



Economic Benefits of Marriage

UNDER FEDERAL AND CONNECTICUT LAW

by Terence Dougherty



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

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Executive Summary

ECONOMIC BENEFITS OF MARRIAGE UNDER FEDERAL AND CONNECTICUT STATE LAW

This study focuses specifically on the economic costs under federal and Connecticut law borne by same-sex couples who are not able to legally marry, compared to their married opposite-sex counterparts. A focus on economic issues quantitatively illustrates how same-sex couples are discriminated against by not being allowed to access the benefits, protections, and responsibilities only granted through equal access to civil marriage. Even if the Connecticut legislature passes a civil unions bill, it will not allow same-sex couples in the state to access all of the benefits and protections afforded to married opposite-sex couples because civil unions are not recognized under federal law.

In order to learn about the economic issues faced by actual Connecticut residents, a number of same-sex couples were interviewed. These couples live in various parts of the state, and have different income levels and educational backgrounds. Some are parents of young children, some have adult children and some are approaching retirement age. Regardless of their individual circumstances, each faces specific financial hardships because of discrimination in state and federal civil marriage laws. For analytical purposes, this study also includes four hypothetical couples created to illustrate additional economic disadvantages for which we could not find real-world same-sex couples who were willing to publicly share their personal and financial information. In total, these case studies illustrate the economic disadvantages felt by thousands of Connecticut same-sex couples because they are unable to enter into a civil marriage that is recognized under state and federal law.

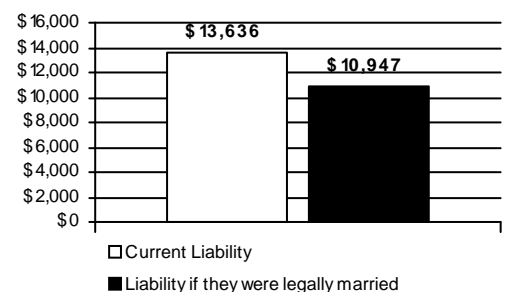
Even if the Connecticut legislature passes a civil unions bill, it will not allow same-sex couples in the state to access *all* of the benefits and protections afforded to married opposite-sex couples because civil unions are not recognized under federal law.

FINDINGS

Federal and State Income Tax Liability

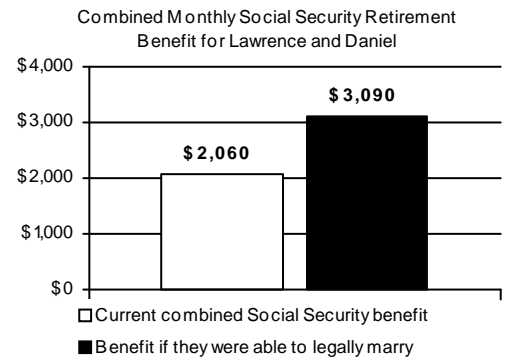
Stephen Rinaldi, 51, and Andre Kreft, 50, are a real same-sex couple living in Connecticut. They have been together for five years. Stephen works full time as an eligibility services supervisor for the State of Connecticut Department of Social Services. Andre is a visual artist and substitute teacher. Unlike married opposite-sex couples, who may incur lower state and federal income tax liability by filing jointly, Stephen and Andre must file separately. **Consequently, in 2003 Stephen and Andre's combined federal and state income tax liability was 25% higher (\$2,689 more) than it would have been if they could have filed a joint return.**

Combined Total Income Tax Liability for Stephen and Andre (2003)



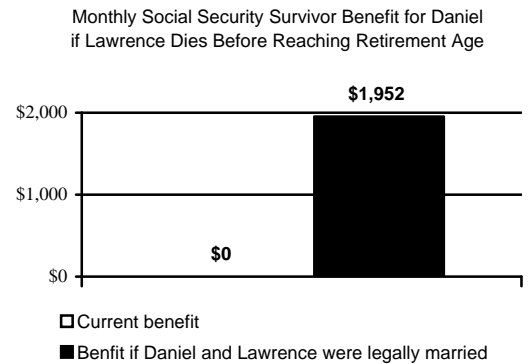
Social Security Retirement Benefits

Lawrence B., 40, and Daniel R., 43, are a real same-sex couple living in Connecticut. They have been in a committed relationship for 22 years. Together, they have three adopted children. Lawrence is an attorney and Daniel is a stay-at-home father. Since Daniel currently has no income, he may be ineligible to receive Social Security benefits. If Lawrence and Daniel were legally married under state and federal law, upon Lawrence reaching retirement age, Daniel would be entitled to receive benefits based on Lawrence’s employment record in the amount of one half of Lawrence’s benefits. **However, because they cannot marry, Lawrence and Daniel’s combined monthly Social Security retirement benefit will be \$1,030 less per month than it would be if they were able to legally marry.**



Social Security Survivor Benefits

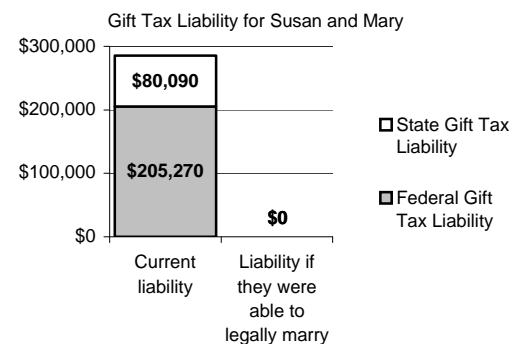
A portion of all Social Security tax payments goes towards survivors’ insurance, which provides support in the form of a monthly benefit to surviving spouses of opposite-sex married couples. **If they were married, and Lawrence died, Daniel’s monthly Social Security benefit would be \$1,952. However, since they can not marry Daniel would receive nothing.**



State and Federal Gift Tax Liability

Hypothetical couple Susan and Mary have been together for six years. When Susan’s parents died, she inherited the family home and some investment assets worth \$3,000,000 after taxes.

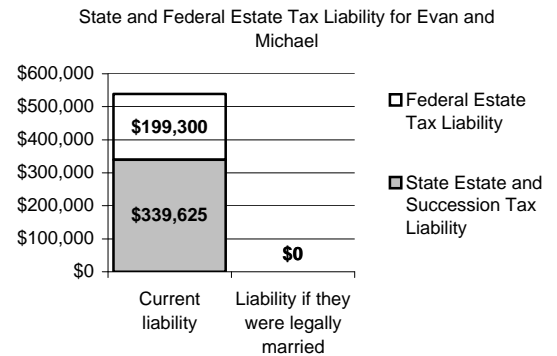
Married opposite-sex couples can transfer most assets to each other without having to pay taxes whether those transfers are made while they are alive, in the form of gift, or after one of them dies, in the form of an estate. Same-sex couples are not entitled to this benefit, and any transfer of an asset between members of a same-sex couple, living or dead, may require the payment of a gift or estate tax. If Susan invested these assets in a mutual fund jointly held by her and Mary, it would be classified under federal law as a gift of \$1,500,000 to Mary, incurring a combined federal and Connecticut state gift tax of \$285,360. **Had they been legally married, the amount of federal and state gift tax they would have to pay would be \$0.**



State and Federal Estate Tax Liability

Hypothetical couple Evan and Michael have lived together on a dairy farm in Litchfield County, Connecticut for 25 years. Michael grew up on the farm and inherited it from his parents when they died. The farm is worth \$2,000,000.

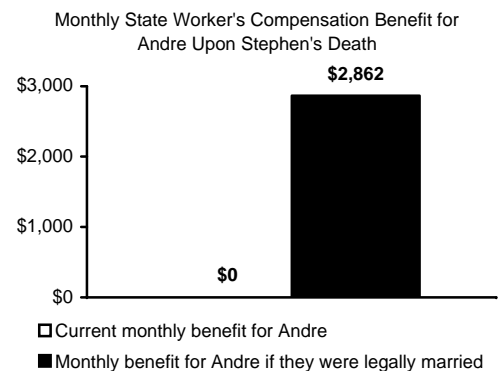
Michael died in late 2004, and left the farm and its business to Evan in his will. **However, because they were not married Michael's estate will have to pay significant state and federal estate and succession taxes on its full value, totaling \$538,000. Had they been married at the time of Michael's death, the tax liability would have been \$0.** If Evan cannot come up with the money to pay the estate tax, the farm he and Michael lived on together for 25 years will have to be sold. He literally will lose the farm.



Connecticut State Worker's Compensation Benefits

Under Connecticut law, if an employee's accidental injury arising out of and in the course of employment or from an occupational disease leads to his or her death, and the employee lives with a spouse and has no other dependents, the deceased employee's spouse is entitled to a weekly benefit equal to 75% of the deceased's take home pay.

Lack of access to this benefit has profound economic consequences for the real-world couple Stephen and Andre, because Stephen is a state employee. **If Stephen and Andre were legally married and Stephen were to die as a result of an injury sustained while working, Andre would receive \$2,862 per month until the time that he either remarries or dies. However, since they can not legally marry, Andre would receive \$0.**



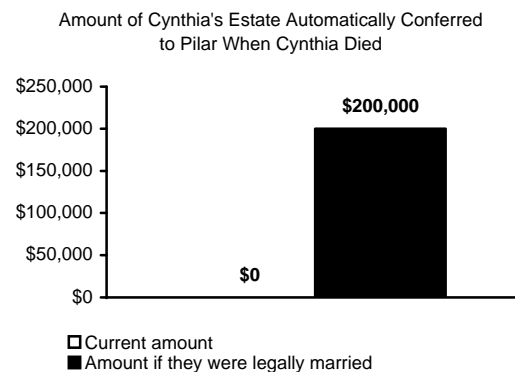
Connecticut Estate Tax Law

Hypothetical couple Cynthia and Pilar were in a committed relationship of 15 years at the time of Cynthia's death. Both were retired and living primarily on Social Security. Cynthia had two adult children. Cynthia's entire estate includes the house she owned, in which she and Pilar lived together for 15 years, and savings of \$200,000. The house is worth \$210,000.¹

¹ Under U.S. estate tax law, this is not a taxable estate. Connecticut succession tax, however, likely would be imposed on any amounts passing to Pilar.



Without a will, Cynthia is considered to have died “intestate.” Because Cynthia and Pilar could not legally marry, Pilar has no legal right to any of Cynthia’s assets. Under the intestate succession rules in Connecticut, the house and the savings account will pass to Cynthia’s children. In fact, Pilar has no legal right to remain living in the house, or to any of the assets in Cynthia’s estate. Even if Cynthia had no children and no other surviving relatives, no portion of Cynthia’s estate would pass to Pilar under Connecticut law. **However, if Cynthia and Pilar were able to legally marry before Cynthia died, Pilar would have automatically been entitled to at least one half (\$200,000) of Cynthia’s entire estate.**

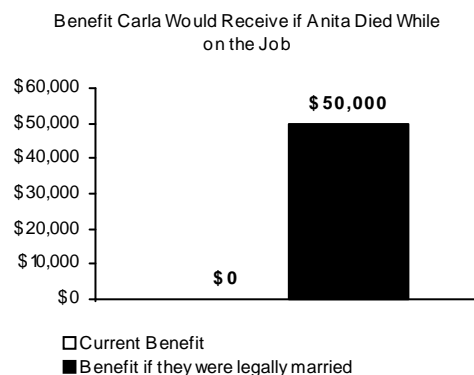


Additional Benefits for Connecticut Public Employees

Hypothetical couple Anita and Carla work for the Connecticut Department of Revenue Services, and have been together since they met in college. In 2004, Anita died in a car accident while performing her work duties.

If any Connecticut state employee, officer, or legislator dies as a result of an injury sustained on the job, and the injury is not the fault of the employee, the employee’s surviving spouse is entitled to \$50,000 payable in equal monthly installments over a period of at least 10 years.

If Anita and Carla had been married at the time of Anita’s death, Carla would be entitled to receive \$50,000 over a ten-year period until she remarries or dies. However, since they are unable to legally marry, Carla would be entitled to no payment whatsoever.



Aggregate Lifetime Economic Detriment

The previous examples illustrate the economic harm felt by lesbian, gay, bisexual, and transgender people living in Connecticut because of their inability to form a same-sex marriage that is recognized under federal and Connecticut state law. As significant as these examples are, they do not show the whole picture. For example, although the harm to Stephen and Andre in 2003 caused by their inability to file jointly on their income tax return is significant, it is important to recognize that this will continue throughout their lifetime absent the ability to legally marry.



In order to provide an example of this lifetime impact, Table 1 shows the estimated impact over the rest of their lives to Stephen and Andre in light of their inability to enter into a legally recognized marriage. It shows the additional tax they will have to pay for each year from 2003 until their retirements, and also includes the impact of being denied the Social Security spousal and survivor benefits they would receive if they were able to legally marry.

Further, although Stephen and Andre currently do not have sufficient assets to have an estate that is taxable under federal or Connecticut law, Table 1 also illustrates a hypothetical example of the impact of their inability to pass assets in a tax-free manner upon the death of the first of them to die, a benefit that is available to opposite-sex married couples.

| | Annual Liability | Lifetime Liability |
|---|------------------|--------------------|
| Income Tax | \$2,689 | \$43,873 |
| Social Security Spousal Benefits | \$2,736 | \$16,416 |
| Social Security Survivor Benefits | \$19,068 | \$151,887 |
| Aggregate lifetime liability: | | \$212,176 |
| Estate Taxes (hypothetical) | | \$538,925 |
| Aggregate lifetime liability including hypothetical estate tax: | | \$751,101 |

In total, if Andre and Stephen continue to work until they reach retirement age in 2020, they can expect to have over \$212,000 less than they would have if they were able to legally marry under federal and Connecticut state law. If their hypothetical estate tax liability is included, that lifetime detriment increases to over \$750,000.

CONCLUSION

According to the 2000 U.S. Census, almost 8,000 same-sex couples live in Connecticut and 25% of those couples report that they are raising at least one child under the age of 18. Given that many couples would choose not to self-identify on a government survey, this is likely a significant undercount. As this study shows, over a lifetime, same-sex couples lose hundreds of thousands of dollars because they are unable to marry. Access to a civil marriage that is recognized under state and federal laws would, for example, enable them to pay a more equitable share of the tax burden and receive a more equitable share of benefits from the Social Security system that they pay into their entire lives. These benefits make it easier for same-sex couples to care for each other when they are sick or elderly, and more likely that their children have access to vital financial support should one or both parents die. Allowing same-sex couples to marry harms no one, and provides them and their children with access to benefits and programs designed by the government to promote family stability and financial security.

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Economic Benefits of Marriage under Federal and Connecticut Law

INTRODUCTION

Marriage has profound social, cultural, and religious meaning in the United States. Since the decision to get married is an intensely personal choice, it is impossible to enumerate all of the reasons why couples decide to marry, or to define or quantify the significance of the marital relationship across all communities in the United States. While the social, cultural, and religious meanings of marriage may vary, its legal implications cross all boundaries. Every state and the District of Columbia permit the right to be legally married under various conditions.² Once married, a couple is entitled to specific benefits and protections. The couple is also subject to specific rules regulating the termination of their marriage, whether through divorce or because one of them dies. These benefits and protections are derived from both state and federal law. With some exceptions, all states and the District of Columbia recognize marriages formed in other states and foreign countries.³

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

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

Regardless of their individual circumstances, each same-sex couple faces specific financial hardships because of discrimination in state and federal civil marriage laws.

² State law has historically limited the right of individuals to marry close relatives, imposed age and competency limitations on the ability to marry, and has denied couples the right to marry if one or both members of the couple are already married.

³ In addition to limiting the definition of marriage for purposes of all federal laws to marriages between individuals of the opposite sex, the federal Defense of Marriage Act gives states the permission to disregard marriages between two same-sex individuals formed under the laws of any other state. DEFENSE OF MARRIAGE ACT, 110 Stat. 2419 (1996), amending Chap. 115 of Title 28, signed into law by President William Jefferson Clinton, September 21, 1996. Many states have passed similar statutes, which prohibit the state from recognizing the marriage of a same-sex couple that was married in any other state where same-sex couples may legally marry. Connecticut has not passed such a statute.



In order to learn about the economic issues faced by actual Connecticut residents, several same-sex couples were interviewed. These couples live in various parts of the state, and have different income levels and educational backgrounds. Some are parents of young children, some have adult children and some are approaching retirement age. Regardless of their individual circumstances, each same-sex couple faces specific financial hardships because of discrimination in state and federal civil marriage laws.

ECONOMIC BENEFITS OF MARRIAGE

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

Background

Eligibility for over 1,138 federal protections, rights and benefits are contingent upon marital status. Same-sex couples are denied these protections, rights and benefits, and are denied equal treatment under Social Security policy, federal tax laws, immigration policy, and other federal legislation that allows married couples to protect their families, like the Family and Medical Leave Act.

Same-sex couples are denied equal treatment under Social Security policy, federal tax laws, immigration policy, and other federal legislation that allows married couples to protect their families, like the Family and Medical Leave Act.

Given the passage of the federal Defense of Marriage Act (DOMA) in 1996, in the short run same-sex marriages performed in any state will not be recognized by federal bureaucracies. However, it has been argued that DOMA is unconstitutional, and it is possible that in the future it will be struck down or repealed. It is also possible that a President and Congress more supportive of equal rights for lesbian, gay, bisexual, and transgender people will afford these federal protections to married same-sex couples.

FEDERAL AND CONNECTICUT INCOME TAX LAW

There is a strong presumption under federal tax law to treat married couples as an economic unit. A primary example is the fact that married couples can file a joint income tax return, combining their income and expenses and paying taxes based on rates applicable specifically to married couples. Whether the overall tax liability of a couple filing a joint return or two individual returns will be lower or higher depends on the couple's economic circumstances. Generally, when two individuals have roughly the same income, they will pay slightly more taxes filing



a joint return than they would if they filed two individual returns. This is the so-called “marriage penalty,” which recently enacted federal tax law has begun to phase out.

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

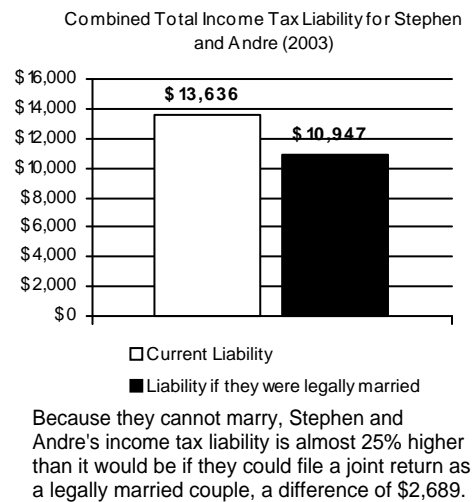
Federal tax law also provides some direct statutory subsidies to married couples. For example, an individual is entitled to pay for his or her portion of an employer-provided health insurance plan out of pre-tax dollars. If the individual’s employer also provides benefits to his or her family members, the portion of the individual’s health insurance payments attributable to his or her spouse’s health insurance and paid by the employer is excluded from the individual’s taxable income. In contrast, if an individual’s employer provides health insurance benefits to domestic partners, unless the domestic partner is the employee’s dependent for federal tax purposes, an employee will pay taxes on the imputed value of the employer’s contribution to the domestic partner’s medical benefits.

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

Example: Stephen Rinaldi & Andre Kreft

Stephen Rinaldi and Andre Kreft are a same-sex couple living in Connecticut. They have been together for five years. Stephen, 51 years old, works full time as an eligibility services supervisor for the State of Connecticut Department of Social Services. Based on his base pay, he earned nearly \$64,000 in 2003. Andre, 50 years old, earned roughly \$11,000 in 2003 as a visual artist and substitute teacher. Thankfully, the couple has health insurance through Stephen’s employer, which offers domestic partnership benefits. However, because they can not legally marry and file jointly, Stephen and Andre will pay almost 25% more each year in taxes than a similar, opposite-sex married couple.

Because they are unable to legally marry, Stephen and Andre are each classified as a single person living in Connecticut. Stephen incurs a federal income tax



liability of \$10,404, and a Connecticut state income tax liability of \$2,909.⁴ Andre incurs \$323 in federal income tax liability for 2003 and no Connecticut income tax liability. Combined, their overall federal and state income tax burden is \$13,636.

If Stephen and Andre were in a marriage recognized under Connecticut and federal law and they were able to file joint federal and state income tax returns, they would incur a federal income tax liability of \$8,014 and a Connecticut liability of \$2,933, totaling \$10,947. However, because they are unable to file a joint return and must each file a single filer return, Stephen and Andre's overall income tax liability is \$2,689 higher, almost 25% more, than it would be if they could file a joint return as a married couple.

SOCIAL SECURITY

Social Security is a primary source of subsistence for many elderly people in the United States. The benefits provided under the Social Security system change depending on the marital status of the recipient. For example:

- An individual can claim Social Security benefits based on his or her spouse's earning history.
- A widow or widower can receive additional benefits upon the death of his or her spouse.
- The spouse of a disabled individual eligible for Social Security may claim additional benefits if that spouse is raising the disabled individual's young child.
- A spouse who is at least 62 years old may claim additional benefits based on his or her spouse's disability.

SOCIAL SECURITY RETIREMENT BENEFITS BASED ON SPOUSAL EARNINGS

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

Example: Lawrence B & Daniel R.

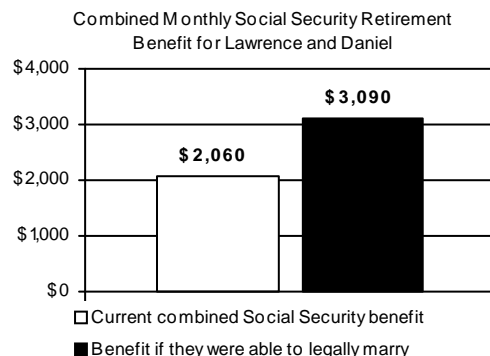
Lawrence, 40, and Daniel, 43, are Connecticut residents who have been in a relationship for 22 years. Together, they have three adopted children. Lawrence

⁴ These calculations are based on 2003 tax rates. Calculations assume that all income earned by the couple is wage income.



works as an attorney and Daniel is a stay-at-home father. Because they are unable to legally marry, the Social Security benefits they will receive upon their retirement will be 50% less per month than the amount they would receive if they could legally marry.

As a full-time parent, Daniel currently has no income. Individuals become eligible to receive Social Security benefits as a result of having earned a specific amount of wage income over a specific period of time. If Daniel's employment prior to becoming a full-time parent is not sufficient to make him eligible to receive Social Security benefits, he will not be eligible for them if he continues to stay at home earning no income. Lawrence, in contrast, currently earns approximately \$95,000 in wage income. Based on this income, a rough estimate of his monthly Social Security benefit at his full retirement age is \$2,060 per month.⁵ This would be the total monthly Social Security benefits they would be entitled to upon retirement if their current circumstances do not change.



Upon retirement, Lawrence and Daniel's combined monthly Social Security retirement benefit would be 50% higher if they were able to legally marry.

If Lawrence and Daniel were legally married under state and federal law, upon Lawrence reaching retirement age, Daniel would be entitled to receive benefits based on Lawrence's employment record in the amount of one half of Lawrence's benefits. This would amount to a monthly payment of \$1,030. Combined, the couple's benefit would be \$3,090 per month, which is 50% higher than the combined benefit they are currently entitled to receive because they can not marry.

SOCIAL SECURITY SURVIVOR BENEFITS

A portion of all Social Security tax payments goes towards survivors' insurance, which provides support to surviving spouses of heterosexual marriages. According to the Social Security Administration, there are about 5 million widows and widowers receiving monthly Social Security benefits based on their deceased spouse's income history.⁶ Everyone who pays Social Security taxes, including single individuals and unmarried couples, contributes toward this benefit.

A surviving spouse who is not disabled can receive 100% of his or her spouse's full retirement benefit upon reaching his or her full retirement age (or 71.5% of that amount if the surviving spouse elects to receive benefits at age 60).

⁵ This is an estimate that makes assumptions about future earnings based on current earnings. Amounts in this section are expressed in today's dollars. Calculations of Social Security benefits were made using the Social Security benefits calculators on the Social Security Administration's website, available at <http://www.ssa.gov>.

⁶ For more information, see <http://www.ssa.gov>



- Disabled surviving spouses can receive benefits as early as age 50. A surviving spouse is also entitled to receive a one-time death benefit of \$255.
- A surviving spouse can receive survivor benefits no matter what his or her age, as long as he or she takes care of a deceased spouse's child who is under 16 or disabled, and who receives benefits based on the deceased spouse's earnings record.
- An unmarried person whose former spouse dies can receive full spousal benefits as long as the marriage to the former spouse lasted at least 10 years.

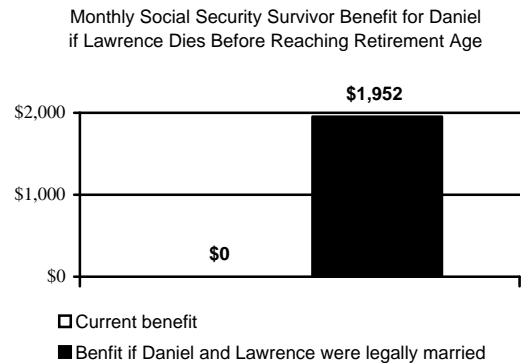
However, none of these benefits are available to same-sex couples, regardless of how long they have been together.

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

Example: Lawrence & Daniel

As discussed in the preceding example, without any current income, Daniel may not be entitled to receive Social Security benefits based solely on his own earnings when he reaches full retirement age. Unfortunately, he will also not be able to receive any Social Security survivor benefits upon Lawrence's death.

However, if Lawrence and Daniel were legally married and Lawrence died today, Daniel would be entitled to receive benefits based on Lawrence's income history, which would amount to \$1,952 per month, even if Daniel were not entitled to receive benefits based solely on his own earnings. If Lawrence died upon reaching full retirement age, the benefit would increase to \$2,060 per month, which is the amount discussed in the preceding example.⁷ Additionally, Daniel would be entitled to receive a one-time death benefit of \$255. Alternatively, if Daniel was disabled and their marriage was recognized by the Social Security Administration, he could receive benefits based on Lawrence's earnings as early as age 50.



If Lawrence and Daniel were able to legally marry prior to Lawrence's death, Daniel's monthly Social Security survivor benefit would be \$1,952. Since they can not marry his current benefit is \$0.

⁷ Different rules would apply in the event Daniel remarried.



GIFT TAX

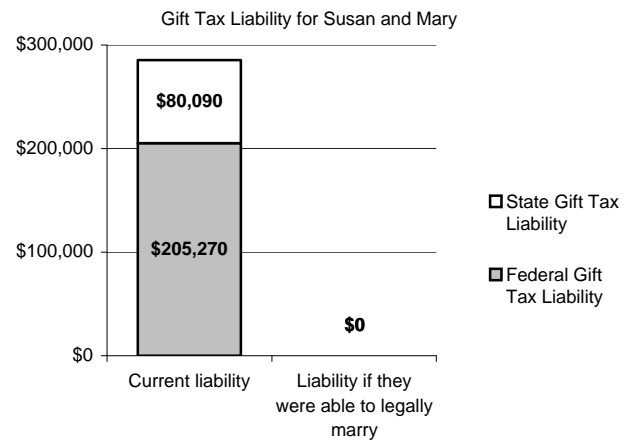
Married heterosexual couples can transfer most assets to each other without having to pay taxes whether those transfers are made while they are alive, in the form of gift, or after one of them dies, in the form of an estate. Same-sex couples are not entitled to this benefit, and any transfer of an asset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

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

Connecticut residents are also subject to gift tax for gifts of intangible property, such as cash, or for gifts of real or tangible personal property located in Connecticut if the amount or value of all taxable gifts made by the resident in a year exceeds \$25,000. Like the federal law, the Connecticut gift tax law permits an exclusion from tax for each gift made to a donee that does not exceed \$11,000 in amount or value. Similar to federal law, Connecticut generally excludes gifts between spouses from gift tax, but does not provide this benefit for same-sex partners. Unlike federal law, Connecticut does not permit a lifetime exclusion from gift tax liability for gifts totaling up to \$1,000,000.

Hypothetical Example: Susan & Mary

Susan D. and Mary L. have been together for six years. Susan's father died several years ago, and upon the death of her mother, she inherited the family home and some investment assets worth \$3,000,000 after taxes. Susan sold the house in late 2003, and invested both the proceeds from the sale of the house and the investment assets in a mutual fund jointly held by her and Mary. Since she never gave sizable gifts to Mary previously (or to anyone else), Susan has not used up any of her \$1,000,000 lifetime gift tax exclusion as defined by federal law. However, because they are unable to legally marry, Susan's gift tax liability under federal and Connecticut law will be \$285,360.



If Susan and Mary were able to legally marry, Susan could transfer an unlimited amount of her inheritance to Mary without paying a gift tax. Since they can not legally marry, Susan's current combined gift tax liability is \$285,360.



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

There will also be gift tax in Connecticut on this gift since Susan and Mary are not married and Susan's gifts in this year exceed \$25,000. Since Susan is entitled to an annual exclusion for gifts to Mary of \$11,000, \$1,489,000 of the gift will be subject to gift tax. There is no lifetime gift tax credit in Connecticut as there is under federal law. The Connecticut state gift tax on this gift will be \$80,090, making the combined federal and Connecticut state gift tax on this gift of \$285,360.

Alternatively, Susan could transfer all of the money to Mary through a complicated procedure that married heterosexual couples do not have to undergo. For example, to avoid federal gift tax, she could make a tax-free gift of only \$1,011,000 to Mary in the same year she receives the proceeds from the sale of the family home. Then, she could make annual gifts to Mary of \$11,000 for the next 44 years—presuming they both live that long and that the annual exclusion remains \$11,000—in order to transfer the full \$1,500,000 without having to pay a federal gift tax. Using this procedure, Susan would still have to pay Connecticut gift tax in the first year on the \$1,011,000 transfer, because Connecticut does not have a \$1,000,000 life time gift tax exclusion. To avoid both federal and Connecticut gift tax, Susan would be permitted to transfer only \$11,000 each year on a tax free basis, and thus it would take over 136 years to transfer the full \$1,500,000 without having to pay gift tax.

In contrast, if Susan and Mary were able to legally marry under Connecticut and federal law, Susan could make the transfer of \$1,500,000 without having to pay either federal or Connecticut gift tax. Additionally, she would not use up any of her \$1,000,000 lifetime gift tax exclusion. This would allow her to use this exclusion to make tax-free gifts to other people in the future, including her children.

ESTATE TAX

When someone who is married dies, his or her spouse is entitled to a reduction in federal estate tax liability. The transfer of an estate to the surviving spouse of an opposite-sex marriage occurs tax-free. All other transfers at death are potentially subject to an estate tax. However, only estates that exceed a certain value are subject to federal estate tax. For those who died in 2004, this amount is



\$1,500,000. Any value of an estate in excess of this amount is subject to the estate tax at a maximum rate of 48%.

Individuals who must pay an estate tax are generally entitled to a credit based on all or a portion of the estate tax paid to a state. Connecticut has an estate tax, which is a tax on the decedent’s estate, and also a succession tax, which is a tax on amounts passing to the beneficiaries of the estate. The Connecticut estate tax is reduced by the amount of the succession tax. Like the federal estate tax, Connecticut subsidizes married couples by permitting a full marital deduction for amounts passing from a decedent to his or her spouse. This means that an estate passing from a person to his or her spouse is not subject to the Connecticut estate tax. Additionally, no succession tax is imposed on amounts that pass to a spouse. This benefit is not available to same-sex couples in Connecticut.

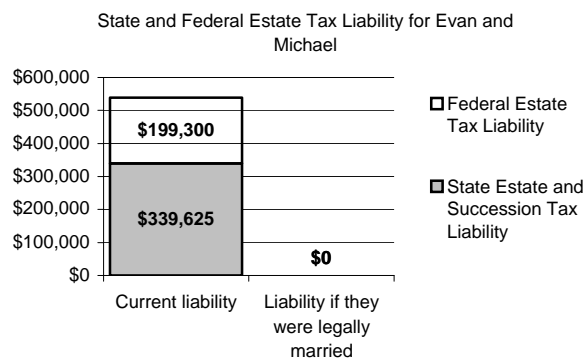
Hypothetical Example: Evan & Michael

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

Together, Evan and Michael had nominal savings, and their biggest asset was the farmland itself. When Michael inherited the farm, its fair market value was \$350,000. Since that time, property values have risen considerably in that part of Connecticut as a result of wealthy individuals from New York City purchasing and building second homes. In fact, the farm is currently worth \$2,000,000.

Michael died in late 2004, and left the farm and its business to Evan in his will, who would like to continue living on the farm and operate the dairy business, especially since the farm has been his home for 25 years and a source of income for two years. However, to keep the farm, Michael’s estate will have to pay significant estate taxes on its full value as part of his partner’s estate for a total of \$538,000.

After the applicable credit for payment of Connecticut estate and succession taxes, the tax on Michael’s estate will be \$199,300.⁸ Under current Connecticut law, Michael’s estate is not entitled to a marital deduction for the amount transferred to



If Evan and Michael were able to legally marry before Michael's death, the farm would have transferred to Evan free of federal and Connecticut estate tax. Since they could not legally marry, Evan must pay \$538,925 or lose the farm.

⁸ These calculations assume that the amount of any additional assets in Michael’s estate is equal to Michael’s liabilities at the time of death, including his funeral expenses and any other deductible expenses.

Evan, since at the time of Michael's death Evan and Michael were not and could not be legally married. Further, since Michael and Evan are not legally married, the highest Connecticut succession tax rates apply to the transfer of the farm to Evan. Consequently, the combined Connecticut estate and succession tax on Michael's transfer of the farm to Evan will be \$339,625, and the combined state and federal estate tax will be \$538,925.

If Evan cannot come up with the money to pay the estate tax, the farm he and Michael lived on together for 25 years will have to be sold. He literally will lose the farm. If Michael and Evan were able to legally marry before Michael died, and that marriage was recognized under federal and Connecticut law, the farm would pass to Evan completely free of federal and Connecticut estate tax.

WORKERS' COMPENSATION BENEFITS

Connecticut employers generally are required by law to provide workers' compensation insurance to all employees. These benefits protect workers who are injured on the job or who develop a work-related illness. Benefits are based on a percentage of the average weekly wages of the employee. The benefits are subject to a cap based on a periodic averaging of the wages of employees covered by workers' compensation in Connecticut. For injuries occurring on or after October 1, 2004, this cap is \$931.00 per week. In the case of a statutorily-designated injury that results in total incapacity to work, an eligible employee is entitled to receive 75% of the amount of his or her average weekly earnings after federal and state taxes and FICA, subject to the \$931.00 per week cap.⁹

If an employee's accidental injury arising out of and in the course of employment or from an occupational disease leads to his or her death, and the employee lives with a spouse and has no other dependents, the deceased employee's spouse is entitled to a weekly benefit equal to 75% of the employee's average weekly earnings after deduction for taxes (essentially 75% of the deceased's take home pay). This benefit is subject to a cap of \$931.00 per week until the surviving spouse's death or remarriage, and is also subject to cost of living adjustments.

Since a spouse with whom the employee lives is considered a presumptive dependent, this spouse is entitled to this benefit regardless of whether the spouse is actually dependent on the employee. A spouse is also considered a presumptive dependent if the spouse receives regular support from the employee, even if the employee and spouse are not living together at the time of injury. If the employee has other presumptive dependents or actual dependents, this amount may be divided up among those individuals. A same-sex partner is not considered a presumptive dependent under any circumstances. Further, it is not clear whether a same-sex partner could ever be considered an actual dependent, since "dependents" are defined by reference to the employee's "family" and

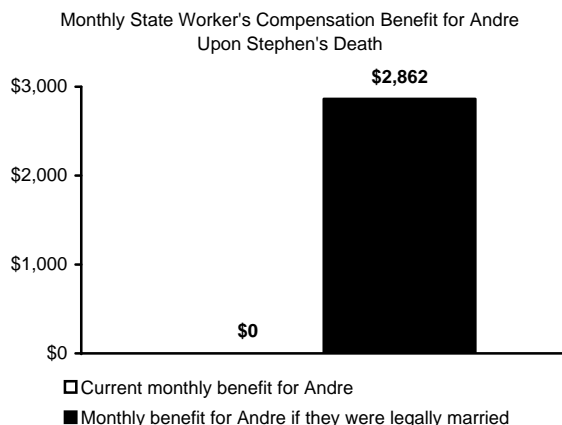
⁹ The minimum weekly payment is 20% of the maximum weekly payment, or \$186.20, but in no event exceeding 75% of the employee's average weekly wage.



Connecticut has not yet taken the position that an individual's same-sex partner may be considered part of the individual's family for purposes of workers' compensation.¹⁰

Example: Stephen & Andre

As discussed earlier, Stephen earns approximately \$64,000 per year, or approximately \$1,230 per week. If he were permanently disabled because of an accident that occurred while he was working, he would receive a life-time benefit of roughly \$660 per week in workers' compensation benefits.¹¹ If he and Andre were legally married under Connecticut law, and he were to die as a result of his injury, Andre would receive \$660 per week (\$2,862 per month) until the time that he either remarries or dies. However, since they can not legally marry, Andre will not be eligible to receive any of the benefits afforded to similar heterosexual couples.



If Stephen died as a result of an injury at work, Andre would receive \$2,862 per month in worker's compensation benefits if they were legally married. Since they can not legally marry, Andre would currently receive \$0.

CONNECTICUT ESTATE LAW

Under Connecticut law, a surviving spouse is entitled to a portion of his or her spouse's estate if that spouse dies without a will. If the decedent has no "issue," such as children or grandchildren, and no surviving parent, the decedent's spouse is entitled to the full value of the estate. If the decedent has issue who are also the issue of the surviving spouse, the surviving spouse is entitled to the first \$100,000 of the estate, plus one-half of the balance. If the deceased has at least one surviving issue that is not issue of the surviving spouse, the surviving spouse is entitled to one-half of the entire estate. Finally, if the deceased has no issue at all, but at least one surviving parent, the surviving spouse is entitled to the first \$100,000 of the estate, plus three-fourths of the balance.

Connecticut also has rules that may give a surviving spouse rights to the deceased's estate's assets if the deceased's will does not provide for the surviving spouse, and the surviving spouse married the deceased after the deceased wrote his or her will. Finally, Connecticut law may permit a surviving spouse to live in the family home and even take distributions from the deceased's estate for living expenses during the administration of the estate. None of these legal protections are available to same-sex partners.

¹⁰ In fact, correspondence with the Connecticut Workers' Compensation Commission confirms that Connecticut takes the position that a same-sex partner—or any unmarried partner for that matter—does not come within the meaning of "family" for these purposes.

¹¹ This is 75% of Stephen's weekly pay after federal and state taxes and FICA.



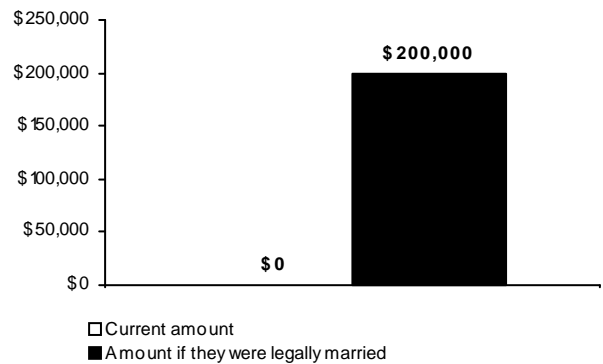
Hypothetical Example: Cynthia & Pilar

Cynthia and Pilar were in a committed relationship for 15 years at the time of Cynthia's death. Cynthia had two adult children. Both were retired and living primarily on Social Security. Cynthia's entire estate includes the house she owned, in which she and Pilar lived together for 15 years, and savings of \$200,000. The house is worth \$210,000.¹² Although Cynthia wanted Pilar to keep their home after her death, Cynthia could not afford to pay the legal expenses of drafting a will, so there is no legal document with specific directions for her estate.

Without a will, Cynthia is considered to have died "intestate." Because Cynthia and Pilar could not legally marry, Pilar has no legal right to any of Cynthia's assets. Under the intestate succession rules in Connecticut, the house and the savings account will pass to Cynthia's children. In fact, Pilar has no legal right to remain living in the house, or to any of the assets in Cynthia's estate. Even if Cynthia had no children and no other surviving relatives, no portion of Cynthia's estate would pass to Pilar under Connecticut law.

If Cynthia and Pilar were able to legally marry before Cynthia died, Pilar would automatically be entitled to one half of Cynthia's entire estate. If Cynthia had no children and no other surviving relatives, Pilar would receive the full value of the estate.

Amount of Cynthia's Estate Automatically Conferred to Pilar When Cynthia Died



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

BENEFITS FOR CONNECTICUT PUBLIC EMPLOYEES

Connecticut public employees are entitled to numerous death and retirement benefits. For example, the spouse of a police officer that is not eligible for Social Security benefits and who dies prior to retirement is entitled to a monthly allowance of \$550 for life or until remarriage.¹³ This benefit is not available under Connecticut law for same-sex partners. Further, if any Connecticut state employee, officer or legislator dies as a result of an injury sustained on the job, and the injury is not the fault of the employee, the employee's surviving spouse is entitled to \$50,000 payable in equal monthly installments over a period of at least 10 years. If the employee also has dependent or minor children, the amount is \$100,000 plus \$50 per month for each dependent minor child until the spouse

¹² Under U.S. estate tax law, this is not a taxable estate. Connecticut succession tax, however, likely would be imposed on any amounts passing to Pilar.

¹³ This is subject to an upward adjustment if there is an increase in the cost of living.



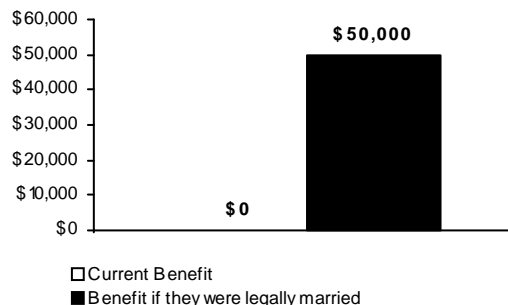
remarries or dies. This benefit is also unavailable under Connecticut law for same-sex couples.

Hypothetical Example: Anita & Carla

Anita and Carla work for the Connecticut Department of Revenue Services, and have been together since they met in college. In 2004, Anita died in a car accident while performing her work duties.

If Anita and Carla had been married at the time of Anita's death, Carla would be entitled to receive \$50,000 over a ten-year period until such time as Carla remarries or dies. However, since they are unable to legally marry, Carla would be entitled to no payment whatsoever.

Benefit Carla Would Receive if Anita Died While on the Job



If Carla and Anita were able to legally marry before Anita died while working on the job, Carla would have received \$50,000 payable over ten years. Since they could not legally marry, Carla received nothing.

AGGREGATE LIFETIME ECONOMIC DETRIMENT TO STEPHEN AND ANDRE

This study demonstrates the economic harm felt by lesbian, gay, bisexual, and transgender individuals living in Connecticut because of their inability to form a same-sex marriage recognized under federal and Connecticut state law. As significant as these examples are, they do not show the whole picture. For example, although the harm to Stephen Rinaldi and Andre Kreft in 2003 caused by their inability to file jointly on their income tax return is significant, it is important to recognize that this will continue throughout their lifetime absent the ability to legally marry. Likewise, the economic hardship experienced by Lawrence B. and Daniel R. because Daniel would not be entitled to receive Social Security spousal retirement or survivor benefits upon Lawrence's death will also continue and aggregate over their lifetimes.

In order to provide an example of this lifetime impact, the following shows the expected impact over the rest of their lives to Stephen and Andre in light of their inability to enter into a legally recognized marriage. It shows the additional tax they will have to pay for each year from 2003 until their retirements, and also includes the impact of being denied the Social Security spousal and survivor benefits they would receive if they were able to legally marry.

Further, although Stephen and Andre currently do not have sufficient assets to have an estate that is taxable under federal or Connecticut law, the following also includes a hypothetical example of the impact of their inability to pass assets in a tax-free manner upon the death of the first of them to die, a benefit that is available to opposite-sex married couples.



INCOME TAX

Between 2003 and 2019, based on their current earnings and based on Stephen retiring in 2019 at age 66, his full retirement age, and Andre retiring in 2020 at age 66, his full retirement age, Stephen and Andre will pay \$43,873 in additional federal and Connecticut income tax because they are unable to enter into a legally recognized marriage.¹⁴

SOCIAL SECURITY SPOUSAL BENEFITS

As discussed previously, a spouse can receive Social Security retirement benefits equal to the greater of the benefits he or she is entitled to receive. This is based on his or her own earnings record or the spousal benefit, which is one half of his or her spouse's retirement benefits. Stephen will be able to receive full retirement benefits in 2019 when he turns 66, which will be \$1,689 per month. Andre can receive full retirement benefits in 2020 when he reaches age 66. Under current law, however, Andre will not be entitled to the spousal benefit based on one half of Stephen's earnings when he reaches 66 because they are not able to enter into a legally recognized marriage.

Based on his current earnings, Andre's monthly retirement benefit will be \$617. This is \$228 less than the spousal benefit of \$845 that he would be able to receive if he and Stephen were legally married. Between the time he would be entitled to this benefit in mid-2020 and Stephen's death, he will suffer an economic detriment because he and Stephen can not legally marry. Assuming Stephen dies at 73 years of age,¹⁵ for the six and a half years between the date that Andre begins receiving Social Security retirement benefits and the assumed date of Stephen's death, Andre will receive \$16,416 less in Social Security spousal benefits than he would receive if he and Stephen were married.¹⁶

SOCIAL SECURITY SURVIVOR BENEFITS

As discussed in more detail earlier in this study, married individuals are entitled to survivor benefits under the Social Security system, which are based on their

¹⁴ For the sake of simplicity, this assumes 2003 rates are in effect in subsequent years and that Stephen and Andre continue to earn the same income they currently earn until their retirement. These numbers also assume that neither Stephen nor Andre will earn income other than Social Security benefits after they retire.

¹⁵ Stephen's date of death is assumed based on 1990 IRS Life Expectancy tables. Under these tables, given a couple comprised of a 50 and a 51 year old individual, one is expected to die in roughly 22 years and the other in roughly 35 years. For purposes of this study, it is assumed that Stephen will die first.

¹⁶ The numbers in this section assume that Social Security benefits upon Stephen's and Andre's retirements will be equal to those available under current law. These numbers are also estimates based on assumptions about future earnings, which in turn are based on current earnings. Amounts are expressed in 2004 dollars.



deceased spouse's Social Security entitlements. This is an important benefit to an individual whose spouse earned greater amounts through his or her lifetime. This is because the surviving spouse is entitled to the greater of his or her own Social Security retirement benefit or the Social Security survivor benefit. An individual in a same-sex relationship is not entitled to this benefit upon the death of his or her partner and may have to rely solely on his or her own Social Security retirement benefits.

If Stephen and Andre were legally married, upon Stephen's death at the assumed age of 73, Andre would be entitled to receive Social Security survivor benefits. Based on his earnings to date, the amount of survivor benefits his survivors are entitled to is \$1,589 per month, or \$19,068 per year plus a one-time death benefit of \$255. However, since they are not able to enter into a legally recognized marriage, Andre will receive only his regular Social Security retirement benefits, which is just \$7,404 per year. If Andre dies when he is 85, this amount will grow to a detriment of \$151,887.¹⁷

Estate Taxes: A Hypothetical Example

As discussed above, Stephen and Andre do not currently have a taxable estate. However, assuming they did for illustrative purposes, the earlier discussion about the impact of estate tax would apply to Stephen and Andre, who would consequently face a significant economic disadvantage because they are unable to legally marry. Assuming that Michael and Evan's situation were to apply to Stephen and Andre (i.e., Stephen dies and leaves to Andre the family farm), Andre would be required to pay a combined federal and Connecticut estate and succession tax of \$538,925 on an estate of \$2 million.¹⁸ There would be no tax if they were legally married.

AGGREGATE LIFETIME DETRIMENT

The aggregate lifetime detriment to Stephen and Andre because they are unable to legally marry is significant (see Table 1). As a result of the impact of federal and Connecticut state income tax law and Social Security spousal and survivor benefit law between 2003 and the time of their deaths, Stephen and Andre will have \$212,176 less than they would if they were able to legally marry.¹⁹

¹⁷ In comparing benefits currently available to Andre to those that would be available if Andre and Stephen were married at the time of Stephen's death, these numbers assume Andre does not remarry. Further, the numbers in this section make assumptions similar to those in the preceding section about Social Security spousal benefits.

¹⁸ The numbers in this section assume the federal and Connecticut estate tax laws and rates applicable in December, 2004, will apply.

¹⁹ These amounts are not present valued and assume no earnings on additional amounts Stephen and Andre might have if they were able to enter into a marriage that is legally recognized under Federal and Connecticut law.



This loss increases even more significantly when we add a hypothetical liability based on federal and Connecticut state estate tax law, which would add an additional \$538,925. Consequently, the total aggregate lifetime detriment to Stephen and Andre because they are unable to legally marry adds up to \$751,101. This reflects the loss in 2004 dollars and excludes returns on reinvestment of saved tax dollars. Were we to include investment returns on these saved tax dollars, the financial disadvantage would be even larger.

| Table 1: Aggregate Lifetime Economic Detriment to Stephen and Andre | | |
|---|------------------|--------------------|
| | Annual Liability | Lifetime Liability |
| Income Tax | \$2,689 | \$43,873 |
| Social Security Spousal Benefits | \$2,736 | \$16,416 |
| Social Security Survivor Benefits | \$19,068 | \$151,887 |
| Aggregate lifetime liability: | | \$212,176 |
| Estate Taxes (hypothetical) | | \$538,925 |
| Aggregate lifetime liability including hypothetical estate tax: | | \$751,101 |

CONCLUSION

Without the right to legally marry under Connecticut law, same-sex couples are denied numerous protections, rights, and benefits that have a significant economic impact. Additionally, many same-sex couples interviewed in Connecticut incurred legal costs in areas as diverse as documenting joint property purchases and granting power of attorney to make medical decisions. These are costs that they would not have had to incur had they been able to legally marry.

The 2000 U.S. Census found that almost 8,000 same-sex couples live in Connecticut.²⁰ This is likely a significant undercount. Twenty-five percent of those same-sex households report the presence of at least one child under the age of 18.²¹ When Connecticut and the U.S. government respect and legally recognize the marital relationships of same-sex couples, these couples will pay a more equitable share of the tax burden and receive a more equitable share of benefits from the Social Security system that they pay into their entire lives. These benefits and protections make it easier for same-sex partners to care for each other when they are sick or elderly, and make it more likely that their children have access to vital financial support should one or both parents die. Allowing same-sex couples to marry harms no one, and provides them and their children with access to benefits and programs designed by the government to promote family stability and financial security.

Allowing same-sex couples to marry harms no one, and provides them and their children with access to benefits and programs designed by the government to promote family stability and financial security.

²⁰ Bradford, J., Barrett, K. & Honnold, J. A. (2002). *The 2000 Census and same-sex households: A user's guide*. New York: The National Gay and Lesbian Task Force Policy Institute, the Survey and Evaluation Research Laboratory, and the Fenway Institute.

²¹ Gate, G. J. & Ost, J. (2004). *The gay & lesbian atlas*. Washington, DC: The Urban Institute Press.



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