revenues will rise when married, same-sex couples file jointly.**

If married same-sex couples file their taxes jointly, the number of couples paying higher taxes will surpass the number whose taxes will decrease. Overall, the net positive impact on the State's income tax revenue will be approximately \$202,000 in Year 1, \$268,000 in Year 2 and \$316,000 in Year 3. This amounts to \$786,000 in three years.

**Estate Tax Revenue will Fall.**

Allowing same-sex couples to marry will enable same-sex partners to take advantage of the marital deduction when calculating estate tax owed to the State. Based on our most conservative estimates (that is, estimates which predict the highest drop in taxes due to same-sex spouses taking advantage of this deduction), we project that, at most, estate tax revenues will fall by approximately \$106,000 in Year 1, \$141,000 in Year 2 and \$166,000 in Year 3, that is, \$413,000 over a 3 year period.

**Transfer Tax Revenue will Remain Unaffected.**

Rhode Island’s transfer tax is not affected by the marital status of the transacting parties, and will remain unaffected.

**Sales tax revenues will rise as a result of new spending on weddings.**

Without taking into account weddings of visiting out-of-state couples, we estimate that Rhode Island’s resident same-sex couples would spend nearly \$4 million in wedding expenses over three years. Out-of-state guests would generate an additional \$1.35 million in spending, including accommodations. This would lead to total state sales and occupancy tax revenues of over \$401,000 over three years.

**State expenditures on means-tested public benefits programs will fall.**

Extending marriage to same-sex couples will reduce the State’s public assistance expenditures. Just as married spouses are obligated to provide for one another’s basic needs, a same-sex spouse’s income and assets would be included in assessing an individual’s eligibility for means-tested public benefits after entering a marriage. This will reduce the number of same-sex partners eligible for such benefits. We estimate that extending marriage to same-sex couples will save the State \$406,000 in its spending on public benefit programs over three years, or \$104,000 in Year 1, \$139,000 in Year 2 and \$163,000 in Year 3.

**Rhode Island will receive increased revenue from marriage license fees.**

The fee for a marriage license in Rhode Island is \$24.00. Marriages between same-sex partners will generate nearly \$14,600 from these fees over three years.

**The cost of state employee retirement and health benefits will remain the same.**

The State maintains the Employees Retirement System of Rhode Island, which administers defined benefit and defined contribution retirement plans for eligible state employees. Same-sex partners of program members are already eligible for health and retirement benefits on a basis equivalent to married spouses. Therefore, expenditures on married same-sex partners will not increase.

**Summary of three year impact of extending marriage to same-sex couples:**

Type of Expenditure/Revenue	Year 1	Year 2	Year 3	Total Fiscal Impact on the Budget
Income Tax	\$202,060	\$268,362	\$315,720	\$786,142
Estate Tax	(\$106,087)	(\$140,987)	(\$165,761)	(\$412,835)
Sales Tax	\$152,259	\$145,237	\$103,741	\$401,236
Public Assistance	\$104,539	\$138,841	\$163,342	\$406,722
Marriage License Fees	\$5,537	\$5,282	\$3,773	\$14,592
<b>TOTAL</b>	<b>\$358,308</b>	<b>\$416,735</b>	<b>\$420,815</b>	<b>\$1,195,857</b>

# INTRODUCTION

As of January 1, 2010, Rhode Island is one of only two New England states that do not issue marriage licenses to same-sex couples.<sup>1</sup> One potential concern about expanding legal partnership rights may be the fiscal impact of such a change. Marriage comes with a variety of rights and obligations that might affect Rhode Island's expenditures and revenues. In other states, the budgetary effect of extending marriage rights to same-sex couples has become a topic of discussion.<sup>2</sup> This study estimates the overall impact of same-sex couples' marriages on the Rhode Island budget over the next 3 years.<sup>3</sup>

Allowing same-sex couples to marry will affect both state revenues and expenditures in various ways. The State may see changes in revenue from issuing marriage licenses or from changes in income tax, estate tax, or sales tax payments. State expenditures may also be affected by expanding the right to marry, since marriage affects eligibility for public assistance and for state employee benefits.

Our analysis for Rhode Island relies in part on the same methods that we used in previous studies on California,<sup>4</sup> Connecticut,<sup>5</sup> Iowa,<sup>6</sup> Maine,<sup>7</sup> Maryland,<sup>8</sup> New Mexico,<sup>9</sup> New Hampshire,<sup>10</sup> New Jersey,<sup>11</sup> Oregon,<sup>12</sup> Vermont,<sup>13</sup> and Washington.<sup>14</sup> The full methodology for our analysis is set out in *Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget*.<sup>15</sup> In these studies, we have concluded that extending the rights and obligations of marriage to same-sex couples would have a positive impact on each state's budget. Similar conclusions have been reached by legislative offices in Connecticut<sup>16</sup> and Vermont<sup>17</sup> and by the Comptroller General of New York.<sup>18</sup> In addition, the Congressional Budget Office has concluded that if all fifty states and the

federal government extended the rights and obligations of marriage to same-sex couples, the federal government would benefit by nearly \$1 billion each year.<sup>19</sup>

Section I of this report estimates the number of same-sex couples in Rhode Island and the number of couples who will likely marry if allowed. In Section II, we present our predictions of the tax-based budgetary impact on the State, separating our analysis into each category of taxation that marriage could affect. In Section III, we estimate the state savings that additional marriages will likely bring to Rhode Island's public benefits programs. Section IV outlines the costs of expanding benefits to the same-sex spouses of state employees. In Section V, we discuss revenues from marriage licenses. Finally, we summarize the expected policy impact for each expenditure or revenue category we address.

In general, we estimate the net effect of costs and benefits conservatively. In other words, we choose assumptions that are the most cautious from the State's perspective, those which tend to predict higher costs to the State and lower benefits. Even so, we find that the net effect of allowing same-sex couples to marry will be a positive impact on the state budget of \$1 million over the next three years. Moreover, as we discuss in Section I, a greater number of couples than we calculate here may choose to marry over this time period. If so, the net gains to the State will be even greater.

## ***I. The Number of Couples Affected***

In order to assess the economic impact of extending marriage rights to same-sex couples, we must first calculate the number

of same-sex couples whose marriages will be legally recognized. However, even though out-of-state marriages by same-sex couples are not yet recognized in Rhode Island for various purposes, such as taxation, some of these couples may have already married in neighboring New England states.

In 2007, the Attorney General of Rhode Island issued a statement explicitly stating that the State would recognize marriages performed in Massachusetts, though he was careful to note that his opinion was not legally binding.<sup>20</sup> Since that time, other New England states have recognized marriage between same-sex couples. Therefore, some Rhode Island couples have already married elsewhere.

These couples will not marry again in Rhode Island, a fact that will affect the revenue that the State obtains when a wedding ceremony is carried out in the State. Therefore, after calculating the number of couples whose marriages will be recognized over the next three years, we calculate how many of these newly recognized couples would have already married in other states.

Not all same-sex couples will choose to marry, even when the option is afforded to them. At the very least, the decision to marry is likely to include a weighing of the symbolic value of public and legal recognition of the relationship with the particular rights and responsibilities implied by the legal status of marriage. We draw upon the experience of other states that have permitted marriage between individuals of the same-sex or similar legal statuses to estimate the number of same-sex couples who might elect to enter a marriage in Rhode Island.

Since Massachusetts neighbors Rhode Island and has allowed same-sex couples to marry since 2003, we look to Massachusetts

for guidance on the number of marriages between same-sex couples that will marry over the next three years. In Massachusetts, approximately 9,931 same-sex couples married over three years. We therefore conservatively estimate that little over 50% of Massachusetts same-sex couples married over three years.<sup>21</sup> This metric conforms to detailed data regarding rates at which couples enter marriage in several other jurisdictions that have recently recognized marriage for same-sex couples.<sup>22</sup>

Based on the experience of Massachusetts, we predict that half of the same-sex couples of Rhode Island desire marital recognition.

According to 2009 American Community Survey data, there are 2097 cohabitating same-sex couples living in Rhode Island. We predict that the State would ultimately recognize the marriages of half of these couples, or about 1048 couples.

Note that not all of these couples will marry within the first year that marriage rights are recognized, an outcome that will affect the timing and degree of any fiscal impact. We use data from Massachusetts to predict the timing and adjust our results throughout this report. As an earlier study notes, out of the total marriages between same-sex individuals that took place in Massachusetts in the three-year period following 2003, 64% of marriages occurred in the first year, 21% in the second year, and 15% in the third year.<sup>23</sup> Therefore, when calculating the impact in a given year, figures must be discounted. Should Rhode Island offer marriage rights to same-sex couples, 64% of 1,048 same-sex couples will marry in the first year (Year 1) after Rhode Island offers these rights, or 671 couples, an additional 21% will marry in the second (Year 2), bringing us to 85% of 1,048, or 891 couples, and finally, all 1,048 couples will be

married by the end of the third year (Year 3).<sup>24</sup>

Data from a recent Williams Institute study of same-sex couples helps us estimate how many Rhode Island couples married elsewhere.<sup>25</sup> While only a few couples surveyed in that study lived in Rhode Island, the study also collected data from New York and Maryland. Like Rhode Island, these states do not themselves allow same-sex couples to marry, but New York and Maryland recognize out-of-state marriages by same-sex couples. Also, again like Rhode Island, these states neighbor jurisdictions that allow same-sex couples to marry, allowing citizens of these states to marry out-of-state relatively easily.<sup>26</sup> Data from New York and Maryland indicate that 21% of the same-sex couples in these states have already entered into marriages in other jurisdictions.<sup>27</sup> Therefore, we assume that a similar proportion of Rhode Island same-sex couples, or 440 couples, are already married. Accordingly, 608 couples will engage in marriage ceremonies in Rhode Island over a three year period.

While 64%, or 671 of the 1,048 couples would usually marry in the first year, we presume that 440 of these couples are already married, and only the remainder, or 231 couples will marry in Year 1. In year 2, 21%, or 220 of these 1048 weddings will occur, and the remaining 15% or 157 weddings will occur in Year 3.

Note, however, that while these 440 couples will not have to purchase new marriage licenses, nor will their marriage ceremonies contribute to sales tax revenues, their marriages are not currently recognized for the purposes of income and estate taxes, or public assistance benefits.<sup>28</sup> Savings or losses occurring from changes in income and estate tax revenue and public assistance expenditures are therefore based on all 1,048 couples.

## ***II. Impact on Tax Revenues***

Extending marriage to same-sex couples in Rhode Island could affect the State's taxes on income, property transfer, and inheritance.<sup>29</sup> Because marriage between same-sex partners will also trigger an increase in taxable wedding spending by same-sex couples, we include the impact on Rhode Island's sales tax revenue in our analysis in this section.

### **A. Impact on Income Tax**

Extending marriage to same-sex couples will likely impact the income tax revenues collected by the State. Under Rhode Island law, a state taxpayer's filing status as "single" or "married" is the same as their federal taxpayer status.<sup>30</sup> While federal law does not recognize marriage for same-sex couples, we presume Rhode Island will give same-sex couples who marry the right to file their income tax returns jointly, just as different-sex married couples currently do.

With this change in status, two individuals who previously filed as "single" will combine their incomes, and as a result, some of these couples will end up paying more or less in income tax when they file as married. However, on average, Rhode Island's same-sex couples will pay \$300 more in annual income taxes on average. Overall, our simulations suggest that extending marriage to same-sex couples in Rhode Island will increase state income tax revenues.

To estimate the net tax impact of allowing same-sex couples to file jointly, we use the income and household characteristics of same-sex "unmarried partner" couples living in Rhode Island gathered by the Census Bureau's American Community Survey (ACS).<sup>31</sup>

This data lists the income of each partner in households headed by same-sex couples. The data also report how much of the income is provided by public assistance and social security. The number of children under 18 living in the household of the same-sex couples is also provided.

For the sake of this analysis, we assume that the tax consequences of marriage will have no impact on who chooses to marry. Overall, research suggests that the possibility for increased taxation has a minimal impact on the likelihood of a couple's decision to marry.<sup>32</sup> We make several other assumptions to simplify the tax calculations. First, if the "householder" reported living with one or more of his or her own children under eighteen in the data-set, we assume that the householder filed as head of household and that the partner filed as single.<sup>33</sup> 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 wed.

We then applied the 2010 Rhode Island 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.

In Rhode Island, taxable income is calculated based upon one's federally adjusted gross income, minus state exemptions. Income reported on federal tax returns does not include public assistance and only includes a discounted portion of social security benefits. More of one's social security benefits are taxed if one is married or has other forms of income, according to a formula provided by the Internal Revenue Service.<sup>34</sup> After calculating adjusted gross income for federal tax purposes, we took into account the following figures by which

Rhode Island reduces taxable income on 2010 tax forms:<sup>35</sup>

(a) A standard deduction of \$5700 for those filing singly, \$8400 for head of households and \$9550 for married couples filing jointly.

(b) An age deduction for the individual (if filing jointly, and/or his/her partner), if over the age of 65. The deduction amounts to \$1400 per individual over the age of 65 or blind if filing singly, or \$1100 if filing jointly.

(c) Rhode Island deduction of \$3650 per federal exemption. An individual gets one exemption for him/herself, one exemption per child if filing as head of household, and one exemption for their spouse if filing jointly.

These figures represent the vast majority of the deductions in Rhode Island.<sup>36</sup> The resulting taxable income is taxed at a graduated rate, which changes depending on one's filing status.

Using these calculations, we estimate each couple's taxes before and after extending marriage rights to same-sex couples in 2010 dollars. First, we calculate what couples pay now when they file as a "single" individual or "head of household." Then we estimate the tax payments for the couple if they were instead married filing jointly. Using these estimates, we determine the difference between their pre- and post-joint filing taxes, calculating the difference first for each couple and then summing the individual differences to get the net effect of marriage for same-sex couples on the State's income tax revenue.

Our model estimates that state income taxes would increase for approximately 74% of same-sex couples in Rhode Island if they could file jointly as married couples.<sup>37</sup> The average increase in their taxes would be \$542. For 8% of couples, filing jointly



would not impact their taxes. Finally, 18% would see their taxes decrease, with an average decrease in taxes of \$579 for those couples. This comes to an average increase of \$301 per couple.

Taxes rise for most couples mainly because Rhode Island has a progressive tax structure, with overall lower deductions when couples file jointly, and because most same-sex couples have two earners. Unmarried couples with two incomes get to take greater advantage of the lower tax brackets and federal and state deductions, and those couples get pushed into higher tax brackets when they marry and combine their incomes.

Table 1 presents the average and total changes in income taxes paid by couples in the three categories. Assuming that Rhode Island will ultimately recognize the marriage of 50% of these individuals, as per our discussion in Section I, the projected increase in income tax revenue for Year 3, when all 1,048 couples are married, is approximately \$315,700. In Year 1 only 64% of this amount will be accrued, or \$202,000. In Year 2, 85% of the Year 3 amount will be realized, or \$268,000. This leads to total income tax gains of \$786,000 over three years.

**Table 1: Summary of Income Tax Revenue Calculations in Year 3**

Type of couple	Percent of Couples	Average Change in Taxes Per Couple	Total Change if 1048 marriages are recognized in Year 3
Increase in taxes	74.5	\$542	\$423,388
Same amount of taxes	7.8	0	0
Decrease in taxes	17.7	(\$579)	(\$107,668)
<b>Total Estimated Income Tax Revenue in Year 3</b>	<b>100</b>	<b>\$301</b>	<b>\$315,720</b>

## B. Impact on Estate Tax

Allowing same-sex couples to marry would likely affect the amount of revenue that the State collects from its estate tax. The estate tax is levied on property that passes from a decedent to her or his beneficiaries under a will or under the intestate laws of succession.<sup>38</sup> In Rhode Island, property passing to a legal spouse is exempt from taxation; such a testamentary transfer is unlimited in amount.<sup>39</sup>

Property passing to unrelated individuals, such as unmarried same-sex partners, could be taxed at one of two possible rates. First, Table A on the Rhode Island schedule sets graduated rates between 39 and 55 percent.<sup>40</sup> Table B in turn sets rates between 0.6 and 16 percent. Rhode Islanders pay taxes on whichever table yields the lesser amount after different deductions and credits that apply to each table. Notably, when credits are applied to

taxes calculated according to Table A, estates under \$850,000 pay no taxes.<sup>41</sup>

Calculations of the impact of extending marriage to same-sex couples on estate tax revenue are complicated. Same-sex couples will inevitably vary in terms of the size of their estates, the extent to which all or part of an estate is left to the surviving partner, the number of other beneficiaries, and the measures they may take to mitigate the taxation of estates that will be inherited by their partners. Unfortunately, we do not have detailed data that provides such information.

To estimate the estate tax from existing data we first calculate the rate at which same-sex partners who file estate taxes would take advantage of the spousal deduction if same-sex couples were allowed to marry. Then we estimate the size of the estate tax using two different methods to estimate the impact on estate tax revenues of allowing an individual to transfer property tax-free to a same-sex spouse. Finally, we add up the amount of savings accruing to same-sex couples as a result of marriage, which is a reduction in estate tax revenue for the State.

### **1. Rate at which Same-Sex Partners Pay Estate Tax**

To calculate the total effect on the estate tax, we first estimate the rate at which same-sex partners would take advantage of the spousal deduction. We first estimate the rate at which individuals who are married to a same-sex spouse would file tax-returns in each year. We presume that such individuals would file tax returns at the same rate as the adult population.<sup>42</sup> Based on our earlier prediction, we calculate there will be 2,097 same-sex spouses in Year 3. The total number of adults (individuals over age 18) in Rhode Island is 815,948 according to 2009 ACS data. Presuming that

only adults file tax returns, the rate at which same-sex partners will file a return is 2097/815,948. In other words, we estimate that 0.26% of people filing estate tax returns in Year 3 would be individuals who are married to a same-sex spouse. We assume that all the partners in this category will make a spousal deduction. As we calculate in Subsections 2 and 3 below, this would mean that approximately 1 individual with a same-sex spouse will file an estate tax return in Year 3.

In Year two, 85% of this figure, or 0.22%, of Rhode Island Estate tax filings will be from an individual with a same-sex spouse, and 64% of that number will represent the Year 1 rate, or 0.16%.

### **2. Using IRS Tax Data to Calculate Estate Size and Estate Tax**

In this Section, we first estimate the average estate size in certain Rhode Island estate tax brackets. Using this figure, we calculate the taxes paid by unmarried and married individuals who make spousal deductions in each bracket. We next determine the total number of same-sex partners in each bracket, and determine how much they would pay in estate tax before and after they are allowed to marry.

The IRS only collected estate information for estates over \$1 million after 2001, which is higher than the estate level at which Rhode Island begins taxation.<sup>43</sup> Using recent IRS figures would therefore fail to provide us with information regarding those individuals whose estates are smaller than \$1 million, but who still pay estate taxes in Rhode Island. Similarly, the Federal Reserve's Survey of Consumer Finances does not provide sufficient information to calculate Rhode Island residents' wealth to provide information on likely estates over \$850,000.<sup>44</sup> We therefore turn to IRS data from 2000-2001, when estate tax

information from lower IRS tax brackets was collected, and apply this data to Rhode Island.

Before using this data, however, we first consider whether 2000-2001 will give us a reasonable estimate of Rhode Island estate sizes today given the likely changes in the value of wealth over the decade. According to the Survey of Consumer Finances, the value of assets rose by 13-14% from 2001 to 2007 for the wealthiest 20% of Americans.<sup>45</sup> However, the recession has led to a dramatic fall in wealth in the last few years. More recent Federal Reserve figures reveal that household wealth fell by 16.7% between 2007 and the second quarter of 2010.<sup>46</sup> Accordingly, 2000-2001 figures are a reasonable estimate of current estate sizes.

The IRS figures give us the gross estates at various IRS income brackets, which we have inflated to 2010 dollars, and the total number of returns in that bracket. This allows us to calculate an average estate value. The data also provide us with the average deductions made in each bracket, including average deductions for probate and funeral expenses, attorney's fees, charitable contributions, and spousal bequests.

Calculating the average estate sizes of unmarried and married individuals from these data requires us to make a series of conservative assumptions.

First, the IRS data does not indicate the total number of married individuals filing the estate tax. We therefore assume that the number of individuals who file for a spousal deduction represents the total number of married individuals filing tax returns. Since this method undercounts the number of married individuals filing tax returns, we will have a high estimate for the average

spousal deduction, and overestimate the total amount the State would lose through same-sex spouses opting for spousal deductions.

Second, the data do not indicate the different rates at which married and unmarried individuals make charitable contributions. We must therefore assume that charitable deductions of non-married individuals are the same as those of married individuals, even though this is not in fact the case.<sup>47</sup> As a result, we presume that unmarried individuals are taking a smaller charitable deduction than they actually are, and are therefore currently paying higher taxes to the State. In turn, we presume that married individuals are making vastly larger charitable deductions than they are, and as a result, would be paying *no* taxes to the State.

Third, and most importantly, the data only allow us to calculate the *mean* estate at each level. As the 2007 Survey of Consumer Finances shows, the mean estate in American households in the top 10% income bracket is nearly three times that of the median wealth for the wealthiest 10%, which is the more appropriate figure for our calculations.<sup>48</sup> By taking the mean figure, we are once more greatly overestimating the estate taxes Rhode Island collects from unmarried individuals, and therefore the taxes it will lose by granting marriage rights to same-sex couples.

To calculate the average taxable estate of an unmarried individual, we subtract the total average deduction (not including the spousal deduction) from the average total estate at each level. We subtract the average spousal bequest from the result to determine the average taxable estate of a married individual. Our results for each year are displayed in Table 2.

**Table 2: 2000-2001 IRS Data Averages**

2000-2001 IRS Data				
Tax Bracket Levels	2010 Dollars	Average Estate in Bracket	Average Non-Married Estate in Bracket after Deductions <sup>49</sup>	Average Married Estate in Bracket after Deductions <sup>50</sup>
675,000	844,088	1,014,329	938,730	517,807
1,000,000	1,250,500	1,501,186	1,357,240	570,445
1,500,000	1,875,750	2,159,209	1,948,060	634,191
2,000,000	2,501,000	3,219,457	2,839,800	653,036
3,500,000	4,376,750	12,498,213	10,140,220	755,013

**Table 3: Rhode Island Averages based on 2000-2001 data, in 2010 dollars**

2000-2001 Averages and Rhode Island tax Calculations						
Gross Estate Table A Tax Bracket, Lower Limit	Taxable Estate of Unmarried Persons	Unmarried Estates after Rhode Island \$60,000 deduction	Taxable estate of married individuals	Calculation from Table B of Estate Tax Schedule	Tax on unmarried Persons Estate	Tax on married Persons Estate
850,000	938,730	878,000	517,807	27.6 plus 5.6% of amount over 840,000	29,769	0
1,250,000	1,357,240	1,297,240	570,445	38.8 plus 6.4% of amount over 1,040	55,263	0
2,000,000	1,948,060	1,888,060	634,191	70.8 plus 7.2% of amount over 1,540	95,860	0
2,500,000	2,839,800	2,779,800	653,036	146.8 plus 8.8% of amount over 2,540	167,900	0
3,000,000	10,140,220	10,080,220	755,013	1082.8 plus 16% of amount over 10,040	1,089,235	0

In Table 3, we calculate the taxes assessed on the estates of unmarried and married individuals. (The 2000-2001 data roughly correspond to the Rhode Island Table A tax brackets.<sup>51</sup> We therefore use Table A brackets to display the data in Table 3.) To correct for any anomalies in a particular year, we base our calculations on the

averages of the taxable estates from the 2000-2001 data.

First, we calculate the taxes assessed on unmarried persons' estates. Estates above \$924,251 are taxed lower under Table B than under Table A.<sup>52</sup> Taxable estates above this figure should therefore use

calculations from Table B. Those below the figure would use calculations from table A. Since mean estates in all the brackets exceed \$924,251, we use calculations from Rhode Island Estate Tax form's Table B.<sup>53</sup>

As discussed above, married persons' taxable estates fall below \$850,000 after deductions because of our conservative assumptions. Accordingly, as the last column of Table 3 indicates, they remain untaxed.

Next we calculate the number of same-sex partners who would marry and who pay the estate tax at each tax bracket. To do so, we multiply the average tax amounts in Table 3 by the proportion of Rhode Island individuals with same-sex spouses who fall within the brackets. The calculation described below creates a weighted average of the amount that same-sex couples are likely to be paying now when they cannot marry in Rhode Island.

To find this number, we first find the proportion of federal tax returns filed in Rhode Island during 2000-2001, that is, the total number of Rhode Island tax returns divided by the total number of federal tax returns.<sup>54</sup> We multiply this proportion by the total number of returns filed in each tax bracket federally, to estimate the total number of tax returns filed in each tax bracket in Rhode Island.

To estimate how many of these returns are from individuals with same-sex spouses, we multiply the result by the proportion of such individuals from Rhode Island filing tax returns, or 0.26% in Year 3, which we shall appropriately discount for Year 1 and Year 2. This calculation yields the figures in the middle column of Table 4 in each tax bracket.

**Table 4: Taxes paid by individuals with same-sex spouses**

(1) Gross Estate Table A Tax Bracket Lower Limit	(2) Tax on unmarried estate (from Table 3)	(3) Returns filed by partners with same- sex spouses	(4) Tax collected from Dying Same-sex Partner at that Level (Col. 2 X Col. 3)
850,000	29,769	0.427	12,710
1,250,000	55,263	0.29	16,030
2,000,000	95,860	0.124	11,890
2,500,000	167,900	0.129	21,660
3,000,000	1,089,235	0.095	103,480
Totals	1,438,027	1.06	165,760

Table 4 shows that on average, 1 tax return would be filed by an individual with a same-sex spouse in Year 3, with the figures in the central column above representing the probability of the return in being in a particular bracket. In Year 2 and Year 1, it is not certain that a same-sex spouse will file a tax return, since fewer couples will have married in the first two years, so the probability of such a return being 85% of 1.06, or 0.90, and 64% of 1.06, or 0.68 respectively.

Accordingly, the expected loss in estate taxes in Year 3 is \$165,761. In Year 2, the expected loss will be \$140,897. In Year 1, the expected loss is \$106,087. In total the State would lose \$412,745. Though we use this figure, it is far higher than the likely actual amount lost, because the mean estate tax we use for our calculations at each tax bracket is close to three times the median estate tax at that bracket. Using estimated median numbers more than halves this amount.<sup>55</sup>

## 2. Average Tax Collected per Person in Rhode Island

In this Section, we use estimates of the average estate tax payment based on data collected by the Rhode Island Estate Tax Division to calculate the effects on the estate tax. The Division provided the following data in uninflated dollars.<sup>56</sup>

**Table 5: Rhode Island Estate Division Income Tax Estimates**

Fiscal Year	Total Taxes
2008	27,059,109
2009	21,726,714
2010	18,369,350

Rhode Island does not maintain records on the total number of individuals who file estate taxes in a given year. The Estate Tax Division estimated that taxes were paid on approximately 400 estates in each year. This resembles the number of Rhode Island tax returns filed with the IRS in the 2000-2001 data used above.<sup>57</sup> With a filing rate of 0.26% for same-sex spouses per Rhode Island estate tax filing in Year 3, we estimate that approximately 1 same-sex spouse files estate taxes.

Using the figures from Table 5, and inflating them to 2010 dollars, we determine that an estate that owed tax in Rhode Island paid \$56,672 on average. Multiplying this by the number of same-sex spouses that file estate tax in Year 3, or 1 same-sex spouse, we find that Rhode Island collects \$56,672 from deceased individuals who would be married to same-sex partners. IRS data from 2009 suggests that on average, taxed individuals leave 67.5% of their estates to their spouses.<sup>58</sup> A conservative assumption is that a spousal bequest would render the estate non-taxable. We therefore calculate that the State would lose \$56,672 in Year 3.

However, this calculation may not provide a good estimate of taxes currently paid by individuals with same-sex unmarried partners. The \$56,672 average includes the returns of both married and unmarried individuals. However, unmarried individuals on average may pay a much higher tax since they have no spouse to leave property to untaxed. If that were the case, same-sex partners would currently be paying the estate tax at a higher rate. Additionally, the taxation formula for 2007-2009 differed significantly from the 2010 formula. We therefore use the higher estimate from our earlier calculation, or \$412,745 over three years.

## C. Impact on Transfer Tax Revenue

In Rhode Island, a transfer tax is imposed on money “paid for the purchase of [real] property.”<sup>59</sup> Same-sex partners, therefore, can transfer real estate without being subject to the transfer tax if no money is paid when property is transferred to one another. Further, Rhode Island does not have a state gift tax. Consequently, marriage for same-sex couples should not have an effect on revenue generated by transfer taxes, given that same-sex couples can already transfer property without becoming subject to these taxes.

Further, it is possible that the right to marry could generate additional sales of homes to same-sex couples, which would increase transfer tax revenue, as argued in a study by the New York State Comptroller’s Office.<sup>60</sup> The emotional stability and financial security associated with marriage may encourage same-sex couples to purchase a house, and those sales to couples will generate new tax revenue.

## D. Impact on Sales Tax

Extending the right to marry to same-sex couples would likely increase spending on wedding-related goods and services by in-

state couples. Because neighboring New England states offer same-sex couples the right to marry, we do not take into account spending by out-of-state couples.

The average spending on weddings in Rhode Island for 2009 was \$25,206.<sup>61</sup> However, same-sex couples in Rhode Island may have already held commitment ceremonies and may receive less financial support from their parents and other family members to cover wedding costs. Additionally, only spending that comes from couples' savings would truly be "new spending" for the State's businesses, rather than money diverted from some other expenditure. We therefore conservatively estimate that a same-sex couple will spend 25% of this figure, or \$6,301 per wedding. This figure is also consistent, although lower than our estimate for wedding spending in Massachusetts.<sup>62</sup> As discussed in Section I, we predict that 608 same-sex couples will marry in Rhode Island over the first 3 years they are allowed to marry. (This figure takes into account the fact that some same-sex couples will have already married in some other state or country.) Accordingly, same-sex couples will spend nearly \$4 million in wedding expenses. Given the current sales tax of 7%, the total sales revenue accruing from wedding expenses is approximately \$268,000 over the next three years.<sup>63</sup>

Additionally, out-of-state wedding visitors will bring tourism revenue to the State. Based on a Williams Institute study of weddings by same-sex couples in Massachusetts, a neighboring state, we predict that each wedding will attract approximately 16 out-of-state guests.<sup>64</sup> This is a conservative estimate as Rhode Island is a smaller state and more guests will probably live out-of-state. The estimated total of out-of-state guests for 608 weddings is 9,728.

To calculate the average spending and tax revenue received per out of state wedding visitor, we presume that each visitor spends only one night in a Rhode Island hotel and one day in the State. The State will collect revenue in both occupancy taxes and sales taxes.

We draw hotel expenditures and non-hotel expenditures from two different sources. According to a hotels.com report, the average cost of a 2010 Rhode Island hotel room is \$132.<sup>65</sup> We assume that only half as many rooms as there are out-of-state guests will be rented, since many guests will travel as a couple or a family and stay in the same room. As a result, we estimate that 4,864 rooms will be rented, resulting in hotel expenditures of \$642,000. Taxed at Rhode Island's total hotel tax rate of 13%, the State will collect \$83,400 in revenues.<sup>66</sup>

These wedding guests will also engage in other forms of spending in Rhode Island, contributing to the State's sales tax. According to the 2005 *Rhode Island Travel and Tourism Research Report*, average day-trip expenditures by visitors were \$62.23, or \$72.81 in 2010 dollars.<sup>67</sup> Presuming that out-of-town wedding guests spend this amount during their one-day visit, in addition to the amount spent on hotel occupancy for one night, visitors would spend a total of \$708,000. Taxed at 7%, this spending would garner the State \$49,600 in sales tax revenue. When added to the occupancy tax revenues, out-of-state guests would lead to total revenues of \$133,000.<sup>68</sup>

In total, we predict a total of \$401,000 in increased sales and occupancy tax revenues over three years. We spread this number across the three years garnering approximately \$152,300 in Year 1, \$145,200 in Year 2 and \$103,700 in Year 3. Note that sales taxes only capture the most direct tax impact of increased tourism.

Businesses and individuals will also pay taxes on the new earnings generated by

wedding spending, providing a further boost to the state budget.

**Table 6: Summary of Tax Impact for Rhode Island**

Type of Tax	Year 1	Year 2	Year 3	Total Fiscal Impact on the Budget
Income Tax	\$202,060	\$268,362	\$315,720	\$786,142
Estate Tax	(\$106,087)	(\$140,987)	(\$165,761)	(\$412,835)
Sales Tax	\$152,259	\$145,237	\$103,741	\$401,236
TOTAL	\$248,232	\$272,612	\$253,700	\$774,543

### ***III. Expansion of State Employee Benefits to Same-sex Spouses***

Rhode Island offers a number of fringe benefits to its state employees, including health insurance, dental insurance, and retirement plans. Same-sex partners are already eligible for coverage under the State’s domestic partner benefits policy.

Same-sex partners who meet the State’s definition of domestic partners may obtain the same health, dental, and vision coverage as different-sex married couples.<sup>69</sup> To qualify as a domestic partner, the couple must complete a “Domestic Partnership Affidavit,” providing a declaration that their relationship is comparable to marriage (i.e. exclusivity, mental competence, financial interdependence, etc.). The state contributions for the health, dental, and vision insurance of domestic partners are identical to those of married couples.

While the State subsidizes retirement health benefits for some employees, it does not do so for their children or spouses.<sup>70</sup> Therefore, retiring employees with same-sex spouses will not increase the amounts spent on employee benefits. Similarly, an

employee can designate any beneficiary to receive their retirement allowance after their death, and death benefits.<sup>71</sup> Finally, both spouses and domestic partners of Rhode Island’s police officers, correctional officers and firefighters receive a payment from the State should their significant other be killed in the line of duty.<sup>72</sup>

### ***IV. Public Assistance Benefits***

Marriage implies a mutual obligation of support that is reflected in public assistance eligibility calculations.<sup>73</sup> Marriage for same-sex couples means these couples are less likely to need public assistance and are less likely to qualify for it. This Section looks at the savings the State may accrue from removing same-sex married partners from public assistance rolls.

#### **A. Public Assistance Programs**

Rhode Island funds an array of public benefits programs that provide subsidies and assistance to low-income individuals and families with state and federal sources. Rhode Island’s main cash assistance program is Rhode Island Works (RI Works), the name of the state’s Temporary Assistance to Needy Families (TANF) program. The core components of RI Works are Cash Assistance, Child Care Assistance,



Job Search and Job Training Assistance, and Transportation Assistance.<sup>74</sup> Rhode Island also offers separate state-funded programs for certain individuals and families who do not qualify for Rhode Island Works programs.<sup>75</sup>

Other forms of assistance available to low-income people in Rhode Island include Supplemental Security Income (SSI), Medicaid, CHIP (Children's Health Insurance Program), and other Medical Assistance (through RIte Care and RIte Share), Emergency Assistance for Vulnerable Youth, Emergency and Catastrophic Housing Assistance, Rental Assistance through the State Community Action Fund, Low-Income Heating Assistance, Housing and Development Services, Disaster Relief, and Property Tax Relief. Assistance that is not directly provided in cash is also available through an assortment of programs, such as state-funded Head Start, Alcohol and Drug Recovery Services, Adult Literacy Services, Community-based Work, Training, and Family Support and Development Programs, and programs for youth exiting juvenile detention.<sup>76</sup>

## **B. Savings and Marriage for Same-Sex couples**

Eligibility for public assistance is means-tested and, therefore, dependent on the individual applicant's income and assets, as well as, for many programs, those of the applicant's family. For the many programs that consider a spouse's income and assets, a married applicant is generally less likely to qualify for assistance than single applicants. Because same-sex couples are not permitted to marry in Rhode Island, people with same-sex partners are likely to be considered "single" when eligibility for these programs is assessed. This "single" classification results in same-sex partners being more likely to qualify for public assistance. If same-sex couples were able

to marry, however, both partners' income and assets could be counted in determining eligibility. Thus if same-sex couples could marry, they would be less likely to need assistance and be eligible for assistance, since their income and assets would exceed program thresholds. With fewer same-sex couples participating in public benefits programs, state expenditures will fall.

Rhode Island will currently consider the income of an unmarried partner if the unmarried partner is the biological or adoptive parent of a child who is in the household.<sup>77</sup> Therefore, some low-income same-sex couples would likely still be eligible for benefits after marriage rights are extended to same-sex couples. We consider the continuing eligibility of these low-income couples in our calculations of savings to the State.

In Rhode Island, the main assistance programs that take marital status into account in eligibility determinations are RI Works (TANF), RIte Care (Medicaid), Children's Health Insurance Program (CHIP), and Supplemental Security Income (SSI). The Rhode Island Administrative Code sets out the income calculation criteria for RI Works, RIte Care, and SSI. Our calculations below, therefore, focus on these programs. Yet because permitting marriage for same-sex couples is likely to trim state spending on many public assistance programs not included in our calculations, the estimates below are conservative.<sup>78</sup>

For RI Works (TANF), the State generally determines applicant eligibility standards.<sup>79</sup> With respect to these programs, then, the State will be able to count a same-sex spouse's income and assets in determining the eligibility of an individual or family. For SSI and RIte Care (Medicaid), however, the federal government determines the generally applicable eligibility standards,

restricting the State's discretion in developing its own application standards and procedures. Because the federal Defense of Marriage Act (DOMA) purports to limit the definition of the word "spouse" to different-sex marriages, Rhode Island may be prohibited from including a same-sex spouse in eligibility determinations for those programs.<sup>80</sup> Nonetheless, in assessing eligibility for RIte Care and SSI, Rhode Island may still be able to take into account the resources of same-sex spouses under state and federal regulations that require Rhode Island to consider the resources of third parties who are legally liable for health care costs.<sup>81</sup> RIte Care (Medicaid) is a provider of last resort, and federal and state law require the State to assure that Medicaid recipients utilize all other available resources, i.e., third parties, to pay for all or part of their medical care needs before turning to Medicaid. Third parties are entities or individuals who are legally responsible for paying the medical claims of Medicaid recipients.<sup>82</sup> They include any "individual who has either voluntarily accepted or been assigned legal responsibility for the health care" of a Medicaid applicant or recipient.<sup>83</sup> The income and assets of a same-sex spouse might be considered under this "third party" category, resulting in essentially the same eligibility determinations as if a "spouse" category was applied.

### **C. Calculation of Savings**

To estimate the impact of permitting same-sex couples to marry, we first calculate the amount spent per participant by the State after removing the federal share. We include the federal block grant for TANF in our calculation of saving for that program. The total expenditures for RI Works, RIte Care, SSI, and CHIP were divided by their overall participation in the same fiscal or calendar year to yield a per-participant annual expenditure figure.<sup>84</sup>

Next, we calculate the rate at which same-sex partners receive public assistance before and after Rhode Island offers marriage benefits. To calculate the rate of participation for RI Works, SSI, and CHIP, we draw on data from the 2008 American Community Survey (ACS). This survey asks respondents to report the amount of income they received in the past 12 months from any sources, including Supplemental Security Income (SSI) and "any public assistance or welfare payments from the state or local welfare office."<sup>85</sup> These income data were used to calculate the rate at which same-sex unmarried couples and different-sex married couples receive SSI and public assistance income in the United States. We assume that Rhode Islanders receive income from these sources at the same rate as individuals in the United States as a whole.<sup>86</sup> Because the ACS does not define with any precision "public assistance," we utilize the rate of public assistance receipt for both RI Works and CHIP. SSI income is reported separately in the ACS, therefore we use that rate to calculate SSI savings. Rates of RIte Care receipt are based on prior research on Medicaid participation among unmarried different-sex and same-sex couples and married different-sex couples.<sup>87</sup>

Of same-sex unmarried couples, 1.03% received public assistance income, 1.20% received SSI income, and 4% received RIte Care. Therefore, of the 2,097 same-sex couples in Rhode Island, in any given year, 22 have an individual receiving a form of public assistance, 26 have an individual receiving SSI, and 84 have an individual receiving RIte Care.

Next, we calculate the decrease in this rate of participation for married same-sex couples. Note that some same-sex spouses would continue to qualify for benefits even after they marry.<sup>88</sup> According to 2008 ACS

data, 0.46% of different-sex married couples received public assistance income and 0.82% received SSI income.<sup>89</sup> According to prior research on Medicaid participation rates, 2.5% of different-sex married couples received Medicaid.<sup>90</sup> We assume that same-sex spouses will qualify for benefits at the same rate as different-sex spouses currently do. Therefore, after three years, only 0.46% of married same-sex couples will receive public assistance benefits, 0.82% will receive SSI income, and 2.5% will receive RIte Care.

We assume again that by the third year after marriage, half of all same-sex couples will have married.<sup>91</sup> Therefore, those same-sex spouses will receive public assistance, SSI, and RIte Care at the same rate as different-sex married couples. As a result, by Year 3, of the 22 same-sex couples who receive public assistance in any given year, 11 would have married, and six will no longer receive benefits.<sup>92</sup> Of the 26 same-sex couples who receive SSI, 13 would marry and four will no longer receive SSI benefits. Finally, of the 84 same-sex couples who receive RIte Care, 42 would marry and 16 will no longer receive RIte Care. Adding together SSI, public assistance, and RIte Care savings for those who would no longer receive benefits, Rhode Island will save

\$163,000 in Year 3. As in earlier sections, after discounting for the lower rates of marriage in Years 1 and 2, we find that the State saves \$104,000 in Year 1 and \$139,000 in Year 2.<sup>93</sup> In total, with marriage for same-sex couples, we anticipate the total savings to the State in public assistance expenditures to exceed \$406,000 over three years, as summarized in Table 7.

Note that RI Works monies should be calculated as savings as the TANF block grant Rhode Island receives from the federal government is not likely to be reduced if fewer people in same-sex couples qualify. That is, if marriage for same-sex couples means fewer RI Works recipients, but not less federal funding, savings will accrue to the State. These calculations also assume that DOMA will not bar the State from including a same-sex spouse's income and assets to calculate eligibility for Medicaid and SSI. Note, however, even if DOMA prevents the State from directly counting marriages for same-sex couples, the State may still be able to count both spouses' incomes and assets via regulations concerning the financial obligations of legally responsible third-parties as discussed above.

**Table 7: Expenditures and Savings on Public Assistance Programs<sup>94</sup>**

Program	Estimated Savings in State Funds after Marriage for Same-Sex Couples			
	Year 1	Year 2	Year 3	TOTAL
TANF	\$52,132	\$69,237	\$81,456	\$202,826
CHIP	\$2,183	\$2,899	\$3,412	\$8,495
Medicaid	\$50,107	\$66,548	\$78,292	\$194,948
SSI	\$116	\$154	\$181	\$452
<b>TOTAL</b>	<b>\$104,539</b>	<b>\$138,841</b>	<b>\$163,342</b>	<b>\$406,722</b>

## ***V. Marriage License Fees***

The weddings of same-sex couples will also generate revenues for counties through marriage license fees. The fee for a marriage license in Rhode Island is \$24.00.<sup>95</sup> We multiply this fee by our estimates of the number of same-sex couples who will marry in Rhode Island during the first three years, or 608 couples.

This calculation suggests that marriages by same-sex couples will create \$14,600 from

these fees. Spread across three years, the annual fee revenue would be \$5,500 in Year 1, \$5,300 in Year 2, and \$3,800 in Year 3.

Of course, some of the revenues of these fees will be offset by the costs of processing the additional marriage licenses. However, other states that have extended marriage, civil unions, or domestic partnerships to same-sex couples have experienced very small increases in administrative costs.<sup>96</sup>

## ***Summary and Conclusions***

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In this study, we drew on U.S. Census Bureau data from Rhode Island residents and the experience of Massachusetts and other states to quantify the likely fiscal and economic effects of allowing same-sex couples to marry in Rhode Island.

<b>Type of Expenditure/Revenue</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Total Fiscal Impact on the Budget</b>
Income Tax	\$202,060	\$268,362	\$315,720	\$786,142
Estate Tax	(\$106,087)	(\$140,987)	(\$165,761)	(\$412,835)
Sales Tax	\$152,259	\$145,237	\$103,741	\$401,236
Public Assistance	\$104,539	\$138,841	\$163,342	\$406,722
Marriage License Fees	\$5,537	\$5,282	\$3,773	\$14,592
<b>TOTAL</b>	<b>\$358,308</b>	<b>\$416,735</b>	<b>\$420,815</b>	<b>\$1,195,857</b>

- The State will experience a loss in estate tax revenue but a significant increase in sales tax revenue and income tax revenue, for a net increase of approximately \$775,000 in tax revenue over three years.
- The State will likely save \$406,700 in public assistance expenditures over three years from extending marriage to same-sex couples.
- Employee benefits of same-sex partners are already covered in Rhode Island, so introducing marriage rights will not affect state expenditures on employee benefits.
- Extending marriage to same-sex couples will also increase revenue from marriage license fees, adding \$14,600 over three years.

Our analysis projects that giving equal marriage rights to same-sex couples will have a positive impact on the state budget of \$358,000 in the first year after passing the measure (Year 1), \$416,000 in Year 2, and \$421,000 in Year 3, totaling to just under \$1.2 million over three years.

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## ENDNOTES

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<sup>1</sup> HUMAN RIGHTS CAMPAIGN, MARRIAGE EQUALITY & OTHER RELATIONSHIP RECOGNITION LAWS (2010) *available at* [http://www.hrc.org/documents/Relationship\\_Recognition\\_Laws\\_Map.pdf](http://www.hrc.org/documents/Relationship_Recognition_Laws_Map.pdf)

<sup>2</sup> Perry v. Schwarzenegger, 704 F. Supp. 2d 921, 941 (N.D. Cal. 2010) (citing M.V. LEE BADGETT, MONEY, MYTHS, AND CHANGE: THE ECONOMIC LIVES OF LESBIANS AND GAY MEN (2001); M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED: WHAT HAPPENS WHEN SOCIETIES LEGALIZE SAME-SEX MARRIAGE (2009); BRAD SEARS & M.V. LEE BADGETT, THE WILLIAMS INSTITUTE, THE IMPACT OF EXTENDING MARRIAGE TO SAME-SEX COUPLES ON THE CALIFORNIA BUDGET (2008); M.V. Lee Badgett & R. Bradley Sears, *Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget*, 16 STAN. L. & POL. REV. 197 (2005)).

<sup>3</sup> All dollar values in this report are in 2010 dollars. We use the Bureau of Labor Statistics to adjust for inflation, accordingly inflating 2006 dollars by 1.08, 2007 dollars by 1.05, and 2008 and 2009 dollars by 1.01. *See* Bureau of Labor Statistics, Databases, Tables & Calculators by Subject, CPI Inflation Calculator, [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm), (last visited Oct. 20, 2010).

<sup>4</sup> R. BRADLEY SEARS & M.V. LEE BADGETT, THE WILLIAMS INSTITUTE, THE IMPACT ON CALIFORNIA'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2004) *available at* <http://www.law.ucla.edu/williamsproj/publications/CASameSexMarriage.pdf>.

<sup>5</sup> M.V. LEE BADGETT ET AL, THE WILLIAMS INSTITUTE, COUNTING ON COUPLES: FISCAL SAVINGS FROM ALLOWING SAME-SEX COUPLES TO MARRY IN CONNECTICUT (2005) *available at* <http://www.law.ucla.edu/williamsproj/pdf/CountingOnCouples.doc>.

<sup>6</sup> M.V. LEE BADGETT ET AL, THE WILLIAMS INSTITUTE, THE IMPACT ON IOWA'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2008) *available at* <http://www.law.ucla.edu/williamsinstitute/publications/IowaFiscalImpact.pdf>.

<sup>7</sup> CHRISTOPHER RAMOS ET AL, THE WILLIAMS INSTITUTE, THE IMPACT ON MAINE'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2009) *available at* <http://www.law.ucla.edu/williamsinstitute/publications/MEfiscalAnalysis.pdf>.

<sup>8</sup> M.V. LEE BADGETT ET AL, THE WILLIAMS INSTITUTE, THE IMPACT ON MARYLAND'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2007) *available at* <http://www.law.ucla.edu/williamsinstitute/publications/MarylandFiscalImpact.pdf>.

<sup>9</sup> M.V. LEE BADGETT ET AL, THE WILLIAMS INSTITUTE, THE IMPACT ON NEW MEXICO'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2006) *available at* <http://www.law.ucla.edu/williamsinstitute/publications/new%20mexico%20econstudy.pdf>.

<sup>10</sup> M.V. LEE BADGETT, R. BRADLEY SEARS & ELIZABETH KUKURA, THE WILLIAMS INSTITUTE, THE IMPACT ON NEW HAMPSHIRE'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2005) *available at* <http://www.law.ucla.edu/williamsproj/publications/NewHampshire%20Econ%20Study.pdf>.

<sup>11</sup> M.V. LEE BADGETT, R. BRADLEY SEARS & SUZANNE GOLDBERG, THE WILLIAMS PROJECT, SUPPORTING FAMILIES, SAVING FUNDS: A FISCAL ANALYSIS OF NEW JERSEY'S FAMILY EQUALITY ACT (2003) *available at* <http://www.law.ucla.edu/williamsproj/publications/NJ-DPAStudy.pdf>.

<sup>12</sup> M.V. LEE BADGETT ET AL, THE WILLIAMS INSTITUTE, THE IMPACT ON OREGON'S BUDGET OF INTRODUCING SAME-SEX DOMESTIC PARTNERSHIPS (2008) *available at* <http://www.law.ucla.edu/williamsinstitute/publications/OregonFiscalAnalysis.pdf>.

<sup>13</sup> M.V. LEE BADGETT, INSTITUTE FOR GAY AND LESBIAN STRATEGIC STUDIES, THE FISCAL IMPACT ON THE STATE OF VERMONT OF ALLOWING SAME-SEX COUPLES TO MARRY (1998), *available at* <http://www.iglss.org/media/files/techrpt981.pdf>.

<sup>14</sup> M.V. LEE BADGETT ET AL, THE IMPACT ON WASHINGTON'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2006) *available at* <http://www.law.ucla.edu/williamsinstitute/publications/washington%20econ%20study.pdf>.

<sup>15</sup> M.V. Lee Badgett & R. Bradley Sears, *Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget*, 16 STAN. L. & POL. REV. 197 (2005).

<sup>16</sup> CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, OFFICE OF FISCAL ANALYSIS REPORT ON HB 5001 (2002) available at [http://www1.law.ucla.edu/~williamsproj/connstudy\\_files/connstudy.htm](http://www1.law.ucla.edu/~williamsproj/connstudy_files/connstudy.htm).

<sup>17</sup> OFFICE OF LEGISLATIVE COUNCIL, REPORT OF THE VERMONT DOMESTIC PARTNERSHIP REVIEW COMMISSION (2002), available at <http://www.leg.state.vt.us/baker/Final%20CURC%20Report%20for%202002.htm>.

<sup>18</sup> *Testimony of New York State Comptroller Alan G. Hevesi to New York City Council in Support of the Right to Civil Marriage for Same-Sex Couples in New York State*, (Mar. 3, 2004) (statement of Alan G. Hevesi, New York State Comptroller), available at <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm>.

<sup>19</sup> Letter from Douglas Holtz-Eakin, Director, Congressional Budget Office, to Steve Chabot, Chairman, Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives (June 21, 2004) & attached analysis entitled "The Potential Budgetary Impact of Recognizing Same-Sex Marriages," available at <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.

<sup>20</sup> Katie Zezima, *Rhode Island Steps Toward Recognizing Same-sex Marriage*, N.Y. TIMES, Feb. 22, 2007, available at <http://www.nytimes.com/2007/02/22/us/22rhode.html>. See *Cote-Whitacre v. Dept. of Public Health*, 446 Mass. 350, (2006).

<sup>21</sup> This calculation is based upon the most recent data available. Recently collected data reveals that 9,931 same-sex couples married in Massachusetts within three years of the state allowing same-sex couples to marry. Next, we must obtain the total number of same-sex couples in Massachusetts. Data from the pre-2008 ACS overcounts the total number of same-sex couples. See GARY J. GATES, SAME-SEX SPOUSES AND UNMARRIED PARTNERS IN THE AMERICAN COMMUNITY SURVEY, 2008 (2008) available at <http://www.law.ucla.edu/williamsinstitute/pdf/ACS2008FullReport.pdf>. Accordingly, we use 2008 ACS data to estimate the total number of same-sex couples in Massachusetts in 2004, or 19,550 couples. This suggests that approximately 51% of couples married over three years.

The percentage of couples who married was likely higher as the 2008 figure likely overestimates the number of couples in Massachusetts in 2004. Out of state couples were not allowed to marry in Massachusetts until 2008, see Pam Belluck & Katie Zezima, *A 1913 Law Dies to Better Serve Gay Marriages*, N.Y. TIMES, July 16, 2008, and same-sex couples may have moved to Massachusetts between 2004 and 2008 in order to be able to have a recognized legal marriage.

<sup>22</sup> Data on file with the Williams Institute. See also Gary J. Gates, M.V. Lee Badgett & Deborah Ho, *The Williams Institute, Marriage, Registration, and Dissolution by Same-Sex Couples in the U.S.* 21 (2008), available at <http://www.law.ucla.edu/williamsinstitute/publications/CouplesOMarr%20Regis%20Diss.pdf>.

<sup>23</sup> *Id.*

<sup>24</sup> See *supra* note 21, *infra* note 28 that explains that actually a higher number of couples could be married in each year. Given that we ultimately find that each marriage benefits the State's fisc, by using a lower estimate of total marriages in each year, our calculations are conservative.

<sup>25</sup> Gary J. Gates, *The Williams Institute, Same-sex couples in US Census Bureau Data: Who Gets Counted and Why* (2010) available at [http://www.law.ucla.edu/williamsinstitute/pdf/WhoGetsCounted\\_FORMATTED1.pdf](http://www.law.ucla.edu/williamsinstitute/pdf/WhoGetsCounted_FORMATTED1.pdf).

<sup>26</sup> Annie Linskey & Julie Bykowicz, *Gansler says Md. Could Recognize Same-Sex Marriages*, THE BALTIMORE SUN, Feb. 24, 2010, available at [http://articles.baltimoresun.com/2010-02-24/news/bal-same-sex-marriageopinion0224\\_1\\_same-sex-marriages-gansler-opinion](http://articles.baltimoresun.com/2010-02-24/news/bal-same-sex-marriageopinion0224_1_same-sex-marriages-gansler-opinion); Jeremy W. Peters, *New York to Back Same-Sex Unions from Elsewhere*, N.Y. TIMES, May 29, 2008, available at <http://www.nytimes.com/2008/05/29/nyregion/29marriage.html?pagewanted=print>. Maryland is located close to Washington D.C. that recognizes marriage rights for same-sex



couples. See HUMAN RIGHTS COUNCIL, *supra* note 1. New York is located close to the various New England states that recognize marriage rights for same-sex couples. *Id.*

<sup>27</sup> Data on file with the Williams Institute from GATES, *supra* note 25.

<sup>28</sup> Another way to engage in the calculation is to presume that the 50% figure gives us the rate at which unmarried same-sex partners marry within a three year period, whether or not some partners are not already married. Thus, according to this method, 50% of the remaining, unmarried individuals in Rhode Island will marry over the next three years, that is, 50% of (100%-21%), that is 39% of existing same-sex couples (828 couples). This would bring the total number of couples whose marriages would have to be recognized to 39% + 21 % of same-sex couples, that is 60% (1,268 couples). However, given the proximity of Rhode Island to other states offering marriage to same-sex couples, we think it unlikely that 39% of couples are yet to marry. Moreover, since we project a *revenue gain* to the state per couple that marries, the more conservative route is to presume that a lower number of couples will marry.

<sup>29</sup> We do not consider the exemption on garnishment of delinquent taxpayers' salaries under R.I. Gen. Laws § 44-53-8.

<sup>30</sup> R.I. Gen. Laws §§ 44-30-11, 44-30-31, 44-30-51.

<sup>31</sup> U.S. Census Bureau, American Community Survey, 3-year Public Use Microdata Sample (PUMS) from 2006-2008 and 1-year PUMS from 2005. Weights from these PUMSs were adjusted to provide a 4-year data set. Note that these data were adjusted as described in Gates, *supra* note 21, to correct for ACS measurement error.

<sup>32</sup> James Alm & Leslie A. Whittington, *For Love or Money? The Impact of Income Taxes on Marriage*, 66 *ECONOMICA* 297, 309-10 (1999) (finding that the "marriage penalty"—the situation in which some couples pay more taxes when they marry than if they remain single—has a relatively small effect on an individual woman's decision to marry whereas there is statistically no negative effect on men).

<sup>33</sup> Note that this is a conservative assumption. Under Rhode Island law, either partner could claim a child in the household as a dependant. In most cases, the partner with the *higher* income would file as the head of household claiming the child as a dependant, whether or not they are the legal parent of the child. This may diminish the total amount of taxes paid by the household, since the partner with the higher income may drop down to a lower tax bracket than before. By failing to account for this strategic behavior, we presume that the higher-earning partner *not* listed as the child(ren)'s parent in ACS, remains in the higher tax bracket, and therefore currently pays more taxes. Accordingly, we presume that the state loses more in taxes should the partner marry than may actually be the case.

<sup>34</sup> Based on the federal worksheet on social security income, DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE, *Social Security Benefits Worksheet*, in 1040 INSTRUCTIONS 28, 28 (2009) available at <http://www.irs.gov/pub/irs-pdf/i1040.pdf>, we conservatively assumed that an individual had no social security deductions in lines 23-32 on their Federal Form 1040. This increases the total taxable income. Thus, we presume that individuals currently pay higher taxes on their social security income than they presumably do. Taxable social security income is calculated as follows, where S=total Social Security Income, I=Other forms of Income, and D=Social Security Deductions from lines 23-32.

The lesser of the following results:

0.85 X S

OR

0.85 X [S/2+I-D-(44,000 if married or 25,000 if single)] + The lesser of the following result:  
{[S/2] or [(12,000 if married or 9,000 if single)/2] or [S/2+I-D-(32,000 if married, 25,000 if single)]/2}

<sup>35</sup> STATE OF RHODE ISLAND DIVISION OF TAXATION, RI-1040, RHODE ISLAND RESIDENTIAL INDIVIDUAL TAX RETURN (2010) available at <http://www.tax.ri.gov/forms/2010/Draft%20PDFs/2010%20RI-1040.pdf>.

<sup>36</sup> In addition, we assume that individuals did not itemize their income tax deduction, that no charitable contributions were claimed, that no alternative minimum or alternative flat tax was paid, and that no earned income, dependent care, mortgage interest, adoption, federal fuel tax, property tax relief, and other federal credits were not claimed. In

effect, we are assuming that the change in taxes for unmarried individuals who itemize their deductions, list charitable contributions or various credits when they married would remain the same as for those unmarried individuals who do not do so.

<sup>37</sup> The data are presented as percentages based on our 2005-2008 dataset. However, the resultant totals are calculated based on the more accurate 2009 count that we use in the study.

<sup>38</sup> R.I. Gen. Laws §§ 44-22-1 to 44-22-1.1.

<sup>39</sup> Telephone conversation with James Campio, Chief, Estate Tax Division, Rhode Island Department of Taxation, (Oct. 19, 2010).

<sup>40</sup> R.I. Admin. Code, Title 60, Rule 223, Exhibit B *available at*, <http://www.tax.state.ri.us/regulations/FINAL%20REGS%202009/ComputationofEstateTax%20RegFinal.pdf>.

<sup>41</sup> *Id.*

<sup>42</sup> We presume that only adults file tax returns.

<sup>43</sup> After 2001, only estates over 1 million dollars have been taxed, whose amounts must be inflated to 2010 dollars.

<sup>44</sup> We have used this data in previous reports where estates at all levels were taxed. *See, e.g.*, M.V. LEE BADGETT ET AL, *supra* note 6 at 6; M.V. Lee Badgett, R. Bradley Sears & Deborah Ho, *Supporting Families, Saving Funds: An Economic Analysis of Equality for Same-Sex Couples in New Jersey*, 4 RUTGERS J. OF L. & PUB. POL'Y 8, 48 (2006). In this report, however, the graduated rate begins at \$850,000, above which there are too few data-points to calculate how much is paid. *See* Brian K. Bucks et al., *Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances*, 95 FED. RES. BULL. A1, A11 tbl. 4 (2009), *available at* <http://www.federalreserve.gov/pubs/bulletin/2009/pdf/scf09.pdf>.

<sup>45</sup> The median assets for the households in the 80-90% national income percentile increased from \$321,153 to \$374,010 in 2010 dollars. Thus, 2001 figures were 14.1% smaller than 2007 figures. Those in the 90-100% percentile increased from \$1.025 million to \$1.174 million, or a difference of 12.7%.

<sup>46</sup> Calculations based on Federal Reserve Statistical Release, *Balance Sheet of Households and Nonprofit Organizations*, in FLOW OF FUNDS ACCOUNTS OF THE UNITED STATES, p. 104, *available at* <http://www.federalreserve.gov/releases/z1/Current/z1.pdf>.

<sup>47</sup> According to 2001 SOI data for example, individuals in the top tax bracket who claim a spousal deduction leave nearly 77% of their estate to their spouses. If they were contributing to charity at the same level as non-married individuals, they would also be leaving 49% of their estate to charity, as this is the average proportion left to charities in that tax bracket. This does not even take into account numerous other deductions that would push the proportion of deductions in a top-bracket estate to well over 100%. Similar calculations can be made at other levels, though the disparity in this highest tax bracket is particularly clear.

<sup>48</sup> Mean is \$3.306 million, median is \$1.119 million. Bucks et al., *supra* note 44.

<sup>49</sup> Calculated as follows: First calculate the (Number of returns not claiming spousal deduction/Total Returns)\*(Gross Estate-All Deductions except spousal deduction). This gives the total taxable estate of all returns not claiming a spousal deduction. This is then divided by the total number of returns not claiming a spousal deduction.

<sup>50</sup> Calculated as follows: First calculate the (Number of returns claiming spousal deduction/Total Returns)\*(Gross Estate-All Deductions except spousal deduction). This gives the total taxable estate of all returns claiming a spousal deduction. This figure however, does not account for the spousal deduction. Thus, the total amount claimed in

spousal deduction in the relevant year is subtracted from this figure. The final figure is then divided by the total number of returns claiming a spousal deduction. Note that the data reflects a large increase in spousal deductions left in 2001 from 2000.

<sup>51</sup> These brackets are far broader than those of Table B, which is more finely graduated.

<sup>52</sup> Because higher estates are taxed at far lower amounts under Table B, it was soon clear that estates over \$1 million would use Table B's calculations. However, estates under \$900,000 would pay only a small amount over \$287,300 in tax, and this latter number is a tax credit available under Table A, these estates would use Table A to calculate their taxes. Our calculations revealed that estates exactly at \$924,251.50 would benefit equally from Table A and Table B, with those above that level benefiting from the latter, and those below it, from the former.

<sup>53</sup> Note that using broader brackets from Table A, though we use Table B to determine taxes paid is still a conservative move. Because the mean estate at higher tax bracket far exceeds the median, *see supra* note 48, we are 'pushing' far more individuals into higher tax brackets than we are 'pulling' individuals into lower brackets. Additionally, Table B taxation rates increase very gradually, which acts as a further safeguard against estate tax underestimations.

<sup>54</sup> See Statistics of Income Division, Internal Revenue Service, SOI Tax Stats - Estate Tax Statistics Filing Year Table 2, <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=210648,00.html> (showing filing data by year and state) This is a total of 418 out of 99,603 in 2001 and 410 out of 108,071 in 2000. See <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=210648,00.html> providing estate tax filing statistics by state by year.

<sup>55</sup> See *supra* note 48 which suggests extrapolations for median figures.

<sup>56</sup> Campio, *supra* note 39.

<sup>57</sup> On average, the IRS received 414 returns from Rhode Island in 2000-2001.

<sup>58</sup> This is a conservative number as 2009 data, most of which is collected from 2008 tax returns, primarily has data regarding estates of \$2 million and over. See HARVEY J. PLATT, YOUR WILL AND ESTATE PLAN 171 (2003). As discussed below, 2000-2001 data revealed that spousal bequests are much higher at these levels, then at lower tax brackets. Additionally, we presume that married individuals, and therefore same-sex married partners, contribute to charities at the same amount as unmarried individuals do, and therefore are taxed on an even smaller amount.

<sup>59</sup> R.I. Gen. Laws § 44-25-1.

<sup>60</sup> William C. Thompson Jr. et al, Office of the New York State Comptroller, *Love Counts: The Economic Benefits of Marriage Equality for New York*, BUDGET NOTES, June 2007 available at <http://www.comptroller.nyc.gov/bureaus/bud/07reports/Jun07LoveCountBudgetnotes.pdf> (accessed November 2007).

<sup>61</sup> WE TV NETWORKS WEDDING REPORT (2010), available at <http://www.theweddingreport.com/wmdb/index.cfm?action=db.viewdetail>.

<sup>62</sup> NAOMI G. GOLDBERG, MICHAEL D. STEINBERGER, & M.V. LEE BADGETT, THE WILLIAMS INSTITUTE, THE BUSINESS BOOST FROM MARRIAGE EQUALITY IN MASSACHUSETTS: EVIDENCE FROM THE HEALTH AND MARRIAGE EQUALITY IN MASSACHUSETTS SURVEY (2009) available at <http://escholarship.org/uc/item/96p5k5sz>.

<sup>63</sup> R.I. Gen. Laws § 44-18-18.

<sup>64</sup> GOLDBERG, *supra* note 62; see also

<sup>65</sup> HOTELS.COM, THE HOTEL PRICE INDEX, REVIEW OF GLOBAL HOTEL PRICES: SUMMER 2010 (2010), *available at* <http://www.hotel-price-index.com/chapter3.html>.

<sup>66</sup> Occupancy tax of 6% added to 7% sales tax. R.I. Gen. Laws § 44-18-36.1.

<sup>67</sup> TIMOTHY J. TYRRELL, RHODE ISLAND TRAVEL AND TOURISM RESEARCH REPORT (2005), *available at* <http://www.visitrhodeisland.com/pdf/TTRR22.pdf>.

<sup>68</sup> This model is supported by findings from two other models. Rhode Island tourism figures show that \$63, or \$66.15 in 2010 dollars, was collected in taxes for state and local authorities from visitors in 2007 over the length of their visit. Kenneth McGill, RHODE ISLAND TOURISM: STRENGTH IN A DIFFICULT TIME 2007 TOURISM SATELLITE ACCOUNT SLIDE #37, p. 40 (2008), *available at* <http://www.visitrhodeisland.com/admin/brscms/myuserfiles/RI%202008%20TSA%20Review.pdf>. Unfortunately, the Report does not say what the average amount collected per *day* per visitor was. Presuming that the average stay of each visitor was 4.9 days, based on our Massachusetts survey, we estimate that the state collected \$16.54 in taxes for state and local authorities per visitor per day. When applied to our out-of-state guests, this would yield \$131,328 in total revenue. The second model relies solely on the 2005 Rhode Island Travel and Tourism Research Report, TYRRELL, note 67. According to this report, the average overnight leisure visitor spent \$157.76, or \$184.58 in 2010 dollars, per day in Rhode Island. When applied to our out-of-state guests, this would yield total expenditures of \$1,795,586.46. Additionally, the report notes that 11% of total tourism expenditure was solely for accommodations, which is taxed at 13%. Assuming that only 11%, or \$197,514.51, of total wedding guest spending would be on hotel rooms, the state would gain \$25,676.89 in hotel tax revenue. Presuming that the remaining 89% of the expenditure, or \$1,598,071.95, is taxed as sales tax, the state would collect an additional \$111,865.04 in sales tax revenue. Tax revenues would total \$137,541 (hotel tax plus sales tax) from out of state guests.

<sup>69</sup> State of Rhode Island Office of Employee Benefits, Domestic Partner/Common Law Spouse Benefits, <http://www.employeebenefits.ri.gov/DP%20and%20CL.php> (last visited, Oct. 19, 2010).

<sup>70</sup> State of Rhode Island, Changes to Retiree Medical Subsidies Frequently Asked Questions, <http://www.employeebenefits.ri.gov/Documents/RETIREE%20MEDICAL%20052908.pdf> (last visited, Oct. 19, 2010).

<sup>71</sup> EMPLOYEES RETIREMENT SYSTEM OF RHODE ISLAND HANDBOOK (2010) *available at* <http://www.ersri.org/public/documentation/retirement.pdf>.

<sup>72</sup> R.I. Gen. Laws § 45-19-4.3

<sup>73</sup> For example, Rhode Island law makes spouses liable for each other's "necessaries," which includes medical expenses. The RI supreme court has ruled that this obligation applies in a gender neutral way. *Landmark Medical Center v. Gauthier*, 635 A.2d 1145 (R.I. 1994).

<sup>74</sup> *See* State of Rhode Island, Department of Human Resources, Renewal of State Plan for Temporary Assistance for Needy Families (TANF), 2008-2011, [http://www.dhs.ri.gov/Portals/0/Uploads/Documents/Public/RIWorks/TANF\\_State\\_Plan\\_12\\_08.pdf](http://www.dhs.ri.gov/Portals/0/Uploads/Documents/Public/RIWorks/TANF_State_Plan_12_08.pdf) (last visited Oct. 25, 2010).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* Confirmed by Telephone Conversation that CHIP and Medicaid are both administered through the Rite Care program, Rhode Island Department of Human Services Rite Care Information Line (Oct. 25, 2010).

<sup>77</sup> R.I. Admin. Code 39-1-128:0348.30. Confirmed by Telephone Conversation, Rhode Island Department of Human Services Rite Care Information Line (Oct. 6, 2010). For RI Works see R.I. Admin. Code 39-1-86:1424.05.05; Conversation with Rhode Island Poverty Institute personnel (Oct. 7, 2010). To understand the relationship between marital status and receipt of public assistance and SSI income, we looked at rates of receipt for these types of

income in the 2008 American Community Survey for married couples, different-sex unmarried partners, and same-sex unmarried partners. Different-sex unmarried partners had higher rates of receipt of public assistance and SSI couples than married couples and same-sex unmarried partners. Therefore, we do believe there is an effect on rates of public assistance and SSI receipt based on marriage and not based on parenting alone.

<sup>78</sup> Once permitted to marry, some same-sex couples' families may become eligible for some family-related benefits. However, the relative amount of money expended on such programs is very small, and such family-related benefits are not in the form of direct financial assistance; rather, they take the form of assistance via educational and similar programs. Consequently, we do not offset our calculations to account for this possibility.

<sup>79</sup> With respect to FIP, see Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Register 37,454 (2006). With respect to SCHIP, see U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR MEDICARE AND MEDICAID SERVICES, OVERVIEW OF NATIONAL SCHIP POLICY, *available at* <http://www.cms.hhs.gov/NationalSCHIPPolicy/>.

<sup>80</sup> 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, 100 Stat. 2419 (1996) (codified at 1 U.S.C. § 7). "Spouse" is the term used to specify individuals whose assets and income may be counted for SSI and Medicaid eligibility purposes. Thus, arguably, DOMA would prevent the state from interpreting the term "spouse" in the regulations to include a same-sex spouse. A related issue has arisen in Vermont with respect to that state's treatment of couples in a civil union within the Medicaid program. David Mace, *Critics Say Rule Change Violates Domestic partnerships*, THE TIMES ARGUS (April 17, 2003). Recent correspondence from the Centers for Medicare and Medicaid Services to state agencies in Vermont and Massachusetts suggests that the states cannot treat same-sex spouses in the same way that different-sex spouses are treated in the Medicaid program.

<sup>81</sup> With respect to federal law, 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.

<sup>82</sup> 42 C.F. R. § 433.135 ("Third party means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan.").

<sup>83</sup> See generally CENTERS FOR MEDICARE AND MEDICAID SERVICES, STATE MEDICAID MANUAL 3900-3910.15, 3900.1, 3900.2 (2003).

<sup>84</sup> The TANF average monthly participation for Rhode Island families in FY2008 FY Avg. was 8,087. See U.S. Department of Health and Human Services, Administration for Children & Families, TANF: Total Number of Families, [http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/2008/2008\\_family\\_tan.htm](http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/2008/2008_family_tan.htm). Since TANF participation is given on a monthly average, the total FY2008 expenditure was divided by the monthly average participation numbers to yield a per-participant annual expenditure. Total Medicaid enrollment for FY2008 was 176,648. See Executive Office of Health and Human Services, Rhode Island Annual Medicaid Expenditure Report – State Fiscal Year 2008, [http://www.dhs.ri.gov/Portals/0/Uploads/Documents/Public/Reports/RI\\_Medicaid\\_Expend2008\\_final.pdf](http://www.dhs.ri.gov/Portals/0/Uploads/Documents/Public/Reports/RI_Medicaid_Expend2008_final.pdf). The number of total SSI recipients for 2008 was 31,585. See Social Security Administration, Supplemental Security Record, Table 3: Number of recipients in state (by eligibility category, age, and receipt of OASDI benefits) and amount of payments, by county, December 2008, [http://www.socialsecurity.gov/policy/docs/statcomps/ssi\\_sc/2008/ri.pdf](http://www.socialsecurity.gov/policy/docs/statcomps/ssi_sc/2008/ri.pdf). Total CHIP enrollment for FY2008 was 31,585. See The Henry J. Kaiser Family Foundation, Rhode Island: CHIP, <http://www.statehealthfacts.org/profileind.jsp?cat=4&sub=61&rgn=41>. Note that we make the conservative assumption here that only one individual in each couple receives public assistance benefits, and that the state will only save on one individual per family no longer receiving public assistance.

<sup>85</sup> U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, U.S. CENSUS BUREAU, THE AMERICAN COMMUNITY SURVEY (2008), *available at* <http://www.census.gov/acs/www/Downloads/questionnaires/2008/Quest08.pdf>.

<sup>86</sup> We considered expenditures for four programs: TANF, Medicaid, CHIP, and SSI. TANF total state and federal expenditures for FY2008 were \$109,182,938. See U.S. Department of Health and Human Services, Administration for Children & Families, Table F – Combined Spending of Federal and State Funds Expenses in FY 2008, [http://www.acf.hhs.gov/programs/ofs/data/2008/tableF\\_2008.html](http://www.acf.hhs.gov/programs/ofs/data/2008/tableF_2008.html). Medicaid state-only expenditures for FY2008 were \$871,074,503. See The Henry J. Kaiser Family Foundation, Rhode Island: Federal and State Share of Medicaid Spending, FY2008, <http://www.statehealthfacts.org/profileind.jsp?ind=636&cat=4&rgn=41>. Total state-only CHIP spending for FY2008 was \$29,438,573. See The Henry J. Kaiser Family Foundation, Rhode Island: Total CHIP Expenditures, FY2008, <http://www.statehealthfacts.org/profileind.jsp?rgn=41&cat=4&ind=235>. Total state and federal SSI payments in 2008 were \$16,415,000. See Social Security Administration, Supplemental Security Record, Table 3: Number of recipients in state (by eligibility category, age, and receipt of OASDI benefits) and amount of payments, by county, December 2008, [http://www.socialsecurity.gov/policy/docs/statcomps/ssi\\_sc/2008/ri.pdf](http://www.socialsecurity.gov/policy/docs/statcomps/ssi_sc/2008/ri.pdf). To calculate total Rhode Island state-only SSI payments, the national state share of all SSI funding was calculated at 8.7% and multiplied by the 2008 SSI payment total shown above. See Social Security Online, SSI Annual Statistical Report, 2009, [http://ssa.gov/policy/docs/statcomps/ssi\\_asr/index.html](http://ssa.gov/policy/docs/statcomps/ssi_asr/index.html). This yielded \$1,428,105 in state-only payments for Rhode Island in 2008. All expenditures were adjusted to 2010 dollars.

<sup>87</sup> See Ash, Michael and Badgett, M. V. Lee. 2006. *Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples*, 24 CONTEMPORARY ECONOMIC POLICY 582 (2006).

<sup>88</sup> For example, when a couple marries, the applicant's partner may have few assets and low income, allowing the program recipient to remain in the public assistance program.

<sup>89</sup> National rates are used instead of state-level rates for Rhode Island due to the statistical limitations of Rhode Island's small sample size in the ACS. We assume that Rhode Island's same-sex unmarried couples and different-sex married couples receive public assistance and SSI income at the national rates.

<sup>90</sup> See *supra* note 85.

<sup>91</sup> This assumption takes into account the fact that possible loss of benefits will deter some same-sex couples from entering marriages. Research on welfare benefits finds at most a very small disincentive effect. See Robert Moffitt, *Incentive Effects of the U.S. Welfare System: a Review*, 30 J. OF ECON. LITERATURE 27 (1992).

<sup>92</sup> We calculated savings for CHIP slightly differently than described. According to the 2008 American Community Survey, of those same-sex couples receiving public assistance income, only half had a child age 18 or younger in their household. Therefore, we assume the number of same-sex couples that participate in CHIP in Rhode Island is half the number that participates in other public assistance programs. We calculate, therefore, that roughly 5 same-sex couples would participate in RI CHIP before marriage rights were extended to same-sex couples and roughly 2 same-sex couples would participate in RI CHIP after marriage rights were extended to same-sex couples.

<sup>93</sup> Since we use rates of participation over 1 year, we also assume that participants on average participate in the program over 12 months. Thus, under this assumption, we do not count Year 1 couples who go off public assistance, and the savings generated by this, *again* in Years 2 and 3. Thus, if we calculate that 22 same-sex partners obtain public assistance each year, we also presume that these 22 individuals change from one year to the next, though the rate of participation remains constant, at 1.03%. Thus, the individuals who are saved from public assistance in Years 1, 2 and 3 are different individuals, all which savings can be attributed to extending marriage benefits to same-sex couples. Note that any inflation in the savings figure is corrected by our conservative assumption that only one individual per couple participates in public assistance.

<sup>94</sup> Columns may not total exactly due to rounding.

<sup>95</sup> R.I. Gen. Laws §§ 15-2-9 to 15-2-9.1

<sup>96</sup> CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH. 2002. OFFICE OF FISCAL ANALYSIS REPORT ON HB 5001, available at [http://www1.law.ucla.edu/~williamsproj/connstudy\\_files/connstudy.htm](http://www1.law.ucla.edu/~williamsproj/connstudy_files/connstudy.htm) (accessed March 2008); OFFICE

OF LEGISLATIVE COUNCIL, REPORT OF THE VERMONT DOMESTIC PARTNERSHIP REVIEW COMMISSION (2002) *available at* <http://www.leg.state.vt.us/baker/Final%20CURC%20Report%20for%202002.htm> (accessed March 2008); Alan G. Hevesi, Testimony of New York State Comptroller Alan G. Hevesi to New York City Council in Support of the Right to Civil Marriage for Same-Sex Couples in New York State (Mar. 3, 2004) *available at* <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm>.