



Economic Benefits of Marriage

UNDER FEDERAL AND MASSACHUSETTS LAW

by Terence Dougherty

National Gay and Lesbian Task Force



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The **National Gay and Lesbian Task Force Policy Institute** is a think tank dedicated to research, policy analysis and strategy development to advance greater understanding and equality for lesbian, gay, bisexual and transgender people.

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Executive Summary

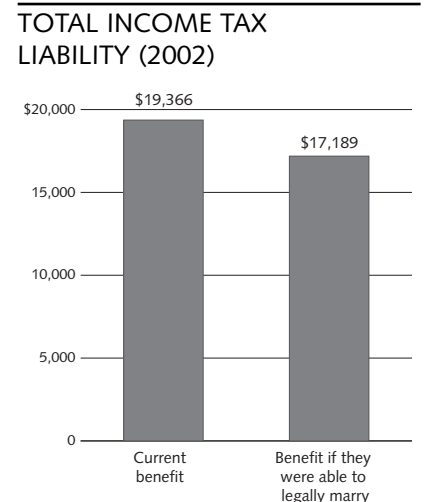
ECONOMIC BENEFITS OF MARRIAGE UNDER FEDERAL AND MASSACHUSETTS STATE LAW

CIVIL UNIONS ARE NOT EQUAL TO MARRIAGE

- The 1,138 federal benefits and protections of marriage are only available to couples that are allowed to legally marry. These include Social Security survivor and spousal benefits, the ability to file a joint tax return, immigration rights, and coverage under the Family and Medical Leave Act.
- To date, civil unions are not “portable,” meaning that when a couple moves to another state, none of the benefits, rights or responsibilities coming from the civil union move with them.
- While the federal government is unlikely to recognize same-sex marriages in the short run, a future President and Congress more supportive of equality may move to treat married same-sex couples equally under federal policy. Under the current legal framework—which is based on *marital* status—the only way to extend federal protections associated with marriage to couples who have entered civil unions would be to amend more than 1,000 separate laws and regulations.

ECONOMIC IMPACT ON A SAMPLE OF REAL SAME-SEX COUPLES IN MASSACHUSETTS

- Thorsten Behrens, 33, and Christopher Schiebel, 32, have been in a committed relationship for five years. Thorsten has no children, but Christopher has 2 children from a previous marriage that they are both raising.
- Donna Triggs and Donna Moore are both 54 years old and have been in a committed relationship for 7 years. They live in a home they have owned together for 6 years.



FEDERAL AND STATE INCOME TAX LIABILITY

- Because they cannot marry, Donna T. and Donna M.'s combined federal and state income tax liability is 13% higher (\$2,177 more) than it would be if they could file a joint return.

SOCIAL SECURITY RETIREMENT BENEFITS

- Upon retirement, Thorsten and Christopher's combined monthly Social Security retirement benefit would be 25% higher (nearly \$500 more per month) if they were legally married.

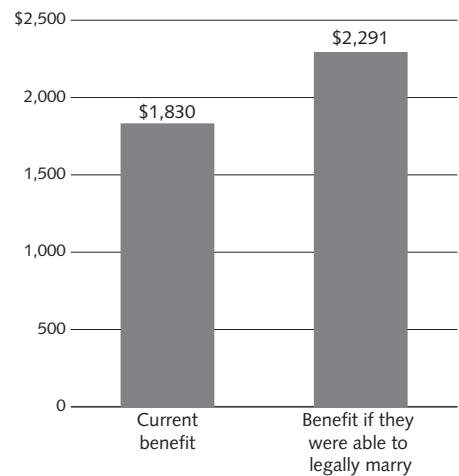
SOCIAL SECURITY SURVIVOR BENEFITS

- If Thorsten and Christopher were able to legally marry prior to Thorsten's death, Christopher's monthly Social Security benefit would be \$1,527, an increase of 500% (\$1,224 more) over the \$303 he would currently receive.

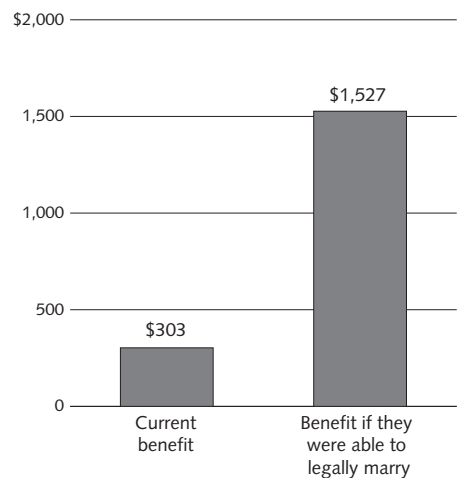
CONCLUSION

- When Massachusetts and the U.S. government respect the marital relationships of same-sex couples, these couples will pay a more equitable share of the tax burden and receive a more equitable share of benefits from the Social Security system that they pay into their entire lives. These benefits and protections make it easier for same-sex partners to care for each other when they are sick or elderly, and make it more likely that their children have access to vital financial support should one or both parents die.

MONTHLY SOCIAL SECURITY RETIREMENT BENEFIT



SOCIAL SECURITY SURVIVOR BENEFITS for Christopher if Thorsten dies



Economic Benefits of Marriage under Federal and Massachusetts Law

INTRODUCTION

Marriage has profound social, cultural, and religious meaning in the United States. Since the decision to get married is an intensely personal choice, it is impossible to enumerate all of the reasons why couples decide to marry, or to define or quantify the significance of the marital relationship across all communities and classes of people.

In addition to the social, cultural and religious meaning of marriage, it also is an important legal relationship. All states within the U.S. and the District of Columbia permit the right to be legally married under various conditions.¹ Once married, a couple is entitled to specific benefits and protections, and is also subject to specific default rules on the termination of their marriage, including because of the death of a spouse. These benefits and protections are derived from both state and federal law. With some exceptions, all states and the District of Columbia recognize marriages formed in other states, and foreign countries.²

This report focuses specifically on the economic costs under federal and Massachusetts law borne by same-sex couples who are not able to legally marry, compared to their married heterosexual counterparts. Much has been and is currently being written concerning the ethical, social, and civil rights-based arguments for permitting same-sex marriage. A focus, however, on economic issues quantitatively illustrates how same-sex couples are discriminated against by not being allowed to access the same benefits, protections, and responsibilities of civil marriage that many heterosexual couples take for granted.

In order to learn about the economic issues faced by actual Massachusetts residents,

This report focuses on the economic costs under federal and Massachusetts law borne by same-sex couples who are not able to legally marry, compared to their married heterosexual counterparts.

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1. State law has historically limited the right of individuals to marry close relatives, imposes age and competency limitations on the ability to marry, and has denied couples the right to marry if one or both members of the couple are already married.
 2. In addition to limiting the definition of marriage for purposes of all federal laws to marriages between individuals of the opposite sex, the federal Defense of Marriage Act gives states the permission to disregard marriages between two same-sex individuals formed under the laws of any other state. DEFENSE OF MARRIAGE ACT, 110 Stat. 2419 (1996), amending Chap. 115 of Title 28, signed into law by President William Jefferson Clinton, September 21, 1996.



several same-sex couples were interviewed. These couples live in various parts of the state, and have different income levels and educational backgrounds. Some are parents of young children, some have adult children and some are approaching retirement age. Regardless of their individual circumstances, each faces specific financial hardship because of discrimination in state and federal civil marriage laws.

THE ECONOMIC BENEFITS OF MARRIAGE

There are numerous areas under both federal and Massachusetts law in which marital status has a large economic impact on two people in a relationship. This study focuses primarily on income tax, estate and gift tax, Social Security benefits, Massachusetts workers' compensation benefits, and benefits available to Massachusetts public employees. These areas are the primary focus of this study since they can potentially affect all couples residing in Massachusetts. They provide excellent examples of how same-sex couples are treated differently from married heterosexual couples because these benefits are calculated based on relatively standard mathematical formulas.

Since income tax, estate and gift tax, Social Security, workers' compensation, and Massachusetts public employee benefits are just a few of the myriad areas in which same-sex couples are treated differently than married heterosexual couples under federal and Massachusetts law, Appendix A provides a list of some additional areas of the law in which marital status has an economic impact.

This study focuses on income, estate and gift taxes, Social Security benefits, and Massachusetts workers' compensation and public employee benefits, since these issues can potentially affect all Massachusetts couples.

BACKGROUND

Eligibility for 1,138 federal protections, rights and benefits is contingent upon marital status. If the Massachusetts legislature does not interfere with the implementation of the *Goodridge v. DPH* ruling, same-sex couples who marry in Massachusetts will have a strong claim for equal treatment under Social Security policy, federal tax laws, immigration policy, and other federal legislation that allows them to protect their families like the Family and Medical Leave Act.

Given the passage of the federal Defense of Marriage Act (DOMA) in 1996, which allows the federal government to withhold recognition from same-sex marriages performed in any state, in the short run same-sex marriages in Massachusetts will not be recognized by federal bureaucracies. However, many believe DOMA to be unconstitutional, and it is possible that in the future DOMA will be struck down or repealed. It is also possible that a President and Congress more supportive of equal rights for gay and lesbian people will afford these federal protections to married same-sex couples. While same-sex couples in Massachusetts may not be able to immediately access those federal protections, if they are allowed to marry they have the potential to access these protections in the future.

If same-sex couples are only allowed to form civil unions, they will not be able to access any federal benefits or protections.

However, if same-sex couples are only allowed to form civil unions, under the current legal framework they will not be able to access any federal benefits or protections.

FEDERAL AND MASSACHUSETTS INCOME TAX LAW

There is a strong presumption under federal tax law to treat married couples as an economic unit. The fact that married couples can file a joint income tax return, combining their income and expenses and paying taxes based on rates applicable specifically to married couples, is a primary example. Whether the overall tax liability of a couple filing a joint return or two individual returns will be lower or higher depends on the couple's economic circumstances. Generally, when two individuals have roughly the same income, they will pay slightly more taxes filing a joint return than they would if they filed two individual returns. This is the so-called "marriage penalty," which recently enacted federal tax law has begun to phase out.

There is a strong presumption under federal tax law to treat married couples as an economic unit.

In contrast, when there is a divergence between the earnings of two individuals (e.g., where one member of the couple works full-time and the other works part time in order to take care of dependent children or other family members), those two individuals often pay more tax filing separate returns than they would if they were able to file a joint return.

Federal tax law also provides some direct statutory subsidies to married couples. For example, an individual is entitled to pay for his or her portion of an employer-provided health insurance plan out of pre-tax dollars. If the individual's employer provides benefits to his or her family members, the portion of the individual's health insurance payments attributable to his or her spouse's health insurance and paid by the employer is excluded from the individual's taxable income. In contrast, if an individual's employer provides health insurance benefits to domestic partners, this beneficial treatment is not extended to amounts expended by that individual on, or provided by the individual's employer for, his or her same-sex partner's insurance benefits, or on his or her same-sex partner's children's benefits (unless the children are jointly adopted by both partners).

Massachusetts income tax law is very similar to the federal regime in many respects, including that it permits the filing of married joint returns. Further, Massachusetts taxable income is calculated in a similar manner to federal taxable income. For example, the preferable treatment under federal law afforded to married couples who receive spousal health benefits from their employers is also available under Massachusetts law.

Because they are unable to marry, Donna Triggs and Donna Moore's overall income tax liability is \$2,177 higher than it would be if they could file a joint return.

Example: Donna Triggs and Donna Moore

Donna Triggs and Donna Moore are both 54 years old and live in Massachusetts. They met in college 36 years ago, have been in a relationship for 7 years, and live together in a home they are currently renting. They each have two children from previous marriages, all four of whom are adults. Donna T. is a medical technologist, and had annual income of approximately \$72,000 in 2002. Donna M. works as a massage therapist and had annual income of approximately

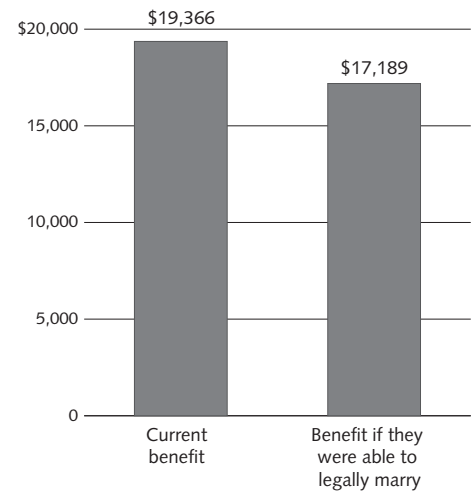


\$25,000 in 2002. Thankfully, the entire family has health insurance through Donna T.'s company, which offers domestic partnership benefits.

Because they are unable to legally marry, both are classified as single persons living in Massachusetts. Donna T. incurs a federal income tax liability of \$12,866, and a Massachusetts state income tax liability of \$3,376.³ Donna M. incurs a federal income tax liability of \$2,234 and a Massachusetts income tax liability of \$890. Combined, their overall federal and state income tax burden is \$19,366.

If they were able to legally marry and file a joint federal and state income tax return, they would incur a federal income tax liability of \$12,976 and a Massachusetts liability of \$4,413, totaling \$17,189. However, because they are unable to marry and must each file a single filer return, their overall income tax liability is \$2,177 higher, almost 13% more, than it would be if they could file a joint return as a married couple.

TOTAL INCOME TAX LIABILITY
(state and federal) for Donna T. and
Donna M.'s family



Because they cannot marry, Donna T. and Donna M.'s income tax liability is 13% higher than it would be if they could file a joint return as a married couple, a difference of \$2,177.

SOCIAL SECURITY

Social Security is a primary means of subsistence for many elderly people in the United States. The benefits provided under the Social Security system change depending on the marital status of the recipient. For example, an individual can claim Social Security benefits based on his or her spouse's earning history. Further, a widow or widower can receive additional benefits upon the death of his or her spouse. The spouse of a disabled individual eligible for Social Security may claim additional benefits if that spouse is raising the disabled individual's young child. And, a spouse who is at least 62 years old may claim additional benefits based on his or her spouse's disability.

SOCIAL SECURITY RETIREMENT BENEFITS BASED ON SPOUSAL EARNINGS

The Social Security retirement benefit a person is entitled to receive is based on his or her earnings history. However, an individual who is married is also entitled to receive benefits based on his or her spouse's earnings history under some circumstances. If a person's monthly benefit is less than half of his or her spouse's monthly benefit (or even if the person is entitled to no benefits based on his or her own earnings), that person is entitled to receive benefits based both on his or her own earnings and his or her spouse's earnings, so that the total benefit equals up to one half of his or her spouse's benefit. All Social Security benefits are potentially subject to reduction in the event the recipient of the benefits earns wage income.

Additionally, if someone gets divorced after at least 10 years of marriage, at age 62 he

3. These calculations are based on 2003 tax rates. Calculations assume that all income earned by the couple is wage income and that neither individual may claim any of their children as a dependent. Calculations assume that Donna M.'s health benefits that are paid by Donna T. in 2002 are worth \$4,000.

or she can collect retirement benefits based on his or her former spouse's income history if he or she has not remarried (the former spouse, by contrast, may be remarried), or that later marriage ended by death, divorce or annulment, and if his or her former spouse is entitled to or currently receives those benefits. In order to be eligible for these benefits, the potential recipient of benefits may not be eligible for equal or higher benefits based on his or her own (or someone else's) earnings record.

Example: Thorsten Behrens & Christopher Schiebel

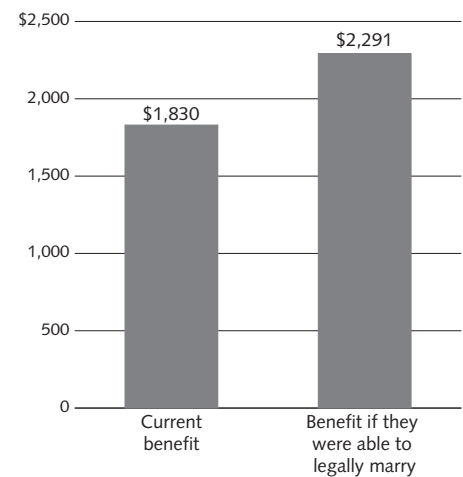
Thorsten Behrens, 33, and Christopher Schiebel, 32, live in Massachusetts and have been in a committed relationship for five years. Thorsten has no children, but Christopher has two children from a previous marriage whom they are raising. In 2002, Thorsten earned a total of \$44,198, and Christopher earned \$4,044 in W-2 reported income and \$3,645 in unemployment compensation.

Based on Christopher's current wage earnings of \$4,044, a rough estimate of the monthly Social Security benefits he could receive at age 67 (his full retirement age) is \$303 per month.⁴ Thorsten, by contrast, earned \$44,198 in wage income in 2002. Based on this income, a rough estimate of his monthly Social Security benefit at full retirement age is \$1,527 per month. Combined, their monthly Social Security benefits would be \$1,830 per month.

Christopher's benefit is less than half of Thorsten's, so if they were legally married under state and federal law, Christopher would receive \$303 based on his own employment record, plus an additional \$461 based on Thorsten's employment record in order to increase his benefit so that it is at least half of Thorsten's. Combined, the couple's benefit would be \$2,291 per month, which is 25% higher than the combined benefit they would be entitled to receive as an unmarried couple.

Christopher also would be entitled to receive additional benefits based on Thorsten's income history even if he and Thorsten were divorced, as long as their marriage lasted at least 10 years and Christopher did not remarry, or the later marriage ended by death, divorce or annulment.

COMBINED MONTHLY SOCIAL SECURITY RETIREMENT BENEFIT for Thorsten and Christopher's family



Upon retirement, Thorsten and Christopher's combined monthly Social Security retirement benefit would be 25% higher if they were legally married.

SOCIAL SECURITY SURVIVOR BENEFITS

A portion of all Social Security tax payments goes towards survivors' insurance, which provides support to surviving spouses of heterosexual marriages. At present, there are about 5 million widows and widowers receiving monthly Social Security benefits based on their deceased spouse's income history.⁵ Everyone who pays Social Security taxes, including single individuals and unmarried couples, contributes toward this benefit.

4. This is a rough estimate because it makes assumptions about future earnings based on current earnings. Amounts are expressed in today's dollars. Calculations of social security benefits were made using the Social Security benefits calculators on the Social Security Administration's website, available at <http://www.ssa.gov>.

5. See www.ssa.org.

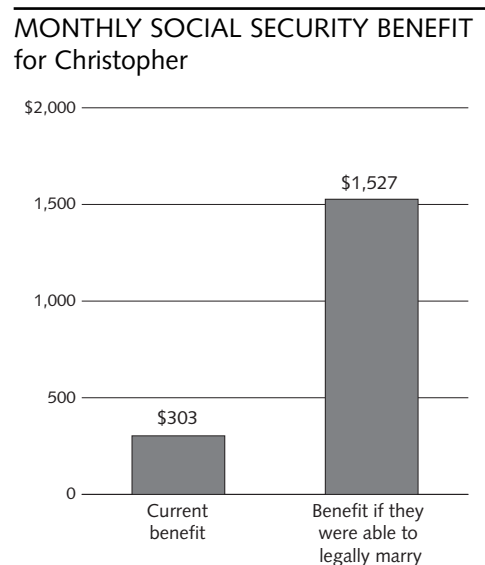
A surviving spouse who is not disabled can receive 100% of his or her spouse's full retirement benefit upon reaching his or her full retirement age (or 71.5% of that amount if the surviving spouse elects to receive benefits at age 60). Disabled surviving spouses can receive benefits as early as age 50. A surviving spouse is also entitled to receive a one-time death benefit of \$255. Further, a surviving spouse can receive survivor benefits no matter what his or her age is if he or she takes care of the decedent spouse's child who is under 16 or disabled and who receives benefits based on the decedent spouse's earnings record. Finally, an unmarried person whose former spouse dies can receive full spousal benefits as long as the marriage to the former spouse lasted at least 10 years. However, none of these benefits are available to same-sex couples, regardless of how long they have been together.

Individuals earn "credits" each year they pay Social Security benefits, and the number of credits needed to provide benefits to his or her surviving spouse depends on the age of death. The younger the person is at death, the fewer credits needed for his or her spouse to receive survivor's benefits. The amount of credits needed to provide benefits to a spouse who is caring for his or her partner's children is even lower. An individual collecting survivor's benefits can switch to his or her own retirement benefits (assuming he or she is eligible and his or her retirement benefits are higher than the survivor's rate) as early as age 62.

Example: Thorsten & Christopher

As discussed in the preceding example, Christopher will receive \$303 per month in Social Security benefits based solely on his own earnings when he reaches full retirement age. In contrast, if Thorsten and Christopher had been legally married, upon Thorsten's death, Christopher would also be entitled to receive benefits based on Thorsten's income history, which would amount to \$1,527 in benefits per month, an increase of over 400%.⁶ Additionally, Christopher would be entitled to receive a one-time death benefit of \$255.

Since Christopher and Thorsten are not able to marry, Christopher will not be entitled to receive any Social Security benefits until he is 62 years old, benefits he could have received as early as age 60 if they were married. Additionally, if Christopher were disabled, he could receive benefits based on Thorsten's earnings as early as age 50. Finally, if Thorsten had adopted Christopher's children (or had other children), on Thorsten's death, Christopher would be eligible to receive benefits based on Thorsten's earnings (even prior to Christopher reaching retirement age) until those children reach the age of 16 (or are 16 or older but are disabled) if Christopher takes care of those children (and those children receive benefits based on Thorsten's earnings).



If Thorsten and Christopher were able to legally marry prior to Thorsten's death, Christopher's monthly Social Security benefit would be \$1,527, an increase of over 500% over the \$303 he would currently receive.

6. Different rules would apply in the event that Christopher remarried.

ESTATE AND GIFT TAXATION

Married heterosexual couples can transfer assets to each other without having to pay taxes, whether those transfers are made while they are alive (in the form of gift) or after one of them dies (in the form of an estate). Same-sex couples are not entitled to this benefit, and any transfer of an asset between members of a same-sex couple, living or dead, requires the payment of a gift or estate tax.

In general, the transfer of assets made by an individual to anyone other than his or her spouse in excess of \$11,000 per year is considered a gift, and the recipient must report that gift on his or her tax return and pay a gift tax. However, individuals are entitled to a lifetime credit against their gift tax liability, currently set at \$1,000,000, for gifts in excess of the \$11,000 annual exclusion. In other words, if an individual who has never made a gift in any year in excess of the annual exclusion makes a gift in 2003 to another person of \$1,011,000, no portion of that gift is taxable. However, any additional gifts made in that year to that person, and any gifts made in any future year to any person in excess of \$11,000, would be subject to a gift tax.

There is no gift tax in Massachusetts.

When someone who is married dies, his or her spouse is entitled to a reduction in estate tax liability. The transfer of an estate to the surviving spouse of a heterosexual marriage occurs tax-free. All other transfers at death are potentially subject to an estate tax. However, only estates that exceed a certain value are subject to estate tax. For those who die in 2004, this amount is \$1,500,000. Any value of an estate in excess of this amount is subject to the estate tax at a maximum rate of 48%.

Individuals who must pay an estate tax are generally entitled to a credit based on any estate tax paid to a state. For 2004, Massachusetts requires the payment of an estate tax on any estate with a value of \$850,000 or more. Like the federal estate tax, Massachusetts subsidizes married couples by permitting a full marital deduction for amounts passing from a decedent to his or her spouse. This means that an estate passing from a person to his or her spouse is not subject to the Massachusetts estate tax.⁷ This benefit is not available to same-sex couples in Massachusetts because they cannot legally marry.

When one member of a married couples with a low income dies, Massachusetts also allows a limited exemption from state property taxes on the spouse's home. This benefit, however, is not available to same-sex couples.

Hypothetical Example: Susan & Mary

Susan and Mary have been together for 6 years. Susan's father died several years ago, and upon the death of her mother, she inherited the family home and some investment assets worth, after taxes, \$3,000,000. Susan sold the house, and would like to invest both the proceeds from the sale of the house and the investment assets in a mutual fund jointly held by her and Mary. Since she never gave sizable gifts to Mary previously (or to anyone else), Susan has not used up any of her \$1,000,000 lifetime gift tax credit as defined by federal law.

7. Prior to July 1, 1994, the marital deduction was limited to 50% of the Massachusetts adjusted gross estate.



If Susan invests the \$3,000,000 in a mutual fund jointly held by her and Mary, it will be classified under federal law as a gift of \$1,500,000 to Mary (50% of \$3 million). Since Susan has never used any of her unified credit, \$1,000,000 of her \$1,500,000 gift to Mary will not be subject to gift tax. Additionally, Susan is entitled to an annual \$11,000 exclusion from gift tax. Therefore, \$489,000 is taxable, leading to a gift tax liability of \$205,270. Since Susan will use her entire \$1,000,000 lifetime unified credit in this one transaction, any future gifts to anyone else in excess of \$11,000 (increased in subsequent years for cost of living adjustments) will be subject to a gift tax.

Alternatively, Susan could transfer all of the money to Mary through a complicated procedure that married heterosexual couples do not have to do. For example, she could make a tax-free gift of only \$1,011,000 to Mary in the same year she receives the proceeds from the sale of the family home. Then, she could make annual gifts to Mary of \$11,000 for the next 44 years—presuming they both live that long—in order to transfer the full \$1,500,000 without having to pay a gift tax.

In contrast, if Susan and Mary were able to legally marry under Massachusetts and federal law, Susan could make the transfer of \$1,500,000 without having to pay a gift tax or file a gift tax return. Additionally, she would not use up any of her \$1,000,000 unified gift tax credit or her \$11,000 annual exclusion. This would allow her to use those credits to make tax-free gifts to other people in the future, including her children.

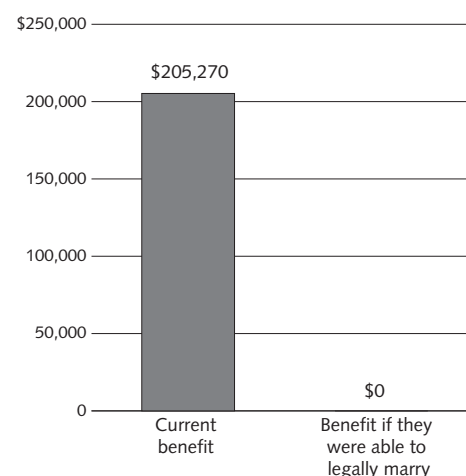
Hypothetical Example: Evan & Michael

Evan and Michael lived together on a dairy farm in Northwestern Massachusetts for 25 years. Michael grew up on the farm and inherited it from his parents when they died. Although the farm is self-sufficient, Michael did not earn much income from it. Evan was originally in the construction business, but worked on the farm for two years prior to Michael's death.

Together, Evan and Michael had nominal savings, and their biggest asset was the farmland itself. When Michael inherited the farm, its fair market value was \$350,000. Since that time, property values have risen considerably in that part of Massachusetts because of the influx of New York City and Boston residents buying weekend homes. In fact, the farm is currently worth \$2,000,000.

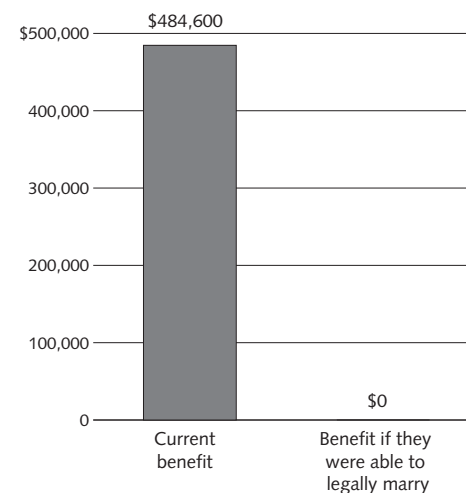
Michael died in late 2003, and left the farm and its business to Evan in his will, who would like to continue living on the farm and operate the dairy business, especially since the farm has been his home for 25 years and a source of

GIFT TAX LIABILITY
for Susan and Mary



If Susan and Mary were legally married, Susan could transfer an unlimited amount of her inheritance to Mary without paying a gift tax (\$0 liability). Since they can not legally marry, Susan's current gift tax liability is \$205,270.

ESTATE TAX LIABILITY
for Evan and Michael



If Evan and Michael were legally married before Michael's death, the farm would have transferred to Evan free of federal and Massachusetts estate tax. Since they could not legally marry, Evan must pay \$484,600 or lose the farm.

income for two years. However, to keep the farm, Evan will have to pay significant estate taxes on its full value as part of his partner's estate. After the applicable credit for payment of Massachusetts estate taxes, the tax on Michael's estate will be \$385,200. Under current Massachusetts law, Michael's estate is not entitled to a marital deduction for the amount transferred to Evan, since at the time of Michael's death, Evan and Michael were not legally married. Consequently, the Massachusetts estate tax on Michael's estate will be \$99,600, and the combined state and federal estate tax is \$484,600.

If Evan cannot come up with the money to pay the estate tax, the farm he and Michael lived on together for 25 years will have to be sold. He literally will lose the farm.

If Michael and Evan were able to legally marry before Michael died, and that marriage was recognized under federal law, the farm would pass to Evan completely free of federal and Massachusetts estate tax.

WORKERS' COMPENSATION BENEFITS

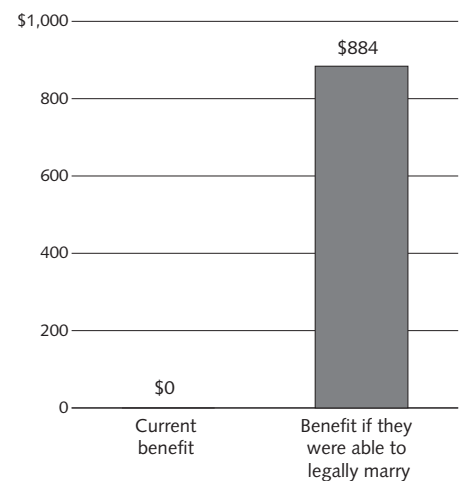
Massachusetts employers are required by law to provide workers' compensation insurance to all employees. These benefits protect workers who are injured on the job or who develop a work-related illness. Benefits are based on a percentage of the average weekly wages of the employee for the 52-week period preceding the injury. The benefits are subject to a cap based on a periodic averaging of the wages of employees in Massachusetts. Currently, the cap is set at \$884 per week. In the case of permanent and total incapacity, an eligible employee is entitled to receive two-thirds of his or her average weekly wage, subject to the \$884 cap.

An individual that is eligible for workers' compensation is entitled to receive an additional \$6 per week for each of his or her dependents, including his or her spouse. If that employee's injury leads to his or her death, the surviving spouse is entitled to a weekly, life-time benefit of two-thirds of the employee's average weekly wage, subject to the \$884 cap, as long as that surviving spouse does not remarry. This amount is increased annually based on a cost of living adjustment.

Example: Donna T. & Donna M.

As discussed earlier, Donna T. is a medical technologist and Donna M. is a massage therapist. Donna T. earns approximately \$72,000 per year, or approximately \$1,385 per week. If she were permanently disabled because of an accident that occurred while she was working, she would receive a life-time benefit of \$884 per week in workers' compensation benefits.⁸ If she and Donna M. were legally married under Massachusetts law, and she were to die as a result of her injury, Donna M. would receive the same \$884

MONTHLY WORKER'S
COMPENSATION BENEFIT
for Donna M. upon Donna T's death



If Donna T. died as a result of an injury at work, Donna M. would receive \$884 per month in worker's compensation benefits if they were legally married. Since they can not legally marry, Donna M. would currently receive \$0.

8. Although 2/3 of Donna's weekly pay is \$923, the benefit is subject to the \$884.46 cap.



per week benefit. However, since they cannot legally marry, Donna M. would not be eligible to receive any of the benefits afforded to similar heterosexual couples.

MASSACHUSETTS ESTATE LAW

Under Massachusetts law, a surviving spouse is entitled to a portion of his or her spouse's estate if that spouse dies without a will. If they have no children, a spouse is entitled to the first \$200,000 of the estate's value, as well as one-half of the personal and real property in that estate beyond \$200,000. If the couple have children, the spouse is entitled to one-half of the entire estate. Further, under Massachusetts law, a non-commercial vehicle owned by a spouse who dies is deemed to have been jointly owned by the married couple, unless a will states otherwise. Finally, a surviving spouse may remain in the house of his or her deceased spouse for up to 6 months following the spouse's death, with no obligation to pay rent.

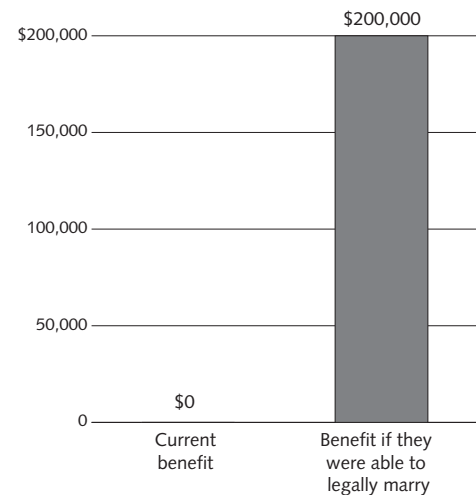
Hypothetical Example: Cynthia & Pilar

Cynthia and Pilar were in a committed relationship for 15 years at the time of Cynthia's death. Cynthia had two adult children. Both were retired and living primarily on Social Security. Cynthia's entire estate includes the house she owned, in which she and Pilar lived together for 15 years, a car worth \$1,000, and savings of \$200,000. The house is worth \$200,000.⁹ Although Cynthia wanted Pilar to keep their home after her death, Cynthia could not afford to pay the legal expenses of drafting a will, so there is no legal document with specific directions for her estate.

Without a will, Cynthia is considered to have died "intestate." Because Cynthia and Pilar could not legally marry, Pilar has no legal right to any of Cynthia's assets. Under the intestate succession rules in Massachusetts, the house, the car and the retirement account will pass to Cynthia's children. In fact, Pilar has no legal right to remain living in the house, or to any of the assets in Cynthia's estate. Even if Cynthia's children give the car to Pilar, she will have to pay a title fee of \$50, and a registration fee of \$25.

If Cynthia and Pilar were able to legally marry before Cynthia died, the car would pass automatically to Pilar. She would not have to pay title, registration or other fees, and the car's value would not be considered part of Cynthia's estate. Additionally, Pilar would automatically be entitled to one half of Cynthia's estate, including the house and the \$200,000 savings. Further, she would be entitled to remain in the house for up to 6 months following Cynthia's death regardless of the ultimate disposition of the house.

AMOUNT OF CYNTHIA'S ESTATE
AUTOMATICALLY CONFERRED
to Pilar when Cynthia died



If Cynthia and Pilar were able to legally marry before Cynthia died, Pilar would receive 50% of Cynthia's estate, a total of \$200,000, in addition to Cynthia's car. However, since they were not married, Pilar receives nothing.

9. Under both U.S. and Massachusetts estate tax law, this is not a taxable estate.

BENEFITS FOR MASSACHUSETTS PUBLIC EMPLOYEES

Massachusetts public employees are entitled to numerous death and retirement benefits. For example, if a police officer, corrections officer, firefighter, or public prosecutor dies as a result of performing his or her duties, his or her surviving spouse is entitled to a one-time payment of \$100,000, which is not subject to Massachusetts income tax. Additionally, if a police officer, corrections officer or firefighter dies as a result of certain specific accidents or assaults, his or her surviving spouse is entitled to receive a life-time benefit of the maximum annual salary the firefighter, police officer, or corrections officer could have received in his or her position.

If a public employee dies on the job, the surviving spouse is entitled to a pension based on 72% of the employee's annual salary, or 72% of the average annual salary of his or her regular compensation for the twelve-month period immediately preceding the date of his or her death, whichever is greater. Additionally, if a public employee retires because of a disability, upon his or her death, his or her surviving spouse is entitled to an annual payment of \$6,000.

Hypothetical Example 1: Anita & Carla

Anita and Carla are police officers, and have been together since they met at the police academy over 12 years ago. Anita earns \$54,000 per year and Carla earns \$52,000 per year. The maximum annual salary either could receive in their position is \$67,500 per year.

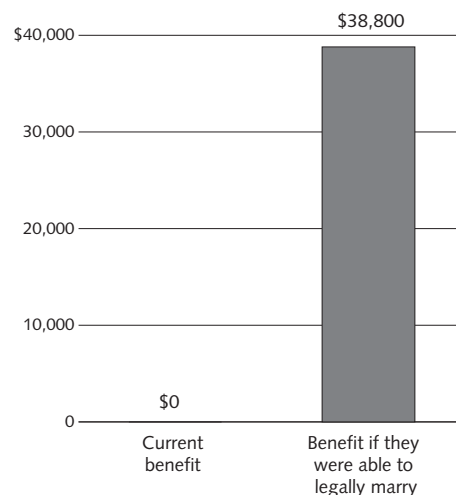
While investigating a possible drug smuggling ring at a pier on the Merrimack River, Anita slips on ice, falls into the river, and drowns. Under Massachusetts law, since Anita died while working, Carla would be entitled to a pension benefit equal to 72% of Anita's annual compensation, or \$38,800 per year, if she and Carla had been married at the time of her death. Since they were unable to legally marry, Carla is entitled to no payments whatsoever.

Hypothetical Example 2: Anita & Carla

Same facts as example 1, but it was determined that there was in fact a smuggling ring on this pier, and Anita was actually pushed into the river by someone involved in the drug smuggling ring.

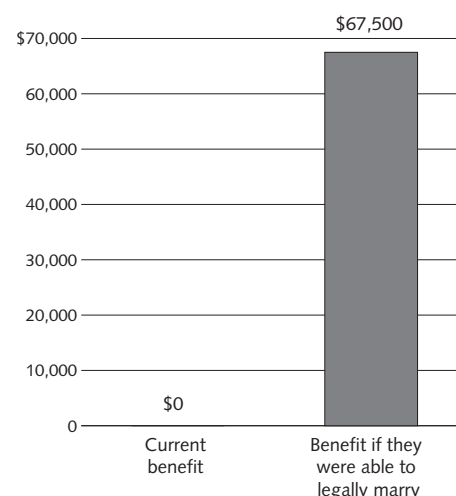
In this example because Anita died not only while on the job, but as a result of an attack, her partner would be enti-

ANNUAL BENEFIT Carla would receive if Anita died in the line of duty



If Carla and Anita were able to legally marry before Anita died in the line of duty, Carla would be entitled to a pension benefit of \$38,800 annually. Since they could not legally marry, Carla gets nothing (\$0).

ANNUAL BENEFIT Carla would receive if Anita was killed in the line of duty



If Carla and Anita were able to legally marry before Anita was killed in the line of duty, Carla would be entitled to a pension benefit of \$67,500 annually, plus a one time payment of \$100,000. Since they could not legally marry, Carla gets nothing (\$0).



tled to a yearly benefit based on the maximum annual salary Anita could have received, which was \$67,500. Additionally, Carla would be entitled to a one-time payment of \$100,000.

However, because they could not legally marry, Carla would receive nothing.

CONCLUSION

Civil unions, even if they grant equality at the state level, would not allow gay and lesbian residents of Massachusetts to access the 1,138 federal benefits and protections automatically granted to their heterosexual counterparts when they marry.

The 2000 U.S. Census found that more than 17,000 cohabitating same-sex couples live in the Bay State and that they are raising some 8,000 children.¹⁰ This is likely a significant undercount. When Massachusetts and the U.S. government respect the marital relationships of same-sex couples, these couples will pay a more equitable share of the tax burden and receive a more equitable share of benefits from the Social Security system that they pay into their entire lives. These benefits and protections make it easier for same-sex partners to care for each other when they are sick or elderly, and make it more likely that their children have access to vital financial support should one or both parents die.

10. Ash, M., Lee Badgett, M.V., Folbre, N., Saunders, L. & Albelda, R. (2004, February). Same-sex couples and their children in Massachusetts: A view from the census 2000. Amherst, MA: The Institute for Gay and Lesbian Strategic Studies. Available at http://www.iglss.org/media/files/Numbers2_04.pdf

Appendix

ADDITIONAL LEGAL BENEFITS, PROTECTIONS, AND OBLIGATIONS OF MARRIAGE¹¹

FEDERAL RETIREMENT BENEFITS

IRA or 401(k) Rollover: If an individual with an IRA or a 401(k) account dies and his/her spouse is the beneficiary, the spouse can roll over the account into an IRA. No tax is due at the time of the spouse's death and the money in the IRA account will grow tax free until the surviving spouse is required to begin taking distributions under applicable rules (generally by age 70 $\frac{1}{2}$).

TORT LAW

Loss of Consortium; Wrongful Death; Wrongful Autopsy: Under Massachusetts law, spouses can sue and collect damages for loss of consortium. This is not available to unmarried couples.¹²

Duty of Support: Spouses have a right to expect support from each other. Individuals may be subject to criminal penalties for abandoning a spouse without making support provisions.¹³

SURVIVING SPOUSES

Compensation to Families of Crime Victims: Under Massachusetts law, spouses of crime victims are eligible for compensation of up to a total of \$25,000 for reimbursement of burial expenses, medical expenses of the deceased, counseling for the family, and lost wages.¹⁴

11. The Gay & Lesbian Advocates and Defenders (www.glad.org) compiled a “work in progress” list of many of the legal protections, benefits and obligations of marriage under Massachusetts and Federal law. See, “Protections, Benefits and Obligations of Marriage Under Massachusetts and Federal Law: Some Key Provisions of a Work-in-Progress” (1st ed., June 21, 2001) (“GLAD Study”). This appendix draws heavily from that study.

12. GLAD Study, Part 7.B., citing *Feliciano v. Rosemar Silver Co.*, 401 Mass. 141 (1987). Further, surviving spouses can sue for wrongful death, GLAD Study, Part 7.B., citing *Doyon v. Travelers Indemnity Company of America*, 22 Mass. App. Ct. 336, 339, rev. den., 398 Mass. 1003 (1986), and wrongful autopsy, GLAD Study, Part 7.B., citing *Kelly v. Brigham & Women's Hospital*, 51 Mass. App. Ct. 297, 301 (2000).

13. GLAD Study, Part 3.A, G.L. ch. 273 §§ 1, 15A.

14. GLAD Study, Part 1.C., citing G.L.c. 258C §§ 2, 3.



Spousal Share of Decedent's Estate: Under Massachusetts law, a surviving spouse can waive the decedent spouse's will and take a life estate in at least one third of the decedent's estate. The surviving spouse can also hold for life one third of all land owned by the deceased spouse at the time of death.¹⁵

Surviving Spouse Advance Payments: Under Massachusetts law, a surviving spouse can take advance payments from the estate of the deceased spouse to cover living expenses.¹⁶

Surviving Spouse Allowances: Under Massachusetts law, a surviving spouse has a right to six months occupancy in the deceased spouse's home without paying rent.¹⁷

MASSACHUSETTS PUBLIC EMPLOYEE BENEFITS

Insurance: State and municipal employees may obtain life insurance coverage under certain circumstances for their spouses, but not for their same-sex partners. The definition of "family" in family life insurance policies does not include same-sex partners.¹⁸

NURSING HOME BENEFITS

MassHealth Benefits: In determining whether an individual is of limited enough means to qualify for nursing home benefits, MassHealth will look to transfers of wealth made within the past three years. Transfers to spouses are excluded from this calculation.¹⁹

INSURANCE

Health Insurance: Same-sex couples cannot purchase joint policies of health insurance on the open market.²⁰

Life Insurance: The definition of "family" in family life insurance policies does not include same-sex partners.²¹

General Liability Insurance: The definition of "family" in family coverage does not include same-sex partners.²²

Continued Spousal Insurance Coverage: The spouses of private sector employees who die or are laid off are entitled to continued insurance coverage for 39 weeks. The definition of "family" in family life insurance policies does not include same-sex partners.²³

LEGAL COSTS OF DOCUMENTING RELATIONSHIP

Health Care: A spouse has the right to visit his or her spouse and, make medical decisions on behalf of a disabled or incompetent spouse. Individuals who are not married can execute health care proxies giving their same-sex partner the right to make medical decisions, though for many couples this would require incurring legal costs.

15. GLAD Study, Part 1.C., citing G.L. ch. 189, § 1 et seq.

16. GLAD Study, Part 1.C., citing G.L. ch. 193, § 13.

17. GLAD Study, Part 1.C., citing G.L. ch. 196, §§ 1, 2.

18. GLAD Study, Part 6.A.

19. GLAD Study, Part 2.I, 130 C.M.R. § 520.019(D) (1).

20. GLAD Study, Part 6, G.L. ch. 176B, § 1, 176A, § 1, 176E, § 1, 176F, § 1, 176J, § 1, 176M, § 1.

21. GLAD Study, Part 6.A, G.L. ch. 175, § 23.

22. GLAD Study, Part 6.A, G.L. ch. 175, § 111G.

23. GLAD Study, Part 6.B.

Dissolution of Relationship: Same-sex couples that terminate their relationships are not entitled to the default rules applicable under Massachusetts state law to married individuals who divorce. Same-sex couples may need to incur legal costs during their relationship to formalize agreements on how to divide assets upon termination of the relationship.



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The **National Gay and Lesbian Task Force Policy Institute** is a think tank dedicated to research, policy analysis and strategy development to advance greater understanding and equality for lesbian, gay, bisexual and transgender people.