

**THE IMPACT ON OREGON'S BUDGET OF
INTRODUCING SAME-SEX DOMESTIC
PARTNERSHIPS**

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EXECUTIVE SUMMARY

Same-sex domestic partnerships in Oregon will positively impact the state budget by \$1.5 million to \$3.7 million biennially.

This analysis by UCLA's Williams Institute estimates the impact on Oregon's state budget of introducing same-sex domestic partnerships. Using the best data available, we estimate that allowing same-sex couples to enter domestic partnerships will result in a net gain of approximately \$1.5 million to \$3.7 million to the State's biennial budget.¹ This net impact will be the result of savings in expenditures on state means-tested public benefit programs and an increase in state income tax revenue.

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

Our study of the fiscal implications of recognizing same-sex partnerships through domestic partnerships assumes that domestic partnership legislation introduced in Oregon¹⁴ would grant the same rights and responsibilities to same-sex couples as marriage provides to different-sex couples. We base our analysis of the fiscal impact on Oregon's state budget of introducing domestic partnerships for same-sex couples on the following estimates:

Approximately 4,466 of Oregon's same-sex couples would enter domestic partnerships in the short term.

According to Census 2000, Oregon has 8,932 same-sex couples. Based on the experiences of other states that have extended domestic partnerships to same-sex couples, we predict that half of those couples—or 4,466 couples—would choose to enter domestic partnerships during the first three years that Oregon makes domestic partnerships available.

State expenditures on means-tested public benefits programs will fall.

Establishing domestic partnerships for same-sex couples will reduce the State's public assistance expenditures. Just as married spouses are obligated to provide for one another's basic needs, a same-sex spouse's income and assets will be included in assessing an individual's eligibility for means-tested public benefits after entering a domestic partnership. This will reduce the number of people eligible for such benefits. We take into account the possibility that losing public benefits may create a disincentive for some of these couples to enter domestic partnerships and the fact that low-income couples might still qualify for benefits. Nevertheless, using Census 2000 data we estimate that creating domestic partnerships will save

the State at least \$100,000 per year and as much as \$1.2 million in its spending on public benefit programs, depending on how much discretion the State is granted to determine whether the income of same-sex partners is included in Medicaid eligibility standards.

Income tax revenues will rise when same-sex couples file jointly.

If same-sex couples are allowed to enter domestic partnerships and file state income taxes jointly, the number of couples paying higher taxes will surpass the number whose taxes will decrease. Overall, the net positive impact on the State's income tax revenue will be over \$765,000 per year.

Any impact on inheritance tax revenue will be negligible.

Allowing same-sex couples to enter domestic partnerships will enable same-sex partners to take advantage of the marital deduction when calculating inheritance taxes owed to the State. However, given the high filing threshold for the inheritance tax and the small number of same-sex partners likely to die each year, we estimate that any impact on inheritance tax revenue resulting from the creation of same-sex domestic partnerships will be negligible, a loss of approximately \$434,000 every five years or \$91,140 annually.

Administrative cost increases will be less than fees generated.

The State will incur the cost of printing domestic partnership application and dissolution forms, but the fees paid by same-sex couples for such official documents will more than offset those expenses.

No increases in court system expenditures are likely to result.

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

The impact on the cost of State employee retirement benefits will be negligible.

The State maintains the Public Employees Retirement System, which administers defined benefit and defined contribution retirement plans for eligible state employees. Although most same-sex partners of program members are already eligible for benefits on a basis equivalent to married spouses, certain categories of employees do not currently qualify for full pre-retirement and post-retirement survivor benefits for their same-sex partners. If domestic partnerships are extended to same-sex couples, the State will spend approximately \$20,000 more per year on same-sex partner death benefits.

Summary of impacts of establishing domestic partnerships on the biennial Oregon state budget

Impact on biennial state budget ¹⁵	Net effect (1)*	Net effect (2)^
Savings from means-tested public benefit programs	\$2,364,286	\$215,544
Increase in income tax revenue	\$1,530,086	\$1,530,086
State inheritance tax	-\$182,280	-\$182,280
State employee benefits costs	-\$39,200	-\$39,200
TOTAL	\$3,672,892	\$1,524,150

*Including same-sex spouses in Medicaid determinations.

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INTRODUCTION

The Oregon Family Fairness Act was passed in 2007. When implemented, this law will allow same-sex couples to register as domestic partners with the state. One potential concern about expanding legal partnership rights is the fiscal impact of such a change. Domestic partnerships come with a variety of rights and obligations that might affect the State of Oregon's expenditures and revenues. This study assesses the links between those rights and obligations and various budget categories to estimate the overall impact of same-sex couples' domestic partnerships on the state budget. In doing so, we assume that the domestic partnership law provides the same state-provided rights and responsibilities to same-sex couples as marriage provides to different-sex couples.

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

Similarly, state tax revenues might be expected to change. In particular, we estimate the effect of same-sex domestic partnerships on revenues from the income tax and the inheritance tax.

We draw on data collected by the State of Oregon, in addition to other relevant data sources. The Census 2000 data on same-sex couples in Oregon provide important estimates of the number of same-sex couples who might enter domestic partnerships if that option were available. Based on Vermont's experience with same-sex domestic partnerships, we predict that 4,466, or half, of Oregon's 8,932 same-sex couples will enter domestic partnerships

over the first three years when offered the opportunity.¹⁶

In general, we estimate the net effect of costs and benefits conservatively. In other words, we choose assumptions that are the most cautious from the State's perspective, those which tend to predict higher costs to the State and lower benefits. Even so, we find that ***the net effect of allowing same-sex couples to enter domestic partnerships will be a positive impact on the biennial state budget of \$1.5 million to \$3.7 million.***¹⁷ Moreover, evidence suggests that there are significantly more same-sex couples in the State than the Census reports.¹⁸ If so, the net gains to the State will be even greater.

1. Public Assistance Programs

The state of Oregon funds several public benefit programs that provide assistance to low-income individuals and families. Temporary Assistance to Needy Families (TANF) and the state supplement to Supplemental Security Income (SSI) provide cash grants. Medicaid, the Oregon Health Plan (OHP), the Family Health Insurance Assistance Program (FHIAP), and the State Children's Health Insurance Program (SCHIP) provide health insurance or health insurance reimbursements.¹⁹ The federal government also provides funding for some of these programs.

Eligibility for these programs is means-tested, i.e., eligibility depends on the individual's and family's income and assets. When an applicant is part of a married couple, the spouse's income and assets are included in the eligibility determination. Currently, regulations for these public assistance programs do not require the state or federal government to take into

account an unmarried same-sex partner's income and assets.²⁰ Therefore, people with same-sex partners are most likely considered to be single when assessing eligibility for these programs, thus increasing the likelihood that they will become eligible. If participants could have a legally recognized same-sex partner, the partner's income and assets would be counted in determining eligibility, thus reducing the likelihood that the original program participant would still be eligible. When participation drops, state expenditures on the program will also fall.

For TANF (and, therefore, for individuals qualifying for Medicaid because they receive TANF), the State determines the eligibility standards and will be able to count a same-

State expenditures on various public assistance programs will fall

sex partner's income and assets in determining the eligibility of an individual or family. For SSI and Medicaid, the federal government determines the generally applicable eligibility standards, and thus states have more limited discretion in developing their own standards and procedures. Because the federal Defense of Marriage Act (DOMA) limits the definition of spouse, the State may be prohibited from including a same-sex partner in determining eligibility.²¹

However, in assessing eligibility for Medicaid and SSI, it is possible that the State could still take into account the resources of same-sex partners under state and federal regulations. These regulations require Oregon to consider the resources of third parties who are legally liable for health care costs. Medicaid is a provider of last resort, and federal and state law require the State to assure that Medicaid recipients utilize all other resources, i.e., third parties, available to them to pay for all or part of their medical care needs before turning to Medicaid.²² Third parties are entities or

individuals who are legally responsible for paying the medical claims of Medicaid recipients.²³ They include any "individual who has either voluntarily accepted or been assigned legal responsibility for the health care" of a Medicaid applicant or recipient.²⁴ Examples of third parties in federal and state Medicaid manuals include absent and custodial parents. In addition, state and federal law require that the incomes of the sponsors of immigrants must be considered when determining an applicant's eligibility.²⁵ If the State were to consider the income of same-sex spouses when determining eligibility for Medicaid and SSI, the savings from allowing same-sex couples to marry would be at their highest. Below we distinguish between sources of savings to capture the uncertainty of the State's (and possibly the federal government's) future decisions about Medicaid and SSI.

To estimate the impact of legalizing same-sex domestic partnerships, we again draw on Oregon data from Census 2000. The Census asks respondents to report the amount of income from various sources, and the publicly available data specifies the amount of income that respondents report having received from Supplemental Security Income (SSI) and from "public assistance or welfare payments from the state or local welfare office" in 1999.²⁶ Therefore, we can calculate the total paid to individuals in same-sex couples. In 1999, members of same-sex couples in Oregon received approximately \$900,000 in public assistance and \$1.4 million in SSI.

Unfortunately, neither the Census nor other datasets can tell us how many people in same-sex couples are enrolled in OHP, FHIAP, or SCHIP. Therefore, we assume that the share of state expenditures for same-sex partners in those programs is the same as for TANF, or 1.2%.²⁷ The second column of Table 1 shows estimated

expenditures on people in same-sex couples in each program.

We adjust the current expenditures in several ways to arrive at an estimate of the State's savings:

- 1) We assume that half of people in same-sex couples will enter domestic partnerships, an assumption that takes into account the fact that the possible loss of benefits will deter some couples from entering domestic partnerships.²⁸
- 2) We assume that some same-sex couples who enter domestic partnerships will continue to receive benefits. When couples enter a domestic partnership, the program participant's partner might also have a low income and few assets, allowing the program recipient to remain in the public assistance program. Furthermore, some partners may become eligible for family-related benefits as a result of domestic partnerships. We make an adjustment assuming that the proportion of same-sex couples in domestic partnerships who will still receive benefits is the same as the proportion of married couples who do. According to the

Census, in 1999 1.12% of people in same-sex couples received SSI, while only 0.99% of married people did, and 1.25% of people in same-sex couples but only 1.05% of married people received "public assistance." Thus spending on public assistance will fall by roughly 16%.²⁹

- 3) We inflate the earlier dollar figures to put the savings in 2006 dollars.
- 4) We use data on the State's share of spending to isolate the State's share of savings.

Table 1 shows that the total expected savings to the State is \$1.2 million per year. The greatest savings come in the Medicaid category. This estimate of almost \$1.1 million in savings on Medicaid is roughly in line with a recent Congressional Budget Office report on the fiscal impact of same-sex marriage on the federal budget that predicted \$300 million in Medicaid savings for all 50 states in 2014.³⁰ However, if the federal government prohibited the State from counting a same-sex partner's income and assets to calculate eligibility for Medicaid and SSI, then the State's savings from state-run public benefit programs would be approximately \$100,000 per year.

Table 1: Expenditures on public assistance programs

	Estimated annual state spending on same-sex couples in Oregon	State savings if same-sex couples can enter domestic partnerships
SSI	\$1,546,790	\$6,306
TANF	\$1,040,086	\$21,836
OHP/FHIAP (Medicaid recipients)	\$33,061,996	\$1,068,065
OHP/FHIAP (Expansion population)	\$954,574	\$76,557
SCHIP	\$426,330	\$9,379
Total savings (including Medicaid and SSI)		\$1,182,143
Total savings (excluding Medicaid and SSI)		\$107,772

2. Impact on Income Tax Revenue

Extending domestic partnerships to same-sex couples will have an impact on the income tax revenues collected by the State because same-sex couples who enter domestic partnerships will have the right to file their income tax returns jointly.³¹ Two individuals who previously filed as “single” will combine their incomes, and as a result, some of these couples will end up paying more in income tax. Domestic partnerships will also likely eliminate the ability of currently “single” taxpayers who have dependent children to use the “head of household” filing status, increasing the taxes that some couples owe. Overall, our simulations suggest that extending domestic partnerships to same-sex couples in Oregon will have a positive impact on state income tax revenues.

To estimate the net tax impact of allowing same-sex couples to enter domestic partnerships, we used the income and household characteristics of same-sex “unmarried partner” couples living in Oregon gathered in 2000 by the Census Bureau.³² We used the Census data on total income and on the number of children in a household to estimate each couple’s taxes twice. First, we estimated the total tax that couples who filed as separate individuals would have paid in 2006. Then we estimated their likely 2006 tax payments as a couple in a domestic partnership. Finally, we calculated the difference between their individual and joint tax liabilities.

We made several assumptions to simplify the tax calculations. First, if the householder reported living with one or more of his or her own children under eighteen in Census 2000, we assumed that the householder filed as head of household and the partner as single.³³ Second, we assumed that individuals and couples had

no Oregon additions or credits to their federal adjusted gross income. Third, we assumed that everyone claimed the standard deduction and that the only additional deduction claimed by taxpayers on Form 40 was the exemption for persons age 65 and older. Fourth, we assumed that individuals claimed a subtraction for their 2005 federal tax liability, which we calculated using the same assumptions about filing status. In calculating federal income tax liability for Oregon taxpayers, we claimed the federal standard deduction, the standard exemption for filers age 65 or older, and the child tax credit, where applicable.

Table 2 summarizes our income tax calculations. Overall, the effect on most couples is quite small. The average increase is \$294 and the average decrease is \$208. If same-sex couples entered domestic partnerships, 75% would see their taxes rise, 23% would see a decline, and 2% would see no change in their taxes. The high percentage of couples whose taxes would rise is largely due to the federal tax liability subtraction: couples filing jointly can claim the subtraction only once, whereas couples filing individually can claim the subtraction for each partner. Couples with children are slightly more likely to see their taxes rise in a domestic partnership, since a legally unmarried parent can file as head of household, a filing status that provides a larger deduction and credit. Couples in which one partner has a very low income tend to see the biggest reductions in taxes when filing jointly.

Extending domestic partnerships to same-sex couples will increase state income tax revenues

If all same-sex couples identified by Census 2000 in Oregon entered domestic partnerships, the estimated net effect on tax revenues would be an increase of approximately \$1.1 million. If only half of

these couples enter domestic partnerships, the revenue effect will be an increase of over \$550,000.³⁴ Thus, we conclude that

introducing domestic partnerships will have a positive impact on State income tax revenues.

Table 2: Summary of income tax revenue calculations

Change in Taxes	Number of couples	Percentage of all couples	Average change in taxes per couple [^]	Total Change [^]	
Taxes increase	3,335	75%	\$294	\$978,890	
No change	103	2%	\$0	\$0	
Taxes decrease	1,029	23%	-\$208	-\$213,847	
TOTAL	4,467	100%		\$765,043	Net change in income tax revenue

[^]Average and total amounts may not match precisely due to rounding.

3. Impact on Inheritance Tax Revenue

The establishment of domestic partnerships for same-sex couples would have a minimal impact on the amount of revenue that the State of Oregon collects from its inheritance tax. Having considered the role of likely expenses and possible bequests, we find that the introduction of domestic partnerships would have a negligible effect on inheritance tax revenue.

Assessing the precise impact of domestic partnerships on inheritance tax revenue is difficult. In addition to the challenges associated with estimating the number of unmarried couples who would enter domestic partnerships, such couples will vary in terms of the size of their estates, the extent to which they currently choose to leave all or part of their estates to their partners, the other beneficiaries to their estates, and the measures they take to mitigate the taxation of estates which will be inherited by their partners. Accordingly, we estimate the impact of creating domestic partnerships on inheritance tax revenue using the most conservative (tax

generating) assumptions about unmarried same-sex couples. In doing so, we assume that the domestic partnership legislation would treat partners in a domestic partnership the same as married spouses for the purposes of the inheritance tax.

Mortality of Married Same-Sex Spouses

To determine the impact of creating domestic partnerships on inheritance tax revenue, we must first estimate the number of individuals in domestic partnerships who would die each year. To do so we assume that 50% of Oregon's same-sex couples would enter domestic partnerships under the new law, which represents 4,466 couples, or 8,932 individual same-sex partners.³⁵ We then use Oregon's annual age-adjusted death rate (0.00833) to estimate the mortality rate for individuals in these couples.³⁶ Thus, we estimate that 74 individuals in domestic partnerships in Oregon will die each year.

Relevant State Tax Laws

The Oregon inheritance tax is levied on the right to receive property from an individual upon death and is measured by the amount that a particular beneficiary receives from the decedent. Traditionally, it has acted as a pick-up tax or credit against the federal estate tax. However, the State did not automatically adopt the changes in the federal Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001. EGTRRA incrementally increased the amount of an estate that could pass free of federal estate tax until that tax is entirely repealed in 2010³⁷ and limited the amount of the credit against the federal estate tax that is allowed for state estate tax payments, phasing out the credit entirely in 2005. Instead of incorporating EGTRRA, in 2003 the legislature tied the state inheritance tax to the federal tax code in effect on December 31, 2000.

The fact that the state inheritance tax law refers to a pre-EGTRRA version of the federal code means that for deaths on and after January 1, 2002, Oregon has lower inheritance tax filing thresholds than the federal government. In the past, Oregon residents were liable for the state inheritance tax only if they were obligated to pay federal estate taxes. Currently, however, the tax liability of an Oregon estate may fall between the state filing threshold and the federal filing threshold. In such instances the beneficiary may be required to pay taxes to the State, even if it does not owe the federal government.

Every estate is potentially subject to the inheritance tax. There is, however, an unlimited marital deduction when property is passed to a surviving United States citizen spouse.³⁸ Presumably, partners in a domestic partnership will be able to take advantage of the same deduction.³⁹ This change would result in a reduction of

revenue from the inheritance tax to the extent that those who would choose to enter a domestic partnership are currently leaving behind estates that pass to their partners.

The Oregon inheritance tax rate varies depending on the value of the net taxable estate. For deaths occurring during 2006, the filing threshold is \$1,000,000.

Median Inheritance Tax for Surviving Unmarried Same-Sex Partners

In order to estimate the impact of creating domestic partnerships on inheritance tax revenue, we first estimate the median tax that is currently being paid on decedents' estates in several steps, summarized in Table 3. For this analysis, we use the median net worth of households in the United States from the 2001 Survey of Consumer Finances, adjusted for inflation.⁴⁰ We do not use the median net worth for all couples, but instead the median net worth for couples falling into five percentile groups in terms of net worth. This allows us to capture the fact that, depending on the size of the decedent's estate, some might pay no inheritance tax while others might pay a great deal. We then divide the median household net worth for each percentile group by two, assuming that unmarried couples roughly share the assets and liabilities in their households.⁴¹

Next we take into account the probate and funeral expenses which will reduce the taxable value of these estates. Nationally, the average cost to probate an estate ranges from 2% to 10% of the value of the estate.⁴² We incorporate a conservative figure into our model, using 2% of the value of the estate as an estimate of the average probate cost.⁴³ To estimate funeral expenses we use the current average cost of an adult funeral in the United States, which is \$6,500.⁴⁴

In order to determine the size of the decedent's estate that would be inherited by his or her unmarried partner, we next take into account a common type of bequest that does not generate inheritance taxes under Oregon law: gifts to charities. Many individuals, particularly those with larger estates, will make charitable bequests, the largest form of bequest after those to surviving spouses.⁴⁵ Both Oregon and the IRS exempt such bequests from taxation.⁴⁶ While a recent study revealed that 8% of the population has included charitable bequests in estate plans,⁴⁷ the best information about charitable bequests comes from federal estate tax returns, which in 2004 were required for estates worth more than \$1 million. The data about such returns indicate that the frequency and size of charitable bequests increase with the value of the estate.⁴⁸

Accordingly, we only calculate a charitable deduction for our top quartile of individuals. We assume these individuals will have charitable bequest patterns similar to decedents filing federal estate tax returns: on average 19% will make charitable bequests, and such bequests will represent 14% of their net estates.⁴⁹ We use these statistics to create a weighted average

charitable deduction of 3% for all decedents falling in our top quartile. Again, these estimates are conservative because it is probable that members of same-sex couples in Oregon are currently more likely to make more and larger charitable bequests than members of married couples in order to avoid the tax consequences of leaving bequests to their unmarried partners.

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

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

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

Percentile Group by Net Worth	A Median Household Net Worth	B Individual Net Worth (A*0.5)	C Probate Expenses (B*0.98)	D Funeral Expenses (C-6500)	E Charitable Bequests [D-(B*0.03)]	F Tax (filing threshold = \$1,000,000)
Less than 25%	1,304.60	652.30	639.25	0	0	0
25-50%	48,388.80	24,194.40	23,710.51	17,210.51	17,210.51	0
51-75%	185,727.60	92,863.80	91,006.52	84,506.52	84,506.52	0
76-90%	510,217.20	255,108.60	250,006.43	243,506.43	235,853.17	0
91-100%	1,544,053.40	772,026.70	756,586.17	750,086.17	726,925.37	0

Aggregate Impact on Inheritance Tax Revenue

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

In 2006, we find no projected inheritance tax burden, due to the high filing threshold set for the inheritance tax. The same is true for subsequent years, when the filing threshold is raised even higher. Thus, we conclude that the tax liability for unmarried same-sex partners – after the relevant expenses and bequests have been deducted from the estate value – is negligible.

An alternative way to consider the potential inheritance tax revenue loss to Oregon as a result of the establishment of domestic partnerships is to use federal data on spousal bequests. The IRS reports that the average taxable estate in 2003 included a spousal bequest of \$5.3 million.⁵⁰ If we make the conservative assumption that a same-sex unmarried partner leaving behind an estate of similar size would bequeath the same amount to his or her partner, opting not to incorporate a charitable bequest in order to reduce the tax burden, the partner would be liable for \$434,000 in Oregon inheritance tax. In order to account for the fact that only a small percentage of the population is subject to the inheritance tax, we divide the total number of spousal bequests by the number of married people who died that year and then multiply the

result by the number of same-sex partners estimated to die annually.⁵¹ Thus, we conclude that less than one (0.21)⁵² same-sex partner would be liable for the state inheritance tax in a given year, or rather that an unmarried same-sex partner's estate would generate tax revenue approximately once every five years. The loss to the State of Oregon of \$434,000 every five years is minimal and supports the conclusion that domestic partnerships are unlikely to have any significant impact on Oregon's inheritance tax revenue. However, we conservatively include in our estimate that the state will lose \$91,140 in inheritance tax revenues each year if it were to make domestic partnerships available to same-sex couples.

Domestic partnerships will not increase the burden on courts

4. Impact on the Judicial System

The creation of domestic partnerships would allow same-sex couples the same access to Oregon's courts as is provided to married 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 introducing domestic partnerships on the State's court system depends on three things: 1) the number of cases that would be added to the dockets of the State's courts as a result of the new legislation; 2) the cost of resolving these cases; and 3) the cost of any other court programs that would be affected by the change.

Although Oregon state employees can access benefits for their domestic partners, there is no statewide domestic partnership registry, and no Oregon law expressly

affords gay and lesbian couples rights based on their relationships at this time. In 2004, Oregon voters approved Measure 36, which amended the State Constitution to define marriage as existing only between one man and one woman.⁵³ Same-sex couples can, however, access certain limited rights by obtaining or creating specific legal documents. This includes co-parent adoption, custody orders, and visitation rights. Thus, new domestic partnerships would not increase the burden on courts with regards to these proceedings.

It is likely that the introduction of domestic partnerships would affect testation proceedings only in the sense of changing beneficiaries in proceedings that would already occur otherwise. However, even using the most conservative assumptions, we have determined that an average of only 74 people in domestic partnerships would be expected to die in a year, which means that if the introduction of domestic partnerships prompted any additional testation proceedings, the courts would not experience a noticeable increase in the number of such proceedings.⁵⁴

The creation of domestic partnerships would also make individuals in same-sex couples eligible for the same benefits available to spouses under the Crime Victims' Compensation Program, which is administered through the Department of Justice. Individuals in domestic partnerships whose same-sex partners are victims of violent crime would be eligible for

counseling and financial assistance they would not have been able to access before. Oregon's victim services programs, however, are funded by fines, fees, judgments, and assessments imposed upon criminal offenders.⁵⁵ Thus, the inclusion of same-sex partners under the terms of eligibility for compensation benefits would not represent an additional cost for the State.

The only significant way in which creating domestic partnerships might augment court filings is by allowing same-sex partners to petition to dissolve their relationships in court. To estimate the number of dissolution cases that would be added to the dockets of state courts if Oregon enabled same-sex couples to enter domestic partnerships, we considered the Oregon divorce rate, as well as the Vermont domestic partnership dissolution rate. We determined the dissolution rate for same-sex couples under Vermont's domestic partnership legislation by dividing the total number of domestic partnerships by the average number of terminations of unions filed each year. We then multiplied these rates by our projected number of same-sex couples who would marry. Based on the Oregon divorce rate⁵⁶ and the experience of Vermont under its domestic partnership legislation,⁵⁷ we estimate in Table 4 that introducing domestic partnerships will add 54 to 85 dissolution cases to the docket each year.

Table 4: Estimating the Dissolution Rate for Oregon Domestic partnerships

Estimate method	Rate	Estimated domestic partnerships in Oregon	Estimate of Dissolutions
Vermont Domestic partnerships	1.2%	4,466	54
Oregon Marriages	1.9%	4,466	85

Oregon's Circuit Courts typically handle approximately 19,000 divorce filings each year.⁵⁸ Adding 85 filings to this caseload would be an increase of less than one-half of one percent (0.0045). The annual fluctuations in divorce filings are far greater than this. In the ordinary course of

business, Oregon courts handle fluctuations ranging from 233 to 788 divorce filings each year (Table 5). New filings by same-sex couples in domestic partnerships will be an insignificant blip on this radar screen.

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

Year	Divorce Filings	Change From Prior Year
2002	19,019	741
2001	19,760	233
2000	19,527	561
1999	18,966	788

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

The insignificance of the cost of these filings is also evident when compared to the caseload of the average Circuit Court judge. The average Circuit Court judge handles over 3,800 filings each year.⁵⁹ Even if all 85 new cases added by introducing domestic partnerships went to one judge, it would only increase his or her docket by 1.4%. Alternatively – and much more likely – is that these cases would be spread out among the 166 Circuit Court judicial positions in Oregon. 51% of these judges would have just one (1) case added to his or her docket, while the other 49% would not take on any additional cases. This estimate assumes that the number of new cases will fall at the high end of our predicted range of domestic partnership dissolutions.

Regardless of how the cases would be distributed throughout the courts, the number of additional cases is so small that we conclude that creating domestic partnerships would not result in any additional expenditure by the State court

system. In other words, the court system would not need to hire any additional judges, clerks, bailiffs, or staff, or build any additional courtrooms or infrastructure, to handle these cases. Indeed, any same-sex dissolution cases would generate revenue from the standard filing fees, which would be available to cover variable administrative costs.⁶⁰

In addition, creating domestic partnerships would likely move some cases out of civil court and into family court, where they will be handled under a more efficient legal regime. Specifically, when same-sex partnerships dissolve under current Oregon law, couples do not have access to family court or the family law rules that apply to married couples. Instead, same-sex partners must resolve their disputes in civil court according to the rules devised for "palimony" cases, that is, under the rubric of contract and, possibly, quasi-contract.⁶¹

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 into whether the relationship and acts of the parties have created any legal obligations, while extending domestic partnerships to same-sex couples will automatically impose on the partners the same legal obligations of marriage; (2) the sparsely developed rules applicable in palimony cases make them difficult to settle or litigate efficiently, as opposed to the well-established rules under the Oregon Domestic Relations code; (3) Circuit Court judges handling occasional palimony cases have little experience with those cases, while family court judges will apply the same law to the dissolution of the new domestic partnerships that they routinely apply to the dissolution of other marriages; (4) litigants in civil court do not have access to the more efficient procedures, including standard forms and expedited proceedings, available in family court; (5) parties have a right to jury trial in civil court, but not in family court; and (6) in family court dissolutions, many issues are resolved by mediation, negotiation, arbitration, and private adjudication, where the parties bear most of the costs. By transforming often contested palimony cases in civil court into dissolution cases in the family court system, where they can be handled more efficiently and where, in most cases, the parties will settle and bear most of the costs, introducing domestic partnerships to same-sex couples might even result in some savings for the State court system.⁶²

In conclusion, we find that the introduction of domestic partnerships would add a negligible number of cases to the state court dockets, such that no additional judges, staffing, courtrooms, or programming would be necessary. Revenue created from additional filing fees would offset any other administrative or marginal costs for handling these cases.

Moreover, it is likely that the State might even save money when dissolution cases are shifted to the family courts, where they will be handled more efficiently.

5. Administrative Costs

The administrative cost of introducing domestic partnerships in Oregon would not significantly burden the State and would likely be more than offset by an increase in revenue gained from licensing fees.

If Oregon introduces domestic partnerships for same-sex couples, the State's Department of Human Services would need to print application forms and dissolution forms. States can expect the cost of printing such forms to run approximately 10 cents per form.⁶³ Thus we estimate that the initial printing of 7,000 license and dissolution forms in order to reflect the new domestic partnership law would cost a minimal \$700, at 10 cents per form.⁶⁴

Moreover, additional revenue will be generated by a domestic partnership registration fee of \$25 payable to the county clerk.⁶⁵ In addition, counties will be allowed to impose an additional fee up to \$10 for registering a domestic partnership.⁶⁶ Assuming that such a fee would apply to domestic partnerships, we calculate that if half of resident same-sex couples in Oregon (4,466) enter domestic partnerships, an additional \$111,650 to \$156,310 in revenue will be collected, or from \$37,217 to \$52,103 each year for the first three years that Oregon makes domestic partnerships available to same-sex couples. This revenue will be shared between the State and the counties, however, and there will also be administrative costs for processing new applications. We assume that the fee income will largely be offset by those additional administrative costs (and the reprinting costs discussed earlier), so we do

not include the fee income in our summary analysis.

6. State Employee Benefit Costs

Oregon currently provides the same medical and dental, life insurance, and long term care insurance benefits to state employees' qualified same-sex domestic partners as the married spouses of state employees receive.⁶⁷ Therefore, no additional health care costs are likely to result from extending domestic partnerships to same-sex couples.

The State of Oregon provides retirement benefits for state employees through the Oregon Public Employees Retirement System (PERS).⁶⁸ Generally, members are eligible for defined benefit and defined contribution retirement plans in one of several configurations, depending on when they enrolled in the program. In 2003, the Oregon Legislature created the Oregon Public Service Retirement Plan (OPSRP), which consists of the Pension Program (defined benefit) and the Individual Account Program (defined contribution), to be administered by PERS.⁶⁹ State employees hired on or after August 28, 2003 participate in the OPSRP Pension Program, while longer-term employees maintain their membership in the PERS Chapter 238 Pension Plan. As of January 1, 2004, longer-term employees became members of the Individual Account Program (IAP) along with other OPSRP members; PERS members retain their PERS accounts in existence prior to that date, but member contributions are now deposited into members' IAP accounts.

The new law establishing domestic partnerships may not require the state government to extend any of the PERS benefits to domestic partners.⁷⁰ However, if the government decides to extend the benefits, the current structure of these plans means that the retirement-related costs to the State will be minimal,

approximately \$20,000 per year for the first three years when domestic partnerships are available, with that figure declining over time. These costs will come from death benefits that are currently available only to surviving spouses of certain categories of state employees.

Post-Retirement Death Benefits for Spouses and Same-Sex Partners

Upon retirement, a state employee who is a member of the PERS Chapter 238 Program or the OPSRP Pension Program receives a life pension, the amount of which is determined based on years of service and final average salary. PERS Chapter 238 members choose to receive benefits under one of 13 payment options, which may provide a lump-sum payment, regular monthly benefits, and survivor benefits in various combinations, depending on the retiree's preference. OPSRP members can choose to receive a standard pension or may convert their pension into one of two options with survivor benefits, providing a surviving beneficiary with either the full monthly benefit or one-half of the monthly benefit that the retiree was receiving upon his or her death. In either program, if the member chooses an option that includes survivor benefits, the retiree and survivor receive a smaller benefit than if the retiree's benefits stop at death. The benefits are actuarially reduced so that they are equivalent to the value of a standard pension. In other words, the retiree pays for the survivor coverage herself or himself.

Retirement and survivor benefit costs will rise by a negligible amount

PERS Chapter 238 and OPSRP members make contributions into their IAPs at a rate equal to 6% of their salaries.⁷¹ Employers may also elect to make additional voluntary contributions to a separate IAP account on behalf of their employees. Contributions to these accounts, plus earnings less losses

and administrative fees, are held in trust for the employee during his or her membership in the program. At retirement, the member may choose to receive the IAP account balance as a lump-sum payment or in installments over a 5, 10, 15, or 20-year period, subject to certain restrictions. If a member dies before all amounts in his or her IAP accounts are paid out to the retiree, all remaining payments will be made to the designated beneficiary, either in installments or in a lump sum.

Same-sex partners of retirees in the PERS Chapter 238 Program and the OPSRP Pension Program are already eligible for the same benefits as spouses, either because retirees can designate a same-sex partner as a beneficiary or (in the case of the OPSRP Pension Program death benefit) because the program includes qualified same-sex domestic partners in its understanding of spouse, following the *Tanner* decision. This means that there would likely be no additional cost associated with a state employee entering a same-sex domestic partnership. Even if state employees are more likely to designate a same-sex domestic partnership partner as a beneficiary than a legally unrecognized same-sex partner, the State would incur no additional expense because the payment options with survivor benefits are designed to be equivalent over time to those without survivor benefits.

Two categories of state employees, however, are subject to different regulations that make employees eligible for death benefits paid only to surviving spouses: retired police officers and firefighters who are part of the PERS Chapter 238 Pension Plan (i.e. who began working for a PERS employer no later than August 28, 2003) and judges who belong to the PERS Judge Member Program. Upon the death of a retired police officer or firefighter in the Chapter 238 Plan, the

retiree's surviving spouse (or minor children) will receive a monthly benefit based on 25% of the refund annuity benefit otherwise due to the retiree. Under the PERS Judge Member Program, a surviving spouse receives a monthly life pension equal to two-thirds of the retirement allowance the member was receiving at the time of death. Currently, the same-sex partners of such employees would not be eligible for these benefits, so extending domestic partnerships to same-sex couples would generate additional expenses to the State in this category of spending.

To calculate the impact of new same-sex partners of judges and of retired police officers and firefighters under the Chapter 238 Program, we use several measures, which are summarized here:

- 1) We assume that the same proportion of state employees will have a same-sex domestic partnership partner beneficiary as currently sign up same-sex partners for dependent domestic partner health insurance coverage in the PERS Health Insurance Program. PERS does not keep statistics on the number of same-sex partners covered,⁷² so we look to the comparable program in Washington State, which reports that 0.12% of retiree health plan subscribers have enrolled a same-sex partner.⁷³ To allow for any unknown differences between the programs, we double that figure in our calculations, which ensures that our overall estimate will remain conservative.
- 2) Using the State's figures on the number of retirees falling in these categories,⁷⁴ we can calculate the number of retirees with same-sex spouses who will be eligible for spousal benefits if the retiree dies first. The pool of retired police officer

and firefighter Chapter 238 Program members will produce approximately 17 such retirees, while the Judge Member Program will, on average, have none. But because the Judge Member calculation results in a fraction, we will round up and assume there will be one such judge member retiree.

- 3) Not all retirees with same-sex spouses in these categories will die immediately, however. To calculate the number of survivors at any given time, we assume that the ratio of retirees with same-sex domestic partnership partners to their surviving beneficiaries will approximate the ratio of retirees to surviving beneficiaries overall. In fiscal year 2005, 8% of benefit recipients were survivors.⁷⁵ Multiplying the number of retirees by this figure implies that there will be one surviving same-sex domestic partnership partner of retired police and firefighter members and no surviving same-sex domestic partnership partners of judge members at any given time.
- 4) The average monthly benefit depends on when the member retired. In fiscal year 2005, the greatest number of retirees fell in the bracket for 26-30 years of service, which provided an average monthly benefit of \$3,206, or \$38,472 per year.⁷⁶ Using this value to calculate the cost of new same-sex partners will give us a high cost scenario, since the majority of retirees receive a smaller benefit, based on fewer years of service. But this is balanced by the fact that police officer, firefighter, and judge member benefits are calculated using a slightly higher factor than general members' pensions.

Surviving spouses of retired police officers or firefighters receive a monthly benefit based on 25% of the refund annuity benefit derived from police or fire service. Surviving spouses of retired judges receive a monthly pension equal to two-thirds of the member's retirement allowance.

Overall, the above calculations result in an estimated total additional expense of approximately \$9,618 per year. Furthermore, the Chapter 238 Program no longer accepts new members, so the additional cost to the State of providing benefits to surviving partners of police officers and firefighters will diminish over time to zero, as the old defined benefit plan is phased out and all new police officer and firefighter members are subject to the same provisions as OPSRP general service members. The cost to the State of providing survivor benefits to same-sex partners of judges will continue to be negligible to nonexistent.⁷⁷

Pre-Retirement Death Benefits for Spouses and Same-Sex Partners

When a member dies before reaching retirement, there are several ways in which benefits may be distributed. The following is true for all PERS members except judges. If the deceased employee was a member of the PERS Chapter 238 Program, the member's beneficiary – who may be any person of the member's choosing – selects one of three options for disbursement of the death benefit.⁷⁸ This beneficiary may be any person of the member's choosing. If the deceased employee was a member of the OPSRP Pension Program, a death benefit equivalent to 50% of the pension that would have been paid as a retirement benefit to the member will be paid to the member's spouse or qualified same-sex domestic partner.⁷⁹ To the extent that the member is vested in any IAP accounts (employee, rollover, and employer), any

amounts in those accounts will be paid in a lump sum to the member's spouse or qualified same-sex domestic partner.⁸⁰ Thus, in none of these instances would the State incur any additional cost because same-sex partners are already eligible to receive death benefits if their partners die before retirement.

The one exception is state employees participating in the Judge Member Program. If a judge member dies before retirement but has served as a judge for six or more years, the surviving spouse will receive a monthly life pension equal to two-thirds of the service retirement allowance, calculated as if the member had retired on the date of death. If the deceased judge member served fewer than six years as a judge, the surviving spouse receives a lump sum equal to the amount credited to the member's account. If the judge leaves no surviving spouse – but has served for six or more years – the designated beneficiary will receive a lump sum equal to the amount credited to the member's account. Currently, a judge's surviving same-sex partner would receive death benefits as a beneficiary of the lump sum disbursement – and not a life pension – so there may be some cost to the State as a result of granting same-sex couples domestic partnerships that would guarantee same-sex partners the same benefits as spouses.

While these pre-retirement death benefits could result in additional expenditures by the State, the actual increase will depend on the number of deaths of judge members who have served as a judge for more than six years and have chosen to enter a domestic partnership. Our calculations suggest that the number of eligible judges likely to pre-decease a same-sex partner will be quite small. We use the following figures to arrive at this conclusion:

- 1) According to Census 2000, the average age of people with same-sex partners in Oregon is 43.⁸¹
- 2) The State uses the Society of Actuaries' mortality tables for retirement benefit planning: a 43-year old male has a 0.001299 probability of death, and a 43-year old female has a 0.000937 probability of death in a given year.⁸² Since members younger than 43 would have a lower probability of death and members over 43 a higher probability, using the mortality rate for the average person will give us a good estimate of the number of people dying before retirement in any given year. In effect, we assume that everyone's age is 43 and that they have these probabilities of dying in any given year.
- 3) As above, in the post-retirement calculations, we assume that 0.24% of state employees have a same-sex partner in a domestic partnership.
- 4) There are approximately 190 active judges in the Judge Member Program.⁸³
- 5) We assume that half of those judge members are men and half are women.

With these values we estimate that there is approximately one active employee in the Judge Member Program who would have a same-sex spouse. At the mortality rates discussed above, it is highly unlikely that there will be any extra deaths added in a given year, and it is less likely that the deceased judge will have served for six years. Even in the rare event that this one same-sex partner became eligible for pre-retirement death benefits, the additional cost to the State would be minimal. The

median monthly benefit for survivors across the system falls in the \$1,001-\$1,500 range.⁸⁴ Thus, one additional death would be expected to add approximately \$10,000 per year to benefits payments, based on the survivor pension, which is equal to two-thirds of the retirement allowance. According to the State's own mortality predictions, however, even this minimal additional cost is unlikely.

In conclusion, we predict that introducing domestic partnerships for same-sex couples will increase expenditures on state employee pension benefits by less than \$20,000 per year, with that figure declining over time to a negligible amount, due to the gradual phase out of the Chapter 238 program.

SUMMARY AND CONCLUSIONS

Table 6 summarizes the findings of earlier sections examining the impact of domestic partnerships on the Oregon State budget. The cumulative biennial effect of domestic partnerships on the budget areas studied in this report would be a net gain of \$3.7 million if the State uses a same-sex partner's income and assets to determine eligibility for Medicaid (Net effect 1) or approximately \$1.5 million without the Medicaid savings (Net effect 2).

Table 6: Summary of impacts of establishing domestic partnerships on the biennial Oregon budget

Impact on biennial state budget ⁸⁵	Net effect (1)*	Net effect (2)^
Savings from means-tested public benefit programs	\$2,364,286	\$215,544
Increase in income tax revenue	\$1,530,086	\$1,530,086
State inheritance tax	-\$182,280	-\$182,280
State employee benefits costs	-\$39,200	-\$39,200
TOTAL	\$3,672,892	\$1,524,150

*Including same-sex spouses in Medicaid determinations.

^Excluding same-sex spouses from Medicaid determinations.

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ENDNOTES

- ¹ The State of Oregon budgets on a biennial basis, that is, every two years. Therefore, in our summary findings, we double any annual impact found.
- ² Badgett, M.V. Lee, R. Bradley Sears, Elizabeth Kukura, and Holning S. Lau. 2006. *The Impact on Washington's Budget of Allowing Same-Sex Couples to Marry*. Los Angeles: The Institute for Gay and Lesbian Strategic Studies and the Williams Institute on Sexual Orientation Law. <http://www.law.ucla.edu/williamsinstitute/publications/washington%20econ%20study.pdf>.
- ³ Badgett, M.V. Lee *et al.* 2006. *The Impact on New Mexico's Budget of Allowing Same-Sex Couples to Marry*. Los Angeles: The Institute for Gay and Lesbian Strategic Studies and the Williams Institute on Sexual Orientation Law. <http://www.law.ucla.edu/williamsinstitute/publications/new%20mexico%20econ%20study.pdf>.
- ⁴ Badgett, M.V. Lee, R. Bradley Sears and Elizabeth Kukura. 2005. *The Impact on New Hampshire's Budget of Allowing Same-Sex Couples to Marry*. Los Angeles: The Institute for Gay and Lesbian Strategic Studies and the Williams Institute on Sexual Orientation Law. <http://www.law.ucla.edu/williamsproj/publications/New%20Hampshire%20Econ%20Study.pdf>.
- ⁵ Sears, R. Bradley and M.V. Lee Badgett. 2004. *The Impact on California's Budget of Allowing Same-Sex Couples to Marry*. Los Angeles: The Institute for Gay and Lesbian Strategic Studies and the Williams Institute on Sexual Orientation Law. <http://www.law.ucla.edu/williamsproj/publications/CASameSexMarriage.pdf>.
- ⁶ Badgett, M.V. Lee, R. Bradley Sears, Patrice Curtis and Elizabeth Kukura. 2005. *Counting on Couples: Fiscal Savings from Allowing Same-Sex Couples to Marry in Connecticut*. Los Angeles: The Institute for Gay and Lesbian Strategic Studies and the Williams Institute on Sexual Orientation Law. <http://www.law.ucla.edu/williamsproj/pdf/CountingOnCouples.doc>.
- ⁷ Badgett, M.V. Lee, R. Bradley Sears and Suzanne Goldberg. 2003. *Supporting Families, Saving Funds: A Fiscal Analysis of New Jersey's Family Equality Act*. Los Angeles: Williams Project on Sexual Orientation Law and The Institute for Gay and Lesbian Strategic Studies. <http://www.law.ucla.edu/williamsproj/publications/NJ-DPASTudy.pdf>.
- ⁸ Badgett, M.V. Lee. 1998. *The Fiscal Impact on the State of Vermont of Allowing Same-Sex Couples to Marry*. Amherst: Institute for Gay and Lesbian Strategic Studies. <http://www.iglss.org/media/files/techrpt981.pdf>.
- ⁹ Badgett, M.V. Lee and R. Bradley Sears. 2005. "Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget." *Stanford Law & Policy Review* 16(1):197-232. http://www.law.ucla.edu/williamsproj/publications/16_Stan_L_&_Poly_Rev_197.pdf.
- ¹⁰ Connecticut General Assembly, Office of Legislative Research. 2002. *Office of Fiscal Analysis Report on HB 5001*. http://www1.law.ucla.edu/~williamsproj/connstudy_files/connstudy.htm.
- ¹¹ Office of Legislative Council. 2002. *Report of the Vermont Domestic Partnership Review Commission*. <http://www.leg.state.vt.us/baker/Final%20CURC%20Report%20for%202002.htm>.
- ¹² Hevesi, Alan G. 2004. *Testimony of New York State Comptroller Alan G. Hevesi to New York City Council in Support of the Right to Civil Marriage for Same-Sex Couples in New York State*, March 3. New York: Office of the New York State Comptroller. <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm>.
- ¹³ Holtz-Eakin, Douglas (Director, Congressional Budget Office). 2004. "The Potential Budgetary Impact of Recognizing Same-Sex Marriages." Letter to Chairman of House Subcommittee on the Constitution, June 21. <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.
- ¹⁴ L.C. 2502, House Bill 2007, 74th Leg. (OR 2007) [hereinafter *Oregon's Domestic Partnership Act*]. <http://www.leg.state.or.us/07reg/measpdf/hb2000.dir/hb2007.intro.pdf>
- ¹⁵ See *supra* note 1.
- ¹⁶ We make this assumption having considered several factors. First, the fact that 57% of Vermont's same-sex partners have chosen to enter domestic partnerships leads us to the conclusion that the more comprehensive set of rights provided to same-sex couples under Vermont law and the higher social status attributed to domestic partnerships has caused a larger percentage of couples to seek legal recognition of their relationships, in contrast to jurisdictions such as California, where only 27% of same-sex couples have registered as domestic partners. At the same time, we assume that the percentage of same-sex couples who marry will not equal the percentage of different-sex couples who marry, which is over 90%. See Sears (2004). Vermont domestic partnership statistics provided by Richard McCoy, Office of Vital Records, Vermont Department of Health, email dated July 11, 2005 (on file with authors).
- ¹⁷ See *supra* note 1.
- ¹⁸ For evidence that the 2000 Census undercounted the number of cohabitating same-sex couples in the United States, see Badgett, M.V. Lee and Marc A. Rogers. 2003. *Left Out of the Count: Missing Same-Sex Couples in Census 2000*. Amherst: Institute for Gay and Lesbian Strategic Studies (noting that two surveys estimated the undercount at 16% to 19%). http://www.iglss.org/media/files/c2k_leftout.pdf (accessed December 7, 2005); Smith David M. and Gary J. Gates. 2001. *Gay And Lesbian Families In The United States: Same-Sex Unmarried Partner*

Households. Washington, DC: Human Rights Campaign (estimating undercount at 62%).

http://www.hrc.org/Template.cfm?Section=Census_20001&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=23&ContentID=27201 (accessed December 7, 2005).

¹⁹ For descriptions of OHP, FHIAP, and SCHIP, see http://egov.oregon.gov/DHS/healthplan/app_benefits/main.shtml (accessed Sept. 19, 2005).

²⁰ See O.R.S. § 414.042 (2003) (stating that the state shall consider spousal responsibility when determining individuals' eligibility for medical assistance, but omitting any mention of same-sex partnership).

²¹ DOMA is a federal law that limits the definition of "spouse" in all federal laws and regulations to refer "only to a person of the opposite sex who is a husband or a wife." Defense of Marriage Act, Pub. L. 104-199, § 1, 100 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 (1997)). "Spouse" is the term used to specify individuals whose assets and income may be counted for SSI and Medicaid eligibility purposes. Thus, arguably, DOMA would prohibit the state from interpreting the term spouse in the regulations to include a same-sex spouse. A related issue has arisen in Vermont with respect to that state's treatment of couples in a domestic partnership within the Medicaid program. Mace, David. 2003. "Critics Say Rule Change Violates Domestic partnerships." *The Times Argus*, April 17. Recent correspondence from the Centers for Medicare and Medicaid Services to state agencies in Vermont and Massachusetts suggests that the states cannot treat same-sex spouses in the same way that different-sex spouses are treated in the Medicaid program.

²² For example, federal law mandates that states must "take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under" Medicaid and to seek reimbursement in cases "where such legal liability is found to exist." 42 U.S.C. 1396a. See also O.R.S. § 414.038 (2003) ("In computing a family's or individual's income . . . any costs, whether in the form of insurance premiums or otherwise, incurred by the family or individual for medical care or for any other type of remedial care recognized under state law may be excluded, except to the extent that they are reimbursed by a third party.").

²³ 42 CFR 433.135 (2004) ("Third party means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan.").

²⁴ See generally Centers for Medicare and Medicaid Services, *State Medicaid Manual*, 3900-3910.15, 3900.1 and 3900.2 (2003).

²⁵ Centers for Medicare and Medicaid Services, Immigrant Eligibility for Medicaid and SCHIP, <http://www.cms.hhs.gov/immigrants> (last visited Sept. 19, 2005); National Immigration Law Center, *Guide to Immigrant Eligibility for Federal Programs* (4th ed. 2002), with updates from Update Page, http://www.nilc.org/pubs/Guide_update.htm (last visited Sept. 19, 2005).

²⁶ Wording from the Census questionnaire, published in U.S. Department of Commerce, U.S. Census Bureau, Public Use Microdata Sample, 2000 Census of Population and Housing, Technical Documentation, (April 2003), at D-8.

²⁷ Calculated using Census data for the numerator. The denominator is expenditures on basic assistance and comes from U.S. Department of Health and Human Services, Administration for Children and Families, FY 2004 TANF Financial Data, http://www.acf.hhs.gov/programs/ofs/data/tanf_2004.html (last visited Sept. 19, 2005).

²⁸ Research on welfare benefits finds at most a very small disincentive effect. See Robert Moffitt, "Incentive Effects of the U.S. Welfare System: A Review." *Journal of Economic Literature* 30:27-31. Mar. 1992, at 1.

²⁹ The reduction equals $(1 - 1.05/1.25) = 0.16$.

³⁰ Congressional Budget Office. 2004. *The Potential Budgetary Impact of Recognizing Same-sex Marriages*. Washington, DC: Congressional Budget Office. <http://www.cbo.gov/showdoc.cfm?index=5559&sequence=0>.

³¹ *Oregon's Domestic Partnership Act*, *supra* note 15, § 9(8).

³² We extracted the same-sex unmarried partner couples from the 5% Public Use Micro Sample of Census data for Oregon and used person weights to make statewide estimates.

³³ "Own children" are those legally related by birth or adoption to the householder. The Census does not provide information on whether the children are also related to the partner, nor do the census data allow us to identify other children in the household who belong to the partner.

³⁴ Social science research suggests that the prospect of paying higher taxes does not discourage most couples from marrying, so we assume that the half of couples marrying will include couples with tax increases as well as decreases. See Alm, James and Leslie A. Whittington. 1999. "For Love or Money? The Impact of Incomes Taxes on Marriage." *Economica* 66: 297-316.

³⁵ See note 13.

³⁶ "Age-adjusted Death Rates for Residents of Oregon and the United States for the Leading Causes of Death, 2002," *Oregon Vital Statistics Report 2003, Volume 2*, Table 6-51. <http://www.oregon.gov/DHS/ph/chs/data/arpt/03v2/chapter6/6-51.pdf> (accessed February 3, 2006).

³⁷ Under the current law's sunset provision, the estate tax will be reinstated in 2011 at its 2001 rate, with \$1 million allowed to pass free of federal estate tax. It is as yet unclear whether the federal tax cuts will be extended beyond 2010 by additional legislation.

³⁸ OAR 150-118.010(7).

³⁹ The marital deduction would apply only to the transfer of an estate between spouses. Thus upon the death of the second spouse or partner, the estate would be subject to full taxation (assuming that the surviving spouse or partner has not remarried). This would apply equally to same-sex and different-sex couples, who would all have the same access to financial planning techniques to minimize the estate's tax liability upon the death of the second spouse or partner.

⁴⁰ Aizcorbe, Ana M., Arthur B. Kennickell, and Kevin B. Moore. 2003. "Recent Changes in Family Finances: Evidence from the 1998 and 2001 Survey of Consumer Finances – Table 3." *Federal Reserve Bulletin*. Washington, DC: The Federal Reserve Board.

⁴¹ While a more inequitable distribution obviously exists in many couples, it is also true that it is just as likely that the wealthier individual in a couple will die as the one with less wealth. Thus over a large group of people, a better estimate of individual net worth, and the subsequent value of an individual's estate upon death, is reached by dividing the household net worth in two and attributing half to each member of the couple.

⁴² American Association of Retired Persons. 1999. *A Report on Probate: Consumer Perspectives and Concerns* (concluding that the average cost of probate is from 2% to 10% of the gross estate).

⁴³ This is also a conservative estimate because the percentages for average probate costs are based on gross estate as opposed to the net worth estate, which we use in our analysis.

⁴⁴ National Funeral Directors Association. 2007. *NFDA Fact Sheets* (average cost of an adult funeral in the United States is \$6,500). <http://www.nfda.org/nfdafactsheets.php>.

⁴⁵ Internal Revenue Service. *Estate Tax Returns Filed in 2004 with Total Gross Estate Greater than \$1 Million: Gross Estate by Type of Property, Deductions, Taxable Estate, Estate Tax and Tax Credits, by Size of Gross Estate*. 2005. SOI Unpublished Data ("SOI Estate Tax 2004 Data"). Washington, DC: United States Department of Treasury. <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96442,00.html> (accessed February 3, 2006); Bass, Gary D. and John S. Irons. 2003. "The Estate Tax and Charitable Giving." *OMB Watch*. Washington, DC: Congressional Budget Office.

⁴⁶ O.R.S. § 116.343 (2005).

⁴⁷ National Committee on Planned Giving. 2000. *Planned Giving in the United States: A Survey of Donors*.

⁴⁸ *SOI Estate Tax 2004 Data*, *supra* note 45; Bass and Irons, *supra* note 45.

⁴⁹ *Id.*

⁵⁰ Although the estates reported in the 2003 data would have been subject to the Oregon inheritance tax as it existed under the previous law, we calculate the tax based on the current State law.

⁵¹ Internal Revenue Service. *Estate Tax Returns Filed in 2003 with Total Gross Estate Greater than \$1 Million: Gross Estate by Type of Property, Deductions, Taxable Estate, Estate Tax and Tax Credits, by Size of Gross Estate – SOI Unpublished Data*. Washington, DC: US Department of the Treasury.

<http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96442,00.html> (accessed February 3, 2006). The year 2003 is the latest for which complete data for this calculation are available. Due to a relatively long filing period, estate tax returns filed in a single calendar year may represent decedents who died in several different years, but we assume here that most of the 2003 filings are for deaths which occurred in 2002 and thus use 2002 death statistics in our calculations. The death figures for married people include individuals who are 15 years and older. Kochanek, Kenneth D., Sherry L. Murphy, Robert N. Anderson, and Chester Scott. 2004. "Deaths: Final Data for 2002." *National Vital Statistics Reports* 53(5): Table 25. Hyattsville: CDC's National Center for Health Statistics. http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_05acc.pdf (accessed April 18, 2007).

⁵² $(2,718/945,795) * 74 = 0.213$

⁵³ Oregon Ballot Measure 36 (2004), which became effective on December 2, 2004, provides: "It is the policy of Oregon, and its political subdivisions, that only a marriage between one man and one woman shall be valid or legally recognized as marriage."

⁵⁴ *See* Section 3.

⁵⁵ O.R.S. § 31.735 (2005).

⁵⁶ The Oregon Department of Human Services reports a divorce rate of 4.3 per 1,000 population for Oregon in 2003. *Divorce by County of Occurrence, Oregon, 2003 Final Data*. Portland: Center for Health Statistics and Vital Records. <http://www.dhs.state.or.us/publichealth/chs/divorce/divcoc03.cfm> (accessed May 4, 2005).

⁵⁷ Vermont recorded 7,400 domestic partnerships from 2000 through 2004, of which 1,104 involved Vermont residents. In this same time period, there have been 65 dissolutions of domestic partnerships entered by Vermont's family courts, or an average of 13 per year (domestic partnerships may only be dissolved by Vermont residents). Email from Richard McCoy, Office of Vital Records, Vermont Department of Health, to R. Bradley Sears (July 11, 2005) (on file with authors).

⁵⁸ Schauffler, Richard Y. *et al.* 2006. "Examining the Work of State Courts, 2005: A National Perspective from the Court Statistics Project." Williamsburg: The National Center for State Courts. http://www.ncsconline.org/D_Research/CSP/CSP_Main_Page.html (accessed February 3, 2006).

⁵⁹ Strickland, Shauna M. 2003. *State Court Caseload Statistics, 2003: Supplement to Examining the Work of State Courts* – Table 8. http://www.ncsconline.org/D_Research/csp/2003_Files/2003_SCCS.html (accessed February 3, 2006).

⁶⁰ The fee for initiating a dissolution proceeding ranges approximately from \$258 to \$333, in addition to which a fee ranging from \$111 to \$220 is collected for the respondent's first appearance. State of Oregon Circuit Courts Fee Schedules; O.R.S. § 21.111(1), (7)(a) (2003)(establishing base fee for dissolution proceedings, to which each Circuit Court adds its own surcharges).

⁶¹ See *McHenry v. Smith*, 45 Ore. App. 813 (Or. Ct. App. 1980); *Ireland v. Flanagan*, 51 Ore. App. 837 (Or. Ct. App. 1981).

⁶² 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." *Notre Dame Law Review* 76: 101-144 (2001). See also, *Principles of the Law of Family Dissolution: Analysis and Recommendations, Domestic Partners (Nonmarital Cohabitation)*, Chapter 6. Philadelphia: American Law Institute (2002). Letter from Fred Hertz, Esq., (May 19, 2003). Fred Hertz has handled a number of gay and lesbian dissolution cases and has written several books, including serving as co-author of the 10th edition of *Living Together: A Legal Guide for Unmarried Couples*. Berkeley: Nolo Press (2002). He is also the author of *Legal Affairs: Essential Advice for Same-Sex Couples*. New York: Owl Books (1998) and co-author of *The Living Together Kit* and *A Legal Guide for Lesbian and Gay Couples*. Berkeley: Nolo Press (2005).

⁶³ For example, the Connecticut Office of Fiscal Analysis reports a reprinting cost of 10 cents per form in its report on the fiscal impact of legalizing same-sex marriage. Office of Fiscal Analysis. 2002. *Report Regarding HB 5001 (concerning same-sex marriage); and HB 5002 (concerning same-sex domestic partnerships) of the 2002 Regular Session*. Hartford: Office of Legislative Research, Connecticut General Assembly. <http://www.cga.ct.gov/olr/ofadoc/ofacivilunion1.htm> (accessed March 7, 2005).

⁶⁴ We estimate that approximately 4,500 Oregon same-sex couples will enter a domestic partnership in the first three years during which they are available in Oregon. With the number of estimated dissolutions and the need for sufficient extra forms, we assume that the state will need to print 7,000 forms.

⁶⁵ *Oregon's Domestic Partnership Act*, *supra* note 15, § 7(1) stating, "[i]n addition to any other fees provided by law, the county clerk shall collect a fee of \$25 for registering a Declaration of Domestic Partnership." The proceeds from these fees will benefit the Domestic Violence Fund administered by the Director of Human Services. O.R.S. § 106.045 (2005).

⁶⁶ *Oregon's Domestic Partnership Act*, *supra* note 15, § 12 (amending O.R.S. § 107.615).stating, "[t]he governing body of any county may impose a fee up to \$10 above that proscribed in ORS 205.320 for...registering a Declaration of Domestic Partnership." These additional fees are to be used for conciliations and mediation services provided by or through the county.

⁶⁷ In December 1998, the Oregon Court of Appeals held that a public employer must provide benefits to unmarried same-sex domestic partners of its employees on the same basis that it provides benefits to spouses of married employees. *Tanner v. Oregon Health Services Univ.*, 157 Ore. App. 502 (1998). Initially, because domestic partner health benefits are not eligible for pre-tax treatment, state employees were liable for an additional imputed value tax for the value of those benefits under both federal and state income tax law. In 1999, however, the Department of Revenue changed the Oregon tax laws based on the *Tanner* decision so that payments for health benefits are no longer taxable by the State if the covered individual is a same-sex domestic partner of a state employee. (Payments for medical and dental coverage of a same-sex domestic partner may still result in federal income tax liability under IRS regulations.) This change in the taxation of domestic partner benefits has already eliminated any income tax revenue to the State arising from the imputed value tax. Thus, because same-sex domestic partners are treated the same as married spouses for the purposes of state employee benefits, there would be no financial impact on the provision of those benefits by the State under the domestic partnership legislation.

⁶⁸ PERS is administered under Oregon Revised Statutes (ORS) Chapter 238, Chapter 238A, and Internal Revenue Code Section 401(a) by the Public Employees Retirement Board.

⁶⁹ O.R.S. § 238A (2005).

⁷⁰ *Oregon's Domestic Partnership Act*, *supra* note 15, § 9(7) stating, "[s]ections 1 to 9 of this 2007 Act do not require or permit the extension of any benefit under ORS chapter 238 or 238A, or under any other retirement, deferred

compensation or other employee benefit plan, if the plan administrator reasonably concludes that the extension of benefits would conflict with a condition for tax qualification of the plan, or a condition for other favorable tax treatment of the plan, under the Internal Revenue Code or regulations adopted by the Internal Revenue Code.”

⁷¹ O.R.S. § 238A.330 (2005).

⁷² Phone conversation with PERS Health Insurance Program representative Gordon (declined to provide last name), May 24, 2006.

⁷³ The Washington Health Care Authority reports that 0.12% of retiree health plan subscribers have signed-up a same-sex partner for coverage. Email from Dave Wasser, HCA Communications, December 19, 2005, on file with authors. See Badgett, M.V. Lee, R. Bradley Sears, Elizabeth Kukura, and Holning S. Lau. 2006. *The Impact on Washington's Budget of Allowing Same-Sex Couples to Marry*. Los Angeles: The Institute for Gay and Lesbian Strategic Studies and the Williams Institute on Sexual Orientation Law.
<http://www.law.ucla.edu/williamsinstitute/publications/washington%20econ%20study.pdf>.

⁷⁴ In fiscal year 2005, there were 6,889 retired police officers and firefighters (or their beneficiaries) receiving benefits. Cleary, Paul R. and David W. Tyler. 2005. *Oregon Public Employees Retirement System, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2005*. Tigard: Public Employees Retirement System.
http://www.oregon.gov/PERS/docs/financial_reports/2005_cafr_web.pdf (accessed April 18, 2007). This number does not distinguish between police officers and firefighters who belong to the Chapter 238 Program and the OPSRP Plan, but because the police and firefighters in the OPSRP Plan are only those hired on or after August 29, 2003, we assume all or almost all of the retired police and firefighters are members of the Chapter 238 Program. There are 111 retired judges receiving benefits in the Judge Member Program. Phone conversation with David Crosley, PERS Communications Officer, May 25, 2006.

⁷⁵ Cleary, *id.*, at 75. http://www.oregon.gov/PERS/RELATED/docs/financial_reports/2005_cafr_web.pdf (accessed June 8, 2006). No breakdown of retiree/survivor recipients is available specifically for police officers, firefighters, and judges, so we use the figures for program benefit recipients as a whole.

⁷⁶ *Id.* No specific breakdowns for police officers and firefighters or judges are available.

⁷⁷ Here we have rounded the fraction of judge members' surviving same-sex partners likely to be eligible for benefits to zero because the number is so small. From an alternative perspective, the same calculations above suggest that a judge member is likely to pre-decease a same-sex domestic partnership partner once every 47 years, which simply represents another way of concluding that survivor benefits in this category would cost the State a negligible amount.

⁷⁸ Oregon Public Employees Retirement System, PERS Chapter 238 Program – Your Member's Handbook: A Guide to PERS Chapter 238 and OPSRP Individual Account Program Benefits and Services 2003-2005.
http://64.233.167.104/search?q=cache:RhB-Q8TJob4J:www.oregon.gov/PERS/MEM/PERSPLAN/docs//publications/pers_handbook_03_05.pdf+%22Oregon+Public+Employees+Retirement+System%22+and+%22PERS+Chapter+238%22+and+Program+Member%E2%80%99s+Handbook&hl=en&ct=clnk&cd=1&gl=us (accessed June 8, 2006).

⁷⁹ Oregon Public Employees Retirement System, Oregon Public Service Retirement Plan (OPSRP) Member's Handbook, 2003-2005.

http://www.oregon.gov/PERS/MEM/OPSRPPLAN/docs/publications/opsrp_handbook_03_05_final.pdf (accessed June 8, 2006).

⁸⁰ *Id.* at 20; PERS Chapter 238 Program Member's Handbook, at 47.

⁸¹ Sears, R. Bradley, William Rubenstein. 2005. *Same-Sex Couples & Same-Sex Couples Raising Children in Oregon: Data from Census 2000*. Los Angeles: Williams Project on Sexual Orientation Law and Public Policy.
<http://www.law.ucla.edu/williamsinstitute/publications/OregonReport.pdf>.

⁸² Oregon Public Employees Retirement System, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2005, at 60, available at http://www.oregon.gov/PERS/RELATED/docs/financial_reports/2005_cafr_web.pdf (accessed June 8, 2006); Society of Actuaries RP-2000 Mortality Tables, Tables 4-5 and 4-6, available at http://www.soa.org/ccm/cms-service/stream/asset/?asset_id=9700104 (accessed June 8, 2006).

⁸³ Phone conversation with David Crosley, PERS Communications Officer, May 25, 2006.

⁸⁴ Cleary, *supra* note 74 at 75. http://www.oregon.gov/PERS/RELATED/docs/financial_reports/2005_cafr_web.pdf (accessed June 8, 2006). PERS does not report monthly average benefits for judges alone.

⁸⁵ See *supra* note 1.