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THE WILLIAMS PROJECT

THE CHARLES R. WILLIAMS PROJECT ON
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IGLSS
INSTITUTE FOR GAY AND LESBIAN STRATEGIC STUDIES

POLICY STUDY

EQUAL RIGHTS, FISCAL RESPONSIBILITY: THE IMPACT OF AB 205 ON CALIFORNIA'S BUDGET

A study jointly produced by the
Williams Project on Sexual Orientation Law
and the Institute for Gay and Lesbian
Strategic Studies (IGLSS)

M.V. Lee Badgett, Ph.D

IGLSS

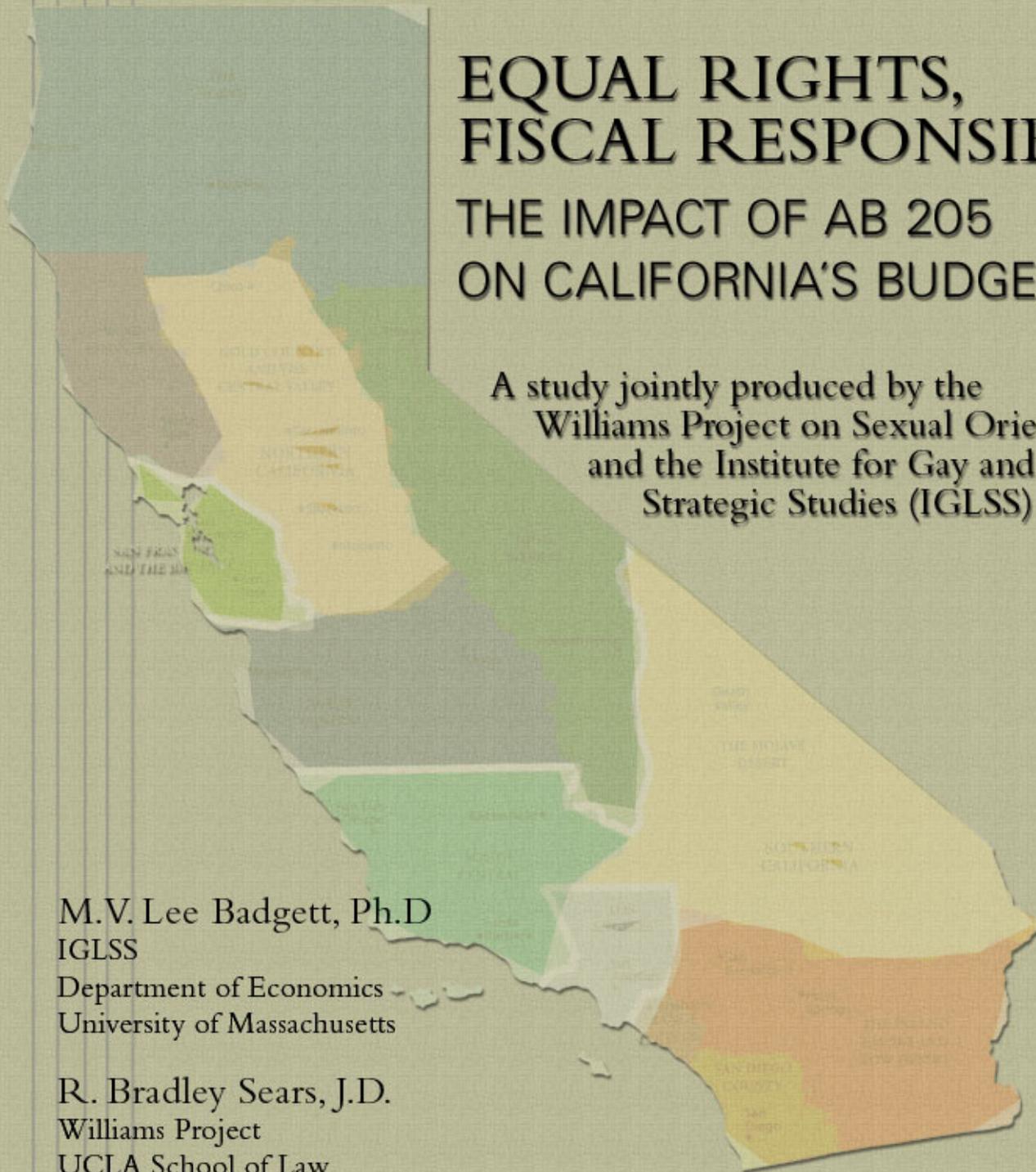
Department of Economics
University of Massachusetts

R. Bradley Sears, J.D.

Williams Project

UCLA School of Law

University of California, Los Angeles



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EXECUTIVE SUMMARY

This study, co-authored by UCLA's Williams Project and the Institute for Gay and Lesbian Strategic Studies (IGLSS), estimates the impact of AB 205 on California's budget. AB 205, if enacted, will provide registered domestic partners with almost all of the same rights and responsibilities as spouses. The study concludes:

AB 205 WILL HAVE A POSITIVE IMPACT ON THE STATE BUDGET OF \$8.1 TO \$10.6 MILLION EACH YEAR.

The positive effects of AB 205 from higher revenues and lower expenditures will outweigh any negative fiscal impacts. We estimate, conservatively, that AB 205 will result in a net gain of \$8.1 to \$10.6 million each year for the State budget. This net impact will be the result in savings of means-tested benefit programs, increased sales taxes revenues from tourism, and a decrease in State income taxes. AB 205 will have a minimal impact on the State court system, State employee benefits, and administrative costs.

AB 205 WILL REDUCE STATE EXPENDITURES ON PUBLIC BENEFITS

AB 205 will require the State to count a domestic partner's income and assets in assessing an individual's eligibility for means-tested public benefits, reducing the number of people eligible for such benefits. Using data from the California Health Interview Survey (CHIS), we estimate how many partnered gay or lesbian people are currently receiving means-tested public benefits. We take into account the possibility that losing public benefits creates a disincentive to register as domestic partners and the fact that low income couples might still qualify for benefits.

Nevertheless, even if only a small percentage of individuals living with partners register as domestic partners and become ineligible for public benefits, the State is likely to reduce its expenditures on these programs by more than \$11.5 million each year.

AB 205 WILL INCREASE SALES TAX REVENUES THROUGH INCREASED TOURISM

If AB 205 is enacted, same-sex couples from other states are likely to travel to California to become domestic partners. This will generate a boost to tourism that will lead to higher sales tax revenues. Using different methods to predict the number of couples coming from out of state to register, and the State's averages for tourist spending, we estimate sales tax increases are likely to range from \$0.7 million to \$3 million.

AB 205 WILL NOT HAVE A SIGNIFICANT IMPACT ON COSTS TO THE STATE'S COURT SYSTEM

AB 205 will increase registered domestic partners' access to State courts by allowing them to petition to terminate their partnerships in State courts under California's Family Code. Using data about current domestic partnership terminations filed with the Office of the Secretary of State, we estimate that AB 205 will add, at most, 251 cases to the 150,000 family law cases filed in California courts each year.

These filings would, at most, increase a small percentage of State court judges' caseloads by 1 case. In addition, some of these filings will not be new, but cases moved from civil court to family court, where they will be disposed of more economically. Thus, we conclude that AB 205 will not lead to any actual increased costs for State courts.

AB 205 WILL DECREASE INCOME TAX REVENUES

AB 205 will have two offsetting effects on income taxes paid by domestic partners. In giving domestic partners the right to use the "married filing jointly" tax status, AB 205 will result in lower tax payments for some domestic partners. However, the law will also eliminate the ability of some domestic partners with dependent children from using the "head of household" filing status, which would increase the taxes owed by these couples.

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We use data from Census 2000 on same-sex "unmarried partner" couples who live in California to estimate pre-AB 205 taxes and post-AB 205 taxes for couples in domestic partnerships. We find that the net impact of AB 205 is a reduction of \$3.9 million in tax revenues.

AB 205 WILL NOT SIGNIFICANTLY INCREASE THE COST OF PROVIDING STATE EMPLOYEE BENEFITS

AB 205 will not have any fiscal impact on many State employee benefits, including health benefits, because domestic partners of State employees and retirees are already covered by these programs. AB 205 will also not increase the cost of providing pre-retirement death benefits. Using data collected by CalPERS, we estimate that, at most, only 1 additional person per year will qualify for pre-retirement death benefits under AB 205. This will not result in any significant additional costs.

AB 205 will increase the cost of providing employees with post-retirement death benefits. Using data collected by CalPERS, we estimate that AB 205 will, at most, make 82 additional survivors eligible for monthly allowances and continued health benefit coverage. Using the most conservative assumptions, we estimate that AB 205 would result in additional costs for providing these benefits of, at most, \$120,000. However, our best estimate is that the actual annual costs will be less than this amount.

AB 205 WILL NOT CREATE SIGNIFICANT ADMINISTRATIVE COSTS

Based on an estimate provided by the Office of the Secretary of State, we estimate that AB 205 will, at most, increase administrative costs by \$50,000 during its first year. However, our best estimate is that actual annual costs will decrease after the first year of implementation, and will be offset by filing fees.

PROVIDING CALIFORNIA'S FAMILIES WITH EQUAL RIGHTS IS FISCALLY RESPONSIBLE

In conclusion, the positive impacts of AB 205 on means-tested benefit programs and tax revenues from tourism will outweigh a loss in income tax revenues and insignificant costs associated with the State's court system, State employee benefits, and administrative costs. The net impact of AB 205 on California's budget will be a positive impact of \$8.1 to \$10.6 million each year.

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I. INTRODUCTION

This report outlines and estimates the impact of AB 205 on particular revenue and expenditure items in California's budget. AB 205, if enacted, would give couples who are registered as domestic partners almost all of the rights and obligations as spouses with respect to the State government. Since marriage changes the eligibility of couples for certain State benefits, particular tax statuses, and other State requirements, AB 205 could have an impact on the State budget. Based on the analysis set out in this study, our best estimate is that the positive effects from higher revenues and lower expenditures will outweigh any negative fiscal impacts, resulting in at least an annual net gain of \$8.1 - \$10.6 million to the State budget.

Although marital status appears in numerous places throughout California's laws, we focus on the particular policy areas that are most likely to have a fiscal impact:

- (1) Changes in eligibility for means-tested public benefits provided by the State;
- (2) Changes in tax revenues related to tourism;
- (3) Changes in access to the family court system;
- (4) Changes in the tax filing status, and therefore the tax payments, of couples in domestic partnerships;
- (5) Changes in State employees' eligibility and enrollment for employment benefits that are currently only provided to employees' spouses; and
- (6) Changes in administrative costs.

In each case, we consider how much the above changes will alter State revenues and expenditures. Some changes are likely to increase revenues, while other changes will decrease them. Some changes increase expenditures, while others decrease them. Our method estimates actual dollar figures in order to gauge the degree to which these changes offset one another.

In order to provide the most accurate estimates possible, we draw on the best available data on domestic partners and on State programs. One important variable is, of course, the number of couples who are likely to register as domestic partners if AB 205 is enacted. California currently allows same-sex couples to register as domestic partners. Different-sex couples are also allowed to register as long as one member of the couple is at least 62 years of age.

Currently, registering as domestic partners creates a number of legal rights and obligations for couples under California law. These rights include, but are not limited to:

- The right to use stepparent adoption procedures.
- The right for one domestic partner to make legal, financial, and medical decisions, to file state disability benefits, and to be appointed as a conservator if the other partner is incapacitated.

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- The right to inherit from a partner if the partner dies without a will, the right to draft a will or trust for a partner, the ability to use form wills, and the right to automatic appointment as executor of a partner's estate.
- The right to sue for wrongful death and infliction of emotional distress when a partner is killed or injured.
- The right to certain employment benefits, including the right to paid leave to care for a seriously ill partner or a partner's child, the right to use sick leave to care for a partner or a partner's child, and in limited circumstances, health insurance.

As of May 14, 2003, 19,905 couples had registered as domestic partners with the State. Unfortunately, the State does not track how many couples registering are same-sex or different-sex. In this analysis, we assume that most domestic partners are same-sex couples. This assumption is reasonable given the fact that different-sex couples are legally allowed to marry and persons over 62 are less likely to form non-marital, co-habiting relationships.

Further, for the purpose of this analysis, we assume that the number of couples wanting to remain registered as domestic partners under AB 205 will remain roughly the same as the current level of registration, at least in the near future. We make this assumption because AB 205, by providing a more comprehensive set of legal rights and obligations than afforded under current law, will create an incentive for some couples to register as domestic partners. However, it is possible that this more comprehensive set of rights and obligations will also deter some couples from registering, and may lead some registered couples to terminate their domestic partnerships. We have no way of knowing how much these two effects might offset each other, and therefore it is not possible to precisely predict whether domestic partnership registrations will increase or decrease if AB 205 is passed.

We predict that, over time, the new rights and obligations provided by AB 205 will encourage more couples to register as domestic partners. We base this prediction on the experience of Vermont's civil union legislation, which provides those entering into civil unions with all the rights and obligations of spouses in civil marriage. When compared to the number of same-sex couples identified by Census 2000, approximately 44% of Vermont's same-sex couples have entered into a civil union. Currently, the 19,905 couples registered as domestic partners under California law represent only 22% of the same-sex couples identified by Census 2000 as living in California. Thus, we assume that the comprehensive set of rights provided under Vermont law has caused a larger percentage of couples to seek legal recognition of their relationships. Likewise, AB 205 will probably provide a greater incentive for California couples to register as domestic partners.

If the number of couples registering as domestic partners increases after the passage of AB 205, all of our estimates would change proportionately. The factors favoring the budget would increase in proportion to those creating additional costs. Therefore, an increase in the number of registered domestic partners would result in a larger positive impact on the State budget than what we have estimated in this study. However, because of the uncertain impact of AB 205 on the number of couples registering, and because any increase in registrations will not change our conclusion – that AB 205 will have a positive impact on California's budget – we do not build in any assumptions about the rate of increase in partnerships created by AB 205.

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In short, for purposes of this analysis, we assume that the number of registered domestic partnerships will remain at 19,905 once AB 205 is enacted. We assess the impact on State revenues and expenditures using 2002 data, the most recent year for which data is available on all the components that we analyze.¹

II. PUBLIC BENEFIT PROGRAMS

Granting equal rights to domestic partners is likely to affect expenditures on California's public benefits programs. Many public benefits programs are means-tested, and the income of spouses is included in calculating eligibility for benefits. Programs that fall in this category include CalWORKS or Temporary Aid to Needy Families (TANF), MediCal, SSI Disability, Food Stamps/California Food Assistance Program, and Healthy Families (State Child Health Insurance Program). Under AB 205, the income of benefit recipients' domestic partners will be included in calculating program eligibility on the same basis as spouses. If fewer couples qualify for these programs, or if the benefits that a couple qualifies for are lower because of the income that the State will now count under AB 205, then the State will spend less money.

The State does not keep track of the proportion of recipients for each benefit program who might have an unmarried partner whose status would change under AB 205, nor does the State track the sexual orientation of recipients. However, one helpful source of data is the 2001 California Health Interview Survey (CHIS), a survey of 50,000 representative California households. The CHIS asks respondents about their sexual orientation as well as their marital or partnership status.² The CHIS also asks a subsample of low-income respondents about their participation in five public benefit programs.

Thus, it is possible to estimate the proportion of public benefit recipients who are in a same-sex partnership.³ We use those proportions to estimate the number of people in each program who are in a same-sex partnership. Table 1 shows that the proportions are small, ranging from 0.2% of TANF recipients to 3.1% of Supplemental Security Income/State Supplementary Payment recipients. The CHIS did not ask about enrollment in Healthy Families, a program that provides health insurance for children in low-income families, so we use the same 0.2% enrollment estimate as found for CalWORKS, another program for families that have children. The numbers of individuals implied by the small proportions can be substantial, however, ranging from the hundreds to the tens of thousands.

To assess the impact of AB 205, we need to know how many of these benefit recipients would remain or become domestic partners and, as a result, how many would lose benefit eligibility because their partner's income is taken into account. Some might argue that the potential loss of eligibility could serve as a disincentive for benefit recipients to remain or to register as domestic partners. Further, some benefit recipients will remain eligible for benefits under AB 205 because their partner's income is so low that, even when considered, it will not disqualify them.

However, several areas of research support that benefit recipients will remain registered, or still register, even if doing so threatens their eligibility. Research about welfare recipients has consistently demonstrated that the threat of losing benefits has only a small impact on an individual's probability of marrying.⁴ Moreover, additional research suggests that

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the decision to marry or enter into another form of commitment has a deep symbolic and cultural value apart from economic considerations.⁵ Finally, a domestic partnership might come with other financial advantages that outweigh this consequence, such as gaining domestic partner benefits from employers (who are likely to rely on the State's partnership registration process for implementing their employment benefits) or reducing the need to generate partnership rights through expensive legal documents.

We offer two ways of adjusting the number of recipients who will no longer qualify for public assistance to account for this disincentive impact and possible continued eligibility for some recipients who have registered. The first adjustment, shown in the fourth column of Table 1, predicts that 22% of partnered recipients will register as domestic partners. This reflects the current rate of domestic partnerships among same-sex couples in California.⁶ A second adjustment (fifth column of Table 1) assumes that 98% of benefit recipients with partners will either not register, terminate their existing partnerships, or will continue to qualify for public assistance even when their partners' incomes are taken into consideration. In other words, we conservatively assume that only 2% of partnered recipients would become ineligible for benefits as a result of AB 205.⁷

Table 1: Public Benefit Program Recipients Likely to Be in Same-sex Partnerships

Total	Total Recipients	% of recipients who are partnered gay men and lesbians	Number of partnered gay male and lesbian recipients	First adjustment (22% will be DPs)	Second adjustment (2% will be DPs)
Medi-Cal	5,841,455	1.0%	57,171	12,578	1,143
TANF/CalWORKS	483,500	0.2%	841	185	17
Calif Food Assistance Program	88,909	0.4%	348	77	7
SSI Disability	746,943	3.1%	23,247	5,114	465
Healthy Families	630,586	0.2%	1,261	277	25

Table 2 presents average expenditures per recipient for each program to calculate the potential savings if fewer people are eligible after AB 205 is implemented. The calculations of savings multiply the two adjustments in Table 1 by the State's average spending per month in column two of Table 2. The bottom row labeled "annual savings" multiplies average monthly spending by twelve to get an annual average.

Table 2: Savings from Same-Sex Partnerships that Reduce Eligibility for Programs

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Sources for Table 1 & 2: "Public Assistance Facts and Figures," California Department of Social Services, for December 2002.

Total	Average monthly payment by State	First adjustment: Savings if 22% partner and ineligible	Second adjustment: Savings if 2% partner and ineligible
Medi-Cal	\$596	\$7,494,190	\$681,290
TANF/CalWORKS	\$511	\$94,473	\$8,588
Calif Food Assistance Program	\$66	\$5,089	\$463
SSI Disability	\$582	\$2,976,863	\$270,624
Healthy Families	\$39	\$10,685	\$971
	Monthly savings	\$10,581,300	\$961,936
	Annual savings	\$126,975,599	\$11,543,236

(CalWORKS cases, SSI/SSP disabled, Food Stamps/Calif. Food Assistance Program).
 Medi-Cal Policy Institute, www.medi-cal.org/countydata/overview.cfm accessed 4/26/03. (Enrollment for January 2002; Total Medi-Cal Expenditures for FY 98-99).
 The California Managed Risk Medical Insurance Board, "2002 Federal Annual Report, Children's Health Insurance Program, Healthy Families, California," January 2003 (Fiscal Year 2003 State Share of Funding); Enrollment in Healthy Families, www.mrmib.ca.gov/MRMIB/HFP/HFPRptSum.html, accessed 4/26/03 (Healthy Families Enrollment).

The totals in Table 2 show that if AB 205 is enacted the State's annual savings from public benefits programs could be substantial. If benefit recipients partner at the State's average rate, the State would save \$127 million per year as recipients remain in or form partnerships that allow them to leave public assistance programs. The lower adjusted estimate is \$11.5 million, illustrating that even a tiny number of partnerships among benefit recipients result in savings sufficient to more than offset all other possible negative fiscal effects estimated in this report. Because of the uncertainty in predicting partnership rates and partners' eligibility, we use this lower estimate of \$11.5 million in savings for our final calculation.

III. TAX REVENUES FROM TOURISM

Analyses of other States' consideration of opening marriage to same-sex couples have argued that the first state to do so would experience a wave of increased tourism that would bring millions of additional tax revenues into state coffers.⁸ Of course, AB 205 would not allow marriage but would create a comparable legal status that is unlikely to be recognized in other states.⁹ In that way, the status created by AB 205 is similar to the "civil union" status created by the State of Vermont for same-sex couples.

Given the experience in Vermont, where most couples entering into civil unions are from other states, we would expect the out of state demand to enter into a domestic partnership in California to be less than the demand for actual marriage but still positive. Current reports from Vermont suggest that 85% of couples, or 4,697 as of May 14, 2003, entering civil unions are from states other than Vermont.¹⁰ In other words, only 15% of civil unions are by Vermonters.

It is difficult to predict the number of couples who would travel to California to enter a domestic partnership. According

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to Census 2000, there are 63,946 same-sex unmarried partner couples in the western states that are not in California, Hawaii, or Alaska. Those couples would have relatively easy access to California, and the State's domestic partnership policy under AB 205 is likely to draw couples from more distant states, as well, given the State's other tourist attractions.

We consider several scenarios. In the optimistic scenario, the 64,000 couples in the western states will travel to California and spend the average 3.5 days stay for overnight visitors and an average of \$91.15 per person per day.¹¹ In this scenario, the State's 7.25% sales tax would generate an additional \$3 million in revenues.

A somewhat less optimistic but more realistic scenario assumes that the same proportion of those 64,000 western couples will become domestic partners as the proportion of same-sex couples in California who have registered. Currently 19,905 couples are registered, or 22% of California's same-sex couples as counted by Census 2000. In this scenario, California businesses will likely see an additional 28,160 visitors generating \$9 million in spending and an additional \$650,000 in State sales taxes.

A highly pessimistic scenario is to assume that California will get the same number of couples as Vermont received. As noted earlier, 4,697 out-of-state couples have traveled to Vermont to enter into a civil union. The impact of that number of visitors would obviously be smaller than the other two scenarios, generating only \$217,000 in additional sales tax revenues in California. This pessimistic scenario is likely to be far too low, since the California domestic partnerships will not require a lengthy residence in order to dissolve, as is the case in Vermont. Thus, the California status is likely to be more attractive than Vermont's civil union.

Overall, it is difficult to precisely estimate the amount of tourism generated. Given the experience of Vermont, California is likely to experience some increase in visits from couples from out-of-state that will generate additional sales tax revenues, likely falling into a range of \$650,000 to \$3 million. Note that these estimates are conservative predictions about the benefits to the State budget. These figures do not include possible increases in income tax payments by workers or businesses that are generated by the higher demand for California's goods and services. These estimates also do not account for the multiplier effect of tourist spending, that is that a \$1 brought into California from out-of-state will over time generate more than a \$1 of additional spending on goods, services, and taxes. Therefore, these tourism estimates are conservative estimates and are likely to be higher than the \$ 0.7 to 3 million dollars calculated here.

IV. ACCESS TO COURTS

AB 205 would allow registered domestic partners the same access to California's courts as is currently provided to 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.

The impact of AB 205 on the State's court system depends on three things: 1) the number of cases that will be added to

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the dockets of the State's courts as a result of AB 205; 2) the cost of resolving these cases; and 3) any offsetting savings or revenues that will result from AB 205.

California already allows registered domestic partners access to some legal proceedings and causes of action in state courts, such as the step-parent adoption process and the right to sue for wrongful death.¹² Thus, AB 205 will not increase the burden on courts with regards to these proceedings and causes of action. The only significant way in which AB 205 will augment court filings is by allowing partners to petition to terminate their relations in court under the same procedures and laws applied to the termination of marriages. Based on the number of domestic partnership terminations currently filed with the Office of the Secretary of State of California¹³ and the experience of Vermont under its civil union legislation¹⁴, we estimate that AB 205 will add 119 to 251¹⁵ dissolution cases to the courts each year.

Currently, California's Superior Courts handle over 150,000 family law filings a year.¹⁶ Adding 251 filings to this caseload would only be an increase of less than two tenths of one percent (0.0016). The annual fluctuations in family law filings are far greater than this. In the ordinary course of business, California courts handle fluctuations ranging from 400 to 6,600 filings each year. AB 205's 251 new filings will be an insignificant blip on this radar screen.

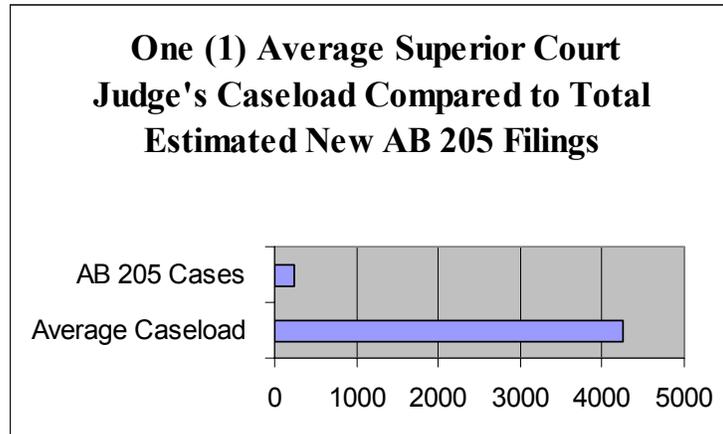
Table 3: Annual Fluctuations in Family Law Filings, 1996-2001

Year	Family Law Filings	Change from prior year
2000-2001	154,672	1,406
1999-2000	156,078	449
1998-1999	156,527	6,643
1997-1998	163,170	2,316
1996-1997	165,486	3,930

Source for Table 3: Judicial Council of California Administrative Office of the Courts, 2002 Annual Report, Court Statistics Report, Table 4, at 46 (2002).

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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 4,000 cases each year.¹⁷



Even if all 251 of these new AB 205 cases went to one judge, it would only increase his or her docket by 6%. Alternatively, if these cases are spread out among all of the almost 2,000¹⁸ judicial positions in California, only 13% of these judges would have even one (1) case added to his or her docket, and the remaining 87% would have no additional cases.

In fact, it is likely that these new cases will neither be clumped in one courthouse, nor spread throughout the State. Nonetheless, the raw number of 251 cases is so small that we conclude that AB 305 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.

In addition, AB 205 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 domestic partnerships dissolve under current law, couples do not have access to family court and the family law rules that apply to married couples. Instead, domestic 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.¹⁹

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 under AB 205 the status of registered domestic partner itself results in specified legal obligations; (2) the sparsely developed rules applicable in palimony cases make them difficult to settle or litigate efficiently, while under AB 205 dissolution of the parties' domestic partnership will be guided by the more determinate California Family Code; (3) Superior Court judges handling occasional palimony cases have little experience with those cases, while under AB 205 family court judges will routinely apply the same law to the dissolution of domestic

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partnerships that they routinely apply to the dissolution of 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.²⁰ 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, AB 205 might even result in some savings for the State court system.

AB 205 might also increase the revenues of the State's court system by generating new filing fees. Fees are required when couples file dissolution proceedings: currently the fees for an uncontested dissolution are \$224, and \$445 for a contested one.²¹ If, as projected, AB 205 creates 251 dissolution cases, it will result in new filing fee revenues ranging from \$56,000 to \$110,000.

We conclude that because there would be no need for additional judges, staffing, or courtrooms to handle the 251 cases that AB 205 might add, it is probable that the savings generated from moving palimony cases out of civil court and into family court, and the revenues created from additional filing fees, would offset any other administrative or marginal costs for handling these cases. Thus, we conclude that AB 205 will have a negligible fiscal impact on the State court system.

V. INCOME TAX REVENUES

AB 205 will have an impact on income tax revenues. The law will give domestic partners the right to use the "married filing jointly" tax status, giving domestic partners the ability to use that status if it is financially desirable for them to do so—in other words, if it will reduce a couple's taxes. The law will also likely eliminate the ability of now "single" taxpayers with dependent children from using the "head of household" filing status—which would increase some couples' taxes owed. In this section, we estimate the impact of these offsetting effects. Overall, we find that the net loss of revenues is likely to be approximately \$3.9 million.

To estimate the net tax impact, we use data from Census 2000 to identify same-sex "unmarried partner" couples who live in California.²² Using the income and household characteristics of actual couples provides a sound basis for projecting the impact of AB 205. In addition to the Census data, we need to estimate how many couples will be registered as domestic partners and what their pre-AB 205 filing status will be. We then use the Census data on total income and on the number of children in a household to estimate their taxes twice: first we estimate what couples now pay, then we estimate their likely tax payments as domestic partners under AB 205, and finally we calculate the difference between the pre- and post-AB 205 taxes.

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A. How many couples will register as domestic partners if AB 205 passes?

As of May 14, 2003, 19,905 couples had registered as domestic partners under the current definition of domestic partner. As discussed in the Introduction, we assume that the number will remain roughly constant and that most couples registering will be same-sex couples.

We also assume that the tax impact of AB 205 will have no impact on who registers as a partner.²³ We make this assumption for several reasons. First, social scientists have done extensive research on the federal "marriage penalty," the situation in which some married couples pay more in taxes when they marry than if they were to remain single. Overall, the research suggests that the marriage penalty has at most a very small impact on the likelihood that a couple will marry.²⁴ Therefore, it seems reasonable to assume that the smaller State tax impact of marriage will also have little effect on the number of people registering as partners. Second, as noted earlier, a domestic partnership might come with other financial advantages that outweigh a negative tax impact, such as gaining domestic partner benefits from employers (who are likely to rely on the State's partnership registration process for implementing their employment benefits) or reducing the need to generate partnership rights through expensive legal documents. Finally, research by anthropologists and other social scientists suggests that the decision to marry or enter into another form of commitment with a partner has a deep symbolic and cultural value apart from economic considerations.²⁵

B. What will the pre-AB 205 and post-AB 205 filing status be for individuals in same-sex couples?

We must make several assumptions in order to estimate taxes for couples. First, we assume that the individual listed as the "householder" of a same-sex couple will file as "head of household" if his or her own children under 18 years old are living in the household, and that this person's unmarried partner will file as single.²⁶ The "head of household" status involves lower tax rates and higher deductions compared to single filers. We also assume that since AB 205 will treat domestic partners as married couples for tax purposes, then the former "head of household" will not qualify as such under AB 205, and the couple would then file as "married filing jointly." Second, when the householder has no children living with him or her, we assume that both partners currently file as single and will file as married filing jointly under AB 205.

C. How much do couples' taxes change?

We calculate taxes twice, pre- and post-AB 205. The tax simulations were necessarily simple. To calculate adjusted gross income, we assumed each partner used the standard deduction and had one exemption to claim apiece if single, and one dependent exemption per child. We then applied the 2002 tax schedule to calculate the taxes owed by each individual and couple, first when each partner files as single or as head of household (if children are present), and second when the couple files jointly. Some couples saw no change in taxes. Other couples' taxes fell, with an average reduction of \$539. According to the Census data, some couples, mostly those couples where one partner previously filed as head of household taxes, will pay higher taxes under AB 205. The average increase in taxes for those households was \$846.

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D. Calculating the overall change in tax revenue.

To estimate the overall effect on tax revenue, we need to know the proportion of couples in each category—couples whose taxes increase, decrease, or stay the same. Given the Census 2000 figures, roughly 11% of same-sex couples in California are likely to be in the tax increasing category, although this proportion is probably too low, since the Census does not allow us to clearly identify situations in which the non-householder has children living with the couple. In the other categories, 35% of couples will see no change in taxes paid, and 54% will see their taxes fall. Table 1 shows how those proportions can be used to calculate the number of couples falling into each category among the 19,905 existing domestic partnerships. Multiplying the number of couples in each category by the average change in taxes shows that tax revenues are likely to fall by \$3.9 million, as shown in the lower right hand corner of Table 4.²⁷

Table 4: Summary of Tax Revenue Calculations

Type of couple	Number of couples	Percentage of all couples	Average change in taxes per couple	Total change	
Taxes Increase	2190	11%	\$846	\$1,852,359	
Taxes Same	7026	35%	0	\$0	
Taxes Decrease	10,669	54%	-\$539	-\$5,750,634	
TOTAL	19,905			-\$3,898,275	Net change in tax revenue

Our estimates are 22% lower than those offered by the Franchise Tax Board (FTB) in its analysis of AB 205 for two main reasons. First, our estimates differ because we had a more accurate estimate of the actual change in taxes for many couples. In particular, we were able to calculate that 11% of couples will see an increase in taxes, resulting in a much smaller net impact of AB 205 than the FTB hypothesized.²⁸

Second, the FTB also projects a large increase in the number of couples who will enter domestic partnerships if AB 205 passes. Earlier we argued that the net impact of AB 205 on the number of partnerships is difficult to predict. But the impact of more domestic partners will lead to more couples whose taxes will increase as well as those couples whose taxes will decrease, so the FTB net figures in year two are also too high. Furthermore, while the average decrease for couples whose taxes fall under AB 205 is \$539, the median is much smaller—\$256 per couple—suggesting that the high average is driven by relatively few couples with extraordinarily high savings.²⁹ Therefore, newly-partnered couples are more likely to have a tax impact near the median than the mean. We do not calculate estimates with higher numbers of couples because the other components of our analysis will also rise and fall proportionately with an increase in couples registering as domestic partners.

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VI. STATE EMPLOYEE BENEFITS

The State of California is an employer, and as such, provides certain benefits to employees as part of a compensation package. These include health benefits, death benefits, retirement benefits, survivor benefits, and various leave programs. Some of these benefits cover an employee's spouse and the children of the employee's spouse, as well as the employee. AB 205, by providing domestic partners with the same rights and obligations as spouses, will allow additional persons to be covered by these benefits. Three factors determine the fiscal impact AB 205 will have on State employee benefits: the scope of increased eligibility for benefits, the costs of providing any new benefits, and the State's share of those costs.

A. Employee Benefits Not Affected by AB 205

Domestic partners are already treated the same as spouses in civil marriage for many State employee benefits. For example, State employees can use sick leave or take six weeks of leave with wage-replacement in order to care for an ill domestic partner, or child of a domestic partner, on the same basis that employees can receive such benefits to care for a spouse or the child of a spouse. State employees can also receive unemployment benefits if they leave employment to accompany either a spouse or a domestic partner who is relocated to a place where it is impractical for the employee to commute. In addition, health benefits are already provided to the domestic partners of all State employees and retirees.³⁰ Domestic partners of employees are also eligible to continue health benefits after the death of a member, if the domestic partner is receiving an ongoing retirement allowance. Notably, during the past three years when State employees and annuitants under CalPERS have been able to enroll domestic partners for health benefits, less than one-half of one percent of State employees have done so.³¹ This low enrollment rate is consistent with the experience of private companies and other public employers who have offered health care benefits to their domestic partners.³² In short, AB 205 will not have any fiscal impact on any of these benefits because they already include domestic partners.

B. Employee Benefits Affected by AB 205

State employees are entitled to death, survivor, and retirement benefits. AB 205 will increase the eligibility for death and survivor benefits, primarily by making domestic partners who survive an employee or retiree eligible for monthly allowances and continued health benefits coverage, benefits which are currently only provided to an employee's eligible family members, including a surviving spouse.

1. Death Benefits (Pre-Retirement)

The State of California provides benefits to the families of employees and their named beneficiaries if an employee dies prior to retirement (death benefits). There are two types of death benefits, lump-sum benefits and monthly allowances. While the domestic partner of an employee can currently receive the lump-sum benefits as a designated beneficiary,³³ he

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or she is not entitled to the same monthly allowances that are provided to spouses. AB 205 will make domestic partners eligible for such monthly allowances on the same basis as spouses.³⁴

We estimate less than one (1) additional employee each year will be eligible for death benefits. This small number is the result of the narrow eligibility criteria for this benefit. For AB 205 to result in a new beneficiary, he or she must: 1) be an active³⁵ State member enrolled in a CALPERS plan, 2) have a domestic partner, 3) die while working, and 4) be otherwise eligible for a monthly allowance death benefit – by being eligible to retire, having at least 20 years of State service credit, or by dying as a direct result of a violent act while performing official job duties. Only a State member meeting these four criteria would have a domestic partner entitled to the automatic monthly allowance benefits under AB 205.

We determine the number of people who would meet the first three of these criteria above by using CalPERS membership data, data about the age of members of same-sex couples from Census 2000, CalPERS actuarial tables, and the take up rate for CalPERS health benefits of one-half of one percent (0.0052).³⁶ Using this data, we estimate that under AB 205, only 1 additional employee each year will meet the first two criteria (die and have a domestic partner) for receiving a pre-retirement death benefit.

However, we cannot estimate the likelihood that an employee will also meet one of the options under the fourth criteria (that he or she will be eligible to retire, have at least 20 years of State service credit, or die a violent death while working). We assume, that if we could take these criteria into account, the probability that AB 205 would result in additional monthly allowance death benefits being paid out in any given year would approach zero.³⁷ Consequently, we conclude that AB 205 will not have any significant fiscal impact on the provision of death benefits to State employees.

2. Survivor Benefits: Post-Retirement

The State of California offers three types of post-retirement death benefits, a lump-sum benefit, a monthly allowance, and continued health benefits (survivor benefits). With regard to the lump-sum benefit, AB 205 will have no impact. This benefit is already paid to a survivor of a retiree, either a designated beneficiary or a surviving family member. AB 205 will only occasionally change who this benefit is paid to, resulting in no increased cost to the State.

A survivor's monthly allowance can be divided into two parts, the survivor continuance and the optional portion. Part of the monthly allowance benefit is provided automatically to eligible family members of retirees as a matter of statute. Eligible family members include spouses who meet certain other criteria, natural and adopted children under the age of 18 (if no eligible spouse), or qualifying dependent parents (if no eligible spouse or children). This part of the monthly allowance is called a survivor continuance. Domestic partners are not entitled to a statutory continuance under current law.

In addition, retirees can choose to augment this automatic statutory continuance by providing an annuity for their surviving spouse. A retiree can do this by taking a reduction in his or her own lifetime monthly allowance. If the retiree does so, the resulting annuity is called the "optional portion" of the survivor's monthly allowance. The beneficiary of the

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optional portion can be either a spouse or a domestic partner, or the retiree can choose not to reduce his or her allowance and not to create such an optional portion at all. In short, AB 205 will impact the monthly allowance survivor benefit by making domestic partners eligible for a survivor continuance on the same basis as spouses.

Finally, survivors of retirees can only receive continued health benefits if they receive a monthly allowance. By making domestic partners eligible for a survivor continuance, AB 205 will make some domestic partners eligible for continued health benefits who otherwise would not be (those who would currently receive no optional portion monthly allowance as a result of the retirement option chosen by their partner).

In short, AB 205 will affect survivors' monthly allowance and continued health benefits. Using CalPERS' membership data and the take-up rate for CalPERS' health benefits by annuitants of 0.0034,³⁸ we estimate that each year AB 205 will result in, at most, an additional 82 people who could be eligible for a survivor continuance, and consequent continued health benefits.

There are a number of interrelated variables that determine a survivor's combined monthly allowance, making an accurate determination of the cost of providing enhanced survivor benefits to these 82 people impossible. To create the most conservative estimate, we assume that each of the potential 82 survivors would be in the position to receive the additional benefit that would be the most expensive for the CalPERS benefit plans. To summarize our method, we assume that the 82 State retirees partnered with these survivors all: 1) chose the unmodified allowance option settlement,³⁹ 2) have no family members that would qualify for the survivor continuance under current law,⁴⁰ and, 3) have surviving domestic partners that would be eligible⁴¹ for a survivor continuance under AB 205. Thus, prior to AB-205, their domestic partners would receive no monthly allowance and not be entitled to continued health benefits – and the State would not be paying a survivor continuance to any other survivor of the retiree. Post AB 205, all of these survivors would be entitled to both a monthly allowance and to continued health benefits.

We then use CalPERS's current average monthly retirement allowance and the average annual cost to employers for health care coverage⁴² to estimate the cost of providing monthly allowances and continued health care coverage to these 82 domestic partner survivors. Under this most-expensive scenario, we estimate that AB 205 would result in additional annual costs of, at most, \$560,000. Our most realistic estimate is that the actual annual costs will be less than this amount.

3. Retirement Allowances

AB 205 will impact the lifetime allowances given to retired employees with domestic partners. This is true because, when selecting four out of the six available options for creating an annuity for a survivor, if the retiree has a family member eligible for a survivor continuance, he or she can create a higher lifetime monthly allowance for themselves, and a consequent higher annuity, than an employee who does not have a family member eligible for a survivor continuance. However, this impact is marginal. In making domestic partners eligible for the survivor continuance, AB 205 would only increase any individual retiree's monthly allowance by, at most, 2%.

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However, AB 205's impact on survivor and retirement allowances are inversely related to each other. The scenario that we use above to calculate the cost of survivor benefits (\$560,000) maximizes the combined additional costs of both survivor and retirement benefits. Accordingly, we do not need to estimate any additional costs for retirement allowances here.

C. Paying for Additional Benefits

The funding for these additional survivor monthly allowance benefits would primarily come from investment earnings from CalPERS funds and member contributions, as opposed to State/employer contributions. Thus, the State would only pay for a fraction of the additional costs for providing benefits under AB 205.

As of June 30, 2001, the date of the most recent actuarial valuation, the funded status of PERF was 111.9%. At that time, the amount by which PERF actuarial assets exceed actuarial benefit liabilities was \$18 billion.⁴³ Thus, no additional contributions would be needed to fully-fund PERF in light of the new survivor benefits for domestic partners. In addition, CalPERS bases its death and retirement benefits on an actuarial assumption that 90% of its members are married.⁴⁴ Since AB 205 will only have a negligible impact on enrollment for these benefits, it will not increase rates or lead to a revision of this actuarial assumption.

However, to provide a conservative estimate, we assume that the State will pay 20%⁴⁵ of the increased costs in providing these benefits. This would result in annual costs of less than \$120,000 for the State. Since this amount is based on the most expensive scenario, our most realistic estimate is that the State would pay somewhere between \$0 and \$120,000 each year.

VII. ADMINISTRATIVE COSTS

Another area of cost for the State if AB 205 is enacted will be the administrative costs of preparing and mailing the notifications required by the statute, modifying software, and revising forms. The Office of the Secretary of State has estimated these costs at \$50,000. These costs will be offset, in part, by the filing fees for registering as a domestic partner provided for by current law and AB 205.⁴⁶ It is also probable that most of these costs only will be present during just the first year of AB 205's implementation. However, as a conservative estimate, we include an annual cost of \$50,000 for administrative costs in our calculations of AB 205's net impact on the State budget. Our most realistic estimate is that these costs will decrease substantially after the first year, and be offset, in part, by filing fees.

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VIII. CONCLUSION

A careful analysis and estimation of the different impacts of AB 205 on California's expenditures and tax revenues reveals offsetting effects. Giving domestic partners the same rights as married couples has a positive effect on the State budget for several reasons:

- Fewer families will need or qualify for public assistance programs, so the State's expenditures on those programs will fall. Our estimate is that they will fall by over \$11.5 million.
- Out-of-state couples will visit California to become domestic partners. We estimate that the extra tourist spending will generate \$0.7 to \$3 million in additional sales tax revenues.

A second set of effects will have no fiscal impact:

- State employees can already include domestic partners in health insurance coverage and other employment benefits that relate to family members.
- Giving domestic partners access to the family court system will generate no noticeable impact on the demands of judges or the judicial system. In fact, dissolutions of domestic partners might use fewer judicial resources under AB 205, and such dissolutions will also generate fees that would offset any increase in costs.

Other changes in status will have a negative fiscal impact on the State budget:

- Some couples' taxes will rise, and some couples' taxes will fall as the result of being treated in the same way that married couples are treated. The net impact of changes in filing status is likely to be a \$3.9 million fall in income tax revenue.
- Some State employees will gain access to survivor benefits that were previously offered only to spouses. While estimating this impact precisely is impossible, we estimate that the most expensive scenario for the State generates only an additional \$120,000 in costs. Our best estimate is that the actual cost to the State will be less than this amount.
- The initial costs of administering AB 205 will be approximately \$50,000. In subsequent years, these costs will decrease and be offset by filing fees.

Overall, the net impact of giving domestic partners equal rights is a positive impact on California's budget of between \$8.1 million and \$10.6 million. We conclude that providing California families with equal rights is fiscally responsible.

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ENDNOTES

¹ AB 205 would not go into effect until January 1, 2005.

² The CHIS asks separately about sexual orientation and partnership status, but the CHIS does not collect data on the sex of the partner. We assume that a gay or lesbian recipient's partner is of the same sex. We omit bisexuals from this analysis since we cannot identify the sex of their partner. Since some bisexual recipients will also have same-sex partners, this omission means that we are underestimating the number of recipients who would lose public benefits and, therefore, are underestimating the decrease in State expenditures.

³ We thank Dr. Christopher Carpenter of the University of Michigan for running the tabulations from the confidential version of the CHIS for us.

⁴ Robert Moffitt, "Incentive Effects of the U.S. Welfare System: A Review," *Journal of Economic Literature*, Vol. 30, March 1992, pp. 1-61. See discussion on pp. 27-31.

⁵ See Ellen Lewin, *Recognizing Ourselves: Ceremonies of Lesbian and Gay Commitment*, Columbia University Press, New York, 1998; Suzanne Sherman, ed., *Lesbian and Gay Marriage: Private Commitments, Public Ceremonies*, Temple University Press, Philadelphia, 1992.

⁶ Out of the 92,138 same-sex couples in California that were counted by Census 2000 (Simmons and O'Connell, p. 4), 19,905 or 22% have registered as domestic partners.

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⁸ For analyses of the Hawaii situation: Jennifer Gerarda Brown, "Competitive Federalism and the Legislative Incentives to Recognize Same-Sex Marriage," *Southern California Law Review*, Vol. 68, 1995, pp. 745-839; Sumner LaCroix and James Mak, "How Will Same-sex Marriage Affect Hawaii's Tourism Industry?" Testimony Before Commission on Sexual Orientation and the Law, State of Hawaii, October 11, 1995. For an analysis of Vermont: M. V. Lee Badgett, "The Fiscal Impact on the State of Vermont of Allowing Same-sex Couples to Marry," Institute for Gay and Lesbian Strategic Studies, 1998.

⁹ At least not without litigation that would have an uncertain outcome.

¹⁰ The Office of Legislative Council, "Report of the Vermont Civil Union Review Commission," January 2002, available at <http://www.leg.state.vt.us/baker/cureview.cfm>, accessed 4/27/03.

¹¹ Figures from "Travel Industry: Research & Statistics," September 2002 Topline Measures, California Tourism, California Division of Tourism.

¹² Registered domestic partners also already have the right to become, or to object to, court-appointed conservators for their partners on the same basis as a spouse, the right to inherit a share of their partners' separate property if their partner dies intestate, the same priority as a spouse to be appointed as the administrator of their partners' estate, and the right to sue for infliction of emotional distress when a partner is killed or injured. See, A.B. 26, 1999-2000 Assemb., Reg. Sess. (Cal. 1999)(enacted) and A.B. 2216, 2001-2002 Assemb., Reg. Sess. (Cal. 2002)(enacted).

¹³ Since July 1, 2000, 19,905 couples have registered as domestic partners in California. During that same period, there have been 754 filings of Notices of Termination, or on average 251 per year. Telephone interview with "Joaney," Office of the California Secretary of State, (May 14, 2003).

¹⁴ In Vermont, during the past three years, 5,526 civil unions have been recorded, with 869 of these recorded by Vermont residents. However, there have only been 16 dissolutions of civil unions entered by Vermont's family courts, or less than six (5.3) per year. Telephone interview with Richard McCary, Office of Vital Records, Department of Health, (May 14, 2003).

¹⁵ For several reasons, 251 overestimates the annual number of new dissolution filings that would likely occur under AB 205. First, although California law only requires one member of a domestic partnership to file a Notice of Termination, in some cases both partners file a termination notice, and the Secretary of State's office does not keep track of duplicate filings. Telephone interview with "Joaney," Office of the California Secretary of State, (May 14, 2003). Second, while under current law domestic partners are required to file a Notice of Termination with the Secretary of State if their partner dies, under AB 205, they would not be required to file a dissolution proceeding in family court if their partner died. Finally, AB 205 will continue to provide a mechanism for dissolution of domestic partnerships that does not require filing a petition in Superior Court. Under AB 205, in certain circumstances, a domestic partnership can be terminated by filing of termination notice with the Secretary of State, similar to the process provided under current law. A.B. 205, Section 7 (d), 2003-2004 Assemb., Reg. Sess. (Cal. 2003).

¹⁶ "Family law filings" refers to dissolution of marriage, legal separation, nullity of marriage, and "combined marital" filings. Judicial Council of California Administrative Office of the Courts, 2002 Annual Report, Court Statistics Report (*hereinafter* 2002 Court Statistics Report), Statewide Caseload Trends 1992 Through 2000-2001, Superior Courts Table 4a.fl, at 46.2. The "combined marital" category refers to filings that courts were not able to distinguish among the prior three categories. For 2000-2001, only 1.3%, of filings fell in this category. Id.

¹⁷ Id. at 39.

¹⁸ No official statistics are available for either the number of Family Court Judges or their dockets. In addition, some

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counties do not even have Family Court Judges. An informal estimate is that there are approximately 211 Family Court Judges, Commissioners, and Referees in California, including 74 Child Support Commissioners. Telephone interview with Don Will, Center for Families, Children and the Courts, Judicial Council of California, (May 14, 2003) and e-mail from Don Will, Center for Families, Children and the Courts, Judicial Council of California, (May 16, 2003). Thus, spreading the additional 251 dissolution filings among these 137 (211-74) Family Court judicial positions would only add 1 or 2 filings to the caseload of each.

¹⁹ See, *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976); *Jones v. Faly*, 122 Cal.App.3d 500 (1981); and *Whotron v. Dillingham*, 202 Cal.App.3d.477(1988).

²⁰ 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 gay dissolution cases and has written a number books, including serving as co-author of the 10th edition of *Living Together: A Legal Guide for Unmarried Couples* (Nolo Press 2002). His 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*.

²¹ See, e.g., Los Angeles Superior Court Fee Schedule, Effective January 1, 2003.

²² We thank Dr. Gary Gates of the Urban Institute for supplying us with an extract of the 1% Public Use Microsample data from Census 2000. The 1% PUMS provides data on 935 same-sex couples in California. The PUMS gives each individual's total income from all sources in 1999. We used the CPI-U to inflate the 1999 dollars to 2002 dollars.

²³ AB 205 requires the State to send a letter to all couples currently registered as domestic partners to notify them of changes in the meaning of this status and of the procedure for dissolving the status. Therefore, by "signing up" we mean both couples who newly sign up and couples who simply retain their registration.

²⁴ For an example, see James Alm and Leslie A. Whittington, "For Love or Money? The Impact of Incomes Taxes on Marriage." *Economica*, Vol. 66, August 1999, pp. 297-316. They find a very small effect of the marriage penalty on the probability of marriage.

²⁵ See Ellen Lewin, *Recognizing Ourselves: Ceremonies of Lesbian and Gay Commitment*, Columbia University Press, New York, 1998; Suzanne Sherman, ed., *Lesbian and Gay Marriage: Private Commitments, Public Ceremonies*, Temple University Press, Philadelphia, 1992.

²⁶ Determination of head of household status is complex, but an unmarried person with a dependent child is likely to be qualified. See Franchise Tax Board, Forms & Instructions, California 540 and 540A, 2002 Personal Income Tax Booklet, pp 24-28.

²⁷ When we applied the Census household weights to the estimates of tax revenue changes, we arrived at an almost identical figure.

²⁸ Our analysis differs in other ways from the FTB analysis, as well. The FTB had guessed that the decrease in taxes for most couples would be \$1000, while our estimate was substantially less (\$539). The FTB also assumed that only 2.5% of couples would see a drop in taxes, whereas the Census suggests that over half of couples will see falling taxes. The net effect of the FTB wrong guesses turned out to be a wash, however.

²⁹ The median is the number that falls in the middle of the distribution, so that half of the couples in this category have savings above \$256 and half below \$256.

³⁰ See, CalPERS Programs, Enrolling Domestic Partners, at calpers.ca.gov/health/members/domesticpartner.html, (2003) and CalPERS, Enrolling Eligible Family Members (2003) at calpers.ca.gov/health/member/family.html. In addition, the University of California provides health and welfare benefits to the same-sex domestic partners of its employees. See, University of California, Human Resources and Benefits, University of California Retirement Plan, Survivor Benefits for Domestic Partners, at 3 (2002).

³¹ Telephone interview with Pamela Schneider, CalPERS Office of Government Affairs, (May 21, 2003).

³² See, Gary J. Gates, The Urban Institute, Domestic Partner Benefits Won't Break the Bank, (April 2001) and M.V. Lee Badgett, Calculating Costs with Credibility: Health Care Benefits for Domestic Partners, 5 ANGLES I, 1- 8(Institute for Gay and Lesbian Strategic Studies 2000).

³³ However, domestic partners are only entitled to such benefits if they are the designated beneficiary. A spouse would receive such a benefit if he or she was either the designated beneficiary, or if there were no designated beneficiary at the time of death.

³⁴ In fact, domestic partners of some State employees already receive pre-retirement death benefits on the same basis as spouses in a civil marriage. See, University of California, Human Resources and Benefits, University of California Retirement Plan, Survivor Benefits for Domestic Partners, at I-2 (2002).

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³⁵ Active members are those currently actively employed by the State. Inactive members have paid into a CalPERS plan, but are not currently employed by the State. Inactive members are only entitled to a Limited Death Benefit, a refund of contributions paid plus interest. This benefit, under current law, will be received by a named beneficiary or a family member in an order of precedence created by law. Thus, if AB 205 has any impact on this benefit, it merely will be to change the recipient. CalPERS 2002 Report at 116-117.

³⁶ CalPERS 2002 Report at 38 (membership data); Dr. Gary Gates, Phd, Urban Institute, Analysis of Census 2000 1% Public Use Microdata Samples (PUMS), May 14, 2003 (average age of 40); and CalPERS 2002 Report at 96-101 (actuarial tables); and Telephone interview with Pamela Schneider, CalPERS Office of Government Affairs, (May 21, 2003) (annuitant's take up rate). This low take up rate is supported by the experience of the University of California Retirement Plan (UCRP). Telephone interview with Nancy Partovic, UCRP, (April 28, 2003) (take up rate of .001%).

³⁷ In addition, in general, AB 205 will either only augment the amount of an employee's current death benefit, and/or change the beneficiary of such benefit, as opposed to creating an entirely new benefit and cost to the State. The cost of any potentially new monthly allowances under AB 205 will be in part off-set for the State by not having to pay out the lump-sum amount under current law. In addition, for some employees with registered domestic partners, the impact of AB 205 on pre-retirement death benefits will not be to create a new benefit, but, primarily, to switch the recipient of the benefit from the employee's child under 18 to their registered domestic partner. Based on the 2000 Census, approximately 31.3% of gay and lesbian couples have children who are under the age of 18. See, Gary Gates, Phd, Urban Institute, Analysis of Census 2000 1% Public Use Microdata Samples (PUMS), May 14, 2003.

³⁸ CalPERS 2002 Report at 38 (membership data). Telephone interview with Pamela Schneider, CalPERS Office of Government Affairs, (May 21, 2003) (take up rate). We assume that, over time, the ratio of retirees with domestic partners to domestic partner survivors receiving a statutory continuance will be comparable to the ratio of State retired members to State survivors and beneficiaries, or 20%. CalPERS 2002 Report at 120. This percentage is somewhat higher than the one that should be used, because these survivors and beneficiaries include pre-retirement beneficiaries.

³⁹ This is a conservative estimate because presently only about 51% of retirees chose to receive an unmodified allowance or option settlement 1, thereby creating no annuity for a designated beneficiary other than the survivor continuance. Telephone interview with Pamela Schneider, CalPERS Office of Government Affairs, (May 21, 2003). Under four out of six available option settlements, a retiree with a domestic partner can already designate a domestic partner as the beneficiary and create an annuity that would be comparable, although less, than the annuity that their domestic partner would receive as an eligible survivor under AB 205.

⁴⁰ In fact, some of these retirees will have an eligible family member under current law, even though their domestic partner is not currently eligible. Thus, any retiree who had a domestic partner, and also had a child under 18 or a qualifying dependent parent, would be entitled to the same survivor continuance (although possibly for a different period of time) under current law as under AB 205. The impact of AB 205 for these retirees merely would be to change the recipient of the survivor continuance.

⁴¹ In the short term, this is unlikely. In order to be eligible, the domestic partnership must have been registered one-year prior to the member's retirement and remain registered until the retiree's death. Since domestic partners have only been able to register as of July 1, 2000, only members who have retired during the past two years would have domestic partners eligible for this benefit.

⁴² Telephone interview with Pamela Schneider, CalPERS Office of Government Affairs, (May 21, 2003) (\$1400 average monthly retirement allowance). Currently, CalPERS does not have an average cost for health benefit. Telephone interview with Pamela Schneider, CalPERS Office of Government Affairs, (May 21, 2003). So we use the national annual average for the employer contribution instead. The Kaiser Family Foundation and Health Research and Educational Trust, Employer Health Benefits, 2002 Summary of Findings at 1 (2002).

⁴³ CalPERS 2002 Report at 14.

⁴⁴ Telephone interview with Pamela Schneider, CalPERS Office of Government Affairs, (May 21, 2003)

⁴⁵ This percentage is based on the employer contributions as a percentage of benefits paid by CalPERS during 2002. Although the employer percentage was 13%, we increase it to 20% to provide for a conservative estimate and account for fluctuations in this ratio. Employer contributions are calculated as a percentage of payroll. The percentage is actuarially determined. CalPERS 2002 Report at 32 and 50. For the year ending June 30, 2002, the State of California General Fund contributed to none of CalPERS defined benefit funds except the Judicial Retirement Fund. This contributions is made pursuant to State statute and is not actuarially determined. *Id.* at 51.

⁴⁶ That AB 205 will result in very little administrative costs is supported by a study of the impact of Vermont's similar civil union legislation on State agencies in Vermont. Vermont Office of the Legislative Council, Report of the Vermont Civil Union Review Commission, at 8-9 (2002) ("some agencies were assigned specific obligations by the act, and this necessitated additional staff time and resources, yet these obligations were met without requiring additional staffing or funding. Time and resources dedicated to civil unions by agencies were concentrated during the first six months after enactment, and has dropped significantly since.").

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Contributing Researchers

M.V. Lee Badgett, Ph.D.

R. Bradley Sears, J.D.

Layout

Frank Lopez

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The Williams Project

UCLA School of Law

Box 951476

Los Angeles, CA 90095-1476

Ph. (310) 794-5279

Fax (310) 825-6023

<http://www.law.ucla.edu/williamsproject>

IGLSS

P.O. Box 2603

Amherst, MA 01004-2603

Ph. (413) 577-0145

Fax (413) 545 2921

<http://www.igls.org/>