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**Williams**  
INSTITUTE

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Assessing the Impact of DOMA on American  
Families”

Written Testimony of  
The Williams Institute, UCLA School of Law

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The Williams Institute, an academic research center of UCLA School of Law, advances sexual orientation and gender identity law and public policy through rigorous, independent research and scholarship, and disseminates it to judges, legislators, policymakers, media and the public.

We are pleased to offer testimony that summarizes demographic data about same-sex couples and the serious financial, legal, social and health consequences of the Defense of Marriage Act (DOMA) for them and their families. While the Williams Institute and other scholars have documented many of these consequences through academic research, DOMA also has the impact of impairing further research on same-sex couples and their families, and the consequences that DOMA has on them.

## **I. Same-Sex Couples and Their Families in the United States**

The Census Bureau's 2009 American Community Survey (ACS) estimates that there are 581,300 same-sex couples in the United States. More than half of lesbians and gay men are in committed cohabiting relationships.<sup>1</sup>

Counts from state administrative agencies show that more than 50,000 same-sex couples have married. Analyses of the 2010 Williams Institute/Harris-Interactive Same-sex Couple Survey show that nearly 14% of same-sex couples in the United States are legally married under state law.<sup>2</sup> This study along with the state administrative agency counts imply that there are 50,000 to 80,000 legally married same-sex couples in the United States today. In addition, another 85,000 same-sex couples are in civil unions or registered domestic partnerships.

ACS data also suggest that approximately 20% of same-sex couples are raising nearly 250,000 children. Rates of child-rearing are even higher among members of same-sex couples who are racial and ethnic minorities. For example, an analysis of 2008 ACS data reveals that 38% of African-American and 27% of Latino/a members of same-sex couples are raising children. Studies also suggest that half of gay men and more than 40% of lesbians who have not yet had a child want to have children some day.<sup>3</sup>

Census and ACS data also reveal that members of same-sex couples are diverse in terms of race and ethnicity, income, veteran status, and age. According to ACS data, almost one in four members of same-sex couples is a person of color. Although 93% of members of

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<sup>1</sup> C. Carpenter & G.J. Gates, *Gay and Lesbian Partnership: Evidence from California*, 45 DEMOGRAPHY 573 (2008).

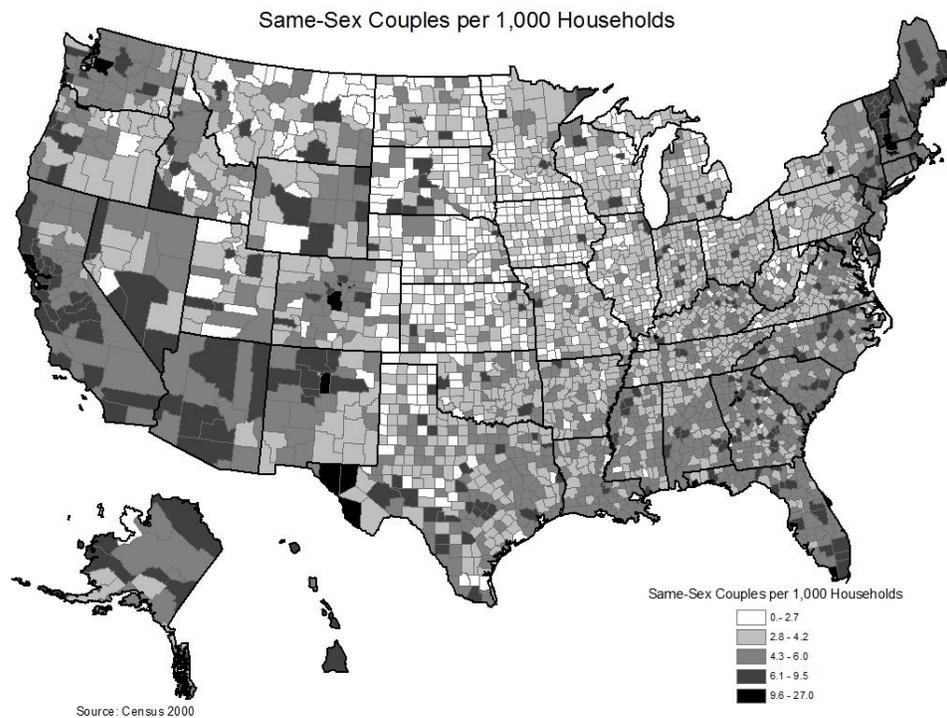
<sup>2</sup> GARY J. GATES, SAME-SEX COUPLES IN U.S. CENSUS BUREAU DATA: WHO GETS COUNTED AND WHY (2010), *available at* [http://www3.law.ucla.edu/williamsinstitute/pdf/WhoGetsCounted\\_FORMATTED1.pdf](http://www3.law.ucla.edu/williamsinstitute/pdf/WhoGetsCounted_FORMATTED1.pdf).

<sup>3</sup> GARY J. GATES ET AL., ADOPTION AND FOSTER CARE BY GAY AND LESBIAN PARENTS IN THE UNITED STATES (2007) *available at*

<http://www3.law.ucla.edu/williamsinstitute/publications/FinalAdoptionReport.pdf>.

same-sex couples in the labor force are employed, and 45% of members have college degrees, they come from every economic class. A Williams Institute report analyzing data from the 2002 National Survey of Family Growth found that 15% of gay men and 24% of lesbians live in poverty. In particular, analysis of Census 2000 data revealed that one in five children being raised by a same-sex couple lives in poverty. Analyses of 2009 ACS data show that over 7% of individuals in same-sex couples, approximately 85,000 individuals nationally, are veterans of the armed forces and almost 5% are 65 years of age or older.

U.S. Census and ACS data also reveal that same-sex couples live throughout the United States. Census Bureau data has identified same-sex couples in every congressional district and in almost every county in the United States. According to 2009 ACS data, approximately 15% of male same-sex couples and 19% of female same-sex couples live in rural areas.



As a result of DOMA, legally married same-sex couples and individuals who have had a same-sex spouse are not recognized as such by the federal government. This lack of recognition results in legal, financial, social, and psychological hardships for many of these couples and their families. These hardships have tangible negative effects on their health and welfare.

## II. Legal and Financial Consequences of DOMA

The federal non-recognition of marriage for same-sex couples articulated in DOMA imposes substantial legal and financial costs on married same-sex couples and their

families by denying them the benefits and protections that federal law affords to married couples and their families.

By failing to be recognized by the federal government, an individual who needs to take time off work to care for their same-sex spouse is not protected. Similarly, both same-sex spouses might lose their home if one of them enters long-term care covered by Medicaid. DOMA imposes barriers that prevent them from receiving benefits, including health care benefits that are otherwise provided to different-sex spouses of federal employees, veterans, and employees in the private sector. Employees whose same-sex spouses are provided with health benefits by their employers have to pay a tax on these benefits that employees with different-sex spouses do not. Same-sex couples may also face higher income and estate taxes. For bi-national same-sex couples, DOMA can mean that the couple must choose between not living together, or living outside the United States. The Williams Institute has conducted research to assess and quantify many of these impacts of DOMA on same-sex couples and their families:

#### *A. Family Medical Leave Act (FMLA) Benefits*

The FMLA allows an individual to take employment leave to care for various family members, including a different-sex spouse. However, employees cannot take leave under the FMLA to care for a same-sex partner. A recent Williams Institute research brief uses 2008 Census Bureau data to estimate that approximately 38% of same-sex partners (approximately 430,000) are both employed and would be eligible for FMLA benefits to care for same-sex spouses if the FMLA covered same-sex partners.<sup>4</sup>

#### *B. Benefits for Spouses of Federal Employees*

Because DOMA prohibits federal recognition of same-sex married couples, it means that same-sex spouses of federal employees cannot receive all of the same employee benefits that are provided to an employee with a different-sex spouse. A 2008 Williams Institute report found that the federal government has approximately 34,000 employees with same-sex partners.<sup>5</sup> Of these, approximately 30,200 employees are partnered with a non-federal employee. The remaining 3,000 employees are partnered with another federal employee, who already receives federal benefits. Benefits denied to spouses of federal employees, who are not employed by the federal government, include coverage for health insurance, retiree health insurance and annuities, and work injury/death compensation.

#### *C. Veteran Partner Benefits*

Based on analyses of 2009 ACS data, 7.3% of individuals in same-sex couples, or approximately 85,000 individuals, are veterans of the armed forces. Of these, nearly

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<sup>4</sup> M.V. LEE BADGETT, THE IMPACT OF EXPANDING LEAVE RIGHTS TO CARE FOR CHILDREN OF SAME-SEX PARTNERS (2010) *available at* [http://www3.law.ucla.edu/williamsinstitute/pdf/FMLA\\_Final.pdf](http://www3.law.ucla.edu/williamsinstitute/pdf/FMLA_Final.pdf).

<sup>5</sup> NAOMI G. GOLDBERG, CHRISTOPHER RAMOS & M.V. LEE BADGETT, THE FISCAL IMPACT OF EXTENDING FEDERAL BENEFITS TO SAME-SEX DOMESTIC PARTNERS (2008), *available at* [http://www3.law.ucla.edu/williamsinstitute/publications/S2521FiscalAnalysis\\_WilliamsInst.pdf](http://www3.law.ucla.edu/williamsinstitute/publications/S2521FiscalAnalysis_WilliamsInst.pdf).

68,000 veterans have same-sex partners who are not also veterans. Spouses of veterans are eligible for a variety of benefits including pensions, educational assistance, and vocational training. Same-sex partners are not eligible for any of these benefits.<sup>6</sup>

#### *D. Taxation of Employee Health Benefits for a Same-Sex Spouse*

Even when employers do offer health insurance to same-sex spouses and domestic partners, because of DOMA these benefits are taxed under federal law burdening both employees and employers. Recognizing the benefits created by workplace equality for recruitment and retention, numerous companies offer the same health benefits for their employees' same-sex domestic partners and spouses as they do for employees' different-sex spouses.<sup>7</sup> However, though the benefits received by different-sex spouses are tax-exempt, the federal government taxes the benefits received by same-sex spouses and domestic partners. Same-sex spouses and domestic partners cannot claim the same tax exemptions as different-sex spouses under current federal law. A 2007 Williams Institute and Center for American Progress study found that an employee with a same-sex spouse or domestic partner pays \$1,069 more in taxes per year than an employee receiving the same health benefits for a different-sex spouse.<sup>8</sup> This results in these employees paying 11% more in taxes than they would pay if they were married and the federal government recognized that marriage.<sup>9</sup> The 2007 study shows that 41,000 same-sex couples have to pay this imputed income tax for these spousal and domestic partner health insurance benefits.

#### *E. Private Employment Health Insurance Benefits Affected By ERISA*

The federal Employee Retirement Income Security Act (ERISA) limits the power of states to control benefits in the private sector.<sup>10</sup> ERISA preempts state laws that attempt to regulate benefits that “relate to”<sup>11</sup> the benefits provided as part of group plans offered to employees by private sector employers; such plans are governed only by ERISA. Because of the so-called “savings clause,”<sup>12</sup> which exempts state insurance laws from preemption, states can require insurance carriers doing business in the state to sell only plans that offer coverage to same-sex partners on the same terms as apply to different-sex spouses.<sup>13</sup> Because ERISA does not apply to government-sponsored health plans, state

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<sup>6</sup> Analysis of 2009 ACS PUMS, Craig Konnoth, Fellow, Williams Institute, Jul. 15, 2011.

<sup>7</sup> See HUMAN RIGHTS CAMPAIGN, CORPORATE EQUALITY INDEX (2011) available at <http://www.hrc.org/cei2011/index.html>.

<sup>8</sup> M.V. LEE BADGETT, UNEQUAL TAXATION OF DOMESTIC PARTNER BENEFITS (2007) available at [http://www.americanprogress.org/issues/2007/12/pdf/domestic\\_partners.pdf](http://www.americanprogress.org/issues/2007/12/pdf/domestic_partners.pdf).

<sup>9</sup> *Id.* at 7.

<sup>10</sup> 29 U.S.C. § 1001 et. seq. (2009).

<sup>11</sup> For a discussion of the current “relate to” test, see *Shaw v. Delta Airlines*, 463 U.S. 85 (1983) and progeny (in particular *N.Y. State Conf. of Blue Cross and Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995), which modifies the test, but does not explicitly overrule prior cases).

<sup>12</sup> 29 U.S.C. §§ 1144(a), (b)(2)(A) (“savings clause”); 1002(32); 1003(b)(1) (non-application to government-sponsored plans).

<sup>13</sup> Jeffrey G. Sherman, *Domestic Partnership and ERISA Preemption*, 76 TUL. L. REV. 373 (2001) (citing *Metropolitan Life Ins. Co. v. Mass.*, 471 U.S. 724 (1985)).

laws can require state and local government employers to offer equal benefits.<sup>14</sup> Numerous states, including states which do not recognize marriage between same-sex partners such as Hawaii, Oregon, Maine and New York (before it passed its marriage equality law), require insurance carriers to provide coverage to same-sex partners.<sup>15</sup>

The biggest impact of ERISA preemption is therefore on self-funded (or self-insured) employer-sponsored health insurance plans.<sup>16</sup> When an employer elects to self insure, ERISA effectively bars the state from setting criteria for how its workplace benefits plans are structured. As a result, none of the states listed above require self-funded plans to insure same-sex partners. Indeed, Oregon's Act explicitly states that it does "not require the extension of any benefit under any employee benefit plan that is subject to federal regulation under the Employee Retirement Income Security Act of 1974 [ERISA]."<sup>17</sup>

Employers' treatment of same-sex spouses of employees in Massachusetts demonstrates the harm that can result. Data from 2009 shows that almost all, or 93%, of employers who offered employee health coverage also covered different-sex spouses. However, only 71% of those employers provided coverage to same-sex spouses of employees. The Massachusetts Division of Health Care Finance and Policy believes the difference is a result of the fact that some employers are self-insured and are therefore regulated by federal law rather than state insurance law.<sup>18</sup>

#### *F. Spousal Impoverishment Protections for Medicaid Long Term Care (LTC)*

Medicaid's long-term care program covers long-term care facility costs for those eligible and expected to remain in the care facility for at least 30 days.<sup>19</sup> As with other Medicaid programs, income and assets are evaluated to determine whether an individual is eligible for Medicaid-covered long-term care. If a Medicaid recipient in long-term care moves into a facility without the intent to return home, transfers a home for less than fair market

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<sup>14</sup> 29 U.S.C. §§ 1002(32); 1003(b)(1).

<sup>15</sup> New York Office of the General Counsel representing the State Insurance Dep't, Re: Health Insurance for Same-Sex Spouses in Legal Out-of-State Marriages, OGC op no 08-11-05 (Nov. 21, 2008), available at <http://www.ins.state.ny.us/ogco2008/rg081105.htm> (before the passage of marriage equality law in New York); HAW. REV. STAT. § 572C (2009) (Hawaii's reciprocal beneficiary law providing for extension of several benefits, including employer-based non-self-funded health insurance, to reciprocal beneficiaries of insured employees); David A. Weber, Deputy Att'y Gen., Health Insurance Coverage for Reciprocal Beneficiaries, Haw. Att'y Gen. Opinion 97-10, Dec. 2, 1997, available at [http://hawaii.gov/ag/main/publications/opinions/1993\\_1999/97-10.pdf](http://hawaii.gov/ag/main/publications/opinions/1993_1999/97-10.pdf); ME. INS. CODE tit. 24-A, ch. 33, § 2741-A (2009); ORS § 106.300 et seq. (2009).

<sup>16</sup> Under self-funded employer-sponsored plans, the employer is responsible for funding the plan out of its general assets; no third party insurance carrier is involved. Janice Kay McClendon, *A Small Step Forward in the Last Civil Rights Battle: Extending Benefits under Federally Regulated Employee Benefit Plans to Same-Sex Couples*, 36 N.M. L. REV. 99, 108 (2006).

<sup>17</sup> *Id.* at § 106.340(7).

<sup>18</sup> See discussion in M. V. Lee Badgett, "The Economic Value of Marriage for Same-sex Couples," *Drake Law Review*, Vol. 58, No. 4, 2010, p. 1088.

<sup>19</sup> U.S. Dep't of Health and Human Svcs, Medicaid Treatment of the Home: Determining Eligibility and Repayment for Long-Term Care (Apr. 2005), available at <http://aspe.hhs.gov/daltcp/reports/hometreat.htm> (last visited Jan. 31, 2011).

value, or dies, the home becomes a countable resource.<sup>20</sup> Furthermore, income received by the recipient is countable after he or she moves to long-term care.<sup>21</sup> The practical effect is that these assets and income will be spent down to pay for long-term care as part of the Medicaid program.<sup>22</sup> If the participant in the long-term care program is married to a different-sex spouse, the program will protect the spouse who remains in the family home from being left destitute due to the asset and income long-term care rules. Congress enacted protections known as “spousal impoverishment provisions” to accomplish this goal. These provisions operate by exempting certain income and assets from being used 1) to determine Medicaid eligibility under the long-term care program; and 2) to offset Medicaid expenditures for the recipient’s long-term care, as required by the Medicaid program.<sup>23</sup> Therefore, the different-sex spouse who is not in long-term care will not be forced to lose the couple’s home or to subsist without adequate income.<sup>24</sup> Although DHHS has recently issued guidance that states can include same-sex couples under existing spousal impoverishment protections, states are not required to include same-sex couples and no state has yet changed its policies as a result of this guidance.

Almost 1.2 million individuals live with a same-sex partner. Of those individuals, 4.8% are 65 years of age or older. Since 1.4% of those younger than 65 require LTC and 14% of those 65 or older require LTC,<sup>25</sup> we estimate that 23,300 of people with same-sex partners require LTC of some kind. Most will not need formal care, but 22% will require at least some formal paid care.<sup>26</sup> After adjusting the estimate upward to account for the fact that 14% of people will be receiving care in an institution, such as a skilled nursing facility, we estimate that about 6,000 people in same-sex couples are receiving paid LTC.

Medicaid pays for about half of all spending on LTC,<sup>27</sup> although approximately 29% of recipients of LTC receive Medicaid.<sup>28</sup> We use both percentages to provide a conservative range of estimates. Therefore, our best estimate is that about 1,700-3,000 individuals with same-sex partners receive Medicaid-financed long-term care.<sup>29</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> U.S. Dep’t of Health and Human Svcs, Spouses of Medicaid Long-Term Care Recipients (Apr. 2005), available at <http://aspe.hhs.gov/daltcp/reports/spouses.htm> (last visited Jan. 31, 2011).

<sup>22</sup> U.S. Dep’t of Health and Human Svcs, *supra* note 10.

<sup>23</sup> U.S. Dep’t of Health and Human Svcs, Centers for Medicare & Medicaid Svcs, Medicaid Eligibility: Spousal Impoverishment, available at [https://www.cms.gov/MedicaidEligibility/09\\_SpousalImpoverishment.asp#TopOfPage](https://www.cms.gov/MedicaidEligibility/09_SpousalImpoverishment.asp#TopOfPage) (last visited Jan. 31, 2011).

<sup>24</sup> SERVICES & ADVOCACY FOR GAY, LESBIAN, BISEXUAL & TRANSGENDER ELDERS & MOVEMENT ADVANCEMENT PROJECT, IMPROVING THE LIVES OF LGBT OLDER ADULTS 15 (2010), available at <http://www.lgbtmap.org/file/improving-the-lives-of-lgbt-older-adults.pdf>.

<sup>25</sup> GEORGETOWN UNIVERSITY, LONG-TERM CARE FINANCING PROJECT, WHO NEEDS LONG-TERM CARE? (2003), available at <http://ltc.georgetown.edu/pdfs/whois.pdf>.

<sup>26</sup> *Id.*

<sup>27</sup> JUDITH FEDER, HARRIET L. KOMISAR, ROBERT B. FRIEDLAND, GEORGETOWN UNIVERSITY, LONG-TERM CARE FINANCING PROJECT, LONG-TERM CARE FINANCING: POLICY OPTIONS FOR THE FUTURE 5 (June 2007), available at <http://ltc.georgetown.edu/forum/ltcfinalpaper061107.pdf>.

<sup>28</sup> This percentage is derived from figures showing that 3 million people receive Medicaid for LTC out of 10.3 million needing LTC, in KAISER COMMISSION ON MEDICAID FACTS, MEDICAID AND THE UNINSURED (2010), available at <http://www.kff.org/medicaid/upload/2186-07.pdf>.

<sup>29</sup> Analysis by M.V. Lee Badgett, Research Director, Williams Institute, Feb. 10, 2011.

It is harder to estimate the number of people who would gain eligibility for LTC under Medicaid if the income and assets of both members of same-sex couples were to be counted (called “spousal deeming”), but it is conceivable that some people in same-sex couples would become eligible. For instance, a wealthier partner requiring LTC would have some assets shifted by the program’s rules to a partner with fewer economic resources, and thus would qualify without as much spending down. If these types of situations are distributed fairly evenly across same-sex couples, then about half of the time the wealthier partner will need LTC, and half the time the partner with fewer resources will need LTC.

Our estimates above imply that about 3,000-4,500 people are receiving LTC and are paying for it through some other means than Medicaid. In addition to Medicaid, LTC care is also paid for by Medicare (19%), private health and LTC insurance (7%), out-of-pocket payments (19%), and other private (3%) or public (3%) sources.<sup>30</sup> If the share of recipients in each category is at least roughly similar to the shares of payments from those sources, then we can estimate an upper bound: about one-fifth of those individuals, or 600 to 900 are paying for LTC out-of-pocket but might possibly now qualify for Medicaid if they were treated as spouses.

### *G. Inheritance Tax*

In 2009, the Williams Institute released a report detailing the estate tax disadvantages that same-sex couples face under federal law since they cannot be recognized as a married couple.<sup>31</sup> The report documents that assets inherited from a different-sex spouse are largely not subject to inheritance tax. One consequence of DOMA is that same-sex spouses are treated as legal strangers and thus subject to different taxation rules. Analyses conducted in 2011 by the Williams Institute suggest that in 2011 and 2012, it is likely that more than 9,000 same-sex couples will file estate tax returns. Of that group, more than 40 couples will have assets that exceed allowable non-taxable transfer of assets, adding an average tax burden of nearly 4 million dollars to these estates.

### *H. Filing Income Taxes Jointly*

While many same-sex couples avoid the so-called “marriage penalty” associated with filing joint tax returns, many same-sex couples would gain from being able to file joint tax returns. Currently, those same-sex couples cannot take advantage of the option to reduce their tax burden. Moreover, many same-sex couples must calculate two sets of state tax returns. In some states, same-sex couples can file their state returns as a married couple. But because federal law prohibits same-sex couples from filing as married couples, federal forms require tax calculations from state returns completed as if they were single.

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<sup>30</sup> GEORGETOWN UNIVERSITY, LONG-TERM CARE FINANCING PROJECT, NATIONAL SPENDING FOR LONG-TERM CARE (2007), available at <http://ltc.georgetown.edu/pdfs/natspendfeb07.pdf>.

<sup>31</sup> MICHAEL D. STEINBERGER, FEDERAL ESTATE TAX DISADVANTAGES FOR SAME-SEX COUPLES (2009), available at [http://www3.law.ucla.edu/williamsinstitute/pdf/EstateTax\\_FINAL\\_Nov2009.pdf](http://www3.law.ucla.edu/williamsinstitute/pdf/EstateTax_FINAL_Nov2009.pdf).

### *I. Social Security Survivor or Spousal Benefits*

Under the current system of Social Security, different-sex spouses of insured workers can get a monthly check for half their spouse's benefit if it is higher than what he or she would get on his or her own. Also, when one spouse dies and both receive social security, the surviving spouse gets the higher of the pair's monthly benefit amount. For example, for a married different-sex couple, the husband may receive \$12,073 each year while his wife may receive \$6,835 each year. When the wife passes away, the husband continues to receive his monthly payment of \$12,073. However, if the husband dies first, the wife would then begin receiving the higher of their payments, or \$12,073.

Because the federal government does not recognize same-sex partners, same-sex couples do not benefit from this potential survivor benefit. This loss can be sizable. Recent data on same-sex couples aged 65 or older shows the difference in social security income between partners is \$5,700 for female same-sex couples and \$5,770 for male couples. If the partner receiving higher social security payments dies first, the surviving same-sex partner would lose this amount in potential benefits.<sup>32</sup>

Social Security also provides a survivor benefit to some widows and widowers whose spouses have paid into the system but have not yet retired. According to the Social Security Administration, a surviving spouse is eligible not only for a \$255 lump-sum benefit on the death of a covered worker, but he or she is also provided with survivor benefits that can be worth as much as a \$433,000 life insurance policy to a young family. Because their marriages are not recognized, members of married same-sex couples are not allowed this survivor benefit at all, nor are they eligible for the lump-sum benefit.

If a covered worker becomes disabled, his or her spouse—if 62 or older—receives a benefit of one-half the disabled recipient's Social Security benefit. For example, in December 2008, the average spousal disability benefit in Massachusetts was \$265 per month, or \$3,180 per year. Again, members of same-sex couples are not allowed this spousal disability benefit at all.

### *J. Immigration for Bi-National Couples*

While current United States immigration policy is based primarily on family reunification, it does not provide any rights for unmarried partners of citizens. As a result, gay and lesbian couples that include a U.S. citizen and a non-citizen (referred to as bi-national couples) can be forced to separate if the non-citizen partner is not able to legally remain in the country. A forthcoming report from the Williams Institute reveals that nearly 26,000 same-sex couples in the United States are bi-national couples who could be forced to separate because they cannot participate in green-card and accelerated

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<sup>32</sup> NAOMI G. GOLDBERG, THE IMPACT OF INEQUALITY FOR SAME-SEX PARTNERS IN EMPLOYER-SPONSORED RETIREMENT PLANS 9 (2009), available at [http://www3.law.ucla.edu/williamsinstitute/pdf/RetirementAnalysis\\_Final.pdf](http://www3.law.ucla.edu/williamsinstitute/pdf/RetirementAnalysis_Final.pdf).

citizenship mechanisms offered to non-citizen spouses of American citizens.<sup>33</sup> In addition to the emotional toll incurred by same-sex couples who live under the threat of forced separation if one partner cannot acquire legal residency, economists also demonstrate that there are clear financial repercussions. There are significant financial benefits of naturalization due to increased labor mobility and employment opportunities, which means that wages of naturalized citizens increase more rapidly than among immigrants who are not naturalized.<sup>34</sup>

### III. Social and Health Consequences of DOMA

One of the most harmful effects of DOMA is the imposition of a government sanctioned stigma on same-sex couples and their families. Psychologists define stigma as “having an attribute that conveys a devalued social identity.”<sup>35</sup> DOMA constitutes structural (or institutional) stigma. This “represents the policies of private and governmental institutions that restrict the opportunities of stigmatized groups.”<sup>36</sup> Structural stigma burdens the liberty and dignity of members of a stigmatized group by legitimizing the unequal treatment of some groups in society. Laws like DOMA uphold and enforce stigma toward same-sex couples and their families by asserting that their relationships are not deserving of equal status when compared to different-sex couples and their families. More broadly, such laws reinforce negative attitudes toward LGBT people and create conditions where these negative attitudes are not only socially acceptable, but also viewed as legally desirable. Ample evidence shows that in our society, negative attitudes toward LGBT people are too often expressed as prejudice, discrimination and even violence against them.<sup>37</sup>

A central aspect of the stigma directed toward LGBT people concerns family relations and intimacy. LGBT people have long been seen as incapable of—and even uninterested in—sustained intimate relationships. Thus, stigma about LGBT people often promotes the perception that because they cannot or do not want intimate partners, families, and children, they live isolated lives and are destined to die lonely.<sup>38</sup> As summarized above, ample research exists to contradict such views.

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<sup>33</sup> CRAIG J. KONNOTH & GARY J. GATES, SAME-SEX COUPLES AND IMMIGRATION IN THE UNITED STATES (forthcoming 2011).

<sup>34</sup> Bernt Bratsberg, James F. Ragan, Jr. & Zafar M. Nasir, *The Effect of Naturalization on Wage Growth: A Panel Study of Young Male Immigrants*, 20 J. OF LABOR ECON. 568 (2002).

<sup>35</sup> J. Crocker, B. Major & C. Steele, *Social Stigma*, in 2 THE HANDBOOK OF SOCIAL PSYCHOLOGY 504, 506 (D. Gilbert et al, eds., 4th ed. 1998).

<sup>36</sup> Patrick W. Corrigan, et al., *Structural stigma in state legislation*, 56 PSYCHIATRIC SERVICES 557, 557 (2005).

<sup>37</sup> Gregory M. Herek, *Sexual Stigma and Sexual Prejudice in The United States: A Conceptual Framework*, in CONTEMPORARY PERSPECTIVES ON LESBIAN, GAY AND BISEXUAL IDENTITIES: THE 54TH NEBRASKA SYMPOSIUM ON MOTIVATION 67 (D. A. Hope, ed., 2009); Gregory M. Herek, *Hate Crimes and Stigma-Related Experiences among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample*, 24 J. OF INTERPERSONAL VIOLENCE 54 (2009).

<sup>38</sup> Ilan H. Meyer & L. Dean. *Internalized Homophobia, Intimacy, and Sexual Behavior among Gay and Bisexual Men*, in 4 PSYCHOLOGICAL PERSPECTIVES ON LESBIAN AND GAY ISSUES: STIGMA AND SEXUAL ORIENTATION 160 (Gregory Herek, ed., 1998).

By explicitly denying married same-sex couples full legal equality and recognition under federal law, DOMA strengthens the structural stigma affecting LGBT persons by limiting their access to a cherished social institution that is rich with both symbolic meaning and tangible privileges. The harm of DOMA to LGBT people is especially enhanced because of the importance and esteem of marriage in our society. Marriage is the social institution that largely governs intimate relations in the United States. Marriage not only provides tangible benefits to married individuals, it also provides social approval and recognition. DOMA both reflects and propagates the stigma that LGBT people do not have and cannot obtain intimate relations that are of similar value and respect as those of heterosexual couples.

By preventing same-sex relationships from obtaining the respect paid to other marital relationships, DOMA essentially enshrines the age-old stigma of LGBT people as lonely and incapable of healthy and happy relationships into the law of the United States. A survey of people married to a same-sex spouse in Massachusetts finds that couples gain social support from their families and a greater level of commitment to their partners when they are allowed to marry.<sup>39</sup> Same-sex couples who can marry report that they feel more socially included,<sup>40</sup> but they are still critically aware that they are excluded from legal recognition and treated as second-class citizens by the federal government as a result of DOMA.<sup>41</sup>

Stigma can produce serious adverse impacts on the health of LGBT people by causing stress and disease. This has been recognized by public health authorities including Healthy People 2010 and 2020, which sets health priorities for the United States.<sup>42</sup> Healthy People objectives identify the LGBT population as a group targeted to reduce health disparities in the United States. In explaining the reason for the inclusion of the LGBT population as one of the groups requiring special public health attention, the Department of Health and Human Services noted: “The issues surrounding personal, family, and social acceptance of sexual orientation can place a significant burden on mental health and personal safety.” This conclusion was reiterated by the Institute of Medicine of the National Academies, an independent body of scientists that advises the federal government on health and health policy matters, in its recent report, *The Health of Lesbian, Gay, Bisexual and Transgender People*, where it noted, “LGBT people . . . face a profound and poorly understood set of . . . health risks due largely to social stigma.”<sup>43</sup>

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<sup>39</sup> C. RAMOS, N. GOLBERG, & M. V. L. BADGETT, THE EFFECTS OF MARRIAGE EQUALITY IN MASSACHUSETTS: A SURVEY OF THE EXPERIENCES AND IMPACT OF MARRIAGE ON SAME-SEX COUPLES (2009), available at [http://www3.law.ucla.edu/williamsinstitute/publications/Effects\\_FINAL.pdf](http://www3.law.ucla.edu/williamsinstitute/publications/Effects_FINAL.pdf).

<sup>40</sup> M. V. Lee Badgett, *Social Inclusion and the Value of Marriage Equality in Massachusetts and the Netherlands*, 67 J. OF SOCIAL ISSUES 316 (2011).

<sup>41</sup> M. V. Lee Badgett, *The Economic Value of Marriage for Same-sex Couples*, 58 DRAKE L. REV. 1100 (2010).

<sup>42</sup> U.S. Dep’t of Health and Human Svcs., Healthy People 2020, [http://www.healthypeople.gov/Document/html/uih/uih\\_2.htm#goals](http://www.healthypeople.gov/Document/html/uih/uih_2.htm#goals), last accessed July 19, 2011. .

<sup>43</sup> INSTITUTE OF MEDICINE, THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING (2011).

The stress that comes from social exclusion takes an emotional toll that can lead to adverse health outcomes and a poor sense of well-being. Researchers have shown that LGBT people are harmed by the impact of stress related to stigma. Indeed, LGBT populations have higher prevalence of such health outcomes as depression, anxiety, substance use disorders, and suicide attempts. It is reasonable to conclude that DOMA's categorical disrespect by the federal government of the actual legal status of tens of thousands of married lesbian and gay couples inflicts similar stigma, with similar attendant harms. In contrast, early research shows that where gay people have been allowed to legally marry, marriage confers mental health benefits, reversing some of the effects of stress related to stigma.<sup>44</sup>

#### **IV. DOMA Impedes Further Research and Understanding of Same-Sex Couples**

DOMA has also impaired the ability of researchers to assess its impact on same-sex couples and their families. Throughout the last decade, the U.S. Census Bureau maintained that DOMA restricted it from reporting any information about married same-sex couples. Legally married same-sex couples who responded that they were spouses on the American Community Survey were publically reported to be same-sex "unmarried partners" even though many were, in fact, legally married.

Recently, the Bureau has begun to reevaluate this policy and has made some positive changes to their procedures. However, a legacy of DOMA is evident in a general resistance on the part of federal statistical agencies to collect detailed, accurate, and reliable data on same-sex couples and their families. This means that policy debates on laws like DOMA have too often been driven as much by anecdote and stereotype as by sound social science research and facts.

#### **V. Conclusion**

The best data available reveal that there are over 580,000 same-sex couples in the United States and that over 50,000 to 80,000 of these couples are married and over 85,000 are in civil unions and registered domestic partnerships. By denying same-sex couples the federal benefits and obligations that are designed to strengthen families, DOMA imposes legal, financial, social and psychological burdens on same-sex couples and their families that result in tangible harms. Moreover, DOMA impedes the very research that is necessary to understand these families and the impact that DOMA has upon them.

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<sup>44</sup> E.D.B Riggle, S.S. Rostosky, & S.G. Horne, Psychological Distress, *Well-Being, and Legal Recognition in Same-Sex Couple Relationships*, 24 J. of Family Psychology 82 (2010).