

The Impact on Washington's Budget of Allowing Same-Sex Couples to Marry

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EXECUTIVE SUMMARY

ALLOWING SAME-SEX COUPLES TO MARRY IN WASHINGTON WILL BOOST THE STATE BUDGET BY \$3.9 MILLION TO \$5.7 MILLION ANNUALLY.

This analysis estimates the impact of allowing same-sex couples to marry on Washington's state budget. Using the best data available, we estimate that allowing same-sex couples to marry will result in a net gain of approximately \$3.9 million to \$5.7 million each year for the State. This net impact will result from savings in expenditures on state means-tested public benefits programs and from an increase in sales tax revenue from weddings and wedding-related tourism.

We base our analysis on the following estimates:

APPROXIMATELY 7,950 OF WASHINGTON'S SAME-SEX COUPLES WILL MARRY IN THE SHORT TERM.

According to Census 2000, Washington has 15,900 cohabiting same-sex couples. Based on the experiences of other states that have extended the rights and obligations of marriage to same-sex couples, we predict that half of those couples — or 7,950 couples — will choose to marry during the first three years that Washington makes same-sex marriage available.

STATE EXPENDITURES ON MEANS-TESTED PUBLIC BENEFITS PROGRAMS WILL FALL.

Extending marriage to same-sex couples will reduce the State's public assistance expenditures. Spouses are obligated to provide for one another's basic needs. After marrying, a same-sex spouse's income and assets will be included in assessing an individual's eligibility for means-tested public benefits, reducing the number of people eligible for such benefits. We take into account the possibility that losing public benefits may create a disincentive for some of these couples to marry and the fact that low-income couples might still qualify for benefits. Nevertheless, using Census 2000 data we estimate that legalizing same-sex marriage will reduce spending on public benefits programs by at least \$300,000 per year and as much as \$2.1 million, depending on how much discretion the State has to determine whether the income of same-sex spouses is included in Medicaid eligibility standards.

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STATE RETAIL SALES TAX REVENUES WILL RISE.

If Washington permits same-sex marriage, the State will collect approximately \$3.7 million in sales tax revenue from Washington same-sex couples' spending on their weddings, or \$1.2 million for each of the first three years that same-sex marriage is available. In addition, couples from other states are likely to travel to Washington to marry and celebrate their weddings, generating a boost to tourism that will lead to higher tax revenues, as well as higher business profit and more jobs. Using Census data and research on Washington's tourism market, we estimate that the State will collect approximately \$8.5 million in tax revenue on spending by out-of-state same-sex couples who travel to Washington to marry, or approximately \$2.8 million each year for the first three years.

Thus, wedding-related spending by in-state and out-of-state couples would raise a total of approximately \$12.2 million in additional tax revenue for the State, or \$4.1 million each year for the first three years that same-sex marriage is available.

ANY IMPACT ON ESTATE TAX REVENUE WILL BE NEGLIGIBLE.

Allowing same-sex couples to marry will enable same-sex partners to take advantage of the marital deduction when calculating estate taxes owed to the State. However, given the high filing threshold for the estate tax and the small number of same-sex spouses likely to die each year, we estimate that any impact on estate tax revenue resulting from the legalization of same-sex marriage will be negligible.

ADMINISTRATIVE COST INCREASES WILL BE MINIMAL.

The State will incur the cost of reprinting marriage license forms with sex-neutral language, but those costs will be minimal.

NO INCREASES IN COURT SYSTEM EXPENDITURES ARE LIKELY TO RESULT.

Any increase in demands on the state court system will be very small relative to the existing average caseload of judges and the normal year-to-year variation in total caseloads. Accordingly, we predict no increase in costs for the State's court system as a result of extending marriage to same-sex couples.

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SAME-SEX MARRIAGE WILL HAVE NO IMPACT ON PROPERTY TAX REVENUE.

Allowing same-sex couples to marry would likely increase property tax payments by some newly-married same-sex couples in which senior citizen or disabled partners currently receive property tax exemptions that reduce the amount of property tax they owe. Because property tax rates are determined based on a statewide cap, however, a reduction in the amount of exempted property will have no impact on total property tax revenues.

THE STATE WILL EXPERIENCE A MINOR DECREASE IN REAL ESTATE EXCISE TAX REVENUE.

Upon divorce, same-sex couples will not be required to pay tax on transfers of property between spouses. The State will experience a small decrease in real estate excise tax revenue to the extent that unmarried same-sex couples currently pay taxes on the transfer of property upon dissolution of their relationships. The estimated decrease in revenue to the State is less than \$325,000 annually.

THE STATE WILL INCUR A SLIGHT INCREASE IN COSTS FOR STATE EMPLOYEE RETIREMENT BENEFITS.

The State maintains seven retirement systems for various categories of State employees. The plans vary in the extent to which they currently recognize employee's same-sex partners and in the pre-retirement and post-retirement death benefits available to spouses. If marriage is extended to same-sex couples, the State can expect to spend approximately \$114,000 per year on same-sex spousal death benefits over the first three years when same-sex marriage is available. Because the state already provides health care benefits to domestic partners, no additional health benefit cost is likely to be incurred if same-sex couples marry.

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SUMMARY OF IMPACTS OF SAME-SEX MARRIAGE ON THE WASHINGTON STATE BUDGET

Impact on State Budget	Net effect (1)*	Net effect (2)**
Savings from means-tested public benefit programs	\$2,079,831	\$305,601
Increased tax revenue from wedding-related spending:		
– in-state couples	\$1,230,000	\$1,230,000
– out-of-state couples	\$2,840,000	\$2,840,000
Decrease in real estate excise tax revenue	- \$324,260	- \$324,260
State employee benefits costs	- \$114,000	- \$114,000
Total	\$5,711,571	\$3,937,341

*Including same-sex spouses in Medicaid determinations.

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INTRODUCTION

Washingtonians are currently discussing the extension of equal marriage rights to same-sex couples. One potential concern about expanding the right to marry is the fiscal impact of such a change. Marriage comes with a variety of rights and obligations that might affect the State of Washington's expenditures and revenues. This study assesses the links between those rights and obligations and various budget categories to estimate the overall impact of same-sex couples' marriages on the state budget.

Several categories of spending might be affected. On the one hand, more marriages could mean higher expenditures for the State on employee benefits and on court administration. On the other hand, the State might see lower expenditures on means-tested benefits.

Similarly, state tax revenues might be expected to change. In particular, we estimate the effect of same-sex marriages on revenues from the real estate tax, the sales and lodging tax, and the estate tax.

We draw on data collected by the State of Washington, in addition to other relevant data sources. The Census 2000 data on same-sex couples in Washington provide important estimates of the number of same-sex couples who might marry if that option were available. Based on Vermont's experience with same-sex civil unions, we predict that 7,950, or half, of Washington's 15,900 cohabiting same-sex couples will marry when offered the opportunity.¹

We base our analysis for Washington on the same methods that we used in previous studies on California,² Connecticut,³ New Hampshire,⁴ New Jersey,⁵ New Mexico,⁶ and Vermont.⁷ The full methodology for our analysis is set out in *Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget*.⁸ In these studies, we have concluded that extending the rights and obligations of marriage to same-sex couples would have a positive impact on each state's budget.⁹ Similar conclusions have been reached by legislative offices in Connecticut¹⁰ and Vermont¹¹ and by the Comptroller General of New York.¹² In addition, the Congressional Budget Office has concluded that if all fifty states and the federal government extended the rights and obligations of marriage to same-sex couples, the federal government would benefit by nearly \$1 billion each year.¹³

In general, we estimate the net effect of costs and benefits conservatively. In other words, we choose assumptions that are the most cautious from the State's perspective and tend to predict higher costs to the State and lower benefits. **Even so, we find that the net effect of allowing same-sex couples to marry will be a positive impact on the state budget of \$3.9 million to \$5.7 million per year.** Moreover, evidence suggests that there are significantly more same-sex

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couples in the State than the Census reports.¹⁴ If more couples marry than we predict, the net gains to the State will be even greater.

1. PUBLIC ASSISTANCE PROGRAMS

The State of Washington funds several public benefit programs that provide assistance to low-income individuals and families. Temporary Assistance to Needy Families (TANF), the state supplement to Supplemental Security Income (SSI), General Assistance Unemployable (GAU), and the Consolidated Emergency Assistance Program (CEAP) provide cash grants. Medicaid and the Basic Health Program (BHP) provide health insurance.¹⁵ The federal government also provides funding for some of these programs.

Eligibility for these programs is means-tested, i.e., eligibility depends on the individual's and family's income and assets. When an applicant is part of a married couple, his or her spouse's income and assets are included in the eligibility determination. Currently, regulations for these public assistance programs do not require the state or federal government to take into account an unmarried same-sex partner's income and assets.¹⁶ Therefore, people with same-sex partners are likely to be considered single when the State assesses eligibility for these programs. If program participants could marry their same-sex partners, same-sex spouses' incomes and assets would be counted in determining eligibility, thus reducing the likelihood that the original program participants would still be eligible. When participation in the programs drops, State expenditures on the programs will also fall.

For GAU, CEAP, and TANF (and, therefore, for individuals qualifying for Medicaid because they receive TANF), the State determines the eligibility standards and will be able to count a same-sex spouse's income and assets in determining the eligibility of an individual or family. For SSI and Medicaid, the federal government determines the generally applicable eligibility standards, and states have more limited discretion in developing their own standards and procedures. Because of the federal Defense of Marriage Act (DOMA), the State may be prohibited from including a same-sex spouse in determining eligibility.¹⁷

However, in assessing eligibility for Medicaid and SSI, it is possible that the State could still take into account the resources of same-sex spouses under state and federal regulations. These regulations require Washington to consider the resources of third parties who are legally liable for health care costs. Medicaid is a provider of last resort, and federal and state law require the State to assure that Medicaid recipients utilize all other resources, i.e., third parties, available to them to pay for all or part of their medical care needs before turning to Medicaid.¹⁸ Third parties are entities or individuals who are legally responsible for paying the medical claims of Medicaid

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recipients.¹⁹ They include any “individual who has either voluntarily accepted or been assigned legal responsibility for the health care” of a Medicaid applicant or recipient.²⁰ 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.²¹ If the State were to consider the income of same-sex spouses when determining eligibility for Medicaid and SSI, then savings from allowing same-sex couples to marry would be at their highest. Below we distinguish between sources of savings to capture the uncertainty of the State’s (and possibly the federal government’s) future decisions about Medicaid and SSI.

To estimate the impact of extending marriage to same-sex couples, we again draw on Washington data from Census 2000. 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 1999.²² Therefore, we can add up the total paid to individuals in same-sex couples. In 1999, members of same-sex couples in Washington received \$2.2 million in public assistance and \$4.7 million in SSI.

Unfortunately, neither the Census nor other datasets can tell us how many people in same-sex couples are enrolled in GAU, CEAP, Medicaid, or BHP. Therefore, we assume that the share of state expenditures for potential same-sex spouses in those programs is the same as for TANF, or 0.44%.²³ The second column of Table 1 shows estimated expenditures on people in same-sex couples in each program.

To assess how much the State would save, we adjust the current expenditures in several ways to arrive at an estimate of the State’s savings:

- (1) We assume that half of people in same-sex couples will marry, an assumption that takes into account the fact that the possible loss of benefits will deter some marriages.²⁴
- (2) We assume that some married same-sex couples will continue to receive benefits. When couples marry, the new spouse might also have a low income and few assets, allowing the program recipient to remain in the public assistance program. Furthermore, some spouses may become eligible for family-related benefits as a result of marriage. We make an adjustment that assumes that the same proportion of married same-sex couples will still receive benefits as married couples do. According to the Census, in 1999 2.0% of people in same-sex couples received SSI, while only 1.0% of married people did, and 2.0% of people in same-sex couples but only 1.1% of married people received “public assistance.” Thus, spending on public assistance will fall by

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roughly half.²⁵

- (3) We inflate the earlier dollar figures to put the savings in 2004 dollars.
- (4) We use data on the State's share of spending to isolate the State's share of savings.

Table 1 shows that the total expected savings to the State is \$2.1 million per year. The greatest savings come in the Medicaid category.²⁶ This estimate is roughly in line with a recent Congressional Budget Office report on the fiscal impact of same-sex marriage on the federal budget that predicted \$300 million in Medicaid savings for all 50 states in 2014.²⁷ However, if the federal government prohibited the State from counting a same-sex spouse's income and assets to calculate eligibility for Medicaid and SSI, the State's savings from state-run public benefits programs would be \$0.3 million per year.

Table 1: Reduced expenditures on public assistance programs

	Estimated annual state and federal spending on people in same-sex couples	State savings if same-sex couples can marry
SSI	\$5,303,496	\$563
TANF	\$2,531,704	\$166,948
GAU	\$177,520	\$41,927
CEAP	\$959	\$227
Medicaid	\$15,961,283	\$1,773,667
BHP	\$408,579	\$96,499
Total savings (including Medicaid and SSI)		\$2,079,831
Total savings (excluding Medicaid and SSI)		\$305,601

2. REVENUE GAINS FROM WEDDINGS

We predict that, if the State of Washington grants same-sex couples the right to marry, the State will see a surge in spending on weddings by same-sex couples who currently reside in Washington,

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as well as an increase in wedding and tourist spending by an influx of same-sex couples from other states. This increase in spending would benefit Washington's tourism-related businesses, generating additional tax revenue for the State. Based on the analysis outlined in detail below, we predict that in each of the first three years when same-sex marriage is legal, Washington's wedding and tourism-related businesses would see sales rise by \$62.7 million. As a result, the State's gross receipt tax revenues would rise by \$4.1 million per year.

The experiences of San Francisco, California, and Portland, Oregon, suggest that the local economic benefits of same-sex weddings are substantial. The couples who married in San Francisco during a one-month window of availability in 2004 came from 46 states and eight countries.²⁸ Businesses in Portland²⁹ and San Francisco³⁰ 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 2004.³¹ It is estimated that, if Massachusetts permitted out-of-state same-sex couples to marry, it would experience new spending in excess of \$100 million.³²

As of today, Washington has no competition from other states for these visitors, since Massachusetts does not currently allow out-of-state same-sex couples to marry there.³³ Even if other states eventually allow same-sex couples to marry, Washington's tourist attractions are likely to retain interest for out-of-state same-sex couples.

To estimate potential wedding expenditures by in-state and out-of-state same-sex couples, we first estimate the number of couples who might marry using Census 2000 data on same-sex unmarried partner couples in Washington and other states. Then we multiply the number of couples by average tourist spending and by average wedding spending to get an estimate of total spending. Finally, to calculate the tax revenue impact, we multiply total spending by the State's gross receipts tax rate.

Spending by out-of-state couples

According to the Washington State Office of Trade and Economic Development, the states that send the most visitors to Washington are Oregon, California, Montana, Idaho, and Texas.³⁴ California is the only one of these states to offer statewide partnership recognition to same-sex couples, in the form of a domestic partnership law that provides most of the rights and responsibilities of marriage to same-sex partners.³⁵ The four states that do not recognize same-sex partnerships have a total of 54,935 same-sex couples, according to Census 2000. Based on Vermont's experience with same-sex civil unions (a status similar to marriage), we predict that half

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of same-sex unmarried partners in these states will wish to marry.³⁶ Thus we predict that approximately 27,468 same-sex couples from these four states will wish to marry. Because they cannot marry in their home states, these couples would have to travel to Washington to do so.

Of course, the need to travel out of state and the fact that a Washington marriage may not be recognized by their home state may deter some same-sex couples from coming to Washington to marry, but our model compensates for this deterrent in two ways. First, we focus on the four states where the travel deterrent would be the least — states that already send a large number of tourists to Washington — and we assume that only half of the couples in those states who will wish to marry, or 25% of those identified in Census 2000, will travel to Washington to marry. Second, we assume that only 5% of couples from the other 45 states (and the District of Columbia) would travel to Washington to marry. We include California in the 5% estimate because some California same-sex couples will choose to marry for the symbolic meaning that a domestic partnership may lack. Table 2 below shows the breakdown of visitors by state.

Table 2: Estimate of same-sex couples who would travel to Washington to marry

State	Number of Same-Sex Couples	Number of Same-Sex Couples Traveling to Washington to Marry
Oregon	8,932	2,233
Montana	1,218	305
Idaho	1,873	468
Texas	42,912	10,728
Other 45 States and D.C. (5%)	523,556	26,178
Total	578,491	39,912

Source: U.S. Census 2000

To arrive at the average tourist spending per couple, we use data from the Washington Statewide Travel Impacts Report³⁷ that estimated average daily spending per person at \$85, including all expenses (lodging, meals, retail shopping, gasoline, rental car, entertainment, and any other spending related to the visit). Overnight visitors stayed an average of 2.4 days per visit. Therefore, we estimate that each out-of-state couple will spend an average of \$408 on basic expenses.

According to The Wedding Report, a wedding industry research group, the average cost of a wedding in Washington is \$28,700.³⁸ We assume that out-of-state same-sex couples would spend

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less than is spent on a traditional wedding, but that they would spend more than typical tourists. For instance, the additional spending could represent friends or family members who accompany the couple, or special accommodations, meals, clothing, flowers, or gifts. We conservatively assume that the additional wedding spending is one-tenth of the typical wedding expense, or \$2,870, resulting in an average spending of \$3,278.

Even this low estimate of spending suggests that the 39,912 out-of-state same-sex couples would bring approximately \$131 million into the State's economy.

Wedding spending by in-state couples

According to Census 2000, Washington has 15,900 resident same-sex couples, with 50% likely to marry if given the option. These 7,950 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 is likely to 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 use. Accordingly, we assume that same-sex couples will spend only 25% of the average amount, or \$7,175. The total for all 7,950 couples would come to \$57 million in additional wedding spending.

Additional tax revenue

The State of Washington will directly benefit from this increased spending through the state retail sales tax.³⁹ (Municipalities and counties will also benefit from their add-on to the gross receipts tax and from additional taxes charged to lodging.) Taxed at a rate of 6.5%, the \$57 million in wedding spending by in-state couples will generate approximately \$3.7 million in tax revenue. The \$131 million worth of spending by out-of-state couples will raise approximately \$8.5 million for the State. Together, this represents a total increase in tax revenue of \$12.2 million. Local governments will also see an increase in local sales tax revenue.

Because couples will 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 might occur in the first year that same-sex couples can marry, we would expect that the total benefit would accrue over a longer time, perhaps over the first three years. Therefore, the State's businesses would see additional spending of \$62.7 million per year, \$19 million spent by in-state couples and \$43.7 million spent by out-of-state couples. The State's tax revenue would

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rise by approximately \$4.1 million per year, with \$1.2 million generated by in-state couples' spending and \$2.8 million generated by out-of-state couples' spending.

3. IMPACT ON ESTATE TAX REVENUE

Extending marriage to same-sex couples will have a minimal effect on the amount of revenue that the State of Washington collects from its estate tax. We have considered the role of likely expenses and possible bequests and found that the legalization of same-sex marriage would have a negligible impact on estate tax revenues.

Estimating same-sex marriage's precise impact on estate tax revenue is difficult. In addition to the challenges associated with estimating the number of unmarried couples who would marry, such couples will vary in terms of the size of their estates, the extent to which they currently choose to leave all or part of their estates to their partners, the other beneficiaries to their estates, and the measures they take to mitigate the taxation of transfers to their partners. Accordingly, we estimate the impact of legalizing same-sex marriage on estate tax revenues using the most conservative (tax generating) assumptions about them.

Mortality of married same-sex spouses

To determine the impact of legalizing same-sex marriage on potential estate tax revenue, we must first estimate the number of individuals in same-sex marriages who will die each year. As before, we assume that 7,950 of Washington's same-sex couples will get married under the new law, which represents 15,900 individual same-sex spouses.⁴⁰ We then use Washington's annual age-adjusted death rate (0.0079) to estimate the mortality rate for individuals in these couples.⁴¹ Thus, we estimate that 126 individuals in same-sex marriages in Washington will die each year.

Relevant state tax laws

After a February 2005 Washington Supreme Court decision⁴² effectively repealed the existing state estate tax, the Washington Legislature responded by creating a new stand-alone estate tax.⁴³ This new version of the tax prevents the loss of revenue that the State would otherwise incur as a result of changes in the federal tax code to which the Washington estate tax was previously tied.⁴⁴

The estate tax is levied on the estate of a decedent before the property is distributed to beneficiaries of the estate. Effective for decedents dying on or after May 17, 2005, an estate tax return must be filed if the gross estate exceeds \$1.5 million. In 2006, the filing threshold rose to \$2 million. The estate tax rate itself varies depending on the value of the net taxable estate.

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The State of Washington has no inheritance tax.⁴⁵

Median estate tax for surviving unmarried same-sex partners

Every estate is potentially subject to the estate tax. There is, however, an unlimited marital deduction when property is passed to a surviving United States citizen spouse. Full marriage for same-sex couples would enable decedents' same-sex spouses to benefit from the marital deduction.⁴⁶ This change would result in a reduction of revenue from the estate tax to the extent that those who would choose to marry their same-sex partners would otherwise leave behind estates that pass to their partners.

In order to estimate the impact of extending marriage to same-sex couples, we first estimate the median tax that would be paid by decedents' estates. For this analysis, we use the median net worth of households in the United States from the 2001 Survey of Consumer Finances, adjusted for inflation.⁴⁷ 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 might pay no estate tax while others might pay 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.⁴⁸

Next we take into account the probate and funeral expenses which would reduce the taxable value of these estates. Nationally, the average cost to probate an estate ranges from 2% to 10% of the estate's value.⁴⁹ We incorporate a conservative figure into our model, using 2% of the estate value as an estimate of the average probate cost.⁵⁰ To estimate funeral expenses we use the current average cost of an adult funeral in the United States, which is \$6,500.⁵¹

In order to determine the size of the decedent's estate that would pass to his or her unmarried partner, we next take into account a common type of bequest that does not generate estate taxes under Washington law: gifts to charities. Many individuals, particularly those with larger estates, would make charitable bequests, the largest form of bequest after those to surviving spouses.⁵² Both Washington and the IRS exempt such bequests from taxation.⁵³ While a recent study revealed that 8% of the population has included charitable bequests in estate plans,⁵⁴ the best information about charitable bequests comes from federal estate tax returns, which in 2004 were required for estates worth more than \$1 million. The data about such returns indicate that the frequency and size of charitable bequests increase with the value of the estate.⁵⁵

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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.⁵⁶ 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 Washington would be more likely to make more and larger charitable bequests than members of married couples in order to avoid the tax consequences of leaving bequests to their unmarried partners.

After these deductions are taken out, we make two additional conservative assumptions. First, we assume that the remainder of the decedent's estate would be left to the unmarried partner. Second, we assume that the decedent would have deployed no other estate planning strategies to reduce estate tax liability. It is quite likely that in order to avoid estate taxes, decedents with unmarried partners, especially wealthy ones, would employ other measures to reduce estate tax burden.

Finally, to estimate the median tax burden for estates of decedents in each percentile group, we compute the Washington estate tax for our estimated median taxable estates that would pass to unmarried same-sex partners.

Table 3: 2006 Estimated Estate Tax for Unmarried Same-Sex Partners by Percentiles Based on Household Net Worth (\$)

	A	B	C	D	E	F
Percentile Group by Net Worth	Median Household Net Worth	Individual Net Worth (A*0.5)	Probate Expenses (B*0.98)	Funeral Expenses (C-6,500)	Charitable Bequests [D-(B*0.03)]	Tax (filing threshold = \$2,000,000)
Less than 25%	1,305	652	639	0	0	0
25-50%	48,389	24,194	23,711	17,211	17,211	0
51-75%	185,728	92,864	91,007	84,507	84,507	0
76-90%	510,217	255,109	250,006	243,506	235,854	0
91-100%	1,544,053	772,027	756,586	750,086	726,925	0

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Aggregate impact on estate tax revenue

To determine the aggregate impact of legalizing same-sex marriage on estate tax revenue, we would multiply the estimated number of same-sex spouses likely to die annually by the estimated median tax burden for surviving partners in each percentile group. We would do this by dividing the estimated number of such decedents into our net worth percentile groups and then multiplying by the median tax burden for each group. We would then add the aggregate tax burdens for each group together to estimate the overall impact on estate tax revenue.

In 2006, we find no projected estate tax burden, due to the high filing threshold set for the estate tax; the same would be true for subsequent years, as the filing threshold will be \$2 million at least through 2009. Thus we conclude that the tax liability for unmarried same-sex partners — after the relevant expenses and bequests have been deducted from the estate value — is negligible.

An alternative way to consider the potential estate tax revenue loss to Washington as a result of legalized same-sex marriage is to use federal data on spousal bequests. The IRS reports that the average taxable estate in 2003 included a spousal bequest of \$5.3 million.⁵⁷ If we make the conservative assumption that a same-sex unmarried partner leaving behind an estate of similar size would bequeath the same amount to his or her partner, opting not to incorporate a charitable bequest in order to reduce the tax burden, the estate would be liable for \$438,000 in Washington estate tax.⁵⁸ In order to account for the fact that only a small percentage of the population is subject to the estate tax, we divide the total number of spousal bequests by the number of married people who died that year and then multiply the result by the number of same-sex partners estimated to die annually.⁵⁹ Thus we conclude that less than one (0.37) same-sex partner would be liable for the state estate tax in a given year, or rather that an unmarried same-sex partner's estate would generate tax revenue approximately once every two-and-a-half years.⁶⁰ In other words, the loss to the State of \$438,000 would occur very rarely, since few couples have the level of assets triggering the tax and those who do are likely to use strategies to minimize taxes owed. Because this would be a rare event, we conclude that same-sex couples' marriages are unlikely to have a measurable impact on Washington's estate tax revenue.

4. IMPACT ON THE JUDICIAL SYSTEM

Legalizing same-sex marriage would allow same-sex couples the same access to Washington's courts as is provided to all spouses. Married persons can use State courts to protect wills, enforce the responsibilities of marriage, end a marriage, and provide for a child. Married persons also have certain rights to sue third parties who may have been responsible in some way for the death of their spouse.

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The impact of legalizing same-sex marriage on the State's court system depends on three things: (1) the number of cases that will be added to the dockets of the State's courts as a result of the new legislation; (2) the cost of resolving these cases; and (3) the cost of any other court programs that would be affected by the change.

Although Washington state employees can access benefits for their domestic partners, there is no statewide domestic partnership registry and no Washington law expressly affords gay and lesbian couples rights based on their relationship at this time. In 1998, the Washington State legislature enacted the Defense of Marriage Act, which limits marriage to "a male and a female" and forbids the recognition of a marriage from another jurisdiction if it does not fit this definition.⁶¹ Same-sex couples can, however, access certain limited rights by obtaining or creating specific legal documents. This includes co-parent adoption, custody orders, and visitation rights. Thus legalizing same-sex marriage will not increase the burden on courts with regard to these proceedings.

It is likely that the legalization of same-sex marriage would affect testation proceedings only in the sense of changing beneficiaries in proceedings that would already occur otherwise. However, even using the most conservative assumptions, we have estimated that an average of only 126 people in same-sex marriages would be expected to die in a year, which means that the courts would not experience a noticeable increase in the number of testation proceedings.⁶²

The only significant way in which legalizing same-sex marriage might augment court filings is by allowing same-sex spouses to petition to dissolve their relationships in court. To estimate the number of dissolution cases that would be added to state court dockets, we considered the Washington divorce rate and the Vermont civil union dissolution rate. We determined the dissolution rate for same-sex couples under Vermont's civil union legislation by dividing the total number of civil unions by the number of terminations of unions filed each year. We then multiplied these rates by our projected number of same-sex couples who would marry. Based on the Washington divorce rate⁶³ and the experience of Vermont under its civil union legislation,⁶⁴ we estimate that legalizing same-sex marriage will add 95 to 182 dissolution cases to the docket each year.

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Table 4: Estimating the Dissolution Rate for Washington Same-Sex Marriages

Estimate Method	Rate	Estimated same-sex marriages in Washington	Estimated dissolutions
Vermont civil unions	1.2%	7,950	95
Washington marriages	2.3%	7,950	182

Washington's Superior Courts typically handle over 30,000 divorce filings each year.⁶⁵ Adding 95 filings to this caseload would be an increase of only six-tenths of one percent (0.0061). The annual fluctuations in divorce filings are far greater than this. In the ordinary course of business, Washington courts handle fluctuations ranging from 159 to 1,295 divorce filings each year. New filings by married same-sex couples will be an insignificant blip on this radar screen.

Table 5: Annual Fluctuations in Divorce Filings, 1999-2002

Year	Divorce filings	Change from prior year
2002	32,785	159
2001	32,626	1,076
2000	33,702	565
1999	33,137	1,295
1998	34,432	-

Source: National Center for State Courts, Court Statistics Project, "Examining the Work of State Courts," available at http://www.ncsconline.org/D_Research/CSP/CSP_Main_Page.html.

The insignificance of the cost of these filings is also evident when compared to the caseload of the average Superior Court judge. The average Superior Court judge handles over 1,400 cases each year.⁶⁶ Even if all 182 new cases added by legalizing same-sex marriage went to one judge, it would only increase his or her docket by 13%. Alternatively — and much more likely — if these cases are spread out among the 175 Superior Court judicial positions in Washington, 4% of these judges would have just two (2) cases added to his or her docket, while the other 96% would only have one (1) additional case. This estimate assumes that the number of new cases will fall at the high end of our predicted range of same-sex marriage dissolutions. Furthermore, some of these matters may be heard by court commissioners, in which case the additional workload will be even more spread out.

Regardless of how the cases would be distributed throughout the courts, the number of additional

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cases is so small that we conclude legalizing same-sex marriage would not result in any actual expenditures by the State court system. In other words, the court system would not need to hire any additional judges, clerks, bailiffs, or staff, or build any additional courtrooms or infrastructure, to handle these cases. Indeed, any same-sex dissolution cases would generate revenue from the standard filing fees, which would be available to cover variable administrative costs.⁶⁷

In addition, extending marriage to same-sex couples will move some cases out of civil court and into family court, where they will be handled under a more efficient legal regime. Specifically, when same-sex partnerships dissolve under current Washington law, couples do not have access to family court and the family law rules that apply to married couples. Instead, same-sex partners must resolve their disputes in civil court according to the rules devised for “palimony” cases, that is, under the rubric of contract and, possibly, quasi-contract.⁶⁸

Palimony cases are likely to impose considerably greater burdens on courts than are dissolutions in family court for several reasons: (1) palimony cases require a threshold fact-intensive inquiry whether the relationship and acts of the parties have created any legal obligations, while extending marriage to same-sex couples will automatically impose on the partners the legal obligations of marriage; (2) the sparsely developed rules applicable in palimony cases make them difficult to settle or litigate efficiently, as opposed to the well-established rules under the Washington Domestic Relations code; (3) Superior Court judges handling occasional palimony cases have little experience with those cases, while family court judges will apply the same law to the dissolution of the new same-sex marriages that they routinely apply to the dissolution of other marriages; (4) litigants in civil court do not have access to the more efficient procedures, including standard forms and expedited proceedings, available in family court; (5) parties have a right to jury trial in civil court, but not in family court; and (6) in family court dissolutions, many issues are resolved by mediation, negotiation, arbitration, and private adjudication, where the parties bear most of the costs. By transforming often contested palimony cases in civil court into dissolution cases in the family court system, where they can be handled more efficiently and where, in most cases, the parties will settle and bear most of the costs, extending marriage to same-sex couples might even result in some savings for the State court system.⁶⁹

In conclusion, we find that legalizing same-sex marriage 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 might even save money when dissolution cases are shifted to the family courts, where they will be handled more efficiently.

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5. ADMINISTRATIVE COSTS

If Washington extended marriage to same-sex couples, the State's Department of Health would need to print new marriage license forms and marriage dissolution forms. The current marriage forms, for example, ask for information on the "bride" and "groom" or the "male" and "female" applicants. States can expect the cost of reprinting such forms to run approximately 10 cents per form.⁷⁰ Thus the one-time reprinting of 130,000 license and dissolution forms in order to reflect the new same-sex marriage law would cost approximately \$13,000, at 10 cents per form — a minimal cost.⁷¹ Otherwise, administrative costs should be minimal and would largely be borne by counties, which also collect fees that offset those costs.

6. IMPACT ON PROPERTY TAX REVENUE

Allowing same-sex couples to marry would likely increase property tax payments by some newly-married same-sex couples. Currently senior citizens (aged 61 or older) and disabled persons with low incomes (less than \$35,000 per year) can receive property tax exemptions that reduce the amount of property tax they owe.⁷² Eligibility is based on household income, which includes the income of a spouse and any co-tenants who have an ownership interest in the property. Currently, the income of a homeowner's same-sex partner would only count if the partner shared an ownership interest in the home; otherwise, only the partner's actual contributions to the household would count. Therefore, if an eligible homeowner marries, his or her spouse's full income will be counted toward eligibility, and some homeowners will no longer qualify for the exemption.

Losing the exemption will mean higher property tax payments for some newly-married couples with senior or disabled partners. Eligible homeowners pay lower taxes both because the value of the residence is frozen at the value on January 1, 1995, or January 1 of the year that the homeowner first became eligible for an exemption, and because some portion of the value is exempted from taxation. In 2005, the average senior citizen savings from both the value freeze and exemption was \$1,365.⁷³

Some additional exemptions may also result if same-sex couples can marry. When the person claiming the exemption dies, a surviving spouse who is 57 or older can continue to receive the exemption if he or she meets the other requirements.⁷⁴ Since all of these younger spouses would meet the requirements once they reach 61 — that is, in four years or less — the effect is to give the exemption early to some households. However, these additional marriage-generated exemptions — for couples where the partner over 61 dies and the surviving partner is between 57 and 60 and also with a low income — would likely be rare and short-lived.

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Furthermore, these changes will not actually affect the amount of property tax revenue received by the State. Currently, the State can increase total property taxes levied by at most 1% of the highest total levied over the past three years, in addition to new value created by new construction.⁷⁵ Property tax rates are set by the State in order to generate the total tax payment that the State is allowed to levy by law. A reduction in the amount of exempted property would have no impact on this cap on total tax revenues to the State. An analysis by the Washington State Department of Revenue notes that even completely removing the exemption for older and disabled residents would not increase the amount of revenue to the State. Accordingly, we conclude that marriages by same-sex couples would have no impact on property tax revenue collected by the State.

7. IMPACT ON REAL ESTATE EXCISE TAX REVENUE

In general, sales of real estate are subject to a state excise tax equal to 1.28% of the selling price.⁷⁷ Certain kinds of transfers are exempt from taxation, however, including transfers of property related to the divorce of a married couple. Under current law, transfers involved in the dissolution of an unmarried relationship would be taxable. Therefore, if same-sex couples can marry, there will at some point be dissolutions involving an untaxed transfer of property, which would have been taxed had the couple not been able to marry.

We expect the potential impact of such transfers on tax revenues to be quite small, however. The key question is how many taxable transfers now occur when same-sex relationships dissolve that would go untaxed if the couple were married. We believe such transfers are rare for several reasons. First, relatively few same-sex couples are likely to divorce in a given year. In Vermont, 65 out of 1,104 in-state civil unions have been dissolved, for an average annual dissolution rate of 1.2%.⁷⁸ Applying that rate to the estimated 15,900 unmarried same-sex couples suggests that roughly 191 relationships dissolve each year. Second, only 64% of Washington's 15,900 same-sex couples live in a home owned by one of the partners.⁷⁹ That leaves approximately 122 dissolutions per year that might generate a taxable real estate transaction. However, some of those couples will not transfer real estate since the home may not be jointly owned, and the tax creates an incentive to seek ways of dividing property that do not involve taxable transfers of real estate. To take this factor into account, we assume that only half, or 61 such couples, will jointly own real estate. Finally, some of those nonmarital dissolution-related taxable events are also likely to continue once same-sex couples are allowed to marry since only half of such couples are likely to marry. This leaves 31 taxable events. Overall, therefore, we expect the fiscal impact to be negligible.

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In FY 2005, the average taxable sale resulted in \$10,460 in state real estate excise tax revenue for the State.⁸⁰ If 31 couples whose dissolution would have generated a taxable event no longer do so, the State would lose approximately \$324,260 per year.

8. STATE EMPLOYEE BENEFIT COSTS

Washington State currently provides the same health care benefits to state employees' qualified same-sex domestic partners as to the married spouses of state employees.⁸¹ Therefore, no additional health care costs are likely to result from extending the right to marry to same-sex couples.

The State of Washington has seven retirement systems that are managed by the Department of Retirement Systems (DRS) for various categories of state employees: Public Employees' Retirement System (PERS), Teachers' Retirement System (TRS), School Employees' Retirement System (SERS), Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF), Washington State Patrol Retirement System (WSPRS), Judicial Retirement System (JRS), and Judges' Retirement Fund (JRF). The current structure of these plans means that the State's costs of allowing employees to marry a same-sex partner will be very small, approximately \$114,000 per year over the first three years when same-sex marriage is available. Those costs will come from the retirement systems that provide specific pre-retirement death benefits or post-retirement death benefits that are limited to spouses. Here we consider each of those categories of benefits in turn.

Post-retirement death benefits for spouses

Upon retirement, a state employee who is a member of one of the seven state retirement systems receives benefits based on his or her final compensation and length of service. For the members of PERS, TRS, SERS, LEOFF Plan 2, WSPRS Plan 2, and JRS (New Benefit) systems, the retiree can choose the "standard option" to receive those benefits for the rest of his or her life, or he or she may designate a beneficiary who will receive survivor benefits after the retiree's death.⁸² If the retiree chooses a survivor option, however, the retiree and survivor receive a smaller benefit than if the retiree's benefit payments stop at death. The "joint and survivor" benefit is actuarially reduced to make the value over time equal to that of the standard option. In other words, the retiree pays for the survivor coverage himself or herself. Furthermore, retirees in these systems can designate a same-sex partner as a beneficiary, so there would likely be no effect of allowing a state employee to marry a same-sex partner. Even if state employees are more likely to designate a same-sex spouse as a beneficiary than a same-sex partner, the state would incur no additional expense since the joint-and-survivor benefit is designed to be equivalent over time to the standard

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option.

Three plans have survivor benefits that only go to spouses. For LEOFF Plan 1 members (those who joined by September 30, 1977), eligible surviving spouses continue to receive the same benefit as the retiree, without an actuarial reduction in those benefits to reflect the survivor payments.⁸³ JRS (Original Benefit) members' surviving spouses receive the greater of either 50% of the member's retirement benefit or 25% of his/her final average salary.⁸⁴ WSPRS Plan 1 members' surviving spouses receive the lesser of the full retirement benefit or 50% of average final salary if the member chose Option A.⁸⁵ If the member chose Option B, the retiree gets 97% of the Option A benefit (an actuarial reduction), and the surviving spouse continues to receive that full amount after the retiree's death. Currently, employees' same-sex partners would not receive these benefits, so extending marriage to same-sex couples would generate additional expenses for the State.

To calculate the impact of new same-sex spouses in these three programs, we use several measures, summarized here:

- (1) We assume that the same proportion of state employees will have a spousal retirement beneficiary as currently sign up same-sex partners for health insurance coverage in the retiree health plan, or 0.12%.⁸⁶
- (2) Using the State's figures on the number of retirees in each plan,⁸⁷ we can then calculate the number of retirees with same-sex spouses who will be eligible for spousal benefits if the retiree dies first. The three systems in question will have approximately nine such retirees.
- (3) Not all retirees with same-sex spouses will die immediately, however. To calculate the number of survivors at any given time, we assume that the ratio of retirees with same-sex spouses to the survivors of that group will approximate the ratio of retirees to beneficiaries overall. In the LEOFF Plan 1, 14.7% of benefit recipients are survivors, and 14.8% of WSPRS Plan 1 recipients are survivors. Multiplying the number of retirees by those figures implies that the LEOFF Plan 1 will have one (1) surviving same-sex spouse of members at any given time, while on average there will be no surviving same-sex spouses in the other plans. However, to avoid the problem with rounding small numbers to zero, we set the predicted number of survivors at one (1) for the larger WSPRS program.
- (4) The average monthly benefit for LEOFF Plan 1 retirees depends on when the member retired and how many years of service he or she accumulated. The highest benefits go to the most

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recently retired individuals. Most retirees in fiscal year 2003 were in the 26-30 years of service category and had an average monthly payment of \$3,609, or \$43,308 per year.⁸⁸ Using this value to calculate the cost of the new spouses will give us a high cost scenario, since the majority of retirees receive a smaller benefit. Using a similar method for WSPRS Plan 1 gives a retirement benefit of \$3,709 per month, or \$44,508 per year.⁸⁹ (This figure is less than half of the average final salary for those retirees, so the survivor would get this as the smaller of the two figures.) Similar recent figures are not available for the JRS plan members, but there are no predicted retirees with same-sex spouses.

Overall, the above calculations result in an estimated total additional expense of approximately \$87,816 per year.⁹⁰ Finally, we note that all three of these plans are being phased out and accept no new members, so the added cost to the State will diminish over time to zero.

Pre-retirement death benefits for spouses

Except for the JRS, all systems provide a \$150,000 death benefit to the beneficiary of a state employee who dies as the result of an on-the-job injury. Since employees can now designate a same-sex partner as a beneficiary for this benefit, there would be no additional state expenditure necessary if those couples could marry.

All plans also provide a benefit if a member dies before retirement for reasons other than an on-the-job injury. The plans vary with respect to how the death benefits are calculated. We have identified some common features across plans and group them accordingly in what follows.

(1) The largest plans — SERS Plan 2, TRS Plans 1 and 2, and PERS Plans 1 and 2 — all have a common structure for pre-retirement death benefits. The death benefit for employees with fewer than 10 years of service provides the employee's designated beneficiary with the employee's accumulated contributions in the plan. If the employee has 10 years of service or more, a spouse chooses between receiving a lump-sum of the employee's accumulated contributions or a monthly benefit that is equivalent to a joint and 100% survivor option, with the value of that benefit calculated as if the employee retired on his or her date of death. If the employee was not married and did not have eligible children, the employee's beneficiary receives the lump sum of accumulated contributions. Thus the impact of marrying someone who would otherwise be a beneficiary (as we assume in the case of same-sex couples) would depend on the difference in actuarial values of the lump sum and the monthly income benefit.

(2) The SERS Plan 3, TRS Plan 3, and PERS Plan 3 are all a mix of defined benefits and defined

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contributions. The defined contribution portions of the retirement benefits in those plans are based on employee contributions (and investment income), and all return lump sums to beneficiaries of deceased members. The defined benefit portion of those plans is based on employer contributions (and investment income). The defined benefit portion provides surviving spouses of active members with a monthly benefit that is equivalent to a joint and 100% survivor option, with the value of that benefit calculated as if the employee retired on his or her date of death. The added cost of allowing state employees to marry same-sex partners will be the expected expense of providing death benefits to those spouses for the defined benefit portion.

(3) LEOFF Plan 1 and WSPRS Plan 1 provide a pre-retirement death benefit only to spouses. The surviving spouse receives a monthly payment of 50% of the member's final average salary.

(4) LEOFF Plan 2 and WSPRS Plan 2 provide similar death benefits. The death benefit for employees with fewer than 10 years of service provides the employee's designated beneficiary with the employee's accumulated contributions in the plan. If the employee has 10 years of service or more, a spouse chooses between receiving a lump-sum of 150% of the employee's accumulated contributions or a monthly benefit that is equivalent to a joint and 100% survivor option, with the value of that benefit calculated as if the employee retired on his or her date of death. If the member with 10 years service is not married, a beneficiary gets the member's accumulated contributions.

(5) The JRS allows members to name a beneficiary who receives the deceased member's accumulated contributions if he or she was employed for fewer than 10 years, or a choice of contributions or a joint and 100% survivor benefit for beneficiaries of judges who were system members for 10 years or longer.⁹¹ Because a same-sex partner could have been named as beneficiary, allowing same-sex couples to marry would result in no additional expenditure for the State.

While these pre-retirement death benefits could result in additional expenditures by the State's retirement systems, the actual increase will depend on the number of deaths of employees married to a same-sex spouse. Our calculations suggest that this number will be very small. We use the following figures to arrive at our number:

(1) According to Census 2000, the average age of people with same-sex partners in Washington is 42.⁹²

(2) The State uses the Society of Actuary mortality tables for retirement benefit planning, and a 42 year old male has a 0.001215 probability of death in a given year, while a 42 year old woman

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has a .000852 probability of death.⁹³ Since members younger than 42 would have a lower probability of death and members over 42 a higher probability, using the mortality rate for the average person will give us a good estimate of the number of people dying before retirement in any given year. In effect, we assume that everyone's age is 42 and that they have these probabilities of dying in any given year.

(3) We assume that the same proportion of state employees will have a spousal beneficiary as currently sign up same-sex partners for health insurance coverage, or 0.59%. This take-up rate is calculated is based on a taxable benefit to employees, which suggests that the death benefit take-up rate could be higher, but we do not have an empirical basis for an estimate of take-up of death benefits.

(4) We assume that half of those employees are men and half are women.

With these values we estimate that there are 1,690 active employees across the seven retirement systems who would have a same-sex spouse. At the mortality rates discussed above, only two extra deaths would be added in any given year. A simple example shows that the additional cost to the State of these deaths is minimal. The median monthly benefit for survivors in the PERS Plan 1, with the largest number of people receiving survivor payments of all seven systems, is in the \$501-600 range.⁹⁴ Thus two additional deaths would be expected to add approximately \$13,200 per year to benefit payments. Over time, survivor benefits payments would add up as more and more survivors enter the pool. But even 30 years of deaths at this same rate would add very little to the State's retirement benefit burden, since the 60 new same-sex spouse survivors would be adding only \$396,000 per year in benefits payments. However, not all of these surviving spouses would be eligible for this level of benefit, since some employees will have fewer than 10 years of service, and some surviving spouses will opt for the lump-sum of employee contributions that is available in some plans. Therefore, the actual increase will be less than \$396,000.

Thus, the increase in State retirement plan expenditures will start off quite small, approximately \$13,200 in the first year, and eventually rise to at most \$400,000 per year after three decades. For the first three years, the state's average increase will be \$26,000 per year. Taken together, post-retirement and pre-retirement death benefits for same-sex spouses will result in approximately \$114,000 per year in additional expenditures for the first three years that same-sex couples are allowed to marry.⁹⁵

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9. CONCLUSIONS

Table 6 summarizes the findings of earlier sections on the impact of same-sex marriage on the Washington State budget. The cumulative effect of same-sex marriage on the budget areas examined in this report would be a net gain of \$5.7 million if the State uses a same-sex spouse's income and assets to determine eligibility for Medicaid (Net effect 1) or \$3.9 million without the Medicaid savings (Net effect 2).

Table 6: Summary of fiscal impact of same-sex marriage

Impact on State Budget	Net effect (1)*	Net effect (2)**
Savings from means-tested public benefit programs	\$2,079,831	\$305,601
Increased tax revenue from wedding-related spending:		
-in-state couples	\$1,230,000	\$1,230,000
-out-of-state couples	\$2,840,000	\$2,840,000
Decrease in real estate excise tax revenue	- \$324,260	- \$324,260
State employee benefits costs	- \$114,000	- \$114,000
Total	\$5,711,571	\$3,937,341

*Including same-sex spouses in Medicaid determinations.

**Excluding same-sex spouses from Medicaid determinations.



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Notes

¹ We make this assumption having considered several factors. First, the fact that 57% of Vermont's same-sex partners have chosen to enter civil unions leads us to conclude that the more comprehensive set of rights provided to same-sex couples under Vermont law and the higher social status attributed to civil unions has caused a larger percentage of couples to seek legal recognition of their relationships, in contrast to jurisdictions such as California, where only 27% of same-sex couples have registered as domestic partners. At the same time, we assume that the percentage of same-sex couples who marry will not equal the percentage of different-sex couples who marry, which is over 90%. See R. Bradley Sears and M. V. Lee Badgett, *The Impact On California's Budget Of Allowing Same-Sex Couples To Marry* (May 2004). Vermont civil union statistics provided by Richard McCoy, Office of Vital Records, Vermont Department of Health, email dated July 11, 2005 (on file with authors).

² M.V. Lee Badgett and R. Bradley Sears, Williams Project on Sexual Orientation Law and The Institute of Gay and Lesbian Strategic Studies, *The Impact on California's Budget of Allowing Same-Sex Couples to Marry* (May 2004), available at <http://www.law.ucla.edu/williamsproj/publications/CASameSexMarriage.pdf>.

³ M.V. Lee Badgett, R. Bradley Sears, et al., Williams Project on Sexual Orientation Law and The Institute for Gay and Lesbian Strategic Studies, *Counting on Couples: Fiscal Savings from Allowing Same-Sex Couples to Marry in Connecticut* (March 2005), available at <http://www.law.ucla.edu/williamsproj/pdf/CountingOnCouples.doc>.

⁴ M.V. Lee Badgett, R. Bradley Sears, et al., The Institute for Gay and Lesbian Strategic Studies and the Williams Project on Sexual Orientation Law, *The Impact on New Hampshire's Budget of Allowing Same-Sex Couples to Marry* (November 2005), available at <http://www.law.ucla.edu/williamsproj/publications/New%20Hampshire%20Econ%20Study.pdf>.

⁵ M.V. Lee Badgett and R. Bradley Sears, with Suzanne Goldberg, Williams Project on Sexual Orientation Law and The Institute for Gay and Lesbian Strategic Studies, *Supporting Families, Saving Funds: A Fiscal Analysis of New Jersey's Family Equality Act* (November 2003), available at <http://www.law.ucla.edu/williamsproj/publications/NJ-DPAStudy.pdf>.

⁶ M. V. Lee Badgett, R. Bradley Sears, Steven K. Homer, Patrice Curtis, and Elizabeth Kukura, Williams Institute and Institute for Gay and Lesbian Strategic Studies, *The Impact on New Mexico's Budget of Allowing Same-Sex Couples to Marry* (March 2006) available at <http://www.law.ucla.edu/williamsinstitute/publications/new%20mexico%20econ%20study.pdf>.

⁷ M.V. Lee Badgett, Institute for Gay and Lesbian Strategic Studies, *The Fiscal Impact on the State of Vermont of Allowing Same-Sex Couples to Marry* (1998), available at <http://www.iglss.org/media/files/techrpt981.pdf>.

⁸ Badgett, M.V. Lee and R. Bradley Sears, *Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget*, 16 STANFORD LAW & POLICY REVIEW 197 (2005), available at http://www.law.ucla.edu/williamsproj/publications/16_Stan_L_&_Poly_Rev_197.pdf.

⁹ Although Massachusetts allows same-sex couples to marry, the state has not tracked the budgetary impact.

¹⁰ Connecticut General Assembly, Office of Legislative Research, Office of Fiscal Analysis Report on HB 5001 (2002), available at http://www1.law.ucla.edu/~williamsproj/connstudy_files/connstudy.htm.

¹¹ Office of Legislative Council, Report of the Vermont Civil Union Review Commission (2002), available at <http://www.leg.state.vt.us/baker/Final%20CURC%20Report%20for%202002.htm>.

¹² Testimony of New York State Comptroller Alan G. Hevesi to New York City Council in Support of the Right to Civil Marriage for Same-Sex Couples in New York State, Office of the New York State Comptroller (March 3, 2004), available at <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm>.

¹³ *The Potential Budgetary Impact of Recognizing Same-Sex Marriages*, letter from Douglas Holtz-Eakin, Director, Congressional Budget Office, to Chairman of House Subcommittee on the Constitution, dated June 21, 2004, available at <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.

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¹⁴ For evidence that the 2000 Census undercounted the number of cohabitating same-sex couples in the United States, see M.V. Lee Badgett & Marc A. Rogers, Institute for Gay and Lesbian Strategic Studies, *Left Out of the Count: Missing Same-Sex Couples in Census 2000* (2003) (noting that two surveys estimated the undercount at 16% to 19%), available at http://www.iglss.org/media/files/c2k_leftout.pdf (last visited on December 7, 2005). David M. Smith & Gary J. Gates, Human Rights Campaign, *Gay And Lesbian Families In The United States: Same-Sex Unmarried Partner Households* (2001) (estimating undercount at 62%), available at http://www.hrc.org/Template.cfm?Section=Census_20001&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=23&ContentID=27201 (last visited December 7, 2005). Because our calculation of the percentage of Vermont couples who entered civil unions uses the (likely) lower Census figure, adjusting for the undercount would not alter our estimates of couples who marry in Washington.

¹⁵ For descriptions of GAU and CEAP, see http://www1.dshs.wa.gov/pdf/esa/briefbook/2004program_descriptions.pdf (last visited December 19, 2005); for a description of BHP, see <http://www.hca.wa.gov/faq/bh.shtml> (last visited December 19, 2005).

¹⁶ See, e.g., W.A.C. 388-450-0100 (in defining income eligibility for cash grants, including “spouse” within the definition of “financially responsible persons,” but omitting unmarried same-sex partners from that definition); W.A.C. 388-408-0055 (in defining income eligibility for medical assistance, stipulating that “[m]arried persons, living together are financially responsible for each other,” but omitting same-sex couples from that stipulation); *Basic Health Member Handbook* 41-42, available at <http://www.basichealth.hca.wa.gov/doc/BHhandbook.pdf> (last visited December 19, 2005) (omitting unmarried same-sex partners from the Basic Health Program’s definition of “family”).

¹⁷ DOMA is a federal law that limits the definition of “spouse” in all federal laws and regulations to refer “only to a person of the opposite sex who is a husband or a wife.” Defense of Marriage Act, Pub. L. 104-199, § 1, 100 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 (1997)). “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 a same-sex spouse. A related issue has arisen in Vermont with respect to that state’s treatment of couples in a civil union within the Medicaid program. David Mace, *Critics Say Rule Change Violates Civil Unions*, THE TIMES ARGUS, April 17, 2003. Recent correspondence from the Centers for Medicare and Medicaid Services to state agencies in Vermont and Massachusetts suggests that the states cannot treat same-sex spouses in the same way that different-sex spouses are treated in the Medicaid program.

¹⁸ For example, federal law mandates that states must “take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under” Medicaid and to seek reimbursement in cases “where such legal liability is found to exist.” 42 U.S.C. § 1396a.

¹⁹ 42 CFR 433.135 (2004) (“Third party means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan.”). Washington State refers to these third parties as “financially responsible persons” and considers their resources in determining their dependants’ eligibility for medical assistance. See W.A.C. 388-475-0200 (defining “resources” for the purposes of medical assistance programs).

²⁰ See generally Centers for Medicare and Medicaid Services, *State Medicaid Manual*, at 3900-3910.15, 3900.1 and 3900.2 (2003).

²¹ Centers for Medicare and Medicaid Services, *Immigrant Eligibility for Medicaid and SCHIP*, available at <http://www.cms.hhs.gov/immigrants> (last visited September 19, 2005); National Immigration Law Center, *Guide to Immigrant Eligibility for Federal Programs* (4th ed. 2002), with updates from Update Page, available at http://www.nilc.org/pubs/Guide_update.htm (last visited September 19, 2005).

²² Wording from the Census questionnaire, published in U.S. Department of Commerce, U.S. Census Bureau, *Public Use Microdata Sample, 2000 Census of Population and Housing, Technical Documentation* (April 2003), at D-8.

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²³ Calculated using Census data for the numerator. The denominator is expenditures on basic assistance and comes from U.S. Department of Health and Human Services, Administration for Children and Families, FY 2004 TANF Financial Data, *available at* http://www.acf.hhs.gov/programs/ofis/data/tanf_2004.html (last visited September 19, 2005).

²⁴ Research on welfare benefits find at most a very small disincentive effect. *See* Robert Moffitt, *Incentive Effects of the U.S. Welfare System: A Review*, 30 JOURNAL OF ECONOMIC LITERATURE, Mar. 1992, at 1, 27-31.

²⁵ The reduction equals $(1 - 1.05/1.99) = 0.47$.

²⁶ We calculate the state savings on Medicaid spending net of long term care expenditures. Kaiser Family Foundation, *Statehealthfacts.org*, (last visited March 15, 2006).

²⁷ Congressional Budget Office, *The Potential Budgetary Impact of Recognizing Same-sex Marriages*, June 21, 2004, at 9.

²⁸ Mabel S. Teng, San Francisco Assessor-Recorder, Demographics Breakdown Of Same Gender Marriages slides 2-3 (2004), *available at* <http://www.alicebtoklas.org/abt/samesexmarriagestats.ppt> (last visited December 7, 2005).

²⁹ *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. David Sarasohn, *Gay Marriage, Tourism: A Package Deal*, OREGONIAN, Apr. 11, 2004, at C4, also quotes D'Alessandro as saying, "It's definitely having a positive impact, because more people are coming to Portland. They fly in, sometimes with families, friends, children, whatever. I've talked to the hotel people, and they say they've seen an increase in gay and lesbian customers."

³⁰ *See* Douglas Belkin, *Wedding Bell Bonanza Tourism, Marriage Industry Foresee Boom in Same-Sex Nuptials*, BOSTON GLOBE, Feb. 26, 2004, at 1. Laura Bly, *Localities Cash in on Same-Sex Marriages*, USA TODAY, Feb. 27, 2004 at 1D. Jung reports that hotels were full 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, reports 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." Dean E. Murphy, *San Francisco Toasts Gay Weddings*, N.Y. TIMES, Feb. 29, 2004, at 3.

³¹ *See, e.g.*, Bly, at D1; Thea Singer, *Three Swank Cities are Becoming Marriage Meccas for Gay Couples*, BOSTON HERALD, Mar. 22, 2004, at 27. Singer reports that wedding-related businesses such as hotels, banquet halls, florists, and jewelers, in Boston, Cambridge, and Northampton have seen "an upsurge of 10 to 100 percent in inquiries and bookings from gay couples" looking to marry. *See also* Marie Szaniszlo, *P'town Set for Gay-Wed Rush*, BOSTON HERALD, Apr. 11, 2004, at 10.

³² Singer, at 27.

³³ 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, April 25, 2004, § 1, at 1. The Massachusetts Supreme Judicial Court upheld the 1913 law in *Cote-Whitacre v. Dept. of Pub. Health*, SJC-09436 (Mass. March 30, 2006).

³⁴ Longwoods International, "Washington State Visitor Profile: A Report on the 2003 Travel Year," November 2004.

³⁵ CAL. FAM. CODE §§ 297-299 (enacted as AB 205: the California Registered Domestic Partner Rights and Responsibilities Act of 2003).

³⁶ In Vermont, 1,933 same-sex couples identified themselves in Census 2000. Tavia Simmons & Martin O'Connell, United States Census Bureau, *Married-Couple and Unmarried-Partner Households: 2000*, at page 4,

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table 2 (2003). 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 co-author R. Bradley Sears (July 11, 2005) (on file with authors).

³⁷ Dean Runyan Associates, "Washington State Statewide Travel Impacts and Visitor Volume, 1991-2004p," Prepared for The Washington State Office of Trade and Economic Development, December 2004.

³⁸ *The Wedding Report*, available at <http://www.costofwedding.com/washington.html> (last visited January 6, 2006).

³⁹ Revised Code of Washington Chapter 82.08, Washington State Legislature, available at <http://dor.wa.gov/content/taxes/sales/default.aspx> (last visited March 6, 2005).

⁴⁰ See note 1.

⁴¹ Washington State Department of Health, Center for Health Statistics, *Mortality Table A1 - Age-Adjusted Mortality Rates and Life Expectancy by Sex for Residents, 1992-2002*, available at <http://www.doh.wa.gov/ehsphi/chs/chs-data/death/2002/2002a1.htm> (last visited January 20, 2006).

⁴² *Hemphill et al. v. State Revenue et al.*, Supreme Court of Washington, Docket No. 74974-4, decision filed February 3, 2005, available at <http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=749744MAJ>.

⁴³ RCW 83.100.040 (2005).

⁴⁴ This history of the Washington estate tax is complicated. The tax was originally introduced as the product of a 1981 ballot initiative. It traditionally acted as a pick-up tax or credit against the federal estate tax and, as such, was affected by passage of the federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001. As a preliminary stage in the repeal of the estate tax - scheduled for 2010, unless additional legislation makes the repeal permanent - EGTRRA limited the amount of the credit against the federal estate tax that was allowed for state estate tax payments, phasing out the credit completely for 2005 and after.

Instead of enacting legislation to update Washington law to conform to the federal changes in EGTRRA, as the State Legislature typically does when Congress amends estate tax exemption levels, the legislature left the Washington estate tax tied to the federal code as it existed on January 1, 2001. This meant that the State was able to continue collecting revenue from the estate tax, despite federal estate tax reform. However, this statutory de-coupling was subsequently rejected by the State Supreme Court, which ruled that the legislative inaction created an invalid tax, given the particular wording of the statute and the way the tax was originally created by ballot initiative.

The court decision prompted the Washington Legislature to pass legislation creating an independent estate tax, which will remain unaltered by any further Congressional action. Opponents of the estate tax are now organizing an initiative to eliminate the tax in 2006. See *Estate tax critics plot initiative*, THE OLYMPIAN, November 17, 2005, available at <http://159.54.227.3/apps/pbcs.dll/article?AID=/20051117/NEWS01/511170340/1006> (last visited January 11, 2006).

⁴⁵ Repealed by 1981 2nd ex.s. c 7 § 83.100.160, effective January 1, 1982.

⁴⁶ The marital deduction would apply only to the transfer of an estate between spouses. Thus, upon the death of the second spouse, the estate would be subject to full taxation (assuming that the surviving spouse has not remarried). This would apply equally to same-sex and different-sex couples, who would all have the same access to financial planning techniques to minimize the estate's tax liability upon the death of the second spouse.

⁴⁷ Ana M. Aizcorbe, Arthur B. Kennickell, and Kevin B. Moore, *Recent Changes in Family Finances: Evidence from the 1998 and 2001 Survey of Consumer Finances*, Federal Reserve Bulletin January 2003, pp. 6-7 and Table

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3.

⁴⁸ While a more inequitable distribution obviously exists in many couples, 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.

⁴⁹ American Association of Retired Persons, *A Report on Probate: Consumer Perspectives and Concerns* (1990) (concluding that the average cost of probate is from 2% to 10% of the gross estate).

⁵⁰ This is also a conservative estimate because the percentages for average probate costs are based on gross estate as opposed to the net worth estate, which we use in our analysis.

⁵¹ National Funeral Directors Association, NFDA Fact Sheets, *available at* <http://www.nfda.org/nfdafactsheets.php> (average cost of an adult funeral in the United States is \$6,500).

⁵² *Estate Tax Returns Filed in 2004 with Total Gross Estate Greater than \$1 Million: Gross Estate by Type of Property, Deductions, Taxable Estate, Estate Tax and Tax Credits, by Size of Gross Estate*, SOI Unpublished Data, *available at* <http://www.irs.gov/pub/irs-soi/04es01tc.xls> (last visited January 13, 2006) ("SOI Estate Tax 2004 Data"); Gary D. Bass and John S. Irons, *The Estate Tax and Charitable Giving*, OMB Watch, June 2003.

⁵³ RCW § 83.100.040 (2005)

⁵⁴ National Committee on Planned Giving, *Planned Giving in the United States: A Survey of Donors* (2000).

⁵⁵ *SOI Estate Tax 2004 Data*; Gary D. Bass and John S. Irons, *The Estate Tax and Charitable Giving*, OMB Watch, June 2003.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Although the estates reported in the 2003 data would have been subject to the Washington estate tax as it existed under the previous law, we calculate the tax based on the current State law. This actually results in higher tax liability because the 2003 filings represent estates that were subject to a reduction in the federal estate tax credit in 2002 and after. The year 2003 is the latest for which complete data for this calculation are available.

⁵⁹ Due to a relatively long filing period, estate tax returns filed in a single calendar year may represent decedents who died in several different years, but we assume here that most of the 2003 filings are for deaths which occurred in 2002 and thus use 2002 death statistics in our calculations. *SOI Estate Tax 2003 Data*. The death figures for married people include individuals who are at least 15 years, as reported by the CDC's National Center for Health Statistics. National Vital Statistics Reports, Vol. 53, No. 5, Table 25, October 12, 2004.

⁶⁰ $(2,757/945,795) * 126 = 0.37$

⁶¹ RCW § 26.04.020 (2005)

⁶² *See* Section 3 above.

⁶³ The National Center for Health Statistics reports a divorce rate of 4.6 per 1,000 population for Washington in 2002. *Marriage and divorce rates by State: 1990, 1995, and 1999-2002*, National Center for Health Statistics, *available at* <http://www.cdc.gov/nchs/data/nvss/mar&div.pdf> (last visited May 3, 2005).

⁶⁴ Vermont has recorded 7,400 civil unions from 2000 through 2004, of which 1,104 involved Vermont residents. In this same time period, there have been 65 dissolutions of civil unions entered by Vermont's family courts, or an average of 13 per year (civil unions may only be dissolved by Vermont residents). Email from Richard McCoy, Office of Vital Records, Vermont Department of Health (July 11, 2005) (on file with authors).

⁶⁵ National Center for State Courts, "Court Statistics Project," *available at* http://www.ncsconline.org/D_Research/CSP/CSP_Main_Page.html (last visited January 6, 2006).

⁶⁶ National Center for State Courts, State Court Caseload Statistics, 2003, Table 8, *available at* http://www.ncsconline.org/D_Research/csp/2003_Files/2003_SCCS.html.

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⁶⁷ The fee for initiating a dissolution proceeding is \$120. State of Washington Superior Courts, as provided by RCW § 36.18.020(2)(a), RCW § 36.18.016(16) (2005)

⁶⁸ See *Connell v. Francisco*, 127 Wn.2d 339 (Wash. 1995); *Fleming v. Spencer*, 2002 Wash. App. LEXIS 198 (Wash. Ct. App. 2002); *Gower v. Shinstrom*, 2003 Wash. App. LEXIS 231 (Wash. Ct. App. 2003); *Gormley v. Robertson*, 120 Wn. App. 31 (Wash. Ct. App. 2004) (finding that the meretricious relationship doctrine applies to a same-sex couple's division of assets and liabilities).

⁶⁹ Interview with Professor Grace Blumberg, UCLA School of Law (May 20, 2003). Professor Blumberg teaches Property, Community Property, and Family Law. She is a Reporter for the *American Law Institute's Principles of the Law of Family Dissolution*, for which she co-authored the chapters on non-marital cohabitation. Professor Blumberg's recent publications include *Casebook, Community Property in California*, 4th ed., New York, NY: Aspen (2003); *Blumberg's California Family Code Annotated*, St. Paul: West Group (2002); and *The Regularization of Nonmarital Cohabitation: Rights and Responsibilities in the American Welfare State*, 76 NOTRE DAME LAW REVIEW 101 (2001). See also, *Principles of the Law of Family Dissolution: Analysis and Recommendations, Domestic Partners (Nonmarital Cohabitation)*, Chapter 6, Philadelphia: American Law Institute (2002). Letter from Fred Hertz, Esq., (May 19, 2003). Fred Hertz has handled a number of gay and lesbian dissolution cases and has written several books, including serving as co-author of the 10th edition of *Living Together: A Legal Guide for Unmarried Couples* (Nolo Press 2002). He is also the author of *Legal Affairs: Essential Advice for Same-Sex Couples* (Owl Books) and co-author of Nolo Press' *The Living Together Kit* and *A Legal Guide for Lesbian and Gay Couples*.

⁷⁰ 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, 10/04/2002, <http://www.cga.ct.gov/olr/ofadoc/ofacivilunion1.htm> (last visited March 7, 2005).

⁷¹ Approximately 39,000-42,000 marriages are entered into in Washington annually, while 26,000-28,000 divorce petitions are filed. Washington State Department of Health, Center for Health Statistics, Marriage and Divorce Data, available at <http://www.doh.wa.gov/EHSPHL/CHS/CHS-Data/main.htm> (last visited January 20, 2006). With the estimated number of same-sex couples marrying under the new legislation and the need for sufficient extra forms, we assume the State will need to print 130,000 revised forms.

⁷² RCW § 84.36.381 (2005)

⁷³ Washington State Department of Revenue, Property Tax Statistics, 2005, August 2005, Table 18, available at http://dor.wa.gov/content/statistics/2005/Property_Tax_Statistics_2005/Table_18.pdf (last visited December 12, 2005).

⁷⁴ RCW § 84.36.381(3) (2005)

⁷⁵ RCW § 84.55.010 (2005)

⁷⁶ Washington State Department of Revenue, Research Division, "Tax Exemptions - 2004: A Study of Tax Exemptions, Exclusions, Deductions, Deferrals, Differential Rates and Credits for Major Washington State and Local Taxes," available at http://dor.wa.gov/content/statistics/2004/Tax_Exemptions_2004/default.aspx (last visited December 14, 2005).

⁷⁷ RCW § 82.45.060 (2005)

⁷⁸ Email from Richard McCoy, Office of Vital Records, Vermont Department of Health (July 11, 2005) (on file with authors).

⁷⁹ Sears and Rubenstein, *Same-sex couples and same-sex couples raising children in Washington: Data from Census 2000*, at 1, January 2005.

⁸⁰ "Tax Topics: Real Estate Excise Tax Has Record Year," available at <http://dor.wa.gov/contgent/home/TaxTopics/recordstatetax.aspx> (last visited December 15, 2005).

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This figure takes out the 1% portion of the tax that goes to the county for administration costs.

⁸¹ WAC-182-12-260

⁸² For details of each plan, *see* Washington State Department of Retirement Systems, member handbooks.

PERS: <http://www.drs.wa.gov/member/Plans/PERS/>; TRS:

<http://www.drs.wa.gov/member/Plans/TRS/default.htm>; SRS:

<http://www.drs.wa.gov/member/Plans/SERS/default.htm>; LEOFF Plan 2:

<http://www.drs.wa.gov/member/Publications/LEOFF/handbooks/Lcoeff2/options.htm>; (all last visited November 14, 2005).

⁸³ LEOFF Plan 1 Handbook:

<http://www.drs.wa.gov/member/Publications/LEOFF/handbooks/Lcoeff1/> (last visited November 14, 2005).

⁸⁴ JRS Handbook: <http://www.drs.wa.gov/member/Publications/Judges/> (last visited November 14, 2005).

⁸⁵ WSPRS Plan 1 members include those who joined by December 31, 2002. WSPRS Plan 1 handbook:

<http://www.drs.wa.gov/member/Publications/WSPRS/handbooks/plan1/> (last visited November 14, 2005).

⁸⁶ According to the Health Care Authority, 0.12% of retiree health plan subscribers have signed up a same-sex partner. That figure is 0.59% for active employee subscribers. Email from Dave Wasser, HCA Communications, December 19, 2005, on file with authors.

⁸⁷ Washington State Department of Retirement Systems, 2004 Comprehensive Annual Financial Report, at 137 (LEOFF Plan 1), at 138 (WSPRS Plan 1), at 127 (JRS), *available at*

<http://www.drs.wa.gov/administration/annualreport/2004/cafr/default.htm> (last visited January 20, 2006).

⁸⁸ Washington State Department of Retirement Systems, 2004 Comprehensive Annual Financial Report, at 147.

⁸⁹ Washington State Department of Retirement Systems, 2004 Comprehensive Annual Financial Report, at 149.

⁹⁰ If we start with the higher domestic partner benefit figure for active employees of 0.59%, the predicted total additional expense in this category is \$304,356. However, this assumption would not be appropriate for these plans, since no new applicants are being accepted.

⁹¹ The Judges' Retirement Fund includes a benefit for spouses of members with 10 or more years of experience, but that program has been closed since 1971 and had only 17 remaining participants as of September 30, 2003. Washington State Department of Retirement Systems, 2004 Comprehensive Annual Financial Report, at 53.

⁹² Sears and Rubenstein, at 4.

⁹³ Washington State Department of Retirement Systems, 2004 Comprehensive Annual Financial Report, at 100.

⁹⁴ Washington State Department of Retirement Systems, 2004 Comprehensive Annual Financial Report, at 133.

⁹⁵ If the take-up rate is higher, obviously the additional expenditures would be higher, but even doubling this small estimate would not result in a significant additional expenditure.