

# Rutgers Journal of Law & Public Policy

---

VOLUME 4

FALL 2006

ISSUE 1

---

***Editor-in-Chief***

BRETT E. TANZMAN

***Executive Editor***

DANIEL H. MANDEL

***Managing Articles  
Editor***

MANDY KNOX

***Senior Articles  
Editor***

JENNIFER PURNELL

***Articles Editors***

MARISSA BAND  
JENNIFER CARLSON  
JEN EVERTS  
BRIAN UZDAVINIS

***Marketing  
Editors***

LLOYD FREEMAN  
KAUSHIK RATH

CHANTAL ARTUR  
MICHAEL BARNES  
KEVIN BIRKHEAD  
SUPURNA BHAR  
LAUREL BUDMAN  
KRISTYN BYRNES  
TARA CANNADAY  
ASHLEY D'AMATO  
BRENDAN FERNALD  
BRIAN HILDEBRANDT  
JULIE HOROWITZ

***Managing Technology  
Editor***

JENNIFER COLANGELO

***Managing Research  
Editor***

CHRISSEY CATALFAMO

***Lead Technology Editor***

JERRY LEVINE



***Business Development  
Editor***

JOSH NUSSBAUM

***Members***

ANDY HUGHES  
ALEXANDRIA JEAN-PIERRE  
TIFFANY JOHNSON  
ADAM MARC KAPLAN  
AMY KESEDAY  
ESTHER KIM  
CHRISTINA KUBIAK  
ERIC LEVINE  
DARREL MARTINELLI  
JESSE MELENDREZ  
RACHAEL MINARDI

***Faculty Advisors***

PHILIP L. HARVEY  
SARAH E. RICKS  
DAMON Y. SMITH

***Managing Notes  
Editor***

CATHLYN SULLIVAN

***Senior Notes  
Editor***

SUMMER DAVIS

***Notes Editors***

LAUREN BRANTZ  
RYAN FRAMPTON  
ORLY JASHINSKY  
CHAIM KURLAND  
JENNIFER LUYBER  
ESTHER OMOLOYIN  
KRISTIN CASALE

***Submissions  
Editor***

PETE GIRGIS

LOUIS MOYA  
MARIE OLIVER  
BRIAN PREW  
A. MASON ROHRER  
PETER COLONNA ROMANO  
RUCHIKA SACHDEVA  
SUSAN SHAW  
LALENA TURCHI  
ANTHONY VECCHIO  
NEENA VERMA  
CARRIE WINTERS

## About the Rutgers Journal of Law & Public Policy

The *Rutgers Journal of Law and Public Policy* (ISSN 1934-3736) is published three times per year by students of the Rutgers School of Law – Camden, located at 17 North Fifth Street, Camden, NJ 08102. The views expressed in the *Rutgers Journal of Law & Public Policy* are those of the authors and not necessarily of the *Rutgers Journal of Law & Public Policy* or the Rutgers School of Law – Camden.

**Form:** Citations conform to *The Bluebook: A Uniform System of Citation* (18<sup>th</sup> ed. 2005). Please cite the *Rutgers Journal of Law & Public Policy* as 4 RUTGERS J.L. & PUB. POL'Y \_\_\_ (2006).

**Copyright:** All articles copyright © 2006 by the *Rutgers Journal of Law & Public Policy*, except where otherwise expressly indicated. For all articles to which it holds copyright, the *Rutgers Journal of Law & Public Policy* permits copies to be made for classroom use, provided that (1) the author and the *Rutgers Journal of Law & Public Policy* are identified, (2) the proper notice of copyright is affixed to each copy, (3) each copy is distributed at or below cost, and (4) the *Rutgers Journal of Law & Public Policy* is notified of the use.

For reprint permission for purposes other than classroom use, please submit request as specified at <http://www.rutgerspolicyjournal.org/>.

**Manuscripts:** The *Rutgers Journal of Law & Public Policy* seeks to publish articles making original contributions in the field of public policy. The *Journal* accepts both articles and compelling essays for publication that are related to the expansive topic of public policy. Manuscripts must contain an abstract describing the article or essay which will be edited and used for publication on the website and in CD-ROM format. The *Journal* welcomes submissions from legal scholars, academics, policy makers, practitioners, lawyers, judges and social scientists.

Electronic submissions are encouraged. Submissions by email and attachment should be directed to [submissions@rutgerspolicyjournal.org](mailto:submissions@rutgerspolicyjournal.org).

Paper or disk submissions should be directed to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North 5th Street, Camden, New Jersey 08102.

**Subscriptions:** Subscription requests should be mailed to to *Rutgers Journal of Law & Public Policy*, Rutgers University School of Law – Camden, 217 North 5th Street, Camden, New Jersey 08102, or emailed to [info@rutgerspolicyjournal.org](mailto:info@rutgerspolicyjournal.org).

**Internet Address:** The *Rutgers Journal of Law & Public Policy* website is located at <http://www.rutgerspolicyjournal.org>

## OFFICERS OF THE UNIVERSITY

RICHARD L. MCCORMICK, B.A., Ph.D., *President*  
ROGER J. DENNIS, B.S., J.D., *Provost and Professor of Law*

## LAW SCHOOL ADMINISTRATION

RAYMAN L. SOLOMON, B.A., M.A., J.D., Ph.D., *Dean and Professor of Law*  
JOHN S. PODOLSKI, A.B., M.B.A., *Associate Dean—Administration*  
JOHN S. BECKERMAN, A.B., M.A., J.D., Ph.D., *Associate Dean—Academic Affairs*  
SYBIL M. JAMES, B.A., J.D., *Dean of Students*  
CAMILLE SPINELLO ANDREWS, B.A., J.D., *Associate Dean—Enrollment*  
ANNE V. DALESANDRO, A.B., M.L.S., J.D., *Director of Law Library*  
SCOTT B. SCHAFFER, A.B., J.D., *Assistant Dean—Development & Alumni Relations*  
EVE BISKIND KLOTHERN, B.G.S., J.D., *Assistant Dean for Pro Bono and Public Interest Programs*  
ANGELA V. BAKER, B.A., J.D., *Associate Dean of Students and Career Planning*  
JANINE JONES SMITH, B.A., J.D., *Associate Dean for Academic Counseling and Students Affairs*

## FACULTY

RANDALL S. ABATE, B.A., J.D., M.S.L., *Legal Writing Faculty*  
AARON ARI AFILALO, A.B., J.D., LL.M., *Associate Professor of Law*  
ROGER V. ASHODIAN, B.A., J.D., *Visiting Associate Clinical Professor of Law*  
DAVID E. BATISTA, A.B., J.D., M.S., *Librarian II*  
LINDA S. BOSNIAK, A.B., J.D., M.A., *Professor of Law*  
HON. DENNIS BRAITHWAITE, B.S., J.D., LL.M., *Visiting Professor*  
A. HAYS BUTLER, B.A., J.D., M.S. (LIS), *Librarian II*  
MICHAEL A. CARRIER, B.A., J.D., *Associate Professor of Law*  
FRED C. CHANDLER, Jr., B.A., LL.B., LL.M., *Professor of Law Emeritus*  
GLORIA F. CHAO, B.A., M.L.S., *Librarian II*  
EDWARD E. CHASE, B.A., J.D., *Professor of Law Emeritus*  
VICTORIA L. CHASE, B.A., J.D., *Visiting Clinical Assistant Professor of Law*  
ROGER S. CLARK, B.A., LL.B., LL.M., J.S.D., LL.D., *Board of Governors Professor*  
JASON K. COHEN, B.A., J.D., *Legal Writing Faculty*  
RUSSELL M. COOMBS, B.A., J.D., *Associate Professor of Law*  
LUCY COX, B.A., M.S., Ph.D., M.L.S., *Librarian II*  
PERRY DANE, B.A., J.D., *Professor of Law*  
JOHN H. DAVIES, B.S., LL.B., LL.M., *Professor of Law*  
ALICE K. DUEKER, B.A., J.D., LL.M., *Clinical Professor of Law*  
JAY M. FEINMAN, B.A., J.D., *Distinguished Professor of Law*  
KIMBERLY D. FERZAN, B.S., J.D., *Associate Professor of Law*  
DAVID M. FRANKFORD, B.A., J.D., *Professor of Law*  
DONALD K. JOSEPH, B.S., LL.B., *Visiting Associate Professor of Law*  
HARRIET N. KATZ, B.A., J.D., *Clinical Professor of Law*  
A. KODZO PAAKU KLUDZE, B.A., LL.B., Ph.D., *Distinguished Professor of Law Emeritus*  
DONALD KOROBKIN, B.A., A.M., J.D., *Professor of Law*  
ARTHUR B. LABY, B.A., J.D., *Associate Professor of Law*  
F. GREGORY LASTOWKA, B.A., J.D., *Assistant Professor of Law*  
ARNO LIIVAK, B.A., M.L.S., J.D., *Professor of Law Emeritus*  
HARRY LITMAN, A.B., J.D., *Visiting Associate Professor of Law*  
MICHAEL A. LIVINGSTON, A.B., J.D., *Professor of Law*  
AMAN L. MCLEOD, B.A., J.D., Ph.D., *Assistant Professor of Political Science and Law*  
JONATHAN MALLAMUD, A.B., J.D., *Professor of Law Emeritus*  
EARL M. MALTZ, B.A., J.D., *Distinguished Professor of Law*  
AMY L. MONTEMARANO, B.S., J.D., *Legal Writing Faculty*  
KIMBERLY MUTCHERSON, B.A., J.D., *Associate Professor of Law*  
JOHN F. K. OBERDIEK, B.A., M.A., J.D., Ph.D., *Assistant Professor of Law*  
CRAIG N. OREN, A.B., J.D., *Professor of Law*  
TRACI OVERTON, B.A., J.D., *Clinical Staff Attorney*  
DENNIS M. PATTERSON, B.A., M.A., J.D., Ph.D., *Distinguished Professor of Law*  
IMANI PERRY, B.A., J.D., LL.M., Ph.D., *Associate Professor of Law*  
STANISLAW POMORSKI, LL.B., LL.M., J.S.D., *Distinguished Professor of Law*  
SARAH RICKS, B.A., J.D., *Legal Writing Faculty*  
RUTH ANNE ROBBINS, B.A., J.D., *Clinical Associate Professor of Law*

ANN E. FREEDMAN, B.A., J.D., *Associate Professor of Law*  
STEVEN F. FRIEDEL, B.A., J.D., *Professor of Law*  
SANDRA GAVIN, B.A., J.D., *Director of Advocacy Programs*  
ERIC GILSON, B.A., J.D., M.L.I.S., *Librarian III*  
GEORGE GINSBURGS, Bacchalaureat Serie Mathematiques, B.A., M.A., Ph.D., *Distinguished Professor of Law Emeritus*  
SALLY F. GOLDFARB, B.A., J.D., *Associate Professor of Law*  
ELLEN P. GOODMAN, A.B., J.D., *Associate Professor of Law*  
JOANNE GOTTESMAN, B.A., J.D., *Clinical Assistant Professor of Law*  
PHILLIP L. HARVEY, B.A., J.D., Ph.D., *Associate Professor of Law and Economics*  
ELIZABETH L. HILLMAN, B.S.E.E., J.D., Ph.D., *Associate Professor of Law*  
N.E.H. HULL, B.A., Ph.D., J.D., *Distinguished Professor of Law*  
RICHARD HYLAND, A.B., M.F.A., J.D., D.E.A., *Distinguished Professor of Law*  
JOHN P. JOERGENSEN, B.A., M.A., M.S. (LIS), J.D., *Librarian II*

RAND E. ROSENBLATT, B.A., M.Sc., J.D., *Professor of Law*  
PATRICK J. RYAN, B.A., M.A., J.D., LL.M., J.S.D., *Associate Professor of Law*  
RICHARD G. SINGER, B.A., J.D., LL.M., J.S.D., *Distinguished Professor of Law*  
DAMON Y. SMITH, B.A., M.U.P., J.D., *Assistant Professor of Law*  
WILLIAM M. SPEILLER, B.S., LL.B., LL.M., *Professor of Law Emeritus*  
ALLAN R. STEIN, B.A., J.D., *Professor of Law*  
BETH STEPHENS, B.A., J.D., *Professor of Law*  
CAROL WALLINGER, B.S., J.D., *Legal Writing Faculty*  
ROBERT M. WASHBURN, A.B., J.D., LL.M., *Professor of Law*  
ROBERT F. WILLIAMS, B.A., J.D., LL.M., LL.M., *Distinguished Professor of Law*

**Rutgers**  
**Journal of Law & Public Policy**

---

VOLUME 4

FALL 2006

ISSUE 1

---

**Current Issues In Public  
Policy**





## SUPPORTING FAMILIES, SAVING FUNDS: AN ECONOMIC ANALYSIS OF EQUALITY FOR SAME-SEX COUPLES IN NEW JERSEY<sup>1</sup>

M. V. Lee Badgett, Ph.D.<sup>2</sup>

R. Bradley Sears, J.D.<sup>3</sup>

Deborah Ho, J.D.<sup>4</sup>

---

<sup>1</sup> **Acknowledgements:** We would like to thank several people for their help with this article and the earlier report. We thank Suzanne Goldberg for her contribution to our earlier study of New Jersey. We are also grateful to Angela Arabia-Meyer, Tamara Ho, and Elizabeth Silver for their assistance with our earlier report. We thank Gary Gates and Danielle MacCartney for their assistance in gathering data for this article.

**Disclaimer:** In the last three years, we have published a series of reports through the Williams Institute that present some of the work discussed in this article. In addition, we have borrowed from some of those studies in this article to present some of the basic background material. However, this article presents significant new analyses and data from a variety of sources, and we reach conclusions not possible in our earlier reports and articles. For a description of our basic analytical framework and an application to California, see 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'Y REV. 197, 202 (2005) [hereinafter *Putting a Price on Equality?*].

**Note:** As this article went to press, the New Jersey State Legislature, in response to the holding in *Lewis v. Harris*, approved a bill on December 14, 2006, revising the state's marriage laws to establish civil unions for same-sex couples. Governor Jon S. Corzine signed the bill into law on December 21, 2006. The new law will take effect February 19, 2007.

<sup>2</sup> M.V. Lee Badgett, Ph.D., is an Associate Professor of Economics at the University of Massachusetts Amherst and the Research Director of the Williams Institute on Sexual Orientation Law and Public Policy.

<sup>3</sup> Brad Sears is a Lecturer in Law at UCLA School of Law and Executive Director of the Williams Institute on Sexual Orientation Law and Public Policy.

## INTRODUCTION

Perhaps no issue is more closely associated with religious, moral, and emotional concerns than extending marriage to same-sex couples. As the discussion has broadened and deepened over the last fifteen years, though, the public debate has evolved to include considerations of the social and economic consequences of marriage equality.<sup>5</sup> Economic consequences, in particular, have assumed an increasing role in the debate about marriage. Policymakers have wondered and worried about the impact of same-sex marriage on economic development and on state budgets.

Concerns about larger economic costs have been met with assurances that, if anything, marriage equality would be a boon to local businesses as same-sex couples spend money on weddings.<sup>6</sup> As the issue was debated in Hawaii in the mid-1990s, analysts predicted as much as \$440 million in additional spending in Hawaii.<sup>7</sup> More recent studies suggest that same-sex weddings would generate \$2 billion in spending.<sup>8</sup> Furthermore, some economic development experts argue that states with a

---

<sup>4</sup> Deborah Ho is a Policy Fellow at the Williams Institute on Sexual Orientation Law and Public Policy.

<sup>5</sup> GAY MARRIAGE: FOR BETTER OR FOR WORSE? WHAT WE'VE LEARNED FROM THE EVIDENCE (William N. Eskridge & Darren R. Spedale, eds., 2006).

<sup>6</sup> Jennifer Gerarda Brown, *Competitive Federalism and the Legislative Incentives to Recognize Same-Sex Marriage*, 68 S. CAL. L. REV. 745, 772 (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) [hereinafter *How Will Same-Sex Marriage Affect Hawaii's Tourism Industry?*] (testimony of Sumner Lacroix & James Mak).

<sup>7</sup> Jennifer G. Brown, *Competitive Federalism and the Legislative Incentives to Recognize Same-Sex Marriage*, 68 S. CAL. L. REV. 745, 771 (1995).

<sup>8</sup> M.V. LEE BADGETT & GARY J. GATES, *THE EFFECT OF MARRIAGE EQUALITY AND DOMESTIC PARTNERSHIP ON BUSINESS AND THE ECONOMY* 4 (2006) [hereinafter *BADGETT & GATES*], <http://www.law.ucla.edu/williamsinstitute/publications/MarriageEqualityontheEconomy.pdf>.



policy climate that is open to and supportive of gay, lesbian, and bisexual individuals (LGB) will be viewed positively by heterosexuals and LGB people seeking support for diversity and creativity.<sup>9</sup> Companies in search of creative workforces, in turn, will also prefer to locate in those communities.

The more specific concern about the impact of same-sex marriage on the state budget seems rooted in the political discourse that focuses on granting gay couples equal access to the *benefits* of marriage, including health insurance, pensions, and other economically valuable rights, while ignoring the economic obligations imposed by marriage. During a hearing on the Federal Marriage Amendment, which would amend the federal constitution to limit marriage to different-sex couples, discussion of the benefits of marriage prompted Representative Spencer Bachus of Alabama to exclaim, “Won’t this just break the bank?”<sup>10</sup>

In response to a request from Rep. Bachus’ colleagues, the Congressional Budget Office (CBO) analyzed the net budgetary impact of same-sex marriage.<sup>11</sup> Contrary to some expectations, the CBO report found that the net effect on the federal budget of allowing same-sex couples to marry would be a positive one.<sup>12</sup> Income tax revenues would rise and spending on public assistance programs would fall, creating a budgetary gain.<sup>13</sup> Although Social Security payments and federal employee benefit costs would rise, increasing budgetary expenditures,<sup>14</sup> the

---

<sup>9</sup> See, e.g., RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS* (2002); RICHARD FLORIDA, *FLIGHT OF THE CREATIVE CLASS* (2005).

<sup>10</sup> Tom Ramstack, *Same-Sex ‘Marriage’ Likely to Prove Costly*, THE WASHINGTON TIMES, May 18, 2004, at A1, available at <http://www.washtimes.com/business/20040518-120217-1233r.htm>.

<sup>11</sup> CONGRESSIONAL BUDGET OFFICE, *THE POTENTIAL BUDGETARY IMPACT OF RECOGNIZING SAME-SEX MARRIAGE* (2004), available at <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

overall net effect would be a gain of just under \$1 billion per year.<sup>15</sup>

This CBO study fits with the findings of a series of studies that Williams Institute scholars have conducted since 2000 on the impact of marriage equality and other forms of recognition of same-sex couples' relationships. Studies of Vermont,<sup>16</sup> California,<sup>17</sup> Connecticut,<sup>18</sup> New Hampshire,<sup>19</sup> Massachusetts,<sup>20</sup> Washington,<sup>21</sup> New Mexico,<sup>22</sup> and Colorado<sup>23</sup> all show a net positive budget effect of legal recognition. For instance, in

---

<sup>15</sup> *Id.*

<sup>16</sup> M.V. Lee Badgett, *The Fiscal Impact of the State of Vermont of Allowing Same-Sex Couples to Marry*, INST. FOR GAY & LESBIAN STRATEGIC STUDIES TECHNICAL REPORT 1 (1998), available at <http://www.iglss.org/media/files/techrpt981.pdf>.

<sup>17</sup> *Putting a Price on Equality?*, *supra* note 1, at 202.

<sup>18</sup> R. BRADLEY SEARS ET AL., COUNTING ON COUPLES: FISCAL SAVINGS FROM ALLOWING SAME-SEX COUPLES TO MARRY IN CONNECTICUT 4 (2005), <http://www.law.ucla.edu/williamsinstitute/pdf/CountingOnCouples.doc>.

<sup>19</sup> R. BRADLEY SEARS ET AL., THE IMPACT ON NEW HAMPSHIRE'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY 3 (2005), <http://www.law.ucla.edu/williamsinstitute/publications/New%20Hampshire%20Econ%20Study.pdf>.

<sup>20</sup> Randy Albelda et al., *Now That We Do: Same-Sex Couples and Marriage in Massachusetts: A Demographic and Economic Perspective*, 7 MA. BENCHMARKS 17, 23 (2005).

<sup>21</sup> M.V. LEE BADGETT ET AL., THE IMPACT ON WASHINGTON'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY 26 (2006), <http://www.law.ucla.edu/williamsinstitute/publications/washington%20econ%20study.pdf>.

<sup>22</sup> M.V. LEE BADGETT ET AL., THE IMPACT ON NEW MEXICO'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY 17 (2006), <http://www.law.ucla.edu/williamsinstitute/publications/new%20mexico%20econ%20study.pdf>.

<sup>23</sup> M.V. LEE BADGETT ET AL., THE IMPACT OF THE COLORADO DOMESTIC PARTNERSHIP ACT ON COLORADO'S STATE BUDGET 18 (2006), <http://www.law.ucla.edu/williamsinstitute/publications/Colorado%20DP%20benefits%20on%20Econ%20Report.pdf>.

California we predicted that granting same-sex couples the right to marry would boost the state budget by about \$41 million per year.<sup>24</sup> While the Domestic Partnership Act (DPA) was being considered by lawmakers in New Jersey in 2003 and 2004, we undertook a similar analysis of the package of rights and responsibilities being considered for unmarried couples that concluded that the Act would have a positive impact on New Jersey's State budget.<sup>25</sup>

In January 2004, the New Jersey State Legislature passed the "Domestic Partnership Act" (DPA),<sup>26</sup> which created a new registered domestic partner status for couples who share an "important personal, emotional and committed relationship."<sup>27</sup> Registration is open to all same-sex couples and different-sex couples where both partners are age 62 or older.<sup>28</sup> The DPA seeks to strengthen the material and legal support for people in such relationships by granting a limited set of legal rights to same-sex and some opposite-sex couples, while enforcing certain responsibilities.

The DPA amends New Jersey law to grant a number of rights and benefits to domestic partners. As adopted, the DPA provides registered domestic partners with the following rights and responsibilities: access to courts for dissolution; protection from discrimination based on domestic partner status; hospital visitation rights; health care proxies; right to claim a personal exemption for a partner on income tax returns; joint responsibility for basic living expenses; exemptions from transfer inheritance taxes; access to state employees' spousal health and retirement benefits for same-sex domestic partners.

This article presents a revised version of our original analysis of the DPA's fiscal impact, and expands our analysis to also

---

<sup>24</sup> *Putting a Price on Equality?*, *supra* note 1, at 231.

<sup>25</sup> M.V. LEE BADGETT & R. BRADLEY SEARS, SUPPORTING FAMILIES, SAVING FUNDS: A FISCAL ANALYSIS OF NEW JERSEY'S FAMILY EQUALITY ACT (2003), <http://www.law.ucla.edu/williamsinstitute/publications/NJ-DPAStudy.pdf>.

<sup>26</sup> Domestic Partnership Act, ch. 246, § 1 (N.J. 2003) [hereinafter DPA] (codified at N.J. STAT. ANN. § 26:8A-1).

<sup>27</sup> N.J. STAT. ANN. § 26:8A-2(a) (West 2006).

<sup>28</sup> N.J. STAT. ANN. § 26:8A-4(b)(5) (West 2006).

assess the budgetary impact of marriage equality. Section I presents a brief history of the Act, and outlines the rights and benefits granted under the DPA as compared to marriage rights. Section II presents actual numbers on registered domestic partners, estimates the number of couples who will register in the future, and those who would marry if allowed.

In Section III, we present our original predictions of the budgetary impact of the DPA and compare our predictions to some very limited data on actual outcomes. We also revise some of our earlier estimates to take into account that the DPA, as enacted, limited registration to different-sex couples where both partners are aged 62 or older. As a result of the recent New Jersey Supreme Court decision in *Lewis v. Harris*<sup>29</sup> affirming same-sex couples' equal rights to the benefits of marriage, the debate has reopened and expanded. Accordingly, in Section III we also consider the fiscal impact of the rights and responsibilities of marriage that will likely be addressed through legislation in 2007, noting any additional fiscal impact of marriage above and beyond that of the DPA.

Section IV expands the economic scope of our analysis beyond the state budget to assess broader effects on New Jersey's economy of allowing same-sex couples to marry. Some of these economic effects have state budgetary implications, including new sales tax revenue resulting from weddings. Companies that are part of the wedding industry will undoubtedly see an increase in business, as the pent-up demand for weddings among same-sex couples drives new spending on hotels, caterers, flowers, and other wedding items. Currently no other state allows out-of-state same-sex couples to marry, since Massachusetts has interpreted a 1913 marriage evasion law to forbid a majority of such marriages.<sup>30</sup>

If New Jersey were to allow out-of-state same-sex couples as well as couples residing in New Jersey to marry, the economic gains would be even larger than those experienced in Massachusetts. Once married, some employees will sign up their same-sex spouse for health care benefits. This means that

---

<sup>29</sup> 908 A.2d 196 (N.J. 2006), *modifying in part and aff'g in part*, 875 A.2d 259 (N.J. Super Ct. App. Div. 2005).

<sup>30</sup> MASS. GEN. LAWS ch. 207, § 11 (1998).

employers will incur additional costs as a result. Section IV also looks at the fiscal impact for private employers if employees were allowed to enroll their same-sex spouses for health benefits. The discussion will also look at a growing body of research on the unquantifiable beneficial effects of equality for employers, including a likely decrease in turnover and increase in job satisfaction among lesbian, gay, and bisexual employees.

Overall, the analysis suggests that the Domestic Partnership Act has created a net loss to the state budget of \$1.1 to \$2.97 million per year. We project that giving same-sex couples the right to marry would result in a net gain to the State of \$3.9 to \$8.1 million. In addition, extending marriage to same-sex couples would create a net financial gain to New Jersey businesses of approximately \$90.2 million per year for at least the few first years of marriage equality.

## I. NEW JERSEY'S DOMESTIC PARTNERSHIP ACT

### A. LEGISLATIVE HISTORY

#### 1. DOMESTIC PARTNERSHIP ACT OF 2003

Loretta Weinberg and four other members of the New Jersey State Assembly introduced the Domestic Partnership Act (DPA) on June 5, 2003 as "The Family Equality Act."<sup>31</sup> The Act acknowledged that:

[A] significant number of individuals in this State...who choose to live together in important personal, emotional and economic committed relationships...that assist the State by their establishment of a private network of support for the financial, physical and emotional health of their participants... [should] be formally recognized by statute, and that certain rights and benefits should be made available to...them.<sup>32</sup>

<sup>31</sup> The Family Equality Act, A. 3743, 210th Leg. (N.J. 2003) [hereinafter The Family Equality Act], *available at* [http://www.njleg.state.nj.us/2002/Bills/A3500/3743\\_I1.PDF](http://www.njleg.state.nj.us/2002/Bills/A3500/3743_I1.PDF).

<sup>32</sup> *Id.* at 2, § 2 & 70.

The Act also stated that the health and pension benefits for domestic partners should be the same as spouses, which meant that all employers would have been required to provide domestic partners with the same health benefits that they provide to spouses.<sup>33</sup>

The Family Equality Act (FEA) enumerated the rights and responsibilities of domestic partners, including the right of all cohabitating unmarried partners to register for a domestic partnership regardless of age or sexual orientation.<sup>34</sup> It also prohibited discrimination based on domestic partnership status in employment,<sup>35</sup> housing,<sup>36</sup> issuing of credit,<sup>37</sup> and contracting<sup>38</sup> or provision of services in a place of public accommodation.<sup>39</sup> The FEA provided that termination of domestic partnerships should follow the same procedures and give the parties the same substantive rights and obligations as those involved in divorce proceedings.<sup>40</sup> In terms of health care rights, the Act allowed parties to make emergency health care decisions<sup>41</sup> and granted hospital visitation rights.<sup>42</sup> As for economic rights, the FEA also gave partners the ability to claim the other as an exemption on state income tax filings,<sup>43</sup> and also exempted them from the

---

<sup>33</sup> *Id.* at 2, § 2(d); *see also id.* at 68, § 54.

<sup>34</sup> The original Act made no distinction between same-sex and different-sex couples. *Id.* at 3, § 4(b).

<sup>35</sup> The original Act made no distinction between same-sex and different-sex couples. *Id.* at 3, § 4(b).

<sup>36</sup> *Id.* at 15, §§ 12(g) (1)-(5), h (1)-(5).

<sup>37</sup> *Id.* at 18, § 12(i) (1)-(5).

<sup>38</sup> Including the buying or selling of real estate or other goods. *Id.* at 19, §§ 12(k), (n).

<sup>39</sup> *Id.* at 14, § 12(f) (1)-(2).

<sup>40</sup> *Id.* at 3, §§ 6, 10.

<sup>41</sup> *Id.* at 27, §§ 28-35.

<sup>42</sup> *Id.* at 21, § 13.

transfer inheritance tax.<sup>44</sup> The Family Equality Act explicitly recognized civil unions, domestic partnerships and reciprocal beneficiary relationships entered in other states.<sup>45</sup>

The Assembly referred the FEA to the Health and Human Services Committee. The Bill remained in Committee for several months while its five primary sponsors negotiated with Republicans, business groups, clergy, and gay and lesbian activists on the issue.<sup>46</sup> The FEA's supporters also held off on bringing the Act up for consideration for fear that many lawmakers would feel uncomfortable voting on such an ideologically charged issue during the election season.<sup>47</sup> Support for the bill increased after Superior Court Judge Linda Feinberg urged lawmakers to consider legislation offering domestic partners benefits in her ruling that dismissed a constitutional challenge to the state's refusal to issue marriage licenses to same-sex couples.<sup>48</sup> Adding to this political momentum was the Massachusetts Supreme Court decision in *Goodridge* holding that same-sex couples have a right to marry under that state's constitution.<sup>49</sup> Shortly thereafter, the Health and Human Services Committee reported on the measure.

In its report, the Health and Human Services Committee made a number of significant amendments, and also changed the bill's title to the Domestic Partnership Act (DPA).<sup>50</sup> The first

---

<sup>43</sup> *Id.* at 41, § 40.

<sup>44</sup> *Id.* at 34, §§ 37-38.

<sup>45</sup> *Id.* at 4, § 6(c).

<sup>46</sup> See James Ahearn, *Time to flag down this train*, THE RECORD, Dec. 21, 2003; Jonathan Schuppe, *'Domestic partner' legislation gains in the Assembly Bill expands fiscal rights for unwed pairs*, THE STAR LEDGER, Dec. 12, 2003, at 1.

<sup>47</sup> Schuppe, *supra* note 46.

<sup>48</sup> *Lewis v. Harris*, No. Mer-L-15-03, 2003 WL 23191114, at \*21 (N.J. Super. Ct. Law Div. Nov. 5, 2003), *aff'd*, 875 A.2d 259 (N.J. Super. Ct. App. Div. 2005), *aff'd in part & modified in part*, *Lewis v. Harris*, 908 A.2d 196 (N.J. 2006).

<sup>49</sup> *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 241 (Mass. 2003).

<sup>50</sup> ASSEM. HEALTH & HUMAN SERVICES COMM., STMT. TO ASSEM., NO. 3743 WITH COMM. AMENDMENTS (2003) [hereinafter ASSEM. HEALTH & HUMAN



modification was to require, in addition to joint residency, that all applicants provide documentation proving financial interdependence and joint responsibility for one another's welfare.<sup>51</sup> The second amendment was to limit domestic partnerships to same-sex couples;<sup>52</sup> this would later be amended by the Appropriations Committee. The third alteration was to require partners to specify a cause for dissolution.<sup>53</sup> This change to domestic partnership termination requirements more closely parallels the requirements of a divorce.<sup>54</sup> The final amendment deleted the provision granting domestic partners terminations on the same basis and with the same rights and obligations involved with a divorce.<sup>55</sup> What this amendment meant in practical terms was that upon termination, no party would be entitled to receive alimony, maintenance, child support or equitable division of any property acquired during the partnership.<sup>56</sup> Most notably, in a concession to garner support from New Jersey's Business and Industry Association, the Act was amended to make the extension of health care benefits

---

SERVICES COMM.], *available at*  
[http://www.njleg.state.nj.us/2002/Bills/A3500/3743\\_S1.PDF](http://www.njleg.state.nj.us/2002/Bills/A3500/3743_S1.PDF).

<sup>51</sup> *Id.* at 5, Am. 2 (“...as evidenced by joint financial arrangements or joint ownership of real or personal property, which is to be demonstrated by at least one of the following: a joint deed, mortgage agreement or lease; a joint bank account; designation of one of the persons as a primary beneficiary in the other person’s will; designation of one of the persons as a primary beneficiary in the other person’s life insurance policy or retirement plan; or joint ownership of a motor vehicle...”).

<sup>52</sup> *Id.* at 5, Am. 4.

<sup>53</sup> *Id.* at 5, Am. 8.

<sup>54</sup> N.J. STAT. ANN. § 2A:34-2 (West 2006).

<sup>55</sup> N.J. STAT. ANN. § 2A:34-2 (West 2006).

<sup>56</sup> *Id.* at 5-6. The Act’s final language stated that “[i]n all such proceedings (termination), the court shall ***in no event*** be required to effect an equitable distribution of property, either real or personal, which was legally and beneficially acquired by both domestic partners or either domestic partner during the marriage.” DPA, *supra* note 26, at 8, § 10(a)(3) (emphasis added).



coverage to employee's domestic partners optional.<sup>57</sup> The Committee reported these changes to the Assembly, which were incorporated into the Act.<sup>58</sup> Because the Act would have a fiscal impact, the amended DPA was referred to the Assembly Appropriations Committee.

The Assembly Appropriations Committee proceeded to amend the measure to allow different-sex couples, where both individuals are age 62 years or older, to register as domestic partners.<sup>59</sup> To limit the fiscal impact of this amendment, the Committee explicitly restricted the extension of health and pension benefits to same-sex couples.<sup>60</sup> The DPA was approved by a 7-1 vote in the Appropriations Committee and was forwarded to the General Assembly.<sup>61</sup> The Assembly debated the bill before voting,<sup>62</sup> passing their final version of the DPA 41 to 28, with 9 abstentions and two members not voting on December 15, 2003.<sup>63</sup>

---

<sup>57</sup> *Id.* at 7, Am. 11. See also Robert Moran, *Domestic-Partners Bill Clears 2 Committees: The Proposal Calls for Legal Rights and Benefits Such as Insurance. An Assembly Vote is Set for Monday*, THE PHILADELPHIA INQUIRER (TRENTON BUREAU), Dec. 12, 2003, at B3.

<sup>58</sup> Domestic Partnership Act, A. 3743 (1R), 210th Leg. (N.J. 2003) [hereinafter A-3743 First Revision], available at [http://www.njleg.state.nj.us/2002/Bills/A3500/3743\\_R1.PDF](http://www.njleg.state.nj.us/2002/Bills/A3500/3743_R1.PDF).

<sup>59</sup> John Gohlke, *Two Assembly Panels Pass Domestic Partnership Bill*, THE RECORD, Dec. 12, 2003, at A5 (citing that older couples often avoid marriage because it can diminish their pension benefits); ASSEM. APPROPRIATIONS COMM., STMT. TO ASSEMBLY, NO. 3743 WITH ASSEM. COMM. AMENDMENTS 5, Am. 2 (N.J. 2003) [hereinafter ASSEM. APPROPRIATIONS COMM.], available at [http://www.njleg.state.nj.us/2002/Bills/A3500/3743\\_S2.PDF](http://www.njleg.state.nj.us/2002/Bills/A3500/3743_S2.PDF).

<sup>60</sup> *Id.* at 5, Am. 4..

<sup>61</sup> Domestic Partnership Act, A. 3743 (2R), 210th Leg. (N.J. 2003) [hereinafter A-3743 Second Revision]; see also Schuppe, *supra* note 46 (reporting that Assemblyman Guy Gregg (R-Sussex) abstained from the 7-1 vote).

<sup>62</sup> Ahearn, *supra* note 46.

<sup>63</sup> Michael Booth, *Assembly Passes Bill, Supported by Governor, Creating Quasi-Marital Status*, 174 N.J.L.J. 1021 (2003).

Senator Richard J. Cody introduced a different version of the Domestic Partnership Act to the Senate on December 11, 2003,<sup>64</sup> whereupon it was referred to the Senate Judiciary Committee for review. Although similar to the Assembly's version in terms of the anti-discrimination, health care, and tax exemptions provisions, the Senate version differed on a number of key issues. It contained no documentation provision,<sup>65</sup> set the minimum age requirement for registration of opposite-sex couples at 63,<sup>66</sup> had no requirement to show cause for termination,<sup>67</sup> and contained no provision restricting health and pension benefits to same-sex couples.<sup>68</sup> In fact, the Senate version explicitly stated that domestic partners should have the same rights to health and pension benefits as spouses.<sup>69</sup> These major differences were all deleted by the Senate Judiciary Committee, when it amended the Senate version of the Act.<sup>70</sup>

---

<sup>64</sup> Domestic Partnership Act, S. 2820, 210th Leg. (N.J. 2003) [hereinafter S-2820 Original Version], *available at* [http://www.njleg.state.nj.us/2002/Bills/S3000/2820\\_I1.PDF](http://www.njleg.state.nj.us/2002/Bills/S3000/2820_I1.PDF).

<sup>65</sup> *Id.* at 3, § 4.

<sup>66</sup> *Id.* at 3-4, § 4(b)(5).

<sup>67</sup> *Id.* at 6, § 10.

<sup>68</sup> In contrast the Assembly's versions explicitly stated:

The Legislature discerns a clear and rational basis for making certain health and pension benefits available to dependent domestic partners only in the case of domestic partnerships in which both persons are of the same sex and are therefore unable to enter into a marriage with each other that is recognized by New Jersey law, unlike persons of the opposite sex who are in a domestic partnership but have the right to enter into a marriage that is recognized by state law and thereby have access to these health and pension benefits.

A-3743 Second Revision, *supra* note 61.

<sup>69</sup> S-2820 Original Version, *supra* note 64, at 2, § 2(d).

<sup>70</sup> S. JUDICIARY COMM., STMT. TO S. COMM. SUBSTITUTE FOR S. NO. 2820 (N.J. 2003) [hereinafter S. JUDICIARY COMM. S-2820], *available at* [http://www.njleg.state.nj.us/2002/Bills/S3000/2820\\_S1.PDF](http://www.njleg.state.nj.us/2002/Bills/S3000/2820_S1.PDF). The Senate Judiciary Committee approved the Act by a 7-1 vote. Ahearn, *supra* note 46. Sen. Peter Inverso (R-Mercer) was the only Judiciary Committee member to vote against recommending the Act to the Senate for a full vote. Michael Booth,

Instead, it adopted the Assembly's version of these key provisions, making the two bills identical.<sup>71</sup>

The revised version of the Senate bill was similar to the original in that it prohibited discrimination in employment,<sup>72</sup> housing,<sup>73</sup> issuing of credit,<sup>74</sup> and contracting<sup>75</sup> or provision of services in a place of public accommodation,<sup>76</sup> allowed parties to make health care decisions,<sup>77</sup> granted hospital visitation rights,<sup>78</sup> allowed individuals to claim a personal exemption for their personal state income tax filings,<sup>79</sup> and exempted them from the transfer inheritance tax.<sup>80</sup> In contrast to the original version, the final version of the Senate bill required registrants to provide documentation proving that the couple is financially interdependent,<sup>81</sup> changed the minimum age for opposite-sex registrants to 62,<sup>82</sup> required domestic partners to articulate an enumerated cause in order to file for termination of a

---

*Democrats Hold Key to Making Same-Sex Unions Legal in N.J.*, LEGAL INTELLIGENCER, Jan. 9, 2004, at 4.

<sup>71</sup> S. JUDICIARY COMM. S-2820, *supra* note 70, at 5 (stating that “[t]his substitute is identical to A-3743 (2R).”).

<sup>72</sup> Domestic Partnership Act, S. 2820 (1R), 210th Leg. 15 ¶ 12(a)-(e) (N.J. 2003) [hereinafter S-2820 First Revision], [http://www.njleg.state.nj.us/2002/Bills/S3000/2820\\_U1.PDF](http://www.njleg.state.nj.us/2002/Bills/S3000/2820_U1.PDF).

<sup>73</sup> *Id.* at 18, ¶ 12(g)-(h).

<sup>74</sup> *Id.* at 20, ¶ 12(i).

<sup>75</sup> Including the buying or selling of real estate or other goods. *Id.* at 21, § 12(k)-(l).

<sup>76</sup> *Id.* at 17, ¶ 12(f).

<sup>77</sup> *Id.* at 29, ¶ 28-35.

<sup>78</sup> *Id.* at 23, ¶ 13.

<sup>79</sup> *Id.* at 43, ¶ 40.

<sup>80</sup> *Id.* at 35, ¶ 36-38.

<sup>81</sup> *Id.* at 4 ¶ 4b(1)(a)-(e).

<sup>82</sup> *Id.* at 4 ¶ 4b(5).

partnership,<sup>83</sup> restricted health and pension benefits to same-sex couples,<sup>84</sup> and made it optional for public employers other than the state to extend health and pension benefits to their employees domestic partners.<sup>85</sup>

The final versions of both Chambers bills were sent to the other for approval on January 8, 2004.<sup>86</sup> As the key provisions in the Assembly's version were identical to the substituted version recommended by the Senate Judiciary Committee, the Senate, with minimal debate, voted to pass the bill 23-9.<sup>87</sup> The Assembly approved the Senate's version on the same day.<sup>88</sup> The Domestic Partnership Act was forwarded to Governor James E. McGreevey for approval. Four days later, the Governor signed the Domestic Partnership Act into law.<sup>89</sup> The Act became effective July 11, 2004.<sup>90</sup>

---

<sup>83</sup> *Id.* at 7, ¶ 10.

<sup>84</sup> "The Legislature discerns a clear and rational basis for making certain health and pension benefits available to dependent domestic partners only in the case of domestic partnerships in which both persons are of the same sex and are therefore unable to enter into a marriage with each other that is recognized by New Jersey law, unlike persons of the opposite sex who are in a domestic partnership but have the right to enter into a marriage that is recognized by state law and thereby have access to these health and pension benefits." A-3743 Second Revision, *supra* note 61, at 3 ¶ 2e.

<sup>85</sup> S-2820 First Revision, *supra* note 72, at 72 ¶ 57(b).

<sup>86</sup> N.J. STATE LEGISLATURE, BILLS 2002-2003: A-3743 DOMESTIC PARTNERSHIP ACT (2003), <http://www.njleg.state.nj.us/> (follow "Bills 2002-2003" hyperlink; then follow "Bill Number" hyperlink, then type in "3743" and follow the "A-3743" hyperlink).

<sup>87</sup> Jonathan Schuppe, *N.J. Senate approves domestic partners bill Governor promises to enact legal rights for same-sex couples*, THE STAR LEDGER, Jan. 9, 2004, at 1, available at 2004 WLNR 20188834. Seven senators abstained, including two Democrats, and one was not present to vote. *Id.* See also *New Jersey Offers Domestic Partner Rights*, FEMINIST DAILY NEW, Jan. 22, 2004, available at 2004 WLNR 14704203 (citing that the Senate debated for only 15 minutes, with five Senators speaking in favor of the bill and none voicing opposition, before passing the measure).

<sup>88</sup> N.J. STATE LEGISLATURE, *supra* note 86.

<sup>89</sup> Ruth Padawer, *Rights for same-sex couples become law; Governor praises step for fairness, respect*, THE RECORD, Jan. 13, 2004, at A3; see also Josh Margolin, *Gay couples gain legal status McGreevey signs Domestic*

## 2. AMENDING THE DPA

One of the key shortcomings of the Domestic Partnership Act was the lack of rights granted to an individual at his or her partner's death. This was especially relevant in regards to the disposition of remains and the inheritance of property if the person died intestate.<sup>91</sup> The Assembly moved to rectify this deficiency by introducing A3429 in October 2004.<sup>92</sup> A similar bill was introduced the following month in the Senate.<sup>93</sup> Both versions of the original bill only provided that a surviving domestic partner would have the same rights as a surviving spouse in controlling arrangements for the funeral and disposition of the human remains.<sup>94</sup>

The introduction of the bill in both chambers coincided with a case involving the estate of Rene Price, the long-time same-sex partner to Betty Jordan. The women had been partners for over two decades, during which time they entered into a civil union in Vermont, married in Canada and then registered as domestic partners under the DPA in 2004. Although Price, the household's main wage earner, had drafted a will in favor of Jordan, it was not executed prior to her death.<sup>95</sup> After Price's

---

*Partnership Act, declares measure a 'great victory' for rights*, THE STAR LEDGER, Jan. 13, 2004, at 23, available at 2004 WLNR 20190795..

<sup>90</sup> S. JUDICIARY COMM. S-2820, *supra* note 70, at § 60. "[This act] will take effect on the 180th day after enactment." *Id.*

<sup>91</sup> Renee Winkler, *N.J. woman to fight for partner's estate*, COURIER POST, Oct. 16, 2005, at 1G.

<sup>92</sup> Assemb. 3429, 211th Leg. (N.J. 2004) [hereinafter A-3429 Original Version], [http://www.njleg.state.nj.us/2004/Bills/A3500/3429\\_I1.PDF](http://www.njleg.state.nj.us/2004/Bills/A3500/3429_I1.PDF). The measure was referred to the Assembly Regulated Professions and Independent Authorities Committee, who reported favorably on the bill at the end of February 2005. ASSEMB. REGULATED PROFESSION & INDEP. AUTHORITIES COMM., STMT. TO ASSEMB., NO. 3429, 211TH LEG. (N.J. 2005), [http://www.njleg.state.nj.us/2004/Bills/A3500/3429\\_S1.PDF](http://www.njleg.state.nj.us/2004/Bills/A3500/3429_S1.PDF).

<sup>93</sup> S. 2083, 211th Leg. (N.J. 2004) [hereinafter S-2083 Original Version], [http://www.njleg.state.nj.us/2004/Bills/S2500/2083\\_I1.PDF](http://www.njleg.state.nj.us/2004/Bills/S2500/2083_I1.PDF).

<sup>94</sup> *See id.* at 2, § 1 and A-3429 Original Version, *supra* note 92, at 2 § 1.

<sup>95</sup> Renee Winkler, *supra* note 91. At the time of Price's death, the couple shared a home, two cars and a bank account solely in Price's name. Therefore if

unexpected death, Jordan petitioned the court to allow her to administer Price's estate after she died intestate. Jordan's attempt to file letters of administration for the estate was rejected by Middlesex County Surrogate Kevin J. Hoagland, because the DPA did not provide for the surviving partner to be named administrator of an estate. Thus, Jordan had to bring the case before the Superior Court.<sup>96</sup>

In response, Senator John Adler, one of the bill's primary sponsors and chairman of the Judiciary Committee, proposed that the bill be amended to provide that a surviving domestic partner would have the same rights and protection concerning inheritance as a surviving spouse if the decedent has not left a will.<sup>97</sup> This includes intestate succession<sup>98</sup> and forced elective share.<sup>99</sup> The new version of the bill also provided for omitted domestic partners (i.e., those that enter into a partnership after a decedent's will has been drafted).<sup>100</sup> The amendment also changed the definition of the term "heir" to include a domestic partner, and relieves partners of the financial responsibility of posting a bond if administering an estate.<sup>101</sup> The revised version of the Senate bill was passed by a vote of 39-0 on January 5, 2006.<sup>102</sup> Similar proposed amendments were adopted by the

---

Jordan were not allowed to administer the state, the house, cars and bank account would all pass to Price's intestate heirs (i.e., all those related by blood beginning with children and parents).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* (summarizing Sen. John Adler's statement that he will amend a bill already in committee to give registered partners in N.J. additional rights and responsibilities, including the right of a domestic partner of an individual who dies without a will would get the same share of an estate as a spouse); *see also* S. JUDICIARY COMM., STMT. TO S., NO. 2083, 211th Leg. (2005), *available at* [http://www.njleg.state.nj.us/2004/Bills/S2500/2083\\_S1.PDF](http://www.njleg.state.nj.us/2004/Bills/S2500/2083_S1.PDF).

<sup>98</sup> N.J. STAT. ANN. § 3B:5-3 (West 2006).

<sup>99</sup> N.J. STAT. ANN. § 3B:8-1 (West 2006).

<sup>100</sup> N.J. STAT. ANN. § 3B:1-1 (West 2006).

<sup>101</sup> N.J. STAT. ANN. § 3B:8-1 (West 2006).

<sup>102</sup> N.J. STATE LEGISLATURE, BILLS 2004-2005: S-2083 [hereinafter N.J. STATE LEGISLATURE 2004-2005], <http://www.njleg.state.nj.us/> (follow "Bills

Assembly on December 12, 2005 and incorporated into the bill.<sup>103</sup> The Assembly's revised version of the bill was passed by a vote of 67-8, with five members abstaining on January 9, 2006.<sup>104</sup> Acting Governor Richard J. Cody signed the bill into law on January 12, 2006.<sup>105</sup> The enactment of this bill remedied one of the key deficiencies of the Domestic Partnership Act in relation to domestic partnership rights.

## B. RIGHTS UNDER THE DOMESTIC PARTNERSHIP ACT – HOW DO THEY COMPARE WITH MARRIAGE?

The adoption of the Domestic Partnership Act (DPA) into law granted some important but rather limited benefits and protections to same- and opposite-sex cohabitating couples who are both over 62 when compared with those granted to married couples. According to the Act itself, the rights and obligations established by the Act “shall be limited to the provisions of this act, and those provisions shall not diminish any right granted under any other provision of law.”<sup>106</sup> This section compares the rights and protections granted to couples when they marry versus those granted to couples when they establish domestic partnerships under the current statute.

### 1. PARENTAL RIGHTS

One of the most fundamental rights granted by marriage is the right of parents to make decisions concerning the care, custody and control of their children. These rights and obligations automatically attach when opposite-sex couples marry and have children. The DPA, in creating domestic

---

2004-2005” hyperlink; then follow “Bill Number” hyperlink, then type in “S2083” and follow the “S2083” hyperlink).

<sup>103</sup> Assembly 3429, 211th Leg (N.J. 2005), [http://www.njleg.state.nj.us/2004/Bills/A3500/3429\\_R1.PDF](http://www.njleg.state.nj.us/2004/Bills/A3500/3429_R1.PDF).

<sup>104</sup> N.J. STATE LEGISLATURE 2004-2005, *supra* note 102.

<sup>105</sup> Act of Jan. 12, 2006, ch. 331 (2005); *see also* Kelley Heck, *Acting Gov. Cody Signs Bills into Law*, U.S. STATES NEWS, Jan. 12, 2006.

<sup>106</sup> N.J. STAT. ANN. § 26:8A-6 (West 2006).



partnerships, did not include these rights for partners who have children during the partnership.<sup>107</sup> The effect of this omission in the DPA is to require the non-biological parent to go through an adoption procedure in order to secure the same legal rights granted to married couples under the law.

In 1983, New Jersey adopted the Parentage Act<sup>108</sup> in order to establish the principle that the parent and child relationship extends equally to every child and parent, regardless of the marital status of the parents.<sup>109</sup> The Act stated six presumptions regarding the paternity of a child.<sup>110</sup> All these presumptions could only be rebutted with clear and convincing evidence.<sup>111</sup> In the absence of any of these presumptions, the court would decide whether the parent and child relationship exists, based upon a preponderance of the evidence.<sup>112</sup> Since all the presumptions refer to situations between opposite-sex couples, none of them are applicable to same-sex partners, thus requiring domestic partners to individually make their case by presenting evidence of a parent-child relationship to a court. The legislature did create one exception to the Parentage Act in the

---

<sup>107</sup> In fact, the Health and Human Services Committee specifically distinguished the rights of domestic partners as compared to married couples in relation to children by stating that “the status of domestic partnership neither creates nor diminishes individual partners’ rights and responsibilities toward children, unlike in a marriage where both spouses possess legal rights and obligations with respect to any children born during the marriage.” ASSEM. APPROPRIATIONS COMM., *supra* note 59, at 5.

<sup>108</sup> N.J. STAT. ANN. § 9:17-38 (West 2006).

<sup>109</sup> N.J. STAT. ANN. § 9:17-40 (West 2006); *see also Chapter 12: Child Support*, 1-12 N.J. FAM. § 12-13 (2004) (citing Assembly and Senate Statements regarding the Parentage Act).

<sup>110</sup> N.J. STAT. ANN. § 9:17-43(a)(1)-(6) & (e) (West 2006) (stating that if a man has attempted to, or actually marries, the biological mother before or after the child’s birth, holds himself out to be the child’s father, provides support for the child, acknowledges his paternity, or man has sexual intercourse with the biological mother within 300 days of a child’s birth, then he is presume to be the child’s father).

<sup>111</sup> N.J. STAT. ANN. § 9:17-43b (West 2006).

<sup>112</sup> N.J. STAT. ANN. § 9:17-43d (West 2006).



area of assisted reproductive technology (ART).<sup>113</sup> This statute on its face does not apply to same-sex couples. Thus, domestic partners are still required to resort to the courts in order to establish the parental rights of a second parent, not automatically recognized by the law.

Although New Jersey courts have already extended some rights and obligations with regard to children to same-sex couples,<sup>114</sup> these rights are far from guaranteed. For example, last summer, the Superior Court of Essex County issued an order to have the partner of the biological mother be deemed the second parent on the birth certificate of their child conceived through artificial insemination.<sup>115</sup> In direct contrast, judges in Burlington, Camden and Middlesex counties have refused similar requests earlier this year, stating that adoption is the appropriate remedy for establishing parental rights.<sup>116</sup>

---

<sup>113</sup> N.J. STAT. ANN. § 9:17-44 (West 2006). In recognition of advancing technologies and the increased utilization of artificial insemination, New Jersey passed an Artificial Insemination statute that recognizes the non-donor husband as the legal parent of a child born to the marriage, even if the child is a result of artificial insemination. This presumption holds true as long as a licensed physician certifies the spouses' signatures and date of insemination and files the form, along with the husband's consent, with the State Department of Health. However, a doctor's failure to comply with the statute's requirements does not affect the father and child relationship.

<sup>114</sup> See, e.g., *In the Matter of the Adoption Two Children by H.N.R.*, 285 N.J. Super. 1, 12 (Ch. Div.1995) (overturning Superior Court's decision to deny a partner's petition to adopt her same-sex partner's biological children from a previous relationship on the grounds that it was prohibited under N.J.'s adoption statute); see also *In the Matter of Adoption of Child by J.M.G.*, 267 N.J. Super. 622, 629 (Ch. Div.1993) (allowing the adoption by the non-biological parent of the child conceived through artificial insemination while preserving the natural mother's status despite the plaintiff's failure to meet the literal definition of a stepparent).

<sup>115</sup> *In re Parentage of the Child of Robinson*, 383 N.J. Super. 165, 167 (Ch. Div. 2005) (court ordered that the female domestic partner of the biological mother be declared the presumptive parent of their daughter, who had been conceived through artificial insemination.).

<sup>116</sup> *In re O'Connor*, N.J. LAWYER, April 14, 2006. A petition by a lesbian couple to put both their names on the birth certificate of their son, conceived through artificial insemination, was rejected by a Superior Court Judge who ruled that it is the legislature's role and not the court's, to decide whether New Jersey's artificial insemination statute should be extended to same-sex partners. *Id.*

## 2. HEALTH CARE RIGHTS

One area in which the DPA grants a significant number of marriage-related rights to domestic partners is in health care. The measure redefines the term “immediate family” to include the patient’s domestic partner and the partner’s parent and adult children,<sup>117</sup> requires health care facilities to grant visitation rights to domestic partners and their children,<sup>118</sup> and allows the designation of a domestic partner as an individual’s health care representative in case of emergency or incapacitation.<sup>119</sup> Where consent is required for disclosure of private health records or for the performance of an autopsy, the physician may obtain such consent from the domestic partner.<sup>120</sup> More importantly, even when two adults in a partnership have not filed an Affidavit of Domestic Partnership, the DPA stipulates that the couple shall be treated as domestic partners in an emergency medical situation.<sup>121</sup> Such treatment includes allowing one adult to accompany the other adult who is ill or injured while the latter is being transported to a hospital or to visit the other adult who is a hospital patient on the same basis as a member of the latter’s immediate family.<sup>122</sup>

An important area of health care in which the DPA falls far short of granting marriage-like rights is the extension of health care benefits to domestic partners. The Act requires the extension of the State Health Benefits Plan (SHBP) to the domestic partners of state employees.<sup>123</sup> The measure does this

---

<sup>117</sup> “‘Immediate family’ of any person includes each parent, child, spouse, brother, sister, first cousin, aunt and uncle of such person, whether such relationship arises by birth, marriage or adoption, as well as the domestic partner of that person...and the domestic partner’s parent and adult child.” N.J. STAT. ANN. § 26:2H-32d (West 2006).

<sup>118</sup> N.J. STAT. ANN. § 26:2H-12.22 (West 2006).

<sup>119</sup> N.J. STAT. ANN. § 26:5C-12 & 6-50 (West 2006).

<sup>120</sup> N.J. STAT. ANN. § 26:2H-58a(1) (West 2006).

<sup>121</sup> N.J. STAT. ANN. § 26:8A-6f (West 2006).

<sup>122</sup> *Id.*

<sup>123</sup> N.J. STAT. ANN. § 52:14-17.26 (West 2006).

by re-defining the term “dependents” in relation to public employees to include an employee’s domestic partner,<sup>124</sup> so that any benefit extended to a dependent must also be extended to an employee’s domestic partner.<sup>125</sup> However, as noted above, in a concession to garner support from New Jersey’s Business and Industry Association, the DPA failed to address the inequality in the provision of health care benefits for domestic partners by employers, other than the state. By not addressing this issue, the Act allows employers who currently offer health insurance to dependents, to continue to exclude domestic partners from the same benefits.<sup>126</sup> The DPA also does not provide individuals with the option of deducting the medical expenses of their domestic partners, which married couples are allowed to do.<sup>127</sup>

### 3. RETIREMENT BENEFITS

Another area where the Domestic Partnership Act extends a number of rights to domestic partners is in retirement benefits to include domestic partners. The DPA amended the definition

---

<sup>124</sup> *Id.*

<sup>125</sup> The DPA provides that any health insurance company or plan doing business in New Jersey shall offer dependent coverage for a subscriber’s domestic partner. Thus, if an employer opts to offer domestic partnership coverage, insurance companies must provide it. N.J. STAT. ANN. § 17:48-6bb (West 2006) (“Hospital service corporation to offer coverage for domestic partner”); N.J. STAT. ANN. § 17:48A-7aa (West 2006) (“Medical service corporation to offer coverage for domestic partner”); N.J. STAT. ANN. § 17:48C-8.2 (West 2006) (“Dental service corporation to offer coverage for domestic partner”); N.J. STAT. ANN. § 17:48D-9.5 (West 2006) (“Dental plan organization to offer coverage for domestic partner”); N.J. STAT. ANN. § 17:48E-35.26 (West 2006) (“Health service corporation to offer coverage for domestic partner”); N.J. STAT. ANN. § 17B:26-2.1x (West 2006) (“Individual health insurer to offer coverage for domestic partner”); N.J. STAT. ANN. § 17B:27-46.1bb (West 2006) (“Group health insurer to offer coverage for domestic partner”); N.J. STAT. ANN. § 17B:27A-7.9 (West 2006) (“Individual health benefits plan to offer coverage for domestic partner”); N.J. STAT. ANN. § 17B:27A-19.12 (West 2006) (“Small employer health benefits plan to offer coverage for domestic partner”); N.J. STAT. ANN. § 26:2J-4.27 (West 2006) (“HMO to offer coverage for domestic partner”).

<sup>126</sup> N.J. STAT. ANN. § 34:11A-20 (West 2006).

<sup>127</sup> N.J. STAT. ANN. § 54A:3-3 (West 2006).

of the terms “widow” and “widower” for State employees,<sup>128</sup> police and firemen,<sup>129</sup> judges<sup>130</sup> and teachers<sup>131</sup> in relation to their respective retirement systems. The Act also amended the definition of “spouse” and “surviving spouse” in relation to state employees to include their domestic partners.<sup>132</sup> The DPA’s redefinition of the above terms did not extend to private and public employers other than the State. Rather, the adoption of such terms was dependent on the ratification of a resolution by such employers.<sup>133</sup> In making the adoption of the terms optional for all employers other than the State, the DPA again falls short of requiring equal treatment of domestic partners and spouses.

#### 4. ECONOMIC RIGHTS

Marriage is viewed as an economic partnership, automatically conferring certain economic rights and responsibilities. This includes the ability to file joint tax returns,<sup>134</sup> to claim one’s spouse as a personal exemption when filing jointly,<sup>135</sup> the freedom to transfer property between spouses without inheritance tax consequences,<sup>136</sup> and the equitable ownership of property.<sup>137</sup> Marriage also brings with it

---

<sup>128</sup> N.J. STAT. ANN. §§ 43:15A-6q(1), g(1) (West 2006).

<sup>129</sup> N.J. STAT. ANN. §§ 43:16A-1(24)(a), (23)(a) (West 2006).

<sup>130</sup> N.J. STAT. ANN. §§ 43:6A-3(t), (u) (West 2006) (excludes property acquired by gift from a third party or inheritance).

<sup>131</sup> N.J. STAT. ANN. §§ 18A:66-2(t)(1), (u)(1) (West 2006).

<sup>132</sup> N.J. STAT. ANN. §§ 43:16A-1(31), 53:5A-3(t) (West 2006).

<sup>133</sup> N.J. STAT. ANN. §§ 43:15A-6(3)(a), 43:16A-1(b), 18A:66-2(t)(3), 43:16A-1(31) (West 2006)

<sup>134</sup> See N.J. DIVISION OF TAXATION, FILING STATUS, BULLETIN GIT-4 1 (2005) [hereinafter FILING STATUS], available at <http://www.state.nj.us/treasury/taxation/pdf/pubs/tgi-ee/git4.pdf>.

<sup>135</sup> N.J. STAT. ANN. § 54A:3-1(b)(1) (West 2006).

<sup>136</sup> N.J. STAT. ANN. § 54A:34-2 (West 2006).

<sup>137</sup> N.J. STAT. ANN. § 2A:34-23.1(i) (West 2006).

added responsibility in terms of liability for debt incurred during the legal relationship.<sup>138</sup>

The passage of the DPA granted some, but not all of these rights to domestic partners. While married spouses have the option of filing separate tax returns if doing so would result in paying less tax,<sup>139</sup> domestic partners do not have that option. The DPA did however give individuals the ability to claim their domestic partner as a personal exemption on their state tax returns.<sup>140</sup> However, this only applies when the person being claimed is not filing his or her own tax return.<sup>141</sup> Since domestic partners are unable to file joint returns, in practice, the only people who can claim this benefit are those whose domestic partners have no income.

Upon marriage, the partnership becomes liable for all debt incurred independently by either spouse during the marriage.<sup>142</sup> Although creditors are obligated to satisfy such debt with the separate property of the indebted spouse first, if that property is insufficient, they may attach jointly owned property in order to ensure payment.<sup>143</sup> Under the DPA, the separate debt of one partner incurred during the partnership, does not become the debt of the partnership, and thus the separate property of the non-indebted partner cannot be used to satisfy the debt of the other. Thus, this obligation of marriage not extended to domestic partners is, in effect, a form of protection for individuals. However, because the property domestic partners purchased together is not recognized as joint assets, as discussed below, any property purchased jointly but held in the indebted partner's name alone can be attached for the satisfaction of such debt.<sup>144</sup>

---

<sup>138</sup> N.J. STAT. ANN. § 26:8A-6 (g) (West 2006).

<sup>139</sup> FILING STATUS, *supra* note 134, at 2-3.

<sup>140</sup> N.J. STAT. ANN. § 54A:3-1 (West 2006).

<sup>141</sup> N.J. STAT. ANN. § 54A:3-2 (West 2006).

<sup>142</sup> N.J. STAT. ANN. § 2A:34-23.1(m) (West 2006).

<sup>143</sup> N.J. STAT. ANN. § 26:8A-6(g) (West 2006).

<sup>144</sup> N.J. STAT. ANN. § 26:8A-6(g) (West 2006).

## 5. DISSOLUTION/TERMINATION

The Divorce Reform Act<sup>145</sup> empowered courts in divorce proceedings to grant alimony, maintenance, and equally divide all real and personal property legally or beneficially acquired during the marriage by either party.<sup>146</sup> Although the original version of the Domestic Partnership Act stated termination of domestic partnerships should follow the same procedures and give the parties the same substantive rights and obligations as those involved in divorce proceedings,<sup>147</sup> the final Act granted the Superior Court sole jurisdiction over the conditions of termination, thus eliminating the guarantee of alimony, maintenance, or equitable division of property for domestic partners.<sup>148</sup>

### A. ALIMONY AND MAINTENANCE

New Jersey provides that a court may order one spouse to pay alimony and maintenance to another spouse pending or after the judgment of divorce.<sup>149</sup> In determining the amount of the award, the court considers a number of factors, including the duration of the marriage, the standard of living established during that period, future earning capacities (i.e., education, training, skills, and employability), length of absence from the job market, and income availability.<sup>150</sup> If the party neglects or refuses to make such payments, the court can attach the person's personal property and income as necessary in order for such payments to be made.<sup>151</sup> The court can also order one party to pay for the litigation costs of the other, if it finds that the

---

<sup>145</sup> Divorce Reform Act, Pub. L. No. 1971, ch. 212, § 8 (1971) (codified at N.J. STAT. ANN. § 2A:34-1 to -52).

<sup>146</sup> 1-4 N.J. FAM. § 4-16 (West 2006).

<sup>147</sup> The Family Equality Act, *supra* note 31, at 3 §§ 6 & 10.

<sup>148</sup> N.J. STAT. ANN. § 26:8A-10(a)(1) (West 2006).

<sup>149</sup> N.J. STAT. ANN. § 2A:34-23 (West 2006).

<sup>150</sup> *Id.* at (b)(1)-(13).

<sup>151</sup> *Id.*

financial circumstances of the parties involved requires such action.<sup>152</sup>

The DPA did not extend alimony or maintenance rights to domestic partners in the event of termination, thus neither party is entitled to file suit for such an award. The absence of such a provision may leave individuals in same-sex partnerships at risk of becoming dependent on the State for care if they have chosen to be a stay-at-home partner.

### *B. EQUITABLE DIVISION OF PROPERTY*

The division of property upon divorce reflects the conception of marriage as a shared enterprise, where the effort of each spouse entitles them to a share of the marital assets. Such effort is not limited to financial contributions, but also includes non-quantifiable contributions such as childrearing, management of the household, and emotional support. As such, the court is authorized to force an equitable distribution of both personal and real property acquired during marriage in the event of a divorce.<sup>153</sup> Such a distribution also serves the public policy interest of making a supported spouse less dependent on alimony, support payments, or public resources.

The DPA does not provide these protections to domestic partners. In fact, the legislators specifically stipulate that “property acquired by one partner during a domestic partnership is treated as the property of that individual, unlike in a marriage where joint ownership may arise by law.”<sup>154</sup> This gap in the law allows one partner to purchase property and establish bank and retirement accounts in his or her name alone, and have these assets considered his or her sole property upon termination, regardless of the length of the relationship or any non-pecuniary support provided by the other partner.

---

<sup>152</sup> *Id.*

<sup>153</sup> N.J. STAT. ANN. § 2A:34-23 (West 2006).

<sup>154</sup> ASSEM. APPROPRIATIONS COMM., *supra* note 59, at 4.

### C. CHILD CUSTODY

As discussed above, the establishment of domestic partnerships under the DPA did not automatically grant domestic partners parental rights. Rather, the non-biological parent is required to adopt their partner's child in order to establish parenting rights over the child. This legal hurdle may pose a problem upon termination if the non-biological parent never completed the adoption process. If no legal relationship was established, then the non-biological partner is not viewed as a legal parent under the eyes of the law.<sup>155</sup> Thus, he or she does not enjoy the same rights as a parent in pursuing custody of the child. In addition, if the non-biological partner is not considered the parent of the child, the court may be more resistant to order that party to pay child support for the care, custody, education and maintenance of the children.<sup>156</sup>

### 6. DEATH

Upon the death of an individual, all real and personal property passes to persons provided for in the individual's will, or in the absence of a will, to the person's heirs, subject to rights of creditors and the cost of administration.<sup>157</sup> Under New Jersey law, all such transfers are subject to a transfer inheritance tax, paid for by the individuals who receive property. The rate and amount of the tax depends upon the beneficiary's relationship to the decedent.<sup>158</sup> Depending upon the circumstances resulting in the individual's death, the individual's heirs may have standing to sue a third party for tort or be entitled to workmen's compensation, disability or any back pay owed to the surviving spouse.

---

<sup>155</sup> N.J. STAT. ANN. §§ 9:2-4, 2A:34-23 (West 2006).

<sup>156</sup> N.J. STAT. ANN. § 2A:34-23 (West 2006).

<sup>157</sup> N.J. STAT. ANN. § 3B:1-3 (West 2006).

<sup>158</sup> N.J. STAT. ANN. §§ 54:34-2(a)(1)-(2), 54:34-2(d) (West 2006).



### A. *INTESTATE SUCCESSION*

In 2006, the New Jersey legislature amended the intestate succession statute to allow surviving domestic partner to have the same rights concerning inheritance as a surviving spouse if the decedent did not leave a will.<sup>159</sup> The amendment also changed the definition of the term “heir” to include a domestic partner, and relieves them of the financial responsibility of posting a bond if administering an estate.<sup>160</sup> Thus, the recent amendment equalizes domestic partner’s rights in regards to intestate succession.

### B. *INHERITANCE AND TRANSFER TAX*

As per New Jersey law, all transfers of real or personal property over \$500 is subject to a transfer tax, paid by the beneficiary.<sup>161</sup> For transfers made to the spouse, children, parents or grandparents of a decedent after a certain date, no taxes would be imposed at all. The passage of the DPA placed domestic partners on equal footing with spouses, thus, any transfer of property to a decedent’s domestic partner was no longer subject to taxation.<sup>162</sup>

### C. *DEATH BENEFITS*

As required by New Jersey law, employers offer worker’s compensation, disability, and death benefits as a part of remuneration packages to their employees. These benefits guarantee some form of support for the family in the event that the employee is killed in the course of his or her employment. New Jersey law requires that the spouse and/or children of the decedent receive all back pay,<sup>163</sup> payment of any remaining

---

<sup>159</sup> Act of Jan. 12, 2006, ch. 331 (2005).

<sup>160</sup> S. JUDICIARY COMM., STMT. TO S., NO. 2083, 211th Leg. (2005) [hereinafter S. JUDICIARY COMM.], [http://www.njleg.state.nj.us/2004/Bills/S2500/2083\\_S1.PDF](http://www.njleg.state.nj.us/2004/Bills/S2500/2083_S1.PDF).

<sup>161</sup> N.J. STAT. ANN. § 54:34-1 (West 2006).

<sup>162</sup> N.J. STAT. ANN. § 54:34-2(a)(1) (West 2006).

<sup>163</sup> N.J. STAT. ANN. § 34:11-4.5(a)(1)-(4) (West 2006) (providing for payment in the following order: surviving spouse, children over 18 in equal

worker's compensation,<sup>164</sup> death benefits,<sup>165</sup> and any disability payments due the deceased.<sup>166</sup> The laws do not, however, provide that the decedent's domestic partner may claim any such benefits and the legal establishment of domestic partnerships under the DPA did not address this deficiency.

#### *D. LEGAL STANDING FOR CIVIL SUITS*

The New Jersey Death Act allows the administrator of a decedent's estate to file a claim based on a tort theory of wrongful death in the event that a spouse is killed either intentionally or unintentionally.<sup>167</sup> However, the law limited the recovery of any proceedings from such an action to persons entitled to take an intestate share of the decedent's estate.<sup>168</sup> The 2006 amendment to the DPA granted domestic partners an intestate share of their partner's estate, and in effect also granted standing to sue for wrongful death.

The discussion in this section highlights the existence of additional rights of marriage beyond those given to domestic partners. Not all of these differences between marriage and domestic partnership will have fiscal implications. However, the income tax filing provision will likely change the taxes owed by same-sex couples that marry.

---

shares or to the guardian of all minor children, father and mother, sisters and brothers, or to the person who pays funeral expenses).

<sup>164</sup> N.J. STAT. ANN. § 34:15-12(e) (West 2006).

<sup>165</sup> N.J. STAT. ANN. §§ 34:15-13(f), (j) (West 2006).

<sup>166</sup> N.J. STAT. ANN. § 43:21-42 (West 2006) (benefits go to a surviving spouse, or such other person or persons who may be legally entitled thereto, may file to claim any remaining payments).

<sup>167</sup> N.J. STAT. ANN. § 2A:31-2 (West 2006).

<sup>168</sup> N.J. STAT. ANN. § 2A:31-4 (West 2006).

## II. THE NUMBER OF COUPLES AFFECTED

One of the most important factors determining the fiscal impact of either the New Jersey Domestic Partnership Act or marriage equality is the number of people who register or marry. Our earlier analysis of the DPA made predictions based on the broad definition of domestic partnerships in earlier versions of the bill, including both same-sex and different-sex couples, and on the basis of other states' experiences. Here we use the new definition in the DPA, as enacted, as well as the benefit of hindsight to better refine our estimate of domestic partnerships and marriages.

### A. ESTIMATING THE NUMBER OF REGISTERED DOMESTIC PARTNERS

In estimating the number of registered domestic partners, we start with the pool of couples that meet the requirements for a domestic partnership under the DPA. The Act allows all same-sex couples and those different-sex couples in which both partners are age sixty-two or older to register as domestic partners if they meet the following criteria:<sup>169</sup>

1. Both persons share a common residence;
2. Both persons are otherwise jointly responsible for the each other's common welfare as evidenced by joint financial arrangements or joint ownership of personal or real property;
3. Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership;
4. Neither person is related by blood, a spouse in a marriage recognized by New Jersey law or a member of another domestic partnership;
5. Both persons have chosen to share each other's lives in a committed relationship of mutual caring;
6. Both persons are at least 18 years of age; and
7. Both persons file jointly an Affidavit of Domestic Partnership.

---

<sup>169</sup> N.J. STAT. ANN. § 26:8A-4(b)(1) to (9) (West 2006).

In addition, individuals who have been in a prior domestic partnership that was terminated must wait at least 180 days before entering into another.

Not all couples that meet these criteria will necessarily register as domestic partners. The choice to enter a legally binding relationship such as marriage or domestic partnership involves many considerations for couples. At the very least, the decision is likely to include weighing the symbolic value of public and legal recognition of the relationship, the particular rights and responsibilities implied by the legal status of domestic partnership, and any other possible legal options for the relationships (such as marriage for qualifying *different-sex* couples).

To estimate the number of domestic partner registrations, we first calculate the pool of eligible same- and different-sex couples that meet three of the basic eligibility requirements: sharing a residence, being over 18, and being unmarried. Using Census 2000 data, we found 16,604 cohabiting *same-sex couples*<sup>170</sup> and 134,714 cohabiting *different-sex couples* living in New Jersey.<sup>171</sup> Of the cohabiting different-sex couples, only 2.5 percent, or 3,368 meet the age requirement to register under the DPA.<sup>172</sup> Next we estimate how many of the almost 20,000 couples counted in the Census also meet both the joint responsibility and committed caring requirements. Of those who meet the additional requirements, predicting how many of these couples would actually register as domestic partners is difficult.

---

<sup>170</sup> Unless cited otherwise, in this section we use our own calculations from the 5% Public Use Microdata Sample (PUMS) from the U.S. Census Bureau. U.S. CENSUS BUREAU, CENSUS 2000, 5-PERCENT PUBLIC USE MICRODATA SAMPLE FILES (2003) [hereinafter U.S. CENSUS BUREAU 5% PUMS], <http://www.census.gov/Press-Release/www/2003/PUMS5.html>; see also Ruth Padawer, *Gay Couples, at Long Last, Feel Acknowledged*, THE RECORD, Aug. 15, 2001, at 14.

<sup>171</sup> Tavia Simmons & Martin O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, CENSUS 2000 SPECIAL REPORTS (2003) [hereinafter Simmons & O'Connell], available at <http://www.census.gov/prod/2003pubs/censr-5.pdf>.

<sup>172</sup> U.S. CENSUS BUREAU 5% PUMS, *supra* note 170.

To make the best estimate of domestic partner registrations, our original report looked to the experience of California,<sup>173</sup> which for several years provided a legal registration process for all same-sex couples and those different-sex couples with one partner aged 62 or older that was much less comprehensive than marriage. As of 2003, when California's domestic partnership law resembled New Jersey's DPA package of limited rights and responsibilities, the number of couples registered in California equaled 22% of that state's total count of same-sex couples.<sup>174</sup> This count was taken prior to 2005, when California passed legislation granting domestic partners almost all the rights or marriage.<sup>175</sup>

As it turns out, data from actual partnership registrations confirm our expectation that the vast majority of domestic partner registrations will be made up of same-sex couples, most likely because different-sex couples have the option of marrying. The count of same-sex registrations is 24% of the total number of same-sex couples in New Jersey.<sup>176</sup> As for different-sex couples, one informal count of California data found only 5-6% of the total number of registered domestic partnerships were different-sex couples.<sup>177</sup> In New Jersey, of the 4,111 couples that

---

<sup>173</sup> California also allows different-sex couples with one partner 62 or over to register for its statewide domestic partner status, making that state's experience potentially useful for estimating the number of couples who might register. Unfortunately, California does not distinguish between same-sex and different-sex couples in its records. *Putting a Price on Equality?*, *supra* note 1, at 202-03.

<sup>174</sup> See M.V. LEE BADGETT & R. BRADLEY SEARS, EQUAL RIGHTS, FISCAL RESPONSIBILITIES: THE FISCAL IMPACT OF AB205 ON CALIFORNIA'S BUDGET 20 n.6 (2003) [hereinafter BADGETT & SEARS], <http://www.law.ucla.edu/williamsinstitute/AB205/AB205Study1.pdf>.

<sup>175</sup> Domestic Partner Rights and Responsibilities Act of 2003, CAL. FAM. CODE § 297 (2006); see also CAL. REV. & TAX CODE § 17021.7 (2006) (allowing taxpayer to claim their domestic partner as a spouse).

<sup>176</sup> E-mail from Maria L. Baron, Ctr. for Health Statistics, N.J. Dep't of Health & Human Senior Services, to Deborah Ho (Nov. 9, 2006) [hereinafter E-mail from Maria L. Baron] (on file with authors).

<sup>177</sup> E-mail from Susan Cochran, Dep't of Epidemiology, UCLA, to M.V. Lee Badgett (June 8, 2005) (on file with authors).

registered as domestic partners between July 2004 and May 2006, only 90 were different-sex couples (or 2% of all domestic partnerships).<sup>178</sup>

From the perspective of the state budget, whether domestic partners are same-sex or different-sex couples matters little. What matters is the number of couples actually registering. However, the distinction matters for the analysts, who must use some basis for predicting the number of registrations. Furthermore, the distinction matters for comparisons of the fiscal impact of the DPA with the impact of marriage equality for same-sex couples, since any additional fiscal effect of marriage equality depends on how many more same-sex couples formalize their relationship through marriage instead of domestic partnership.

Since our earlier predications were so close to the actual numbers of domestic partnership registrations in New Jersey at this time, we retain our original prediction that 22% of same-sex couples will register in the future as domestic partners in order to facilitate comparisons with our earlier report. We do not further consider or distinguish the number of different-sex couples registering as partners.

## B. ESTIMATING THE NUMBER OF SAME-SEX COUPLES WHO WOULD MARRY

We have only one state with which to estimate directly the proportion of same-sex couples who would marry. In Massachusetts, 8,171 same-sex couples have married, constituting 48% of the count of that state's same-sex couples in Census 2000.<sup>179</sup> Two other states have had experience with civil unions and domestic partnerships, which are legal statuses different from marriage that provide a significant package of the rights and responsibilities that states can offer to couples. In Vermont, the number of in-state civil unions since 2000

---

<sup>178</sup> E-mail from Maria L. Baron, *supra* note 176.

<sup>179</sup> Dan Ring, *8,100 gay, lesbian couples marry after 2004 decision*, The Republican, May 17, 2006, available at <http://mass.live.advance.net/news/topstories/index.ssf?/base/news-0/114787085559880.xml&coll=1&thispage=1>; see also Simmons & O'Connell, *supra* note 171.

accounts for 57% of such couples.<sup>180</sup> In California, the number of domestic partnerships increased with the addition of significant new rights and responsibilities. From January 1, 2000 through July 31, 2006, 38,963 couples registered their partnerships, or 42% of California's same-sex couples.<sup>181</sup> Since the take-up rates for these three states cluster around 50%, we assume that half of New Jersey's same-sex couples, or 8,300 couples, would marry if they had the option.

For the purpose of this analysis, a more precise estimate of the percentage of unmarried same-sex couples marrying or registering as domestic partners is not required for us to conclude that either policy will have a net positive impact on New Jersey's budget. The main thrust of our findings is not sensitive to the number of couples marrying or registering since the effects are, for the most part, offsetting. In other words, if more unmarried couples marry or register than we estimate, savings in state benefits and added tax revenue will offset any additional costs for providing state employee benefits and any additional loss in inheritance tax revenues. Conversely, if fewer couples marry or register than we estimate, then both the savings and any costs of marriage equality or the DPA will decrease.

### III. FISCAL IMPACT OF THE DOMESTIC PARTNERSHIP ACT AND MARRIAGE ON NEW JERSEY'S STATE BUDGET

The enactment of the Domestic Partnership Act (DPA) extended the limited set of rights, benefits, and responsibilities to same-sex couples described above in Section I. Permitting such couples to marry would extend the rest of marital rights under state law to them. This expansion of rights is likely to have an impact on the state budget in the areas of taxation, health benefits provision, court and administrative costs. To

---

<sup>180</sup> E-mail from Richard McCoy, Office of Vital Records, Vermont Department of Health, to R. Bradley Sears (July 11, 2005) (on file with authors).

<sup>181</sup> E-mail from the Special Filings/Domestic Partnership Section, Secretary of State's Office, State of California, to M.V. Lee Badgett (Aug. 18, 2006) (on file with authors); *see also* Simmons & O'Connell, *supra* note 171.



facilitate the presentation of the fiscal effect of either domestic partnership or marriage equality, for each expenditure or revenue category we address, we first outline the expected policy impact. Where we predict an impact, we then make separate predictions for domestic partnership and for marriage equality. In some cases the different fiscal impact of marriage over the DPA arises from an additional right; in other cases the different fiscal impact of marriage arises because we predict that more same-sex couples will marry than will register domestic partnerships.

## A. IMPACT ON TAX REVENUES

### 1. INCOME TAX

The DPA allowed a taxpayer to claim an additional \$1,000 personal exemption for a domestic partner who does not file separately.<sup>182</sup> Since the DPA does not allow for filing jointly, this provision is only useful when one partner is not filing an income tax return, i.e., for those taxpayers whose partners have no taxable income. Thus, the number of these new exemptions actually claimed is likely to be quite small. Currently if a non-filing partner meets the IRS criteria for being a “dependent,” a situation that is likely when a partner has no taxable income, then the taxpayer can already claim a \$1,000 or \$1,500 exemption on a New Jersey tax return, depending on the status of the partner. Therefore, we conclude that the fiscal impact from this provision of the DPA is negligible, resulting in no change in income tax revenue.<sup>183</sup>

Marriage equality is likely to have an impact on state income tax revenue, however. Same-sex couples would be able to file jointly, as different-sex married couples now do. To estimate

---

<sup>182</sup> N.J. STAT. ANN. § 54A:3-1 (West 2006).

<sup>183</sup> The Legislative Budget and Finance Office also conducted an estimate regarding the potential impact of the gross income tax provision of the DPA, and concluded that there would be “minimal impact” because this provision would only apply if one of the partners had taxable income and the other did not. LEGISLATIVE BUDGET AND FINANCE OFFICE, LEGISLATIVE FISCAL ESTIMATE, SENATE COMMITTEE SUBSTITUTE FOR SENATE, NO. 2820 (2004), available at [http://www.njleg.state.nj.us/2002/Bills/S3000/2820\\_E1.PDF](http://www.njleg.state.nj.us/2002/Bills/S3000/2820_E1.PDF).



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 New Jersey gathered by the Census Bureau’s 1% and 5% Public Use Microdata Samples (PUMS).<sup>184</sup> We use the Census data on total income and number of children in a household to estimate each couple’s taxes twice. 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 married and filed jointly. Using these estimates, we calculate the difference between their pre- and post-joint filing taxes. Some couples’ taxes will rise; other couples’ taxes will fall. We add up the couples’ changes to calculate the net effect of marriage equality on the State’s revenue.

In this analysis, we assume that the tax consequences of marriage will have no impact on who enters a marriage. We make this assumption for several reasons. First, social scientists have conducted extensive research on the federal “marriage penalty,” the situation in which some married couples pay more taxes when they marry than if they remain single. Overall, the research suggests that the marriage penalty has, at most, a very small impact on the likelihood that a couple will marry.<sup>185</sup> Therefore, it seems reasonable to assume that the change in

---

<sup>184</sup> See U.S. CENSUS BUREAU, CENSUS 2000: NEW JERSEY LONG FORM CENSUS DATA, 1% PUBLIC USE MICRODATA SAMPLE (2003) [hereinafter U.S. CENSUS BUREAU 1% PUMS], available at <http://www.census.gov/Press-Release/www/2003/PUMS.html>; and U.S. CENSUS BUREAU 5% PUMS, *supra* note 170. We thank Dr. Gary Gates of the Williams Institute for supplying us with an extract of the 1% and 5% Public Use Microdata Sample (PUMS) from Census 2000. The 1% and 5% PUMS provide data on a representative sample of the same-sex couples in New Jersey. The PUMS provides each individual’s total income from all sources in 1999. We used the Consumer Price Index to inflate the 1999 dollars to 2006 dollars. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, CONSUMER PRICE INDEXES, [hereinafter BUREAU OF LABOR STATISTICS], available at <http://www.bls.gov/cpi/home.htm> (last visited Nov. 15, 2006).

<sup>185</sup> See 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 has a relatively small effect on an individual woman’s decision to marry whereas there is statistically no significant negative effect on men and that the size of the actual effect depends on the characteristics of the individual, which is higher for some groups of women, but still relatively small compared with the impact of other factors on the probability of marriage).

filing status will also have little effect on the number of same-sex couples who will marry. 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.<sup>186</sup>

We must make several assumptions in order 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 18 years old are living in the household, and that this person’s unmarried partner will file as single.<sup>187</sup> The “head of household” status involves lower tax rates compared to single filers.<sup>188</sup> We also assume that if same-sex couples were allowed to marry, 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 wed.

We then calculate taxes twice, with and without the joint filing status. Given the available data, we used a simplified tax simulation for our estimates. To calculate New Jersey gross income, we added together all forms of income reported by each partner on Census 2000. We adjusted income by assuming each partner claimed one exemption apiece if single, another if over 65, and one dependent exemption per own child. We then applied the 2005 New Jersey state tax schedule to calculate the

---

<sup>186</sup> See ELLEN LEWIN, *RECOGNIZING OURSELVES: CEREMONIES OF LESBIAN AND GAY COMMITMENT* (1998); *LESBIAN AND GAY MARRIAGE: PRIVATE COMMITMENTS, PUBLIC CEREMONIES* (Suzanne Sherman, ed. 1992).

<sup>187</sup> Determination of head of household status is complex, but an unmarried person with a dependent child is likely to be qualified. See *FILING STATUS*, *supra* note 134, at 2-3.

<sup>188</sup> N.J. DIV. OF TAXATION, 2005 NJ-1040 TAX RATE SCHEDULES, INSTRUCTIONS FOR THE NJ-1040 70 (2005) [hereinafter *INSTRUCTIONS FOR THE NJ-1040*], available at [http://www.state.nj.us/treasury/taxation/pdf/other\\_forms/tgi-ee/2005/051040i.pdf](http://www.state.nj.us/treasury/taxation/pdf/other_forms/tgi-ee/2005/051040i.pdf).

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 model shows that state income taxes would increase for approximately 58% of same-sex couples in New Jersey if they could file jointly as married couples. The average increase in their taxes would be \$332. The couples that would pay higher taxes if married are generally those where one partner previously filed as head of household or where partners had relatively similar incomes. For 6% of couples, filing jointly would have no impact on their taxes and 36% would see their taxes fall. The average decrease in taxes for those couples would be \$371.

Table 1 presents the average and total changes in income taxes paid by couples in the three categories. Assuming that 50% of these individuals will marry, as per our discussion in Section II, then the projected increase in income tax revenue is slightly over \$500,000.

**TABLE 1: Summary of Income Tax Revenue Calculations**

<b>Type of couple</b>	<b>Percent of couples</b>	<b>Average change in taxes per couple</b>	<b>Total change</b>
Taxes Increase	58%	\$332	\$3,512,548
Taxes Same	6%	\$0	\$0
Taxes Decrease	36%	-\$370	-\$2,489,777
<b>Net Change in Income Tax Revenue</b>	—	—	<b>\$1,022,771</b>
<b>TOTAL ESTIMATED INCOME TAX REVENUE</b>	—	—	<b>\$511,386</b>

*2. SALES TAX REVENUE*

Giving same-sex couples the right to marry would likely increase spending on wedding-related goods and services by in-state same-sex couples and by out-of-state couples. Presently, the only state that allows same-sex couples to marry is Massachusetts, but that state forbids marriages of non-residents

that would be illegal in the their state of residence.<sup>189</sup> Therefore, if New Jersey were to allow same-sex couples to marry regardless of residency status, the state's businesses could experience a large increase in wedding and tourism revenue that would also result in an increase in sales tax revenue. We would not expect the DPA to create a similar effect, since domestic partnerships would have no meaning outside of New Jersey. Indeed, only 30 out-of-state couples registered as domestic partners in 2004, constituting only 1% of all couples registering in that year, the only year that such figures are available.<sup>190</sup>

Below in Section IV we outline our estimates of the new spending by same-sex couples. In addition to boosting the state economy, the State government, as well as local governments through add-on sales tax and additional occupancy taxes, would directly benefit from this increased spending through the state retail sales tax. Based on our analysis presented in Section IV, we estimate that a decision by New Jersey to allow same-sex couples to wed could result in approximately \$307.5 million in additional spending on weddings and tourism in the State. Since New Jersey imposes a tax of 7% on the sale of certain services,<sup>191</sup> this spending could generate approximately \$21.5 million in tax revenue, with \$5.15 million from in-state couples and \$16.37 million from out-of-state couples. Tax revenue could well be higher, depending on how much of this spending is for hotel accommodations, which are taxed at a higher rate.

We also 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.

---

<sup>189</sup> MASS. GEN. LAWS ch. 207, § 11 (1998) (Massachusetts has interpreted a 1913 marriage evasion law to forbid a majority of such marriages).

<sup>190</sup> E-mail from Maria L. Baron, *supra* note 176.

<sup>191</sup> N.J. DIV. OF TAXATION, NEW JERSEY SALES TAX GUIDE, BULLETIN S&U-4 2 & 23 (2006) [hereinafter N.J. DIV. OF TAXATION], *available at* <http://www.nj.gov/treasury/taxation/pdf/pubs/sales/su4.pdf>.

### 3. INHERITANCE TRANSFER TAX REVENUE

The New Jersey Domestic Partnership Act affects the amount of revenue that the State collects from its transfer inheritance tax. Marriage equality would have an additional effect since we predict that more couples will marry than will register for domestic partnerships.

The New Jersey transfer inheritance tax is not paid by the estate of the deceased, but rather by the individuals who receive property from the estate. The rate and amount of the tax depend upon the beneficiary's relationship to the decedent. A spouse, child, grandchild, parent, and grandparent of the decedent are all considered Class A beneficiaries and pay no transfer inheritance tax.<sup>192</sup> On the other hand, distant relatives and friends of the decedent are considered Class D beneficiaries and subject to a 15% taxation rate on any bequest between \$500 and \$700,000, and a rate of 16% for any amount in excess of \$700,000.<sup>193</sup> Prior to the enactment of the DPA, an unmarried partner of a decedent would be considered a Class D beneficiary and subject to the consequent transfer inheritance tax rate.

The DPA changed this taxation structure by making both same- and different-sex domestic partners, where both individuals are age 62 or older, equivalent to spouses, i.e., Class A beneficiaries, and thus exempt from the transfer inheritance tax.<sup>194</sup> This change reduces revenues from the transfer inheritance tax to the extent that those who register as domestic partners, or would marry, are leaving bequests to their partners that would have been taxed prior to the DPA or marriage.

Estimating the precise impact on inheritance tax revenues is complicated. Same-sex couples will vary in terms of the size of their estates, the extent that they currently choose to leave all or part of their estates to their partners versus other beneficiaries, and the measures they already take to mitigate the taxation of transfers to their partners. Accordingly, we estimate the impact of the DPA and marriage equality on inheritance tax revenues by

---

<sup>192</sup> INSTRUCTIONS FOR THE NJ-1040, *supra* note 188, at 1; N.J. STAT. ANN. § 54:34-2(a)(1) (West 2006).

<sup>193</sup> INSTRUCTIONS FOR THE NJ-1040, *supra* note 188, at 1; § 54:34-2(d).

<sup>194</sup> N.J. REV. STAT. § 54:34-1 (West 2006).

using the most recent and reliable aggregate data available about same-sex couples and the most conservative (tax-generating) assumptions about them.

#### A. MORTALITY OF DOMESTIC PARTNERS

To determine the impact on inheritance tax revenues, we first must estimate the number of individuals in registered domestic partnerships or future same-sex marriages who will die each year. To do so, we double the number of same-sex couples in New Jersey counted in Census 2000, or 16,604,<sup>195</sup> to determine the number of individuals in those couples. We then use New Jersey's annual age-adjusted death rate (.0085)<sup>196</sup> to estimate the mortality for individuals in these couples. Multiplying these numbers together gives us an estimated 282 people who will die each year who are also part of a same-sex couple.

Next, as explained in Section II, we estimate that 22% of same-sex couples will register as domestic partners<sup>197</sup> and 50% would marry if allowed.<sup>198</sup> Based on this analysis, we estimate that under the DPA, 62 individuals in registered partnerships in New Jersey will die, on average, each year. If the State extended marriage to same-sex couples, our estimate increases to 141

---

<sup>195</sup> Simmons & O'Connell, *supra* note 171, at 4 tbl. 9.

<sup>196</sup> CTR. FOR HEALTH STATISTICS, N. J. DEP'T OF HEALTH AND SENIOR SERVICES, MORTALITY, NEW JERSEY HEALTH STATISTICS 2000 tbl. M1 and Fig. M1 (2003), available at <http://www.state.nj.us/health/chs/stats00/mortality.htm>. Using the overall age-adjusted rate most likely overestimates the number of individuals in registered domestic partnerships who will die annually. This is one of the conservative assumptions that we build into this model. The death rate for individuals in these couples is likely to be lower because younger individuals tend to be in unmarried cohabitating couples, and will have a lower death rate. For example, the data collected in Census 2000 reveals that individuals in different-sex unmarried couples are, on average, over a decade younger than individuals in married couples. See U.S. CENSUS BUREAU 1% PUMS, *supra* note 184.

<sup>197</sup> BADGETT & SEARS, *supra* note 174.

<sup>198</sup> See Simmons & O'Connell, *supra* note 171, at 4 tbl. 2 (indicating number of unmarried-partner households by state, including Vermont, California, and New Jersey as of the year 2000).

same-sex spouses. In other words, allowing same-sex couples to marry would add 79 decedents whose bequests to a same-sex partner would not be taxed.

### *B. MEDIAN TRANSFER INHERITANCE TAX FOR SURVIVING UNMARRIED PARTNERS*

Next, we must estimate the median tax that would be paid by decedents' surviving same-sex partners if neither the DPA nor marriage equality existed. For this analysis, we use the median net worth of households in the United States from the 2004 Survey of Consumer Finances, adjusted for inflation.<sup>199</sup> We do not use the median net worth for all couples, but instead the median net worth for couples falling into five percentile groups in terms of net worth. This allows us to capture the fact that, depending on the size of the decedent's estate, some surviving partners would have paid no inheritance tax while others would have paid a great deal. We then divide the median household net worth for each percentile group by two, assuming that unmarried couples roughly share the assets and liabilities in their households.<sup>200</sup>

Next, we reduce the estimated value of these estates by the three primary sets of deductions to the inheritance tax: 1) unpaid debts of the decedent, 2) probate expenses, and 3) funeral expenses.<sup>201</sup> The first set of deductions and debts are already accounted for in our analysis by our use of median net

---

<sup>199</sup> Brian K. Bucks et al., *Recent Changes in U.S. Family Finances: Evidence from the 2001 and 2004 Survey of Consumer Finances*, FED. RES. BULL. A8 tbl. 3 (2006), available at <http://www.federalreserve.gov/Pubs/Bulletin/2006/financesurvey.pdf>.

<sup>200</sup> While a more inequitable distribution obviously exists in many couples, it is also true that it is just as likely that the wealthier individual in a couple will die as the one with less wealth. Thus, over a large group of people, a better estimate of individual net worth, and the subsequent value of an individual's estate upon death, is reached by dividing the household net worth in two and attributing half to each member of the couple.

<sup>201</sup> N.J. DIV. OF TAXATION, SCHEDULE "D" DEDUCTIONS CLAIMED AND INSTRUCTIONS FOR SCHEDULE "D," TRANSFER INHERITANCE AND ESTATE TAX – TAX RESIDENT RETURN IT-R 16-17 (2005), available at [http://www.state.nj.us/treasury/taxation/pdf/other\\_forms/inheritance/itrbk.pdf](http://www.state.nj.us/treasury/taxation/pdf/other_forms/inheritance/itrbk.pdf).



worth to estimate the decedent's estate. For the second set of deductions, we use estimates of the average cost to probate an estate in the United States, 2% to 10% of the value of the estate.<sup>202</sup> We use 5% of the value of the estate as an estimate of the average probate cost.<sup>203</sup> To estimate funeral expenses we use the current average cost of an adult funeral in the United States, \$6,500.<sup>204</sup>

In order to determine the decedent's bequest to his or her unmarried partner, we next take into account two common types of bequests that do not generate inheritance taxes: those to the decedent's children and to charities.

Many of the couples who register as domestic partners under the DPA or marry will have children: 30% of unmarried same-sex couples in New Jersey have children under 18 present in their households.<sup>205</sup> Some individuals in these couples will leave

---

<sup>202</sup> AM. ASS'N OF RETIRED PERSONS, A REPORT ON PROBATE: CONSUMER PERSPECTIVES & CONCERNS (1990) (concluding that the average cost of probate is between 2% to 10% of gross estate).

<sup>203</sup> This is also a conservative estimate because the percentages for average probate costs are based on the gross estate as opposed to the net worth estate, which we use in our analysis. The average executor fee for probating an estate in New Jersey is 5% for the first \$200,000, 3.5% for the next \$800,000 and 2% for any amount over \$1 million. Conversation with Kevin Wolfe, Chief Civil Practice Liaison, N.J. Admin. Office of the Cts. (Nov. 22, 2006). This percentage does not include attorney's fees, which vary by estate according to the complexity of the probate process. Thus, since more than 95% of our sample has a net worth of \$200,000 or less, the use of 5% of the estate as the average probate costs in our analysts only slightly underestimates the amount of inheritance tax the state would receive. The reality is that so few of the individuals in our sample would benefit from the reduced probate rate, that the actual difference in inheritance taxes is negligible.

<sup>204</sup> NAT'L FUNERAL DIRECTORS ASS'N, NFDA FACT SHEETS, <http://www.nfda.org/nfdafactsheets.php> (last visited Nov. 1, 2006) (average cost of an adult funeral in the United States, as of July 2004, is \$6,500).

<sup>205</sup> Simmons & O'Connell, *supra* note 171. The percentage used for same-sex households is a weighted average based on this data. Since same-sex couples are 50% male and 50% female in New Jersey, the weighted average is simply the average of males reporting children under 18 present (25.8%) and females reporting children under 18 present (34.7%). *Id.* The weighted average of 30% does not change depending on whether data on householders' own children, or their own children and/or unrelated children is used. For different-sex couples, we use data on the householders own children and/or unrelated children, assuming that primarily the children unrelated to the householder will



all or a portion of their estate to their children. It is difficult to estimate how many individuals will bequeath all or a share of their estate to their children. Studies of married couples reveal that a majority of married testators, 50% to 85%, leave everything to their surviving spouse, even when they have surviving children.<sup>206</sup> However, unmarried couples probably leave bequests to their children at higher rates than married couples. This is likely because doing so will avoid New Jersey's transfer inheritance tax and, for some, the federal estate tax. In addition, individuals in such couples have a greater incentive to transfer assets directly to their children because their surviving partner, in many cases, will have no legally recognized relationship and consequent obligation to care for such children.

For our analysis, we make the conservative assumption that only 10% more individuals in unmarried couples will make bequests to their children than the lowest estimate of married individuals who make transfers to their children.<sup>207</sup> Thus, we assume that 25% of individuals in unmarried couples with children will leave a portion of their estate to their children.<sup>208</sup> We estimate that, on average, these individuals will leave half of their estates to their children. We then calculate a weighted average for bequests to children, 3.75%, for all individuals in unmarried partnerships.<sup>209</sup>

---

be related to the householder's unmarried partner. For this data, "own children" refers to the sons/daughters of the householder. *Id.* Use of these statistics will undercount the percentage of decedents with bequests to children, because this data does not capture couples that only have children who are over 18.

<sup>206</sup> J. Thomas Oldham, *What Does the U.S. System Regarding Inheritance Rights of Children Reveal About American Families?*, 33 FAM. L.Q. 265, 269 n.18 (1999).

<sup>207</sup> *Id.*

<sup>208</sup> Obviously, some individuals might leave all of their estates to their children while others may only leave a fraction of their estates. We choose 50%, in part, based on our conservative assumption about the percentage of unmarried individuals who are leaving a portion of their estate to their children.

<sup>209</sup> Thus, we assume that 70% of individuals in same-sex couples in New Jersey do not have children and will have no bequests to children. Of the 30% that do have children, we assume that three-fourths will leave nothing to their children and that the other one-fourth will leave a bequest of 50% of their estate

Next, we account for the fact that many individuals, particularly those with larger estates, will have charitable bequests, the largest form of bequests made overall in the United States after bequests to surviving spouses.<sup>210</sup> Both New Jersey and the IRS exempt such bequests from taxation.<sup>211</sup> While a recent study revealed that 8% of the population has included charitable bequests in their estate plans, the best information about charitable bequests comes from federal estate tax returns, which in recent years have only been required for estates worth over \$600,000.<sup>212</sup> The data about such returns indicate that the frequency and size of charitable bequests increase with the value of the estate.<sup>213</sup>

Accordingly, we only calculate a charitable deduction for our top quartile of individuals. We assume these individuals would have charitable bequest patterns similar to decedents filing federal estate tax returns: on average 19% will make charitable bequests and such bequests will represent 14% of their net estate.<sup>214</sup> We use these statistics to create a weighted average charitable deduction of 3% for all decedents falling in our top quartile. Again, these estimates are conservative because it is probable that members of same-sex couples in New Jersey would be more likely to make more and larger charitable bequests than members of married couples in order to avoid the

---

to their children. Thus, the weighted average for the size of the bequest to children is  $[(70*0) + (22.5)*(0) + (7.5)*(.50)]/100$ .

<sup>210</sup> INTERNAL REVENUE SERVICE, ESTATE TAX RETURNS FILED IN 2001: GROSS ESTATE BY TYPE OF PROPERTY, DEDUCTIONS, TAXABLE ESTATE, ESTATE TAX, AND TAX CREDITS, BY SIZE OF GROSS ESTATE, SOI [hereinafter INTERNAL REVENUE SERVICE] (unpublished data), available at <http://www.irs.gov/pub/irs-soi/01es01fy.xls>; Gary D. Bass & John S. Irons, *The Estate Tax and Charitable Giving*, OMB WATCH (2003) [hereinafter Bass & Gates].

<sup>211</sup> See N.J. STAT. ANN. § 54:34-4(d) (West 2006) and I.R.C. § 2522(a) (West 2005).

<sup>212</sup> NATIONAL COMMITTEE ON PLANNED GIVING, PLANNED GIVING IN THE UNITED STATES 2000: A SURVEY OF DONORS (2000).

<sup>213</sup> INTERNAL REVENUE SERVICE, *supra* note 210, at tbl. 1; Bass & Gates, *supra* note 210.

<sup>214</sup> See *supra* note 213.

tax consequences of leaving bequests to their unmarried partners.

After these deductions are taken out, we make two very conservative assumptions. First, we assume that the remainder of the decedent's estate will be left to their unmarried partner. Second, we assume that the decedent has deployed no other estate planning strategies to reduce their surviving partner's inheritance tax liability, or the tax liability of their estate in general. It is quite likely that in order to avoid inheritance taxes, decedents with unmarried partners, especially wealthy ones, leave portions of their estate to other Class A beneficiaries and take other measures to reduce their unmarried partners' tax burden.

Finally, to estimate the median tax burden for surviving unmarried partners in each percentile group, we multiply the Class D taxation rate, 15%, with our estimated median bequests to surviving unmarried partners.<sup>215</sup> Table 2 summarizes each of these steps to arrive at the expected tax for each net worth grouping.

TABLE 2: Estimated Median Transfer Inheritance Tax for Unmarried Partners by Percentiles Based on Household Net Worth (\$USD)

Percentile Group by Net Worth	A.	B.	C.	D.	E.	F.	G.
	Median Household Net Worth**	Individual Net Worth (A*.5)	Probate Expenses (B*.95)	Funeral Expenses (C-6500)	Bequests to Children [D-(B*.0375)]	Charitable Bequests [E-(B*.03)] (top 25%)	Tax (F*.15)
Less than 25%	1,826	913	867	0	0	0	0
25%-50%	46,831	23,416	19,380	12,880	11,124	11,124	1,669
51%-75%	183,351	91,676	74,385	67,885	61,009	61,009	9,151
76-90%	544,361	272,180	204,345	197,845	177,431	177,431	26,615
91-100%	1,536,089	768,045	618,403	761,545	703,941	680,900	102,135

\*\*Inflated to 2006 dollars using the U.S. Dep't of Labor Consumer Price Index inflation calculator.

<sup>215</sup> N.J. STAT. ANN. § 54:34-2(d) (West 2006).

### C. AGGREGATE IMPACT ON TRANSFER INHERITANCE TAX REVENUES

To determine the aggregate impact of the DPA and marriage on transfer inheritance tax revenues, we multiply our estimated number of domestic partners dying under the DPA and marriage equality scenarios by our estimate of the median tax burden for surviving partners in each percentile group. We do this by dividing the estimated numbers of such decedents into our net worth percentile groups, and then multiplying them by the median tax burden for each group. We then add the aggregate tax burdens for each group together to estimate the total impact on transfer inheritance tax revenues.

Accordingly, using the most conservative assumptions available, we estimate that the DPA will result in a loss of transfer inheritance tax revenues of slightly over \$1 million per year. Marriage equality would add another \$1.4 million lost, for a total of \$2.4 million. This represents a loss of less than 1% of New Jersey's current net revenues from its transfer inheritance and estate taxes.<sup>216</sup>

### 4. OVERALL TAX IMPACT

As the above analysis demonstrates, the overall tax revenue impact of the DPA and allowing same-sex marriage in New Jersey is a \$5.3 million annual gain for the state budget, as shown in Table 3. Although the extension of certain tax benefits to domestic partners alone results in lower revenue, the impact is relatively small compared with the total amount collected in inheritance transfer tax.

---

<sup>216</sup> N. J. DIV. OF TAXATION, DEP'T OF THE TREASURY, TRANSFER INHERITANCE AND ESTATE TAX, 2004 ANNUAL REPORT 45-7 (2005), available at <http://www.state.nj.us/treasury/taxation/pdf/annual/2004.pdf>. In 2004, New Jersey collected \$516,007,975 in inheritance tax. *Id.* The Domestic Partnership Act will have no impact on New Jersey's Estate Tax, because that tax is applied to the entire value of the holdings left by a person when he or she dies, regardless of how the estate is disbursed to beneficiaries. See N.J. STAT. ANN. § 54:38-1 (West 2006) (requiring that an estate or transfer tax be paid with respect to property owned by the decedent).

TABLE 3: Summary of Annual Tax Impact for New Jersey

<b>Tax Type</b>	<b>Domestic Partnership Act</b>	<b>Marriage equality</b>
Income Tax	—	500,000
Sales Tax	—	7,200,000
Inheritance Transfer Tax	(1,000,000)	(2,400,000)
<b>TOTAL</b>	<b>\$ (1,000,000)</b>	<b>\$ 5,300,000</b>

## B. EXPANSION OF HEALTH CARE BENEFITS FOR STATE EMPLOYEE'S DOMESTIC PARTNERS

### 1. STATE EMPLOYEE BENEFITS

Before the passage of the Domestic Partnership Act (DPA), the State of New Jersey provided certain fringe benefits to its employees that also covered legal spouses. The State continues to subsidize health insurance benefits for their employee's spouses, and provides certain retirement-related and death benefits to the spouses of employees and retirees. The enactment of the DPA granted eligibility to state employees' *same-sex* registered domestic for spousal benefits.<sup>217</sup> As a result, both the number of persons covered as well as the State's total cost of providing benefits undoubtedly increased as some employees signed up same-sex partners. In this section we estimate the impact of covering partners on State benefit costs by applying realistic estimates of the number of new domestic partners.

Given the very specific and direct economic incentive of enrolling a partner for health care benefits, we do not predict that extending marriage to same-sex couples will result in any additional state employees enrolling spouses for benefits than would do so under the DPA. Since under the Act, the State allows employees to enroll their same-sex domestic partner in

<sup>217</sup> See generally N.J. STAT. ANN. § 52:14 (West 2006) (defining dependents to include "an employee's spouse, or an employee's domestic partner"). The Domestic Partnership Act did not however, extend these benefits to state employee's registered *different-sex* domestic partners. N.J. STAT. ANN. § 26:8A-2(e) (West 2006).

the State Health Benefits Program (SHBP), we assume that this incentive has led the vast majority of state employees who would choose to enroll their partner to have already done so under the DPA. Therefore, we anticipate that granting marriage equality will not result in any additional employee benefit costs to the State over those already accrued by passing the DPA.

#### A. HEALTH AND DENTAL BENEFITS FOR EMPLOYEES

The State Health Benefits Program includes medical coverage, prescription drug coverage, and dental coverage through a variety of plans. Employees (active employees and, in some cases, retirees), their legal spouses, and their children are covered by the state plan. These benefits are funded by employee contributions and by state contributions. The SHBP also provides health benefits for qualifying retirees, including state employees and teachers. In 2002, the State paid all of the coverage cost for 84,855 employees.<sup>218</sup> The State pays 50-80% of the cost of coverage for an additional 4,546 retirees.<sup>219</sup>

According to the state, 440 active employees and 71 retirees have signed up a partner (and in some cases, their partner's children) for health benefits.<sup>220</sup> The state estimates that the total cost of those benefits is \$1.7 million per year for active employees and \$664,000 for retirees, for a total of \$2.4 million per year. To put this in perspective, in 2005, the State's total benefit expenses for all three state employee programs amounted to \$1.3 billion,<sup>221</sup> so adding coverage for same-sex

---

<sup>218</sup> See OFFICE OF MGMT. & BUDGET, N.J. DEP'T OF THE TREASURY, NJ KIDCARE AND NJ FAMILY CARE, NEW JERSEY COMPREHENSIVE ANNUAL FIN. REPORT, FISCAL YEAR ENDED JUNE 30, 2002 at 11 (2003) [hereinafter OFFICE OF MGMT. & BUDGET], *available at* <http://www.state.nj.us/treasury/omb/publications/02cafr/index.shtml>.

<sup>219</sup> *Id.*

<sup>220</sup> E-mail from the Government Records Access Unit, N.J. State Treasury, to Deborah Ho (Nov. 21, 2006) [hereinafter E-mail from Government Records Access Unit] (on file with authors).

<sup>221</sup> DIV. OF PENSIONS & BENEFITS, DEP'T OF TREASURY, 2005 STATE HEALTH BENEFITS PROGRAM ANNUAL REPORT 12 (2005) [hereinafter DIV. OF PENSIONS & BENEFITS 2005].

partners either under the DPA or through marriage only increases state employee benefits cost by 0.2%.<sup>222</sup>

### B. SURVIVOR BENEFITS

The State of New Jersey has five defined benefit pension funds that are specifically required by the DPA to treat same-sex domestic partners in the same way that spouses are now treated:

- Teachers' Pension and Annuity Fund (TPAF)
- Public Employees' Retirement System (PERS)
- Police and Firemen's Retirement System (PFRS)
- State Police Retirement System (SPRS)
- Judicial Retirement System (JRS)

A potential fiscal impact arises because the DPA makes same-sex domestic partners eligible for any survivor or death benefits currently reserved for spouses. Depending on their retirement system, state employees receive several different kinds of benefits that would go to survivors upon the death of the employee. We consider the impact of the DPA on each kind of benefit.<sup>223</sup> As in the case of health care benefits, we assume no increase in take-up with marriage equality.

#### i. Group life insurance

Upon the death of an active (i.e., non-retired) employee or a retired employee, the employee's beneficiary receives a life insurance payout. The State pays for a group life insurance policy for all state employees who are members of a retirement system. Employees may designate any person as the beneficiary

---

<sup>222</sup> Collectively, the three funds ended fiscal year 2002 with a Fund Balance of over \$26 million.

<sup>223</sup> Information on the five different plans come from member handbooks accessed online: DIV. OF PENSION & BENEFITS, N.J. DEP'T OF THE TREASURY, EMPLOYERS' PENSIONS & BENEFITS ADMINISTRATION MANUAL (Winter 2003) [hereinafter DIV. OF PENSION & BENEFITS EPBAM], available at <http://www.state.nj.us/treasury/pensions/epbam/pensions/retsys.htm> (last visited Nov. 2, 2006). Additional information comes from *id.* at *Death Benefits*, <http://www.state.nj.us/treasury/pensions/epbam/pensions/claims/death.htm> #2012 (last visited Nov. 2, 2006).



of that policy; therefore, an employee may already designate a same-sex domestic partner as beneficiary. Thus the DPA and marriage equality would change nothing and result in no additional costs to the state for life insurance provision.<sup>224</sup>

*ii. Return of member contributions*

In two systems (TPAF and PERS), if an active employee dies, the member's contributions are paid to a named beneficiary. Since that beneficiary could be a same-sex partner, the DPA again changes nothing and results in no additional cost to the state.

*iii. Optional survivor pensions*

In three retirement systems (TPAF, PERS, and JRS), retiring members may opt for a "joint and survivor" benefit at retirement, which involves taking reduced payments so that a survivor can continue a payment after the retiree's death.<sup>225</sup> Retirees have eight different options for structuring the joint and survivor payments. In each case the survivor can be either a spouse or a non-spouse, although in some options a non-spouse survivor must be within a particular age range of the retiree. Since a same-sex domestic partner could already be designated as a survivor, neither the DPA nor marriage equality would affect the state's liability in these systems.

*iv. Job-related accidental death survivor benefits*

When an employee dies from an accident suffered while performing job duties, spouses may be eligible for a survivor benefit in the form of an annual pension. The accidental death pension is a proportion of the employee's final salary and varies across the five plans. For eligible spouses (until they remarry)

---

<sup>224</sup> *Id.* at *Group Life Insurance*, <http://www.state.nj.us/treasury/pensions/epbam/pensions/claims/gli.htm> (last visited Nov. 2, 2006).

<sup>225</sup> *See* DIV. OF PENSIONS & BENEFITS, N.J. DEP'T OF THE TREASURY, PENSION OPTIONS, FACT SHEET #5, *available at* <http://www.state.nj.us/treasury/pensions/fact05.htm> (last visited Nov. 2, 2006).



the pension ranges from 25% in the JRS, to 50% in the TPAF and PERS, to 70% for police and firefighters (both PFRS and SPRS). If there is no spouse, or if the spouse remarries, then children of the employee would receive the benefit.<sup>226</sup> If there are no children, the dependent parents of the employee would receive a smaller pension. If there are no spouses, children, or dependent parents, then in the three systems that have statutory survivor benefits (see below), the employee's pension contributions would be paid to a named beneficiary. The DPA requires the retirement fund to pay out pensions to a same-sex domestic partner in the event of an accidental job-related death of an employee in the same way that it pays out to spouse, which could increase the State's pension costs.

However, for several reasons the new eligibility of same-sex domestic partners is likely to have virtually no impact on the State's expenditures related to accidental death benefits. First and foremost, these deaths are extremely rare, and the likelihood of an employee with a same-sex domestic partner or spouse experiencing a qualifying accidental death is even smaller since we predict that only 0.25% of employees will have such registered partners. In Fiscal Year 2002, for instance, only four such deaths occurred among the more than 44,000 members of the Police and Firemen's Retirement System,<sup>227</sup> which is made up of employees in the most hazardous occupations. In 2005, only two accidental deaths were reported.<sup>228</sup> Second, some employees with same-sex domestic partners have children or dependent parents who would have received benefits prior to the DPA's passage, lessening the impact of giving pensions to same-sex domestic partners or spouses. Third, when an employee has no spouse or other qualified dependents, the employee's beneficiary—who could

---

<sup>226</sup> A recent change allows the widow/widower of a member of the PFRS and SPRS to keep the accidental death pension after remarriage.

<sup>227</sup> N.J. DIV. OF PENSIONS & BENEFITS, POLICE & FIREMEN'S RETIREMENT SYSTEM, FY2002 ANNUAL REPORT 5 (2002), *available at* <http://www.state.nj.us/treasury/pensions/epbam/exhibits/ann-rpts/pfrsrpt2002.pdf>. Note that not all of the members are state employees.

<sup>228</sup> N.J. DIV. OF PENSIONS & BENEFITS, POLICE & FIREMEN'S RETIREMENT SYSTEM, FY2005 ANNUAL REPORT 4 (2005), *available at* [http://www.state.nj.us/treasury/pensions/annreports\\_2005/pfrs.pdf](http://www.state.nj.us/treasury/pensions/annreports_2005/pfrs.pdf).

now be a same-sex domestic partner—would receive the employee's pension contributions, again lessening the additional costs possible under the DPA. For these reasons, we assume that any possible increase in the state's pension expenses from providing an accidental death pension to a same-sex domestic partner or spouse is so remote that it would equal to zero.

*v. Statutory survivor benefits for active and retired employees*

Members of three retirement systems (JRS, PFRS, and SPRS) receive a statutory death benefit that goes to a spouse, children, or surviving parents, in that order of priority. Spouses stop receiving benefits if they remarry, and children stop receiving benefits when they turn 18 or 24 (depending on their enrollment status in high school or college).<sup>229</sup> When an active employee dies in these systems, if no such qualified survivor exists, a named beneficiary receives the deceased member's pension contributions. Making same-sex domestic partners or spouses eligible for such benefits would increase the liabilities of the pension system since more people would be eligible for a survivor benefit.

In contrast to the accidental death survivor benefit, the likelihood of some same-sex domestic partners or spouses becoming eligible for statutory survivor benefits is almost certain. Assessing the cost to the pension system, and therefore to the State, of this expansion in coverage depends on several factors: (1) the number of same-sex domestic partners who will receive a pension as the result of the DPA; (2) the difference in the partner's pension when compared with pre-DPA payments to other possible survivors or to a named beneficiary; and (3) the share of the higher pension fund costs that will be paid by the State.

While each factor is difficult to estimate with precision, we can get an idea of the potential order of magnitude. An estimate of the number of newly covered partners receiving a survivor benefit can be predicted by assuming (as in the health insurance

---

<sup>229</sup> Note that the DPA could actually reduce some pension fund expenditures if "remarrying" is interpreted as including the formation of a domestic partnership. More spouse survivors might stop receiving state survivor pensions.

analysis) that 0.25% of employees have a registered same-sex partner who would become eligible for a statutory survivor benefit. In that case then, the number of survivors receiving these death benefits would increase by approximately 0.25% as well. The most recently available data (as of June 30, 2004) shows that 134 beneficiaries of state employees receive “active members’ death benefits,” and 772 beneficiaries received “retired members’ death benefits.”<sup>230</sup> An increase of 0.25% results in benefits being paid out to two additional persons. However, even this small number may overestimate the number of new beneficiaries, since employees with same-sex domestic partners might have children or parents who already qualify. The “average annual allowance” paid to these individuals was \$26,849,<sup>231</sup> again an overestimate of the additional cost for each new beneficiary since smaller benefits might already be paid out. The total additional expenditures for all three systems would be slightly less than \$53,700 per year. Though this estimate is likely to be too high since some employees with same-sex partners will have children or dependent parents who would not receive benefits if a same-sex domestic partner qualified. Even without considering the offsetting costs that the state would incur, this estimate is quite small and would hardly be noticeable.

### C. OTHER ASSOCIATED COSTS

We estimate that several of the rights and benefits that will be extended to same-sex couples under the DPA and marriage will have a nominal impact on New Jersey’s budget, despite concerns that have been advanced in public debates about their fiscal impact.

---

<sup>230</sup> DIV. OF PENSIONS & BENEFITS, N.J. DEP’T. OF THE TREASURY, 50<sup>TH</sup> COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2005 – STATISTICAL SECTION 189 (2005) [hereinafter 2005 DIV. OF PENSION & BENEFITS ANNUAL FINANCIAL REPORT], *available at* [http://www.state.nj.us/treasury/pensions/annreports\\_2005/statistical%20section.pdf](http://www.state.nj.us/treasury/pensions/annreports_2005/statistical%20section.pdf). This calculation assumes that the proportion of PFRS beneficiaries receiving death benefits from state employees is equal to the proportion of retired state employees and beneficiaries in the whole system— 7.5%.

<sup>231</sup> *Id.*

## 1. ACCESS TO COURTS FOR DISSOLUTION OF DOMESTIC PARTNERSHIPS

In passing the DPA, New Jersey's State Legislature granted domestic partners access to the New Jersey Superior Court for all domestic partnership termination proceedings.<sup>232</sup> Dissolution of same-sex marriages would follow the same basic procedures for marriages of different-sex couples. As a result, under both scenarios the number of cases added to the dockets of the Court may increase.

From July 10, 2004 to September 30, 2006, there were a total of 39 domestic partnership terminations filed with the New Jersey Superior Court.<sup>233</sup> Not surprisingly, the number of terminations filed within the first two years after enactment of the DPA was quite low, and uncharacteristic of what the State would expect in terms of future domestic partnership terminations. From July 1 to September 30, 2006, there were nine terminations for an average of three terminations per month. Thus, taking this monthly average for 2006, we can determine that there will be approximately thirty-six terminations this judicial year and use that as our estimate of the annual number of terminations for the next several years.

In predicting the number of same-sex marriages that would dissolve each year, we have little experience to draw on. Instead, we note that approximately 1% of Vermont's civil unions dissolved each year since 2000.<sup>234</sup> If 8,300 same-sex couples marry and divorce at that rate, then 1% or approximately 83 per year will dissolve.

---

<sup>232</sup> N.J. STAT. ANN. § 26:8A-10(a)(1) (West 2006).

<sup>233</sup> There were six filings from July 1, 2004-June 30, 2005, 24 filings from July 1, 2005-June 30, 2006, and nine from July 1, 2006-present. E-mail from Family Division Statistics, N.J. Admin. Office of the Cts., to Deborah Ho (Nov. 17, 2006) [hereinafter E-mail from Family Division Statistics].

<sup>234</sup> Vermont has recorded 7,800 civil unions from 2000 through 2005, of which 1,234 involved Vermont residents. In this same time period, there have been 92 dissolutions of civil unions entered by Vermont's family courts, or an average of 15 per year (civil unions may only be dissolved by Vermont residents). E-mail from Patrick Cummings, Office of Vital Records, Vermont Department of Health, to R. Bradley Sears (July 14, 2006) (on file with authors).

Since New Jersey's Superior Court handles on average 64,000 dissolution filings each year,<sup>235</sup> the addition of 36-83 filings to this caseload would be insignificant (at most 0.1% of all filings). Table 4 shows that the annual fluctuations in divorce filings are far greater than this. In the ordinary course of business, New Jersey courts handle fluctuations ranging from 615 to 3,241 divorce filings each year. Last year, each judge in the Family Division of the Superior Court of New Jersey resolved an average of 1,436 dissolution cases.<sup>236</sup> This means that the increase in same-sex dissolution cases is less than one quarter of 1%. Even in the most unlikely scenario, where all 36-83 new same-sex couple dissolutions were added to the docket of one judge, it would only increase his or her caseload by 2%-6%. Alternatively—and much more likely—the cases would be spread out among the entire family division across New Jersey, meaning that many judges would not even see one case added to his or her docket. New filings by same-sex couples ending domestic partnerships will not have a noticeable effect on courts' caseloads.

---

<sup>235</sup> NEW JERSEY COURTS, ANNUAL REPORTS, *available at* <http://www.judiciary.state.nj.us/>.

<sup>236</sup> July 1 – July 2, 2006. *Id.*

TABLE 4: Annual Fluctuations in Dissolution Filings, 2000-2005

Judicial Year July 1 – June 30	Dissolution Filings	Change from Prior Year	% Change From Prior Year	Actual Dissolutions <sup>237</sup>
2005-2006	66,059 <sup>238</sup>	1,807	3%	24
2004-2005	64,252 <sup>239</sup>	-471	-1%	6
2003-2004	64,723 <sup>240</sup>	-76	<-1%	—
2002-2003	64,799 <sup>241</sup>	615	1%	—
2001-2002	64,184 <sup>242</sup>	3,241	5%	—
2000-2001	60,943 <sup>243</sup>	—	—	—

Regardless of how the cases would be distributed throughout the courts, the number of additional cases is so small that we conclude that domestic partnerships would not result in any actual expenditure 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 courtrooms or infrastructure, to handle these cases. In addition, any same-sex dissolution cases would generate revenue from the standard

<sup>237</sup> E-mail from Family Division Statistics, *supra* note 233.

<sup>238</sup> NEW JERSEY COURTS, ANNUAL REPORT COURT YEARS 2005-2006 25, available at <http://www.judiciary.state.nj.us/pressrel/annualreport2006.pdf> (last visited Nov.17, 2006).

<sup>239</sup> NEW JERSEY COURTS, ANNUAL REPORT COURT YEARS 2004-2005 29, available at <http://www.judiciary.state.nj.us/pressrel/annualreport05.pdf> (last visited Nov.17, 2006).

<sup>240</sup> *Id.*

<sup>241</sup> JUDICIARY OF THE STATE OF NEW JERSEY 2002-2003 ANNUAL REPORT 22, [http://www.judiciary.state.nj.us/pressrel/annual\\_report04.pdf](http://www.judiciary.state.nj.us/pressrel/annual_report04.pdf) (last visited Nov.17, 2006).

<sup>242</sup> ANNUAL REPORT OF THE NEW JERSEY JUDICIARY 2001-2002 21, <http://www.judiciary.state.nj.us/pressrel/annualreport03.pdf> (last visited Nov.17, 2006).

<sup>243</sup> *Id.*

filing fees, which would be available to cover variable administrative costs.<sup>244</sup>

In conclusion, we find that domestic partnerships would add a negligible number of cases to the state court dockets, such that no additional judges, staffing, courtrooms, or programming would be necessary. Revenue created from additional filing fees would offset any other administrative or marginal costs for handling these cases. Moreover, it is likely that the State, in legally recognizing domestic partnerships, might even save money when dissolution cases, which would have been litigated in trial courts, are shifted to the family courts, where they will be handled more efficiently.<sup>245</sup>

## 2. ADMINISTRATIVE COSTS

Although the issuance of licenses and domestic partner certificates are the responsibility of local county clerks,<sup>246</sup> the State has certain administrative responsibilities and costs associated with the DPA. This includes preparing, printing and supplying local registrars with registration forms, examining, recording and tracking the number of people who register, and preparing and maintaining a comprehensive index of registered domestic partners.<sup>247</sup> If same-sex couples are allowed to marry, the process will mirror that currently in place for opposite-sex couples. Therefore, any increase in cost for printing forms, copying papers and training clerks to assist in same-sex marriage dissolutions should already be accounted for in the marriage license fee.

---

<sup>244</sup> The fee for initiating a dissolution proceeding is \$250. Richard J. Williams, *Memo: Notice to the Bar: Procedures for Termination of a Domestic Partnership*, NEW JERSEY COURTS ONLINE (August 31, 2004), at <http://www.judiciary.state.nj.us/notices/n040915a.htm>.

<sup>245</sup> See *Putting a Price on Equality?*, *supra* note 1, at 219 (discussing reasons why the rules governing dissolutions in civil court impose considerably greater burdens on courts than are dissolutions in family court).

<sup>246</sup> N.J. STAT. ANN. § 26:8-17 (West 2006).

<sup>247</sup> N.J. STAT. ANN. § 26:8-24f (West 2006).



As per our discussion in Sections II & III, there have been 4,111 domestic partnership registrations<sup>248</sup> and 39 resolutions to date.<sup>249</sup> Accordingly, there are still 15,771 eligible same- and different-sex couples residing in the State that have yet to register. Using our earlier projections that 22% of same-sex and 2% of different-sex couples will continue to register under the DPA, we predict that approximately 2,800 couples have yet to register for domestic partnerships. That yields approximately 7,000 forms needed. Taking into consideration the need for extra forms, we predict approximately 10,000 total forms must be printed. The cost of printing such forms generally runs approximately 10 cents per form.<sup>250</sup> Thus the one-time printing of 10,000 license and dissolution forms in order to reflect the new domestic partnership law would cost approximately \$1,000—a minimal cost.

As of September 30, 2006, there have been 4,111 domestic partnership filings in New Jersey.<sup>251</sup> Since the state charges a \$28 fee for domestic partnership registrations,<sup>252</sup> resulting in \$115,108 in revenue to the state, we assume that any additional net costs of adding additional “domestic partnerships” to the existing function will be zero over time. The start-up costs for implementing same-sex marriage are also likely to be quite small<sup>253</sup> because the administrative process involved in allowing

---

<sup>248</sup> E-mail from Maria L. Baron, *supra* note 176.

<sup>249</sup> E-mail from Family Division Statistics, *supra* note 233.

<sup>250</sup> For example, the Connecticut Office of Fiscal Analysis reports a reprinting cost of 10 cents per form in its report on the fiscal impact of legalizing same-sex marriage. CONNECTICUT GENERAL ASSEMBLY, OFFICE OF FISCAL ANALYSIS REPORT (2002) (“[E]stimate of the fiscal impact of the provisions contained in HB 5001 (concerning same-sex marriage); and HB 5002 (concerning same-sex civil unions) of the 2002 regular session.”), *available at* <http://www.cga.ct.gov/olr/ofadoc/ofacivilunion1.htm>.

<sup>251</sup> E-mail from Maria L. Baron, *supra* note 176.

<sup>252</sup> DEP’T OF HEALTH & SENIOR SERVICES, DOMESTIC PARTNERSHIP BROCHURE, *available at* [http://www.state.nj.us/health/vital/dp\\_brochure.shtml](http://www.state.nj.us/health/vital/dp_brochure.shtml).

<sup>253</sup> Vermont reported that implementation of their more extensive civil union legislation involved some additional agency time in the six months following passage, but that no additional staff was required. VT. CIVIL UNION REV. COMM’N, OFFICE OF LEGISLATIVE COUNCIL, REPORT OF THE VERMONT CIVIL



same-sex couples to wed would be the same as the process already in place. Thus, we project small start-up costs and no net administrative burden.

### 3. HEALTH CARE RIGHTS

The DPA requires health care facilities to grant domestic partners visitation rights when a partner is in the hospital and permits the partner to make decisions for incapacitated partners.<sup>254</sup> Neither of these provisions have a fiscal impact for the state.

## D. PUBLIC ASSISTANCE SAVINGS

In order to register for a domestic partnership, couples are required to execute and file a legally binding Affidavit of Domestic Partnership with the local registrar. One of the requirements for registration is that both persons must be “otherwise jointly responsible for each other’s common welfare as evidenced by joint financial arrangements or joint ownership of real or personal property.”<sup>255</sup> This attestation can have implications for the State budget if the income and assets of domestic partners are used in determining eligibility for various means-tested programs. Marriage also implies a mutual obligation of support that is reflected in public assistance eligibility calculations. This section looks at the potential savings to the state if domestic partnerships and marriage equality mean that same-sex couples are less likely to need public assistance or are less likely to qualify for it.

### 1. PUBLIC BENEFITS PROGRAM

New Jersey funds several public benefit programs that provide assistance to low-income individuals and families: Work First New Jersey/Temporary Assistance to Needy

---

UNION REVIEW COMMISSION 8-9 (2002). The fees required by the DPA would also help to offset any administrative costs.

<sup>254</sup> N.J. STAT. ANN. § 26:8A-2(c), (d) (West 2006)

<sup>255</sup> N.J. STAT. ANN. § 26:8A-4 (West 2006).

Families (WFNJ/TANF),<sup>256</sup> and Supplemental Security Income cash grants (SSI).<sup>257</sup> Medicaid, NJ FamilyCare, and NJ KidCare all provide health insurance. Funding for these programs is supplemented by the federal government.

Eligibility for these programs is means-tested, i.e., eligibility depends on both the individual's and family's income and assets.<sup>258</sup> When an applicant is part of a married couple, the spouse's income and assets are included in the eligibility determination. Although regulations for these public assistance programs do not require the state or federal government to take into account a domestic partner's income and assets, the DPA does require that domestic partners "agree to be jointly responsible for each other's basic living expenses during the domestic partnership."<sup>259</sup> Furthermore, the Act defines "jointly responsible" as agreeing to provide for the basic living expenses of a partner who is unable to do so for him or herself.<sup>260</sup> Since domestic partners must take on financial responsibility for one

---

<sup>256</sup> The Work First New Jersey Program includes the state's General Assistance program. THE DIVISION OF FAMILY DEVELOPMENT (DFD), WORKFIRST NEW JERSEY (WFNJ), <http://www.state.nj.us/humanservices/dfd/wfnjws.html> (last visited Nov. 20, 2006); *see also* N.J. STAT. ANN. § 44:10-58 (West 2006).

<sup>257</sup> Most of SSI grant funding comes from the federal government, with the state providing a small supplement. U.S. DEP'T OF HEALTH AND HUMAN SERVICES, PROGRAM DATA: SUPPLEMENTAL SECURITY INCOME, 2002 INDICATORS OF WELFARE DEPENDENCE app A [hereinafter DEP'T OF HEALTH AND HUMAN SERVICES], *available at* <http://www.aspe.hhs.gov/hsp/indicators02/appassi.htm#SSI> (last visited Nov. 3, 2006).

<sup>258</sup> For the definition of the TANF assistance unit, *see* N.J. ADMIN. CODE tit. 10, § 90-2.7 (West 2006). The Food Stamp program is an apparent exception, since benefits are determined with respect to a household. THE DIVISION OF FAMILY DEVELOPMENT, NEW JERSEY FOOD STAMPS, *available at* <http://www.state.nj.us/humanservices/dfd/wfnjws.html> (last visited Nov. 20, 2006).

<sup>259</sup> N.J. STAT. ANN. § 26:8A-4(b)(2) (West 2006).

<sup>260</sup> N.J. STAT. ANN. § 26:8A-3 (West 2006). The Act defines basic living expenses as "the cost of food and shelter and any other cost, including but not limited to, the cost of health care, if some or all of the cost is paid as a benefit because a person is another person's domestic partner." *Id.* This provision implies that if an applicant's partner's employer offered domestic partner coverage, then the employed partner would be required to enroll the applicant.

another under the Domestic Partnership Act, the State's need to provide assistance to individuals in registered domestic partnerships should diminish. By taking into account domestic partners' or spouses' financial responsibility for each other, some people in same-sex couples will become ineligible for public benefits.

With the passage of the DPA, the State has the discretion to consider the income and assets of the applicant's domestic partner in determining eligibility for WFNJ/TANF, SSI and Medicaid.<sup>261</sup> In contrast, the federal government determines the generally applicable eligibility standards for SSI and Medicaid, leaving states with limited discretion in developing their own standards and procedures for these programs. Because of the federal Defense of Marriage Act (DOMA), the State may not simply redefine the term "spouse" in eligibility requirements to include same-sex domestic partners or even to consider same-sex spouses as spouses.<sup>262</sup>

However, in assessing eligibility for Medicaid, New Jersey is required under state and federal regulations to take into account the resources of third parties who are legally liable for health care costs. Third parties are entities or individuals who are

---

<sup>261</sup> New Jersey determines eligibility for public assistance programs by assessing all income and resources of all persons in an assistance unit of which the applicant or recipient is a member. New Jersey defines "assistance unit" to mean "a single person without dependent children; a couple without dependent children; dependent children only; or a person or couple with one or more dependent children who are legally or blood-related, or who is their legal guardian, and who live together as a household unit." N.J. STAT. ANN. §§ 44:10-34, -71 (West 2006). Although N.J.'s law does not specifically mention domestic partnership in their determination of a legal unit, domestic partners with one or more dependent children who are living together would fall under this plain-meaning definition. See *id.* at § 44:10-34.

<sup>262</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, 1 U.S.C. § 7 (2006). "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 prohibit the state from interpreting the term spouse in the regulations to include same-sex domestic partners. This 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 Civil Unions*, THE TIMES ARGUS, April 17, 2003. Federal officials have not yet issued a formal opinion on whether a civil union partner could be treated as a spouse. *Id.*

legally responsible for paying the medical claims of Medicaid recipients.<sup>263</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>264</sup> Examples of third parties in federal and state Medicaid manuals include absent and custodial parents. In addition, state and federal law require that the incomes of the sponsors of immigrants must be considered when determining an applicant’s eligibility.<sup>265</sup>

Because Medicaid is a provider of last resort,<sup>266</sup> both federal and state law require the state to assure that Medicaid recipients utilize all other resources available to them to pay for all or part of their medical care needs before turning to Medicaid.<sup>267</sup> Therefore, since the DPA requires domestic partners to “be jointly responsible for each other’s basic living expenses,” the state could determine that domestic partners are legally liable for their partners health care cost and thus include their incomes as resources of third parties when determining eligibility for Medicaid benefits. Similarly, under a policy of marriage equality, the state could consider same-sex spouses to have the same responsibility. Given the consideration of the incomes of the groups eligible for Medicaid (i.e., low income

---

<sup>263</sup> N.J. STAT. ANN. § 30:4D-3m (West 2006). “Third party means any person...who is or may be liable in contract, tort, or otherwise by law or equity to pay all or part of the medical cost of injury, disease, or disability of an applicant for or recipient of medical assistance payable under this act.” *Id.*

<sup>264</sup> See generally CTNS. FOR MEDICARE & MEDICAID SERVICES, STATE MEDICAID MANUAL, 3900-3910.15, 3900.1 and 3900.2 (2003).

<sup>265</sup> DIV. OF MEDICAL ASSISTANCE & HEALTH SERVICES, MEDICAID ONLY MANUAL, N.J. ADMIN. CODE 10:71-5.9 (May, 17, 2002) (“whenever the sponsor of an alien is subject to deeming provisions (see N.J. ADMIN. CODE § 10:71-5.8 (West 2006)) any countable resources of the sponsor in excess of the appropriate resource limit...shall be considered to be the resources of the alien in addition to whatever resources the alien has.”).

<sup>266</sup> See, e.g., N.J. STAT. ANN. § 30:4D-2 (West 2006) (Medicaid benefits shall be “last resort benefits.”).

<sup>267</sup> 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. 1396(a) (2006).

eligibility threshold), in all likelihood the State will consider the income of a registered domestic partner, or same-sex spouse, when determining eligibility.

To estimate the potential fiscal impact of the DPA and of marriage equality on public assistance expenditures, we again draw on data from Census 2000 for New Jersey. The Census asks respondents to report the amount of income from various sources, and the publicly available data specifies the amount of income that respondents report having received from Supplemental Security Income (SSI) and from “public assistance or welfare payments from the state or local welfare office” in 1999.<sup>268</sup> Therefore, we can add up the total paid to individuals in same-sex unmarried partnerships that would likely enter into domestic partnerships and marriages.

Unfortunately, neither the Census nor other surveys collect information on how many people in same-sex couples are enrolled in Medicaid or NJ KidCare/FamilyCare. Therefore, we assume that the share of state expenditures for same-sex couples in these programs is the same as for TANF.<sup>269</sup>

The second column of Table 5 presents our calculations from the Census and administrative data for federal and state expenditures on each program.<sup>270</sup> In 1999, 2.3% of people in same-sex couples received SSI income, totaling \$6.8 million in 2006 dollars.<sup>271</sup> Similarly, 1.7% of people in same-sex couples received public assistance, totaling approximately \$2.4 million in 2006 dollars.<sup>272</sup> Our projections of State spending alone on health insurance for low-income people and families suggest that the State spends as much as \$26.5 million per year on the

---

<sup>268</sup> Wording from the Census questionnaire, published in U.S. CENSUS BUREAU, PUBLIC USE MICRODATA SAMPLE, 2000 CENSUS OF POPULATION & HOUSING, TECHNICAL DOCUMENTATION D-8 (2003).

<sup>269</sup> COMM. ON WAYS & MEANS, U.S. H.R., THE 2000 GREEN BOOK, Tbl. 7-18 (2000), available at <http://www.aspe.hhs.gov/2000gb/sec7.txt>. Cash and work-based assistance expenditures in N.J., FY1999: \$302 million. *Id.*

<sup>270</sup> Figures are inflated to 2006 dollars, using the November Consumer Price Index from the Bureau of Labor Statistics. BUREAU OF LABOR STATISTICS, *supra* note 184.

<sup>271</sup> U.S. CENSUS BUREAU 5% PUMS, *supra* note 170.

<sup>272</sup> *Id.*

three health programs, Medicaid, NJ KidCare, and NJ FamilyCare, for people in same-sex couples.

Neither the DPA nor marriage equality would necessarily eliminate the State's need to pay the total of more than \$35 million in assistance to these couples, however. As discussed earlier in the report, for a variety of reasons not all same-sex couples are likely to register as domestic partners or marry. However, previous research has demonstrated that receipt of welfare payments has little effect on the probability of recipients marrying.<sup>273</sup> These findings suggest that public assistance income should not serve as a significant deterrent to partner registration or marriage for same-sex couples. Nevertheless, for reasons not necessarily connected to public assistance, some low-income couples with one partner receiving assistance will not register or marry. As discussed earlier in Section II, we base our estimates on the prediction that 22% of such couples have registered as domestic partners and that 50% of same-sex couples would marry if allowed. Furthermore, some couples may continue to qualify for benefits after registering. In 1999, 0.9% of people in married couples received SSI payments according to the Census, and 0.6% of married people received some form of public assistance.<sup>274</sup>

In order to predict the actual fiscal impact of the DPA and marriage equality on the State's public assistance expenditures, we estimate how many of the same-sex couples receiving public assistance of some kind are likely to register as domestic partners or married couples and then lose eligibility for such programs. We do this by making several adjustments:

- First, we assume that 22% of couples will register as domestic partners and 50% would marry.
- Second, we assume that the same proportion of people in domestic partnerships will retain eligibility and will

---

<sup>273</sup> Robert Moffitt, *Incentive Effects of the U.S. Welfare System: A Review*, 30 J. ECON. LITERATURE 1, 27-31 (1992).

<sup>274</sup> U.S. CENSUS BUREAU 5% PUMS, *supra* note 170.

therefore continue to receive these benefits as do people in married couples.<sup>275</sup>

- All spending figures are adjusted for inflation to bring the estimate into 2006 dollars.<sup>276</sup>
- Finally, we count as savings only the State's share of spending, which varies from program to program.<sup>277</sup>

The third column of Table 5 shows that the Domestic Partnership Act is projected to save approximately \$2.3 million per year. Marriage equality would add \$2.9 million more in savings, for a total of \$5.2 million in savings from equal marriage rights for same-sex couples. The savings will be somewhat less if the State can only assess eligibility based on a same-sex partner's or spouse's resources for WFNJ/TANF and NJ Kid Care/Family Care. As a lower bound, adding the estimates of current spending on WFNJ/TANF and Kid Care/Family Care suggests that the State will save almost \$1 million per year with a policy of marriage equality.

---

<sup>275</sup> Estimated savings from people losing eligibility were calculated, for example for public assistance by people in same-sex partnerships, by multiplying current spending times  $0.22 \times (1 - .9/2.3) \times 1.0798$  (the inflation factor).

<sup>276</sup> Figures are inflated to 2006 dollars, using the November Consumer Price Index from the Bureau of Labor Statistics. BUREAU OF LABOR STATISTICS, *supra* note 184.

<sup>277</sup> DEP'T OF HEALTH AND HUMAN SERVICES, *supra* note 257 (11.7% of SSI benefits in New Jersey are provided by the state).



TABLE 5: Estimates of State Public Assistance Expenditures and Savings

	Total State and Federal Spending on Same-sex Couples (\$USD)	State's Share of Savings	Savings from Domestic Partnerships (22% of couples) (\$USD)	Marriage Addition to Savings (\$USD)	Total Savings (DP + marriage) (\$USD)
SSI	6,828,400	11.1%	101,468	129,142	230,610
TANF	2,414,146	23% <sup>278</sup>	343,661	437,386	781,047
Medicaid	24,796,964	50%	1,764,960	2,246,313	4,011,274
NJ KidCare/ FamilyCare	1,723,194	35%	85,856	109,271	195,126
<b>TOTAL</b>	<b>35,762,704</b>	—	<b>2,295,945</b>	<b>2,922,112</b>	<b>5,218,057</b>
<b>TOTAL (excluding Medicaid &amp; SSI)</b>	—	—	429,516	546,657	976,173

### E. SUMMARY OF FISCAL IMPACT

Table 6 pulls together each element of the fiscal analysis to allow a final tallying up of the impact of the Domestic Partnership Act and the potential policy of equal marriage rights for same-sex couples. Using the full estimate of the effect of reduced public assistance expenditures results in the highest estimates. We estimate that the Domestic Partnership Act would create a net budgetary loss of \$1.1 million per year. If New Jersey allowed same-sex couples to marry, the gain to the State budget would be \$9.2 million per year, for a total fiscal gain of \$8.1 million. Using the smaller public assistance savings estimates results in a prediction of \$2.97 million loss from the DPA, or \$6.85 million total gain from marriage equality.

---

<sup>278</sup> Unlike the other public assistance programs where the Federal Government funding is dependent on the actual amount spent, TANF is funded annually through a block grant which the government for different parts of the program at its discretion. Thereby, any savings from the program will go entirely to the state budget.



TABLE 6: Summary of Fiscal Effects and Net Effect (\$USD)

	<b>Domestic partnership effect</b>	<b>Additional marriage effect</b>	<b>Total</b>
<b>Public assistance</b>	2,300,000	2,900,000	5,200,000
<b>Income tax revenue</b>	0	500,000	500,000
<b>Inheritance tax</b>	(1,000,000)	(1,400,000)	(2,400,000)
<b>Sales tax</b>	0	7,200,000	7,200,000
<b>In-state couples</b>	0	1,700,000	1,700,000
<b>Out-of-state couples</b>	0	5,500,000	5,500,000
<b>Employment benefits</b>	(2,400,000)	0	(2,400,000)
<b>NET FISCAL IMPACT (NFI)</b>	<b>(1,100,000)</b>	<b>9,200,000</b>	<b>8,100,000</b>
<b>NFI WITH LOWER PUBLIC ASSISTANCE SAVINGS</b>	<b>(3,000,000)</b>	<b>6,800,000</b>	<b>3,900,000</b>

#### IV. POST *LEWIS V. HARRIS*: THE POTENTIAL IMPACT OF MARRIAGE ON NEW JERSEY'S ECONOMY

Extending marriage to same-sex couples will have economic impacts beyond the state budget. In this section we first analyze the impact on businesses as employers, and second as providers of goods and services used in planning and celebrating weddings. New Jersey's private sector employers might be affected in ways that will both increase and decrease labor costs. On one hand, the customary provision of health care benefits means that a new set of same-sex spouses who are eligible for benefits will impose additional costs on employers who provide such benefits. Below we estimate that such costs would be nonexistent for many small and medium-sized employers and small for large firms. On the other hand, the provision of

benefits to employees' same-sex spouses might have positive effects on employers' ability to recruit and retain workers. Finally, we estimate the direct revenue impact on businesses that serve the wedding industry, such as those that provide hotels, restaurants, caterers, florists, and photographers.

## A. EMPLOYER HEALTH CARE COSTS

New Jersey employers commonly provide certain benefits to employees as part of a compensation package. These include health, death, retirement and survivor benefits, as well as various leave programs. Some of these benefits cover the employee, their spouse and any children. Under the current law, private employers are allowed, but not required, to offer health care coverage to same-sex domestic partners.<sup>279</sup> While we have no representative data on the current level of provision of domestic partner benefits, many New Jersey businesses already provide such benefits (see Appendix A). Under the current law, if same-sex couples could marry, employers would be required to treat same-sex spouses in the same way as different-sex spouses for purposes of health care provision.<sup>280</sup> In this section of the paper, we focus only on health care benefits, since the rising cost of health care premiums was the primary concern raised by New Jersey businesses during the debate on the DPA. There would be little or no increase in costs to employers providing retirement benefits, since the employee typically pays for those benefits. When an employee opts for a survivor benefit through a joint-and-survivor annuity, he or she receives a lower payment while alive in return for having a benefit paid to his or her survivor.

---

<sup>279</sup> The DPA does not provide for eligibility of *different-sex* domestic partners. N.J. STAT. ANN. § 34:11A-20b (West 2006).

<sup>280</sup> N.J. STAT. ANN. § 10:2-1 (West 2006) (anti-discrimination laws prohibit employers, contractors and sub-contractors from discriminating against persons based on marital status, affectional or sexual orientation or sex).

### 1. COVERING SAME-SEX SPOUSES WILL NOT RESULT IN HIGHER PREMIUMS FOR EMPLOYERS

Early in the discussions about domestic partner benefits (as far back as the 1980's), some employers worried that employees would sign up a partner who would have higher than average health care costs. Insurance companies call this phenomenon "adverse selection." When it occurs, the new enrollees drive up health care expenses, and eventually, health care premiums paid by employers for their employees will rise. To protect against this possibility, some of the first insurance companies to sell partner coverage to employers insisted on a surcharge; however, the surcharge was soon dropped when adverse selection failed to occur.<sup>281</sup> Since then, employers, insurance companies, and employer benefit consultants report that adverse selection does not occur with domestic partner benefits.<sup>282</sup> Similarly, one recent study of the self-reported health status of people in same-sex and different-sex partnerships found little or no differences between people in same-sex couples and married people.<sup>283</sup>

Since adverse selection has not occurred, this analysis will focus on the number of employees who would be likely to sign up a same-sex spouse as the only source of total health care cost increases for employers. As discussed below, the employers who will experience increased costs are those that subsidize family coverage for employees. To estimate these costs, we first look at the number of employees who will sign up a same-sex spouse and then multiply that number by the average employer spending on spousal health care coverage.

---

<sup>281</sup> Michael A. Ash & M.V. Lee Badgett, *Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples*, 24 CONTEMP. ECON. POL'Y 582, 590 (2006) [hereinafter Ash & Badgett], available at <http://cep.oxfordjournals.org/cgi/reprint/24/4/582>.

<sup>282</sup> See M. V. Lee Badgett, *Calculating Costs with Credibility: Health Care Benefits for Domestic Partners*, ANGLES, Nov. 2000 at 1-8, [hereinafter *Calculating Costs with Credibility*], [http://www.iglss.org/pubs/angles/angles\\_5-1\\_p1.html](http://www.iglss.org/pubs/angles/angles_5-1_p1.html).

<sup>283</sup> Ash & Badgett, *supra* note 281, at 588.

## 2. SOME NEW JERSEY BUSINESSES ALREADY VOLUNTARILY PROVIDE HEALTH CARE BENEFITS TO DOMESTIC PARTNERS OF THEIR EMPLOYEES

A number of New Jersey businesses already provide benefits, such as health, dental, and retirement benefits, to domestic partners of employees on the same basis as spouses, even though they are not required to provide these benefits under current law.

As of 2004, 23% of workers in the northeastern United States worked for an employer that covered same-sex domestic partners' health insurance, although more recent figures would likely be higher.<sup>284</sup> One list of such businesses includes 79 employers headquartered in New Jersey, presented in Appendix A.<sup>285</sup> New Jersey companies are not alone. Thousands of other companies headquartered outside of New Jersey also provide health care benefits to domestic partners of employees; many of these companies have branches located in New Jersey.<sup>286</sup> We assume that New Jersey employers are similar to others in the northeast and that 23% of the New Jersey labor force already works for an employer offering partner coverage.<sup>287</sup> For employer's currently offering such coverage, we assume that if marriage were extended to same-sex couples no additional same-sex spouses will sign up for coverage beyond the domestic partners now covered. Thus, these employers would experience no increase in costs for employee health care benefits.

---

<sup>284</sup> THE KAISER FAMILY FOUNDATION & HEALTH RESEARCH AND EDUCATIONAL TRUST, EMPLOYER HEALTH BENEFITS: 2004 ANNUAL SURVEY 42 ex. 2.7 (2004) [hereinafter KAISER FAMILY FOUNDATION 2004], <http://www.kff.org/insurance/7148.cfm> (last visited Nov. 19, 2006).

<sup>285</sup> Human Rights Campaign, Private Sector Employers that Offer Domestic Partner Health Benefits, [http://www.hrc.org/Template.cfm?Section=Search\\_the\\_Database&Template=/CustomSource/WorkNet/srch\\_list.cfm&setcnt=126&srctype=QS&searchid=26&sortfld=state&sortdir=ASC&RankEntityID=2](http://www.hrc.org/Template.cfm?Section=Search_the_Database&Template=/CustomSource/WorkNet/srch_list.cfm&setcnt=126&srctype=QS&searchid=26&sortfld=state&sortdir=ASC&RankEntityID=2) (last visited Nov. 2, 2006).

<sup>286</sup> *Id.*

<sup>287</sup> KAISER FAMILY FOUNDATION 2004, *supra* note 284.

### 3. ADDITIONAL ENROLLMENT OF NEW SAME-SEX SPOUSES WILL BE MINIMAL

One recent study of the impact of extending marriage to same-sex couples on business health care costs uses Census 2000 data on same-sex couples in New Jersey to predict the number of new spouses who might sign up for health care benefits.<sup>288</sup> That study made some adjustments to Census data in order to estimate the number of private sector employees currently being offered health care benefits (but not domestic partner benefits), whose partner is likely to want to sign up for employer-provided insurance.<sup>289</sup> This study predicts that in New Jersey, approximately 5,111 same-sex couples are likely to sign up for health care benefits if all of the state's same-sex couples marry.<sup>290</sup> Assuming only half marry, as per our predicted uptake rate discussed below, then private sector employers will need to cover approximately 2,505 new spouses.

To put the numbers of newly covered spouses in perspective, in 2001 there were 177,527 firms in New Jersey with employees.<sup>291</sup> If the 2,505 newly covered spouses were spread out over these firms, each firm would have, on average 0.01 new partners, to cover. The smaller the business, the less likely the firm is to have a partner sign up.<sup>292</sup> We predict that most of the 2,505 new same-sex spouses are likely to be married to employees of large businesses. Approximately 63% of paid

---

<sup>288</sup> M.V. LEE BADGETT & GARY GATES, THE BUSINESS COST IMPACT OF MARRIAGE FOR SAME SAME-SEX COUPLES 4, <http://www.igls.org/media/files/busimpact.pdf> (last visited Nov. 12, 2006).

<sup>289</sup> *Id.* at 6.

<sup>290</sup> *Id.* at 12.

<sup>291</sup> U.S. CENSUS BUREAU, STATISTICS OF U.S. BUSINESSES 2001: NEW JERSEY, ALL INDUSTRIES BY EMPLOYMENT SIZE OF ENTERPRISE, at <http://www.census.gov/epcd/susb/2001/nj/NJ--.HTM> [hereinafter NEW JERSEY, ALL INDUSTRIES BY EMPLOYMENT SIZE OF ENTERPRISE] (last visited Nov. 12, 2006).

<sup>292</sup> THE KAISER FAMILY FOUNDATION & HEALTH RESEARCH AND EDUCATIONAL TRUST, EMPLOYER HEALTH BENEFITS: 2006 ANNUAL SURVEY § 2, at 1 (2006) [hereinafter KAISER FAMILY FOUNDATION 2006], available at <http://www.kff.org/insurance/7527/index.cfm> (last visited Nov. 20, 2006).

employees in New Jersey work for employers with 100 or more employees.<sup>293</sup> Put differently, since a majority of businesses in New Jersey are small employers—approximately 90% have less than twenty employees—most businesses will likely see no employees signing up a domestic partner.<sup>294</sup>

An employer's current average annual contribution toward family health care benefits coverage for an employee is \$8,508, compared with \$3,615 for single coverage.<sup>295</sup> Accordingly, the average increase in cost for an employer to add a new spouse (and his or her children) would be \$4,893 per year. Taking this increase in employer costs per new spouse and multiplying it by the expected number of new spouses per firm shows that New Jersey employers should see, on average, an increase in costs of about \$69 per year as a result of marriage equality.<sup>296</sup> For all businesses across the state, additional health care expenses will total only \$12.3 million. Overall, extending marriage to same-sex couples will have a negligible impact on the bottom line of New Jersey's small businesses.

## B. THE IMPACT OF WEDDINGS ON NEW JERSEY BUSINESSES

This section estimates the potential financial gains from extending marriage to same-sex couples for New Jersey's economy. Weddings are a lucrative business, creating jobs and tax revenue in the United States. The wedding industries have seen a new market emerge for same-sex couples, a market enhanced by recent policy decisions to give marriage or marriage-like rights to same-sex couples. Forbes Magazine predicted that weddings of same-sex couples could become a billion dollar-per-year industry.<sup>297</sup>

---

<sup>293</sup> NEW JERSEY, ALL INDUSTRIES BY EMPLOYMENT SIZE OF ENTERPRISE, *supra* note 291.

<sup>294</sup> *Id.*

<sup>295</sup> KAISER FAMILY FOUNDATION 2006, *supra* note 292, at § 6, 5 ex. 6.3.

<sup>296</sup>  $\$4893 * 2505 = \$12,256,965 / 177,527 = \$69.04.$

<sup>297</sup> Aude Lagorce, *The Gay Marriage Windfall: \$16.8 Billion*, FORBES.COM, Apr. 5, 2004, available at [http://www.forbes.com/commerce/2004/04/05/cx\\_al\\_0405gaymarriage.html](http://www.forbes.com/commerce/2004/04/05/cx_al_0405gaymarriage.html).

## 1. ALLOWING OUT-OF-STATE SAME-SEX MARRIAGES

The recent experiences of San Francisco, California, and Portland, Oregon, suggest that the local economic benefits of same-sex weddings are real and large. The couples that married in San Francisco during a one-month window of availability in 2004 came from 46 states and eight countries.<sup>298</sup> Businesses in Portland<sup>299</sup> and San Francisco<sup>300</sup> reported that same-sex wedding visitors spent substantial amounts of money on wedding-related goods and services. Furthermore, Massachusetts witnessed increased demand for hotels, catering services, and other wedding-related goods and services when same-sex couples began to marry there in May 2004.<sup>301</sup> One

---

<sup>298</sup> MABEL S. TENG (San Francisco Assessor-Recorder), PRESENTATION: DEMOGRAPHICS BREAKDOWN OF SAME GENDER MARRIAGES 2-3 (2004), available at <http://www.alicebtoklas.org/abt/samesexmarriagestats.ppt> (last visited Nov. 2, 2006).

<sup>299</sup> See Helen Jung, *Gay Marriages May Bring Joy to Tourism*, OREGONIAN, Mar. 5, 2004, at D1. Joe D'Alessandro, president of the Portland Oregon Visitors Association, is quoted as saying that same-sex marriage has provided an "economic boost" to Portland as same-sex couples and their families fly in for weddings. *Id.* David Sarasohn also quotes D'Alessandro as saying, "It's definitely having a positive impact, because more people are coming to Portland." *Gay Marriage, Tourism: A Package Deal*, OREGONIAN, Apr. 11, 2004, at C4. "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." *Id.*

<sup>300</sup> See Jung, *supra* note 299 (reporting that hotels in Vancouver had atypically high bookings and Macy's department store ran out of wedding rings during the month that San Francisco let same-sex couples marry); Heather Knight, *Windfall in Castro: 'Giddy' Newlyweds Have Been Boon For S.F. Neighborhood*, S.F. CHRON., Feb. 18, 2004, at A1 (reporting that same-sex marriages were "great for businesses as newlyweds throw their money at the neighborhood's florists, jewelry stores, liquor shops, bookstores and photo processors."); Laura Bly, *Localities Cashing in on Same-Sex Marriages*, USA TODAY, Feb. 27, 2004 at 1D; see also Dean E. Murphy, *San Francisco Toasts Gay Weddings*, N.Y. TIMES, Feb. 29, 2004, at 3.

<sup>301</sup> Thea Singer, *Three Swank Cities are Becoming Marriage Meccas for Gay Couples*, BOSTON HERALD, Mar. 22, 2004, at 27 (reporting that wedding-related businesses such as hotels, banquet halls, florists, and jewelers, in Boston, Cambridge, and Northhampton have seen "an upsurge of 10 to 100 percent in inquiries and bookings from gay couples" looking to marry); see also Marie Szaniszló, *P'town Set for Gay-Wed Rush*, BOSTON HERALD, Apr. 11, 2004,



study estimates that, if Massachusetts permitted out-of-state same-sex couples to marry, it would experience new spending in excess of \$100 million.<sup>302</sup> As a result, scholars have predicted that the first state that allows out-of-state same-sex couples to marry would experience an economic boom in wedding-related sectors of the economy, and in turn increased tax revenues.<sup>303</sup>

Therefore, if New Jersey were to give same-sex couples the right to marry regardless of residency status, the State would not only experience a substantial increase in spending on weddings by same-sex couples residing in New Jersey, but it would also see an increase in wedding and tourist spending by same-sex couples from other states. We predict that sales revenues by New Jersey's wedding and tourism-related businesses would rise by \$102.5 million in each of the first three years when same-sex marriage is legal.

As of today, New Jersey would have no competition from other states for these visitors since Massachusetts does not currently allow out-of-state same-sex couples to marry there.<sup>304</sup> Even if other states eventually allow same-sex couples to marry, New Jersey would likely remain a prime destination for same-sex couples on the East Coast. New Jersey is within a short drive from several cities with large numbers of same-sex couples, including New York City and Philadelphia, suggesting that the state would retain appeal for out-of-state same-sex couples.

To estimate potential wedding expenditures by in-state and out-of-state same-sex couples, we first estimates the number of couples who might marry using Census 2000 data on unmarried same-sex partners in New Jersey and other states. Multiplying

---

at 10 and Douglas Belkin, *Wedding Bell Bonanza Tourism, Marriage Industry Foresee Boom in Same-Sex Nuptials*, BOSTON GLOBE, Feb. 26, 2004, at 1.

<sup>302</sup> Singer, *supra* note 301.

<sup>303</sup> Brown, *supra* note 6; *How Will Same-Sex Marriage Affect Hawaii's Tourism Industry?*, *supra* note 6.

<sup>304</sup> Shortly after same-sex marriage became legal in Massachusetts, Governor Mitt Romney ordered clerks to comply with a 1913 Massachusetts law that makes it illegal for out-of-state couples to enter into a marriage that would not be legal in their own state. See, e.g., Pam Belluck, *Romney Won't Let Gay Outsiders Wed in Massachusetts*, N.Y. TIMES, Apr. 25, 2004, at 1.



the number of couples by average expenditures on tourism and for weddings in the State gives an estimate of total spending by same-sex couples. Finally, as noted earlier in Section III, this increase in spending would benefit the state budget since the State would tax those expenditures at the 7% sales tax rate; an additional hotel occupancy fee, ranging from 1% to 5% depending on the location, would also apply to some of the spending.<sup>305</sup> Some local jurisdictions within the State also have their own sales tax and occupancy taxes, but in this study we provide estimates only for tax revenues accruing to the State.

## 2. TOURISM AND WEDDING SPENDING BY OUT-OF-STATE COUPLES

According to the New Jersey Commerce, Economic Growth & Tourism Commission, the states that send the most visitors to New Jersey are New York, Pennsylvania, Maryland, New Hampshire, Massachusetts, Connecticut, Virginia, North Carolina, and Florida, accounting for almost 93% of the state's visitors.<sup>306</sup> Massachusetts allows resident same-sex couples to marry and Connecticut allows same-sex couples to enter into civil unions, probably reducing the interest of couples in Massachusetts and perhaps Connecticut in traveling to New Jersey to marry. However, the other seven states do not recognize same-sex partnerships and, according to Census 2000, those states have a total of almost 153,000 cohabiting same-sex couples. As discussed earlier, we predict that half of the same-sex unmarried partners in these states will wish to marry over the first three years after the policy change.<sup>307</sup> That means that approximately 76,000 same-sex couples from these

---

<sup>305</sup> N.J. DIV. OF TAXATION, *supra* note 191, at 2, 23-24.

<sup>306</sup> D.K. SHIFFLET & ASSOCIATES, LTD., NEW JERSEY: FY2005P VISITOR PROFILE 93 (2006) [hereinafter D.K. SHIFFLET & ASSOCIATES], at <http://www.state.nj.us/travel/pdf/fy2005p-nj-visitor-profile.pdf>.

<sup>307</sup> In Vermont, 1,933 same-sex couples identified themselves in Census 2000. Simmons & O'Connell, *supra* note 171, at 4 tbl. 2. At the end of 2004, 1,104 Vermont same-sex couples, or 57% of the number of couples who identified themselves on Census 2000, had entered into a civil union. E-mail from Richard McCoy, Office of Vital Records, Vermont Department of Health, to R. Bradley Sears (July 11, 2005) (on file with authors).

seven states will wish to marry. Because they cannot marry in their home states, some of these couples would have to travel to New Jersey in order to wed.

Of course, the need to travel out of state and the fact that their home state may not recognize a New Jersey marriage will deter some same-sex couples from coming to New Jersey to marry. We take into account these deterrents in two ways. First, we focus on the seven states where the travel deterrent would be the least – states that already send a large number of tourists to New Jersey and are within a reasonable driving distance of New Jersey. Second, we assume that only half of the couples in those states that will wish to marry, or 25% of the total identified in Census 2000, will actually travel to New Jersey to marry. Third, we assume that only 5% of couples from the other 42 states (including the District of Columbia, but not Massachusetts) would travel to New Jersey to marry. We include California, Vermont, and Connecticut in the 5% estimate because some same-sex couples in those states would likely choose to marry for the additional practical value or symbolic meaning that a domestic partnership or civil union lacks. Table 7 below shows the breakdown of visitors by state.

TABLE 7: Out-of-State Same-Sex Couples who would Travel to New Jersey to Marry

<b>STATE</b>	<b>Number of Same-Sex Couples</b>	<b>Number of Same-Sex Couples Traveling to New Jersey to Marry (25% for named states, 5% for “other 41 states and D.C.”)</b>
<b>New York</b>	46,490	11,623
<b>Pennsylvania</b>	21,166	5,292
<b>Maryland</b>	11,243	2,811
<b>Virginia</b>	13,802	3,451
<b>N. Carolina</b>	16,198	4,050
<b>Florida</b>	41,048	10,262
<b>New Hampshire</b>	2,703	676
<b>Other 41 states and D.C.</b>	408,038	20,402
<b>TOTAL</b>	—	<b>58,564</b>

Source: U.S. Census 2000

To arrive at the average tourist spending per out-of-state couple, we use tourism data on New Jersey that estimates average spending per person at \$105 per day, including all expenses (lodging, meals, retail shopping, entertainment, and any other spending related to the visit).<sup>308</sup> Because New Jersey requires a 72-hour waiting period between applying for and receiving a marriage license,<sup>309</sup> we expect visiting couples from distant locations to stay at least three days. Therefore, we estimate that those distant out-of-state couples will spend an average of \$630 on basic expenses. Because of the proximity of Pennsylvania and New York, we assume that couples from those states will return home during the waiting period and will not spend money on these tourist expenses.

The second source of spending comes from wedding expenditures, including spending on ceremonies, meals, parties, transportation, flowers, photographers, and other expenses. According to The Wedding Report, a wedding industry research group, the average cost of a wedding in New Jersey is \$35,460.<sup>310</sup> We assume that out-of-state same-sex couples would spend less than is spent on a traditional wedding, but that they would spend more than typical tourists on special accommodations, meals, clothing, flowers, and gifts. We also expect additional spending by friends or family members who might accompany the couple, which is spending not included in the average wedding cost. Therefore, we conservatively assume that the additional wedding spending is one-tenth of the typical wedding expense, or \$3,546.

Accordingly, for couples from New York and Pennsylvania, we estimate wedding spending as \$3,546 per couple, and for couples from more distant states, we estimate total wedding and tourism spending as \$4,176 per couple. The first few lines of Table 8 show those figures multiplied by the number of couples

---

<sup>308</sup> D.K. SHIFFLET & ASSOCIATES, *supra* note 306, at 6 & 77.

<sup>309</sup> N.J. STAT. ANN. § 37:1-4 (West 2006).

<sup>310</sup> The Wedding Report, New Jersey: Wedding Statistics and Wedding Market Estimates, at <http://www.theweddingreport.com/wmdb/index.cfm?action=db.viewDetail&type=state&location=34> (last visited November 20, 2006).

from Table 1. The total spending by these 58,000 couples would be \$233.9 million.

Because couples would need to make travel and wedding plans in advance, we can reasonably expect this increase in spending and tax revenue to be realized over time. While the largest number of weddings is likely to occur in the first year that same-sex couples can marry, we expect that the total benefit would accrue over a longer time, perhaps over the first three years. The increase in spending by out-of-state couples spread over three years is \$78 million per year.

TABLE 8: Expenditures on Weddings in New Jersey by Same-sex Couples

<b>State Group</b>	<b>Couples Coming to NJ to Marry</b>	<b>Spending per Couple</b>	<b>Total Spending per State Group (in millions)</b>
<b>NY and PA</b>	16,914	\$3,546	\$60.0
<b>FL, MD, NC, NH, and VA</b>	21,249	\$4,176	\$88.7
<b>Other states</b>	20,402	\$4,176	\$85.2
<b>TOTAL OUT-OF-STATE</b>	—	—	\$233.9
<b>New Jersey</b>	8,302	\$8,865	\$73.6
<b>TOTAL</b>	—	—	<b>\$307.5</b>

### 3. WEDDING SPENDING BY IN-STATE COUPLES

According to Census 2000, New Jersey has 16,604 resident same-sex couples. Again we assume that 50% will marry if given the option. These 8,300 in-state couples are likely to have larger celebrations and spend more than out-of-state couples because their friends and family are more likely to be local. However, since some of these couples may already have had commitment ceremonies, spending may be less than the typical wedding. Also, due to societal discrimination, same-sex couples may receive less financial support from their parents and other family members to cover wedding costs. Finally, 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. Accordingly, we assume that same-sex couples will spend only 25% of the average amount, or just

under \$9,000. The total for all 8,300 couples would come to \$73.6 million in additional wedding spending over three years, or \$24.5 million per year.

### C. OTHER ECONOMIC BENEFITS OF MARRIAGE EQUALITY

A recent review of the social science literature on workplace issues for gay and lesbian employees suggests that New Jersey employers will gain in other ways that could reduce labor costs, although it is not possible to precisely calculate these effects. Most of this growing body of research focuses on the effect of an employer offering domestic partner benefits to lesbian, gay, and bisexual employees, implying that employees might be reacting to a supportive step taken by a particular employer. However, given the general nature of some of the effects, it is possible that businesses will see the same positive effects of extending marriage to same-sex couples and the equal provision of benefits to same-sex and different-sex spouses.

One recent report on this literature drew the following conclusions:<sup>311</sup>

- A supportive workplace climate and supportive policies, including domestic partner benefits, increase disclosure, or “coming out,” of lesbian, gay, and bisexual employees.<sup>312</sup>

---

<sup>311</sup> BADGETT & GATES, *supra* note 8, at 2.

<sup>312</sup> See generally M.V. LEE BADGETT, MONEY, MYTHS, AND CHANGE: THE ECONOMIC LIVES OF LESBIANS AND GAY MEN (2001) [hereinafter MONEY, MYTHS, AND CHANGE]; J.M. Driscoll et al., *Lesbian Identity and Disclosure in the Workplace: Relation to Occupational Stress and Satisfaction*, 48 J. VOCATIONAL BEHAV. 229 (1996) [hereinafter Driscoll et al.]; Kristin H. Griffith & Michelle R. Hebl, *The Disclosure Dilemma for Gay Men and Lesbians: “Coming out” at Work*, 87 J. APPLIED PSYCHOL. 1191 (2002) [hereinafter Griffith & Hebl]; Belle R. Ragins & John M. Cornwell, *We Are Family: The Influence Of Gay Family-Friendly Policies On Gay, Lesbian and Bisexual Employees*, in SEXUAL ORIENTATION DISCRIMINATION: AN INTERNATIONAL PERSPECTIVE (M.V. Lee Badgett & Jefferson Frank, eds., forthcoming 2006) (manuscript on file with authors) [hereinafter Ragins & Cornwell]; Sharon S. Rostosky & Ellen D.B. Riggle, *“Out” at Work: The Relation of Actor and Partner Workplace Policy and Internalized Homophobia to Disclosure Status*, 49 J. COUNSELING PSYCHOL. 411 (2002) [hereinafter Rostosky & Riggle]; Scott B. Button, *Organizational Efforts to Affirm Sexual Diversity: A Cross-Level Examination*, 86 J. APPLIED PSYCHOL. 17 (2001).

- Disclosure has potentially positive benefits to worker health. Several studies find that people who are more out report lower levels of anxiety and less conflict between work and personal life.<sup>313</sup>
- Lesbian, gay, and bisexual workers who are more out will be better workers. Several studies show that out workers report greater job satisfaction.<sup>314</sup> In addition, in one study participants who are more out also report sharing their employer's values and goals more than workers who are more closeted.<sup>315</sup> Another study shows that more out workers report higher levels of satisfaction with their co-workers.<sup>316</sup>
- Research also shows that partner benefits reduce gay, lesbian, and bisexual workers' turnover and increase their commitment to firms.<sup>317</sup>
- Partly because of employer health care practices, people in same-sex couples are almost twice as likely to be uninsured than are married different-sex people, which

---

<sup>313</sup> K.M. Jordan & R.H. Deluty, *Coming Out for Lesbian Women: Its Relation to Anxiety, Positive Affectivity, Self-Esteem, and Social Support*, 35 J. HOMOSEXUALITY 41 (1998) [hereinafter Jordan & Deluty]; Nancy E. Day & Patricia Schoenrade, *Staying in the Closet versus Coming Out: Relationships Between Communication about Sexual Orientation and Work Attitudes*, 50 PERSONNEL PSYCHOL. 147 (1997) [hereinafter Day & Schoenrade]; Griffith & Hebl, *supra* note 312.

<sup>314</sup> Driscoll et al., *supra* note 312; Day & Schoenrade, *supra* note 313; Griffith & Hebl, *supra* note 312.

<sup>315</sup> Day & Schoenrade, *supra* note 313. However, some studies searched but did not find this link. Allan L. Ellis & Ellen D.B. Riggle, *The Relation of Job Satisfaction and Degree of Openness About One's Sexual Orientation for Lesbians and Gay Men*, 30 J. HOMOSEXUALITY 75 (1995) [hereinafter Ellis & Riggle]; Ragins & Cornwell, *supra* note 312.

<sup>316</sup> Ellis & Riggle, *supra* note 315.

<sup>317</sup> Ragins & Cornwell, *supra* note 312. A related study finds that experiences of heterosexism increase the likelihood of turnover for LGB employees. Craig R. Waldo, *Working in a Majority Context: A Structural Model of Heterosexism as Minority Stress in the Workplace*, 46 J. COUNSELING PSYCHOL. 218 (1999).

could reduce the health care and health of employees with same-sex partners.<sup>318</sup>

Extending marriage to same-sex couples might improve worker health because a new social climate of equality will encourage openness and because of greater access to health care benefits. Improved worker health may benefit employers through reduced absenteeism and health care costs. Employers might also find it easier to retain and recruit lesbian, gay, and bisexual employees since New Jersey employers will be more attractive to such employees when compared with employers in other states that do not allow same-sex couples to marry. This competitive advantage could reduce training and hiring costs. In addition, some heterosexual employees might also prefer to work in a state that demonstrates its valuing of family diversity through marriage equality, further adding to the gains for New Jersey employers.<sup>319</sup>

#### D. SUMMARY OF MARRIAGE EQUALITY EFFECTS ON NEW JERSEY BUSINESSES

Only two of the three kinds of economic effects on New Jersey employers can be quantified: the added health care benefit costs and the added business revenue from weddings. While the gains from the less direct effects of extending marriage to same-sex couples are not explicitly quantifiable, the costs of recruiting, training, and hiring new employees are likely to be real considerations for most employers. Even without a good estimate of those financial effects, however, the net gain to New Jersey employers is clear. The total health care costs estimated above were \$12 million per year, easily outweighed by the direct effect of over \$100 million in yearly wedding-related spending by out-of-state and in-state couples during the first three years that marriage is extended to same-sex couples. Not all of the private sector employers who will be subsidizing health care benefits for new spouses will directly realize these gains, of course, but the increased health care costs will be very much

---

<sup>318</sup> Ash & Badgett, *supra* note 281, at 588.

<sup>319</sup> See BADGETT & GATES, *supra* note 8, at 3.



spread out because there are so many employers and so few new spouses. We predict that the 2,500 new spouses to be covered will be barely noticed by the state's 177,000 employers.

## CONCLUSION

Using data from New Jersey residents in Census 2000 and drawing on the experience of New Jersey and other states, we have been able to quantify the likely fiscal effects of the Domestic Partnership Act and of giving same-sex couples the right to marry.

- The State will likely save from \$0.4 to \$2.3 million in avoided public assistance expenditures through the Domestic Partnership Act, or from almost \$1 to \$5.2 million from extending marriage to same-sex couples.
- Covering the health insurance of same-sex domestic partners or spouses of state employees and retirees will add approximately \$2.4 million in state expenditures.
- The State will also experience a loss in transfer inheritance tax revenues but an increase in income tax and sales tax revenues, for a \$5.3 million net gain in tax revenues.
- If same-sex couples are allowed to marry, New Jersey's employers will have approximately \$12 million in additional health care benefit expenses for 2500 new spouses, although most employers will have no new spouses signing up for benefits.
- If same-sex couples are allowed to marry, New Jersey's wedding and tourism-related business sectors will see a little over \$100 million per year in spending by in-state and out-of-state same-sex couples.

Our analysis projects that giving equal marriage rights to same-sex couples will have a positive net impact on the state budget of \$3.9 to \$8.1 million per year and a net gain to state businesses of over \$90 million per year during the first three



years that marriage is extended to same-sex couples. The analysis shows that marriage equality is not just good for same-sex couples, but good for the state budget and economy, too.

## APPENDIX A: NEW JERSEY COMPANIES THAT PROVIDE HEALTH CARE BENEFITS TO DOMESTIC PARTNERS

<b>COMPANY</b>	<b>CITY</b>
AramSCO	Thorofare
Astrix Software Technology	Edison
Automatic Data Processing, Inc.	Roseland
Avaya Financial Services	Livingston
Avaya Inc.	Basking Ridge
Aventis Pharmaceuticals Inc.	Bridgewater
Barba Arkhon International Inc.	Cherry Hill
Berlex, Inc.	Montville
Besam Automated Entrance System Inc	Hightstown
Biovail Pharmaceuticals Inc.	Bridgewater
Boda Industries Inc	South Hackensack
Campbell Soup Co.	Camden
Carbone Of America	Boonton
Castrol Consumer North America	Wayne
Cendant Mortgage	Mt. Laurel
Cherryroad Technologies Inc	Parsippany
Chubb Corp.	Warren
Church & Dwight Co. Inc.	Princeton
Commerce Bancorp, Inc.	Cherry Hill
David Sarnoff Research Center	Princeton
Diagnostica Stago, Inc.	Parsippany
Fleetwood Financial Corp	Edison
Global Protection Acquisition, Inc.	Marlton
Global Protection Llc	Marlton
Great Voice Company	Englewood Cliffs
Grignard Co Llc	Newark
Hoffmann-La Roche Inc.	Nutley
Honeywell International Inc.	Morristown

Ileon.Com Inc	Cherry Hill
Iniven	Somerville
I-Stat Corporation	Princeton
J. Fletcher Creamer & Son, Inc.	Linden
Johnson & Johnson	New Brunswick
Lee Hecht Harrison	Woodcliff Lake
Lifecell Corp	Branchburg
Liz Claiborne Inc.	North Bergen
Lucent Technologies Inc.	Murray Hill
Macro 4 Inc.	Parsippany
Maquet Inc	Bridgewater
Matting World	Pleasantville
Medco Health Solutions	Franklin Lakes
Medi-Type Transcription Service Corp	Wayne
Merck & Co. Inc.	Whitehouse Station
Merrill Lynch Trust Co	New Brunswick
Movado Group	Paramus
MWW Group, The	East Rutherford
Neta Scientific Inc	Marlton
Newcourt Credit Group Inc	Livingston
Niagara Conservation Corp	Cedar Knolls
Nice Systems Inc	Rutherford
North American Video Inc	Brick
North Jersey Media Group Inc.	Hackensack
Novartis Pharmaceutical Corp.	East Hanover
Osteotech Inc	Eatontown
PA Consulting Group	Plainsboro
Ppi/Mrs Inc	South Amboy
Prosec Protection Systems Inc	Lakewood
Prudential Financial Inc.	Newark
Prudential Insurance Company	Livingston
Public Service Enterprise Group	Newark
Quest Diagnostics Incorporated	Lyndhurst
Rainbow Environmental Products	Fairfield

RCC Consultants, Inc.	Woodbridge
Regent Book Co	Saddle Brook
Riker Danzig Scherer Hyland & Perretti	Morristown
Saint Barnabas Health Care System	Toms River
Schering-Plough Corp.	Kenilworth
Serco Group, Inc.	Gibbsboro
Software House International	Somerset
Subaru of America Inc.	Cherry Hill
Swatch Group (Us) Inc	Weehawken
Swissray America Inc	Elizabeth
Telcordia Technologies Inc.	Morristown
The Dun & Bradstreet Corporation	Short Hills
Tyco International	Princeton
Verizon Communications Inc.	Basking Ridge
Verizon Wireless	Bedminster
Virtua Health	Marlton
Wyeth	Madison