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The Impact of Creating Civil Unions for Same-Sex Couples on Delaware's Budget

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EXECUTIVE SUMMARY

Recognizing civil unions between same-sex partners in Delaware would increase net expenditures in the state budget by a small average of \$430,000 per year, for a total of \$1.18 million in additional costs over three years.

This analysis by UCLA's Williams Institute estimates the impact on Delaware's state budget of introducing civil union rights for same-sex couples. Using the best data available, we estimate that a law recognizing civil unions between same-sex partners will cost the State \$1.18 million over the three years following the measure, or only \$390,000 per year. The costs and benefits accrued will change every year, as the number of same-sex couples entering civil unions each year will change. Overall, the State will see a loss of \$93,000 in the first year after offering civil unions (Year 1), \$460,000 in the second year (Year 2) and \$630,500 in the third year (Year 3). The State will see savings in expenditures on state means-tested public benefit programs, and an increase in state license fees and spending and tourism revenues. These savings will be outweighed by losses in estate tax, income tax, and transfer tax revenues and increased expenditures on state employee benefits. The annual effect is a tiny fraction—on average a mere one hundredth of one percent—of the State of Delaware's annual \$3.3 billion budget over three years (based on the FY11 budget).

We base this analysis on the following estimates:

Approximately 750 of same-sex couples would form civil unions that would be recognized in Delaware in the first three years.

According to 2009 American Community Survey Data, Delaware has 2,677 same-sex couples. Based on the experiences of other states, we estimate that 28 percent of same-sex couples will enter a civil union over the next three years. In Year 1, 450 couples will enter a civil union, 193 couples will enter a civil union in Year 2, and 152 couples will enter a civil union in Year 3. Over a three year period, we predict that the State will recognize the civil unions of 750 same-sex couples.

Income tax revenues will fall slightly when same-sex couples may file jointly.

Delaware allows its married taxpayers to file either jointly or separately. We conservatively estimate that only those taxpayers whose taxes will fall will file jointly, and that the remaining partners will file separately and see no changes in the tax they owe before and after entering a civil union. Overall, the net decrease in the State's income tax revenue will be approximately \$19,500 in Year 1, \$29,000 in Year 2 and \$36,000 in Year 3. This amounts to \$85,000 over three years.

Estate tax revenue will fall by a small amount.

When same-sex couples enter civil unions, it will enable same-sex partners to take advantage of the marital deduction when calculating estate tax owed to the State. Based on our most conservative estimates (that is, estimates which predict the highest drop in

taxes due to same-sex partners taking advantage of this deduction), we project that, at most, estate tax revenues will fall by approximately \$41,450 in Year 1, \$61,400 in Year 2 and \$76,750 in Year 3, that is, nearly \$180,000 over a 3 year period.

Transfer tax revenue will fall, but the amount is difficult to estimate.

In Delaware, a transfer tax is imposed on sales of real estate worth over \$100, at a rate between 1.5% and 2%, depending on municipal ordinances. Legal spouses are exempt from the transfer tax. Allowing same-sex couples to enter civil unions could lead to fewer impositions of transfer taxes, resulting in reduced revenue to the State. We conservatively estimate that the loss in state revenue would be \$258,129 over three years, or \$86,000 per year.

State tax revenues will rise as a result of new spending and tourism for civil union ceremonies.

Without taking into account civil unions of visiting, out of state couples, we estimate that Delaware same-sex couples would spend nearly \$3.4 million in civil union ceremony expenses over three years, which would generate \$21,000 in gross receipts tax revenues for the State. Out of state guests would generate an additional \$620,000 in state tax revenues. This would lead to a total increase in state tax revenues of \$641,000 over three years

The cost of State employee healthcare and retirement benefits will increase.

Delaware provides healthcare and retirement benefits to its employees. Employees are able to obtain coverage under these programs for legal spouses and dependent children. Thus, civil unions for same-sex couples would allow employees to obtain coverage for their same-sex partner and their partner's children. Drawing on state records regarding enrollment and expenditures, we calculate that annual state expenditures for healthcare and retirement benefits would increase by approximately \$1.6 million.

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

Civil Unions 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 partner's income and assets would be included in assessing an individual's eligibility for means-tested public benefits after entering a civil union. This will reduce the number of same-sex partners eligible for such benefits. We estimate that civil unions for same-sex couples will save the State \$248,000 in its spending on public benefit programs over three years, or \$57,000 in Year 1, \$85,000 in Year 2 and \$106,000 in Year 3.

Delaware will receive increased revenue from civil union license fees.

The fee for a marriage license in Delaware is \$50. We assume that civil union licenses would incur the same fee as a marriage license. In all, \$37,500 would be collected from these fees over three years.

Summary of three year impact of extending civil unions to same-sex couples

Type of Expenditure/Revenue	Year 1	Year 2	Year 3	Total Fiscal Impact on the Budget
Income Tax	(\$19,515)	(\$28,911)	(\$36,139)	(\$84,564)
Estate Tax	(\$41,445)	(\$61,400)	(\$76,750)	(\$179,595)
Transfer Tax	(\$86,043)	(\$86,043)	(\$86,043)	(\$258,129)
Spending and Tourism Revenue	\$346,121	\$166,651	\$128,193	\$640,965
State Employee Benefits	(\$369,697)	(\$544,751)	(\$673,448)	(\$1,587,897)
Public Assistance	\$57,313	\$84,908	\$106,135	\$248,355
Civil Union License Fees	\$20,250	\$9,750	\$7,500	\$37,500
TOTAL	(\$93,016)	(\$459,796)	(\$630,552)	(\$1,183,365)

INTRODUCTION

As of early 2011, Delaware does not allow for formal legal relationships for same-sex couples.¹ One potential concern about a proposal to allow same-sex couples to register their civil unions may be the fiscal impact of such a change. Civil unions would come with a variety of rights and obligations that might affect Delaware's expenditures and revenues. In other states, the budgetary effect of extending rights of marriage to same-sex couples has become a topic of discussion.² This study estimates the overall impact of civil unions for same-sex couples on the Delaware budget over the next 3 years.³

Assuming civil unions confer rights and responsibilities that are equivalent to marriage at the state level, allowing same-sex couples to enter civil unions will affect both state revenues and expenditures in various ways. The State may see changes in revenue from issuing civil union licenses or from changes in income tax, estate tax, taxes on spending and tourism or other tax payments. State expenditures may also be affected by civil unions, since legal relationship recognition will affect eligibility for public assistance and for state employee benefits.

Our analysis for Delaware relies in part on the same methods that we used in previous studies on California,⁴ Connecticut,⁵ Iowa,⁶ Maine,⁷ Maryland,⁸ New Mexico,⁹ New Hampshire,¹⁰ New Jersey,¹¹ Oregon,¹² Vermont,¹³ and Washington.¹⁴ 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*.¹⁵ In these studies, we have concluded that extending the rights and obligations of marriage (including through an

alternative status that has similar legal meaning) for same-sex couples would have a positive impact on each state's budget. Similar conclusions have been reached by legislative offices in Connecticut¹⁶ and Vermont¹⁷ and by the Comptroller General of New York.¹⁸ 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.¹⁹

Section I of this report estimates the number of same-sex couples in Delaware and the number of couples who will enter civil unions if allowed. In Section II, we present our predictions of the tax-based budgetary impact on the State, separating our analysis into each category of taxation that civil unions could affect. Section III outlines the costs of expanding benefits to the same-sex partners of state employees. In Section IV, we estimate the savings that civil unions will likely bring to Delaware's public benefits programs. In Section V, we discuss revenues from civil union licenses. Finally, we summarize the expected policy impact for each expenditure or revenue category we address.

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. We find that the net effect of allowing same-sex couples to enter civil unions will be a minimal cost to the state budget of \$1.18 million over the next three years. The annual effect

is a tiny fraction—on average a mere 0.01%, or one hundredth of one percent—of the State of Delaware’s annual \$3.3 billion budget over three years (based on the FY11 budget). The findings in this study depart from the pattern of earlier studies, mainly because Delaware does not currently provide any form of benefits for the same-sex partners of state employees.

1. The Number of Couples Affected

In order to assess the economic impact of extending civil unions to same-sex couples, we must first estimate the number of same-sex couples who will enter civil unions. We calculate the number of same-sex couples who will likely enter civil unions based upon data from states that have previously extended civil unions to same-sex couples.

According to 2009 American Community Survey (ACS) data, there are 2,677 cohabitating same-sex couples living in Delaware. Not all of these same-sex couples will choose to enter a civil union, even when the option is afforded to them. At the very least, the decision to enter a civil union is likely to include a weighing of the symbolic value of public and legal recognition of the relationship with the particular rights and responsibilities implied by the legal status of the union. We draw upon the experience of other states that have permitted civil unions between individuals of the same-sex or similar legal statuses to estimate the number of same-sex couples who might elect to enter a civil union in Delaware.

Since New Jersey neighbors Delaware and has allowed same-sex couples to

enter civil unions since 2007, we look to New Jersey for guidance on the number of civil unions between same-sex couples that will happen in Delaware over the next three years. In New Jersey, approximately 4,392 same-sex couples entered civil unions over three years. We therefore estimate that a little over 28% of New Jersey’s same-sex couples entered civil unions over three years.²⁰ This estimate is similar to detailed data regarding rates at which couples enter legally recognized unions in other states.²¹ Based on the experience of New Jersey, we predict that 28% of the same-sex couples in Delaware, or 750 couples, will enter civil unions over three years.

Note that not all of these couples will enter civil unions within the first year that these rights are recognized, an outcome that will affect the timing and degree of any fiscal impact. We use data from New Jersey to predict the timing and adjust our results throughout this report. Out of the total civil unions that have taken place in New Jersey in the three-year period following 2007, 54% of unions occurred in the first year, 26% in the second year, and 20% in the third year.²² Therefore, when calculating the impact in a given year, figures must be adjusted to reflect that timing. Should Delaware offer civil unions to same-sex couples, 54% of 750 same-sex couples will enter a civil union in the first year (Year 1) after Delaware offers these rights, or 405 couples, an additional 26% will enter a civil union in the second (Year 2), bringing us to 80% of 750, or 598 couples, and finally, all 750 couples will have entered a civil union by the end of the third year (Year 3).

II. Impact on Tax Revenues

Allowing same-sex couples in Delaware to enter civil unions could affect the State's taxes on income, property transfer, and inheritance. Because civil unions will also trigger an increase in taxable civil union ceremony spending by same-sex couples, we include the impact on Delaware's gross receipts tax revenues and tourism revenues in our analysis in this section.

A. Impact on Income Tax

Allowing same-sex couples in Delaware to enter civil unions will likely impact the income tax revenues collected by the State. Couples who enter civil unions will have the right to file their income tax returns jointly, just as different-sex married couples currently do. In Delaware, however, no marriage penalty exists. A married couple may choose to file separately, allowing each spouse to report only their own income, credits, deductions, and one half of income obtained from jointly held assets, even if the couple files a joint federal income tax form. We assume the same provisions apply to couples in civil unions. We therefore conservatively assume that a couple in a civil union who previously filed as head of household or single will combine their incomes and submit joint filings only when this will reduce the taxes they pay. We assume that the partners in the remaining couples continue to file taxes separately and pay the same in state income tax. On average, then, we find that 18% of Delaware's same-sex couples who enter civil unions will pay \$267 less in annual income taxes.

To estimate the net tax impact of allowing same-sex couples to file jointly, we use the income and household

characteristics of same-sex "unmarried partner" couples living in Delaware gathered by the ACS.²³

This dataset provides the income of each partner in households headed by same-sex couples. The data also report how much of the income is provided by public assistance, retirement benefits, and social security. The number of children under 18 living in the household of these same-sex couples is also provided.

For the sake of this analysis, we assume that the tax consequences of civil unions will have no impact on who chooses to enter civil unions as Delaware has no income tax marriage (or civil union) penalty. We make several other 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 the dataset, we conservatively assume that the householder filed as head of household and that the partner filed as single, whether or not the householder has more income.²⁴ Second, when the householder has no children living with him or her, we assume that both partners currently file as single and will file jointly if allowed to enter civil unions and if filing jointly causes the couple's taxes to fall.

We then applied the 2010 Delaware state tax schedule to calculate the taxes owed by each individual and couple, first when each partner files as single or as head of household (if children are present), and second when the couple files jointly, for those couples we assume will file jointly.

In Delaware, annual gross income consists of one's federal adjusted gross income (which does not include public

assistance income) minus social security income and, if one is over age 60, retirement, rental and investment income.²⁵ After calculating Delaware adjusted gross income, we took into account the following figures by which Delaware reduces taxable income on 2010 tax forms:²⁶

(a) A standard deduction of \$3250 for those filing singly, as head of household, or married filing separately, and \$6500 for couples filing jointly.

(b) An age deduction of \$2500 for the individual (if filing jointly, and/or his/her partner), if over the age of 65.

These figures represent the vast majority of the deductions in Delaware.²⁷ The resulting taxable income is taxed at a graduated rate, which changes depending on one's filing status. From the resulting taxes owed, we deduct \$110 per federal exemption (one exemption per individual, one per child, and one for a spouse if filing jointly).

Using these calculations, we estimate each couple's taxes before and after civil unions are allowed in 2010 dollars. First, we calculate what couples pay now when they file as a single individual or head of household. Then we estimate the tax payments for those couples filing

jointly. Using these estimates, we determine the difference between their pre- and post-joint filing taxes. We first calculate the difference first for each couple and then sum the individual differences for those couples whose taxes decrease. This gives us the net effect of civil unions for same-sex couples on the State's income tax revenue.

While our model estimates that approximately 71% of same-sex couples in Delaware would pay an average of \$471 more in taxes if they filed jointly, we assume that partners in these couples will file taxes separately, and that there will therefore be no change in the taxes they owe.²⁸ For 11% of couples, filing jointly would not impact their taxes; these couples may choose to file either separately or jointly. Finally, 18% of the 750 couples who would be in civil unions in Year 3 would see their taxes decrease, with an average decrease in taxes of \$267 for those couples.

Table 1 presents the average and total fall in income taxes. In total, the projected decrease in income tax revenue is \$19,500 in Year 1, \$29,000 in Year 2, and \$36,000 in Year 3. This amounts to total income tax losses of nearly \$85,000 over three years.

Table 1: Summary of Income Tax Revenue Calculations in Year 3

	Number of Couples = 18% of same-sex couples entering civil unions in that year	Loss in Income Tax Revenue
Year 1	73	(\$19,515)
Year 2	108	(\$28,911)
Year 3	135	(\$36,139)
Total		(\$84,564)

B. Impact on Estate Tax

Allowing same-sex couples to enter civil unions would likely affect the amount of revenue that the State collects from its estate tax. The estate tax is levied on property that passes from a decedent to her or his beneficiaries under a will or under the intestate laws of succession.²⁹ In Delaware, property passing to a legal spouse is exempt from taxation; such a testamentary transfer is unlimited in amount.

Property passing to unrelated individuals, such as legally unrecognized same-sex partners, is taxed based on the Delaware estate tax schedule, which sets a graduated rate between 0.8 and 16 percent. All estates obtain a \$3.5 million deduction, along with an additional \$60,000 federal adjustment deduction.³⁰ This amounts to a \$3.56 million deduction from the federal estate size.

Calculations of the impact of extending civil unions to same-sex couples on estate tax revenue are complicated. Same-sex couples will inevitably vary in terms of the size of their estates, the extent to which all or part of an estate is left to the surviving partner, the number of other beneficiaries, and the measures they may take to mitigate the taxation of estates that will be inherited by their partners. Unfortunately, we do not have detailed data that provides such information.

To estimate the estate tax from existing data we first calculate the rate at which same-sex partners who file estate taxes would take advantage of the partnership deduction if same-sex couples were allowed to enter civil unions. Then we use the most recent IRS data to estimate the impact on estate tax

revenues of allowing an individual to transfer property tax-free to a same-sex partner. Finally, we add up the amount of savings accruing to same-sex couples as a result of civil unions, which is a reduction in estate tax revenue for the State.

1. Rate at which Same-Sex Partners Pay Estate Tax

To calculate the total effect on the estate tax, we first estimate the rate at which same-sex partners would take advantage of the partner deduction. We first estimate the rate at which individuals who enter civil unions would file estate tax-returns in each year. We presume that such individuals would file tax returns at the same rate as the adult population.³¹ Based on our earlier prediction, we calculate there will be 1500 same-sex partners in civil unions in Year 3. The total number of adults (individuals over age 18) in Delaware is 678,358 according to 2009 ACS data. Presuming that only adults file tax returns, the rate at which same-sex partners will file a return is $1500/678,358$, or 0.2%.

2. Using IRS Tax Data to Calculate Estate Size and Estate Tax

In this Section, we first estimate the average estate size in certain Delaware estate tax brackets. Using this figure, we calculate the taxes paid by unmarried and married individuals who make spousal deductions in each bracket. We next determine the total number of same-sex partners in each bracket, and determine how much they would pay in estate tax before and after they are allowed to enter civil unions.

The most recent IRS data from 2009, collects tax information for those estates

over \$2 million, and includes a bracket for those estates over \$ 3.5 million, or \$3.568 million in 2010 dollars. This corresponds to the total Delaware estate deduction. Additionally, the IRS figures give us the total number of returns in various IRS income brackets over \$3.5 million. This allows us to calculate an average estate value. The data also provide us with the average deductions made in each bracket, including average deductions for probate and funeral expenses, attorney's fees, charitable contributions, and spousal bequests.

Calculating the average estate sizes of unmarried and married individuals from these data requires us to make a series of conservative assumptions.

First, the IRS data does not indicate the total number of married individuals filing the estate tax. We therefore assume that the number of individuals who file with a spousal bequest represents the total number of married individuals filing tax returns in the existing data. Since this method undercounts the number of married individuals filing tax returns, we will have a high estimate for the average spousal bequest, and overestimate the total amount the State would lose through same-sex individuals making partnership deductions.

Second, the data do not indicate the different rates at which married and unmarried individuals make charitable contributions. We must therefore assume that charitable deductions of non-married individuals are the same as those of married individuals, even

though this is not likely to be the case.³² As a result, we presume that unmarried individuals are taking a smaller charitable deduction than they actually are, and are therefore currently paying higher taxes to the State. In turn, we presume that individuals in marriages and civil unions are making vastly larger charitable deductions than they are, and as a result, are paying *no* taxes to the State.

Third, and most importantly, the data only allow us to calculate the *mean* estate at each level. As the 2007 Survey of Consumer Finances shows, the mean estate in American households in the top 10% income bracket is nearly *three times* that of the median wealth for the wealthiest 10%, which is the more appropriate figure for our calculations.³³ By taking the mean figure, we are once more greatly overestimating the estate taxes Delaware collects from unmarried individuals, and therefore the taxes it will lose by granting civil unions for same-sex couples.

To calculate the average taxable estate of an unmarried individual who has a same-sex partner, we subtract the total average deduction (not including the spousal deduction) from the average total estate at each level. We subtract the average spousal bequest from the result to determine the average taxable estate of a married individual, or an individual in a civil union. Our results for the average taxable estate for married and non-married but partnered individuals are displayed in Table 2.

Table 2: 2009 IRS Data in 2010 Dollars

IRS Estate Tax Bracket, Lower Limit	Average Estate in Bracket	Average Non-Married Taxable Estate in Bracket	Average Married Taxable Estate in Bracket
3,500,000	4,238,604	3,780,751	1,488,485
5,000,000	6,926,513	6,021,448	1,586,342
10,000,000	13,899,756	11,972,617	1,868,185
20,000,000	57,648,307	44,987,120	1,920,735

Table 3: Delaware Taxes Based on 2009 Data

Taxable Estate of Unmarried Persons	Unmarried Estates after Delaware \$3,560,000 deduction	Taxable estate of married individuals after spousal bequest	Calculation from Table B of Estate Tax Schedule	Tax on unmarried Persons Estate	Tax on married Persons Estate
3,780,751	220,751	1,488,485	1,200 plus 2.4% of amount over 140,000	6,498	0
6,021,448	2,461,448	1,586,342	106,800 plus 8% of amount over 2,040,000	303,716	0
11,972,617	8,412,617	1,868,185	786,800 plus 14.4% of amount over 8,040,000	907,942	0
44,987,120	41,427,120	1,920,735	1,082,800 plus 16% of amount over 10,040,000	7,711,139	0

In Table 3, we calculate the taxes assessed on the estates of unmarried and married individuals. First, we calculate the taxes assessed on unmarried persons' estates, after the \$3,560,000 deduction. As discussed above, according to the IRS data, the taxable estates of married persons, and therefore the estates of those in civil unions, fall below \$3,560,000 after the partner deduction because of our conservative assumptions. Accordingly, they remain untaxed, as shown in the final column in Table 3.

Next we take into account the number of same-sex partners who would enter civil unions but now pay the estate tax at each tax bracket. To do so, we multiply the average tax amounts in Table 3 by the proportion of Delaware

individuals in civil unions who fall within the brackets.

To find this number, we first find the proportion of federal tax returns filed in Delaware during 2009, that is, the total number of Delaware tax returns divided by the total number of federal tax returns.³⁴ We multiply this by the total number of returns filed in each tax bracket federally, to get the total number of tax returns filed in each tax bracket in Delaware.

To find how much of these returns are from individuals in same-sex civil unions, we multiply the result by the proportion of such individuals from Delaware filing tax returns, or 0.2% in Year 3, which we shall appropriately discount for Year 1 and Year 2. This procedure yields the numbers used in

the second column of Table 4 in each tax bracket.

Table 4: Taxes paid by individuals in civil unions

Tax in Bracket on Unpartnered estates	Returns filed by partners in civil unions	Tax collected from Dying Same-sex Partners at That Level
6,498	0.041	269
303,716	0.036	10,906
907,942	0.012	11,347
7,711,139	0.07	54,229
	0.097	76,750

This means that on average, Delaware would see a partner in a civil union filing a taxable estate tax return less than once every ten years, with the figures in the central column above representing the probability of the return in being in a particular bracket in Year 3. In Year 2 and Year 1, the probability of such a return being filed is further discounted, becoming 80% of 0.097, or 0.077, and 54% of 0.097 or 0.052 respectively.

Accordingly, the expected loss in estate taxes in Year 3 is \$76,750. In Year 2, the expected loss will be \$61,400. In Year 1, the expected loss is \$41,445. In total the State would lose nearly \$180,000. Though we use this figure, it is far inflated from the actual amount lost, because the mean estate tax we use for our calculations at each tax bracket is close to three times the median estate tax at that bracket. Using estimated median numbers more than halves this amount.³⁵

C. Impact on Transfer Tax Revenue

In Delaware, a state transfer tax is imposed on sales of real estate worth over \$100 at a rate of 1.5%.³⁶ "Any conveyance between husband and wife," and presumably, between partners in a civil union, is untaxed.³⁷ Same-sex partners, therefore, cannot transfer property to one another without being subject to the transfer tax. Allowing same-sex couples to enter civil unions could then lead to fewer impositions of transfer taxes, resulting in reduced revenue to the State.

Although difficult to estimate, it is possible to get some sense of the potential revenue loss. It seems most likely that same-sex couples would be subject to the transfer tax when one partner owns property and wishes to share that with the other partner. The median value of an owner-occupied housing unit in Delaware is \$249,400;³⁸ if we assume that the partner transfers half ownership and pays 1.5% in state transfer tax, the revenue to the State would be \$1,871.

This revenue would be lost to the State if same-sex couples were allowed to enter civil unions, and transfer property tax-free after instead of before entering civil unions. Several facts suggest that not all 750 same-sex couples expected to enter civil unions would have transferred property and paid taxes.

First, in many same-sex couples that enter civil unions, neither partner may be a property owner. According to 2005-2009 ACS data on homeownership in Delaware, 73.5% of individuals own homes. We use this figure to estimate that 551 of the 750 same-sex couples in Delaware who will enter civil unions own their own homes. This is a conservative

estimate, as 2000 Census data suggests that fewer same-sex couples own their homes than in the general population.³⁹

Next, some of those same-sex couples that own property, purchased that property together, or transferred the property before entering civil unions. Accordingly, they would not transfer the property after entering a civil union. According to data from Vermont, of same-sex couples not in civil unions who owned a home, 77% owned the home together, and would not need to transfer it upon entering a civil union.⁴⁰ We therefore conservatively assume that at least 75% of the 551 home-owning same-sex couples in Delaware, or at least 413 couples, already own their own home together, and would not need to transfer it to their partner upon entering a civil union.

Finally, we assume that *all* of the remaining home owners in same-sex couples, or 25% of the 551 home-owning couples entering civil unions, would transfer half their property to their same-sex partner. Yet, note that, even if Delaware does not tax the transfer of property between some partners in civil unions, some of these individuals may choose not to transfer the property at all to avoid incurring federal gift tax.

Accordingly, if up to 138 couples transfer property after entering civil unions, the loss in state revenue would be \$258,129 over three years, or \$86,043 per year.⁴¹ However, this tax exemption is only a true cost to the State if those transfers would have occurred in the absence of civil unions, which is highly uncertain, making this figure an extremely conservative estimate.

It should also be noted that gaining the right to enter civil unions could generate additional sales of homes to same-sex couples, thus increasing transfer tax revenue, as argued in a recent study by the New York State Comptroller's Office.⁴² The emotional stability and financial security associated with legal recognition may encourage same-sex couples to purchase a house, and those sales to couples will generate new tax revenue.

Accordingly, the estimates of lost transfer tax revenue used in this report are very conservative. The amount truly lost is likely to be much lower than our estimate.

D. Impact on Tax Revenues from Spending and Tourism

Civil unions for same-sex couples would likely increase spending on ceremony-related goods and services by in-state couples. We assume that couples entering a civil union would have a ceremony in celebration of their union similar to a marriage ceremony. Because states in proximity to Delaware offer same-sex couples the right to marry, we do not take into account spending by out-of-state couples.

The average spending on weddings in Delaware for 2008 was \$17,597.⁴³ However, same-sex couples in Delaware may have already held commitment ceremonies and may receive less financial support from their parents and other family members to cover celebration costs. Additionally, only spending that comes from couples' savings would truly be "new spending" for the State's businesses, rather than money diverted from some other expenditure. We therefore conservatively estimate that a same-sex

couple will spend 25% of this figure, or \$4,487 per civil union ceremony, after adjusting to 2010 dollars. As discussed in Section I, we predict that 750 same-sex couples will enter civil unions over the first 3 years, for a total of 750 ceremonies. Accordingly, these couples will spend nearly \$3.4 million, in ceremony expenses. Though Delaware has no sales tax, we estimate the revenue impact based on Delaware's gross receipts tax of 0.624%, which yields total revenue accruing from ceremony expenses at approximately \$21,000 over the next three years.⁴⁴

Revenue obtained from civil union celebrations is likely to be even higher, as Delaware imposes a tax on leases of certain personal property.⁴⁵ Thus, further revenue is obtained when partners entering civil unions lease certain types of personal property for ceremonies.

Additionally, out-of-state visitors for civil union ceremonies will bring tourism revenue to the State. Based on a Williams Institute study of weddings by same-sex couples in Massachusetts, we predict that each ceremony will attract approximately 16 out-of-state guests.⁴⁶ This is a conservative estimate as Delaware is a smaller state and more guests will probably live out-of-state. The estimated total of out-of-state guests for 750 civil union ceremonies is 12,000.

To calculate the average state tax revenue generated by each out-of-state visitor, we assume that each visitor's trip is similar in spending and duration of stay to an average tourist in Delaware. The State will collect revenue both directly through occupancy taxes and gross receipts taxes, but also indirectly through personal income tax, corporate income tax, and other revenue sources.⁴⁷

According to the Delaware tourism report *How Important is Tourism to Delaware?*, in one trip, the average tourist generates \$48 in state revenues through direct and indirect sources.⁴⁸ Assuming that out-of-town civil union ceremony guests spend and consume like the average tourist, they would generate \$620,000 in state tax revenue over three years.

Summed up, we predict a total of nearly \$641,000 in increased state revenues from spending and tourism over three years. We spread this number across the three years depending upon the number of civil union ceremonies per year, as determined in Section I, garnering approximately \$346,000 in Year 1, \$167,000 in Year 2 and \$128,000 in Year 3. Note that gross receipts taxes only capture the most direct tax impact of increased spending on civil union ceremonies. Businesses and individuals will also pay taxes on the new earnings generated by civil union ceremony spending, providing a further boost to the state budget.

Table 5: Summary of Tax Revenue Impact for Delaware

Type of Tax	Year 1	Year 2	Year 3	Total Impact on Budget
Income Tax	(\$19,515)	(\$28,911)	(\$36,139)	(\$84,564)
Estate Tax	(\$41,445)	(\$61,400)	(\$76,750)	(\$179,595)
Transfer Tax	(\$86,043)	(\$86,043)	(\$86,043)	(\$258,129)
Spending and Tourism Revenue	\$346,121	\$166,651	\$128,193	\$640,965
TOTAL	\$199,118	(\$9,703)	(\$70,739)	\$118,677

III. Expansion of State Employee Benefits to Delaware's Same-Sex Couples

A. Health care Benefit Plans for Active Employees

Delaware provides certain fringe benefits to state employees, employees' spouses, and their dependent children.⁴⁹ The State offers a choice of four health care plans, which include prescription coverage, to its employees, and the State contributes the same amount toward the premium of all four plans.⁵⁰ While the State does offer dental benefits and other supplementary benefits, the employee must pay the full amount of the premiums for those benefits.⁵¹ An employee has the option to provide healthcare coverage to a spouse and dependent children under all of these plans. Delaware does not currently offer healthcare benefits to employees' same-sex partners, so civil unions for same-sex couples would increase state expenditures on health care benefits.

An increase in state expenditures could come about in state health care spending via two scenarios. Some employees will move from covering only

themselves to covering themselves and a same-sex partner, in which case the State's contribution for health benefits would increase. Other employees might move from covering only themselves to covering both their same-sex partner and their partner's children. We estimate the change in the State's contributions, bearing both of these possibilities in mind.

According to the 2006-2008 American Community Survey, approximately 8% of same-sex couples in Delaware have children. We make the conservative estimate that half of the children of Delaware's employees who are in same-sex couples are those of the non-employee partner and the employee has not adopted the children. Therefore, we estimate that approximately 4% of Delaware's employees who are in same-sex couples will add both their partner and at least one child to their health insurance coverage, given the ability to enter a civil union. This is likely a considerable overestimation, as some of the children in the households of same-sex couples have likely been legally adopted by the non-biological parent. Consequently, even if the child was not the employee's biological child, the employee could already be obtaining health insurance coverage for an

adopted child. Nonetheless, we make these assumptions in order to take into account the impact of moving from single coverage to coverage for an employee and two or more additional individuals, as the State's contribution in this case is larger than if the employee adds only a partner.

The State offers four types of coverage: 1) Employee Only, 2) Employee Plus Spouse, 3) Employee Plus Children, and 4) Employee Plus Spouse and Child(ren).⁵² We assume that an employee who enters a civil union would change their coverage in one of two ways: he or she would move from the Employee Only plan to the Employee Plus Spouse plan, or, for those who have children, the employee would move from the Employee plan to the Employee Plus Spouse and Child(ren) plan. The annual increase in state premium contributions would be approximately \$6,600 per employee to add a partner and \$9,800 per employee to add a partner and one or more children.⁵³

According to the 2006-2008 American Community Survey, 10% of all couples in Delaware have one state employee in the couple. Assuming that same-sex couples are like all couples in terms of state employment, we estimate that 268 of the 2,677 same-sex couples in Delaware have one state employee, and 75 of those 268 couples would enter a civil union over three years.

To calculate the increase in state expenditures for active state employee healthcare premiums, we estimate that 72 of these 75 couples would add their partner to their healthcare benefits plan and 3 would add both their partner and their partner's children. The increase in premium expenditures for the State

would accumulate over three years, with 40 (54%) of the 75 couples entering civil unions in Year 1, 60 (80%) of the couples having entered civil unions by Year 2, and all 75 having entered civil unions by Year 3.

Assuming premiums remain the same and all employees remain in the State healthcare benefits plan over the three years, we multiply the per-employee increase in state premium contributions (\$6,600 for those adding a partner only and \$9,800 for those adding a partner plus one or more children) by the number of state employee couples entering civil unions over three years. State expenditures on healthcare premiums for active employees would increase by \$277,000 in Year 1, \$402,500 in Year 2, and \$544,000 in Year 3. The total increase in state expenditures over three years is \$1.2 million.⁵⁴

B. Healthcare Benefit Plans for Retirees

Delaware also provides certain retirement and death-related benefits to the spouses of employees and retirees, such as health insurance for Medicare-covered and non-Medicare-covered retirees and their spouses.⁵⁵ Retirees who receive Medicare can enroll themselves and their Medicare-covered spouses in a Medicare supplement plan. The full cost of the Medicare supplement premium (\$414.26 per month) is covered by the State.⁵⁶ Non-Medicare retirees and their spouses continue to receive health care coverage under the active employees' plans described in the prior section. According to data provided by the Office of Management and Budget, Statewide Benefits Office, about 70 percent of retirees covered by state health benefits

programs are covered through the Medicare supplement plan.⁵⁷ The remaining 30 percent are covered through the active employees' plans.

We estimate that 31 Delaware state retirees have same-sex partners and would enter a civil union over three years.⁵⁸ We make the conservative assumption that all 31 would add a same-sex partner to their healthcare insurance plan. Nine retirees (30%) would add their partner to their health benefits plan in the active state employees' benefits system at a cost to the State of \$6,600 annually. Twenty-two retirees (70%) would add their partner to their Medicare supplement plan at a cost to the State of \$4,970 annually. Over three years, health

benefits for retirees entering civil unions would cost the State \$93,000 in Year 1, \$142,000 in Year 2, and 169,000 in Year three. Total cost over three years is \$404,000.

C. Total Cost of Expanding Healthcare Benefits after Delaware Civil Unions

Adding together the costs of expanding health care benefits through civil unions over three years for both active employees and retirees, we estimate additional cost to the State of \$370,000 in Year 1, \$545,000 in Year 2, and \$673,000 in Year 3. The total estimated cost over three years is nearly \$1.6 million.

Table 6: Total Increase in State Expenditures on Health Benefits Plans

Type of Expenditure	Year 1	Year 2	Year 3	Total Fiscal Impact on the Budget
Active Employees	(\$277,038)	(\$402,461)	(\$504,673)	(\$1,184,172)
Retirees	(\$92,659)	(\$142,290)	(\$168,775)	(\$403,725)
TOTAL	(\$369,697)	(\$544,751)	(\$673,448)	(\$1,587,897)

D. Survivor Benefits Under Delaware's Employee Retirement Systems

The Delaware Public Employee Retirement System offers state employees three state-funded pension funds: the State Employee's Pension Plan (SEPP), the State Police Pension Plan (SPPP), and the Judiciary Pension Plan (JPP).⁵⁹ These plans provide to state employees who participate the ability to pass along either their pension plan contributions or a percentage of their monthly pension payments to eligible survivors or beneficiaries.⁶⁰

Currently in Delaware, only spouses, dependent children, and dependent parents of the participating employee are considered eligible survivors who can receive monthly survivor pension payments after the participant's death. In this section, we consider the potential cost to the State after civil unions, which would allow same-sex partners to be considered eligible survivors.⁶¹

Active and retired state employees who are members of the retirement system and have no eligible survivors receive a death benefit that is payable to a named beneficiary. This benefit consists of a

single lump sum payment that is equal to the employee's total pension contributions plus interest, minus any pension payments already made.⁶² Since employees can designate the beneficiary of their choice to receive this lump sum payment, same-sex partners of state employees are already able to receive these payments.

In the case of active and retired employees who have met certain service requirements, upon the employee's death, their eligible survivors will receive a monthly pension payment that is equal to a specified percentage (ranging from 50% to 75%, depending on the retirement plan) of the participating employee's monthly pension payment.⁶³ Currently, same-sex partners of state employees are not eligible to receive survivor's benefits. After civil unions, the additional cost to the State will be the difference between the lump sum payment described above and the payment of monthly survivor pension benefits for each state employee who dies with a surviving same-sex partner.

In the prior section on state employee healthcare benefits, we estimated that 75 current state employees have a same-sex partner and would enter a civil union in the first three years. We also estimated that 31 current Delaware retirees have same-sex partners and would enter a civil union in the first three years. We make the conservative assumption that all 31 retirees would meet the length of relationship requirements to make their same-sex partner eligible for survivor benefits.⁶⁴

The mortality rate of Delaware's population in 2007 was 0.8%.⁶⁵ Assuming that state employees in same-sex couples have mortality rates similar to the 2007 mortality rate, over three

years we would expect less than one death among the 31 retirees and less than two deaths among the 75 active employees. In FY 2009, the average survivor received \$8,277 in survivor benefits.⁶⁶ Assuming all three deaths among employees and retirees will collect survivor benefits, civil unions would cost the State from \$25,200 (if all deaths occur in Year 3) to \$75,500 (if all deaths occur in Year 1) adjusted to 2010 dollars. This cost would be partially offset, however, because without civil unions, these three survivors would have been eligible for the lump sum payment of pension contributions as designated beneficiaries. The average lump sum payment amount in FY 2009 was \$7,220.⁶⁷ For three deaths over three years, the total of lump sum payments would be just over \$22,000. The cost would also be offset for same-sex partners with children, because the State would already incur a cost of paying the survivor benefit to a dependent child.

A review of the survivor benefits under Delaware's pension plans, therefore, indicates a minimal effect on the State's employee benefit expenditures. Under all plans, employees can currently elect their same-sex partner as a beneficiary. Further, under those plans that offer spousal survivor benefit, the additional cost of adding same-sex partners would be so small as to render the effect unnoticeable.

E. Offsetting the Costs of Increased State Employee Benefits

Some of the added employee benefit costs to the State will be offset by lower spending on Medicaid and

uncompensated health care and by lower training and recruitment costs.

Offering benefits to public employees in same-sex civil unions will likely reduce the number of people who are uninsured or who are currently enrolled in Medicaid and other government-sponsored health care programs. A recent study shows that people with unmarried partners—either same- or different-sex—are much more likely to be uninsured or on Medicaid than are married people.⁶⁸ People in same-sex couples were twice as likely as married people to be uninsured; one in five with a same-sex partner does not have medical insurance.⁶⁹ The study also finds that if employers offer benefits for same-sex couples, then some people who are currently uninsured are likely to receive insurance. Therefore, it is likely that the State is already responsible for at least some of the costs associated with uncompensated care for the uninsured.⁷⁰ Similarly, some members of same-sex couples who receive Medicaid might become eligible for a partner's state health insurance and will shift to such coverage. Both effects will tend to offset the cost of providing coverage to the same-sex spouse of state employees.

The State may also see lower costs associated with worker turnover from allowing state employees to enter civil unions with their same-sex partners and to enroll them in health benefit plans. A recent study shows that the extension of domestic partner benefits has the effect of reducing gay, lesbian, and bisexual employee turnover and increasing their commitment to employers.⁷¹ The same effect is likely to be present if the State allowed its employees to enter civil unions with a same-sex partner and, therefore, to

receive the same benefits offered to different-sex spouses of employees.

The State's position as an employer will be further strengthened in its labor market since its compensation policies will be better aligned with current practices of other employers in Delaware's labor market. As of 2008, 57% of Fortune 500 corporations offered health benefits to employees' same-sex and different-sex partners.⁷²

This evidence suggests that giving same-sex couples the right to enter civil unions will help the State compete for talented and committed employees of all sexual orientations. As a result, some of the State's recruitment and training costs will likely fall. Recruitment and turnover are costly for employers, although the cost varies from job to job.⁷³ For example, one recent study calculated the training, vacancy, hiring, and recruiting costs for a registered nurse to be \$62,000 to \$67,000.⁷⁴ These potential savings are likely to help offset some of the State's higher employee benefit costs, although it is not possible to estimate the savings precisely.

IV. Public Assistance Benefits

A civil union implies a mutual obligation of support that is reflected in public assistance eligibility calculations. Civil unions for same-sex couples mean these couples are less likely to need public assistance and are less likely to qualify for it. This Section looks at the savings the State may accrue from some same-sex partners leaving the public assistance rolls.

A. Public Assistance Programs

Delaware funds an array of public benefits programs that provide subsidies and assistance to low-income individuals and families with state and federal sources. Delaware's main cash assistance program is Temporary Assistance to Needy Families (TANF), but Delaware also provides General Assistance (cash assistance) with state-only funding for those in need who do not qualify for TANF. Programs administered through Delaware's Division of Social Services also include Child Care Assistance, Refugee Cash Assistance, and Food Stamps.⁷⁵ Cash assistance is also available to low-income people in Delaware through Supplemental Security Income (SSI).⁷⁶

Delaware also provides medical assistance through the Division of Medicaid and Medical Services. The main medical assistance program is Delaware's Medicaid program. Other medical coverage is provided through the Delaware Health Children Program (DHCP), which is Delaware's CHIP (Children's Health Insurance Program) program, the Delaware Prescription Assistance Program, and the Chronic Renal Disease Program.⁷⁷

Assistance that is not directly provided in cash is also available through an assortment of programs administered through the Delaware Department of Health and Social Services. These include, but are not limited to, assistance programs that serve people with disabilities, those in need of long term care, the aging population, those who need assistance with substance abuse and mental health issues, and those who are blind.⁷⁸

B. Savings and Civil Unions for Same-Sex couples

Eligibility for public assistance is means-tested and, therefore, dependent on the individual applicant's income and assets, as well as, for many programs, those of the applicant's family. For the many programs that consider a spouse's income and assets, a married applicant is generally less likely to qualify for assistance than single applicants. Couples who are not married are likely to be considered "single" when eligibility for these programs is assessed. This "single" classification results in same-sex partners being more likely to qualify for public assistance. If same-sex couples were able to enter civil unions, however, both partners' income and assets could be counted in determining eligibility. Thus if same-sex couples enter civil unions, they would be less likely to need assistance and be eligible for assistance, since their income and assets would exceed program thresholds. With fewer same-sex couples participating in public benefits programs, state expenditures will fall.

For TANF, Delaware will consider the income of an unmarried partner if the unmarried partner is the biological or adoptive parent of a child who lives in the assistance unit.⁷⁹ Therefore, some low-income same-sex couples would likely still be eligible for benefits after civil unions are granted to same-sex couples. Therefore, we consider the continuing eligibility of these low-income couples in our calculations of savings to the State. Delaware does specifically exclude same-sex partners as part of the household unit in an individual's application for the Food Stamp Program.⁸⁰ We assume that if civil unions are granted to same-sex couples, that this exclusion would be removed.

In Delaware, the main assistance programs that take marital status into account in eligibility determinations are TANF, Medicaid, Delaware Health Children Program (DHCP), and Supplemental Security Income (SSI). Our calculations below, therefore, focus on these programs. Yet because permitting civil unions for same-sex couples is likely to trim state spending on many public assistance programs not included in our calculations, the estimates below are conservative.⁸¹

For TANF and DHCP, the State generally determines applicant eligibility standards.⁸² With respect to these programs, then, the State will be able to count a same-sex partner's income and assets in determining the eligibility of an individual or family. For SSI and Medicaid, however, the federal government determines the generally applicable eligibility standards, restricting the State's discretion in developing its own application standards and procedures. Because the federal Defense of Marriage Act (DOMA) has been interpreted to limit the definition of the word "spouse" for federal benefits to different-sex marriages, Delaware may be prohibited from including a same-sex partner in eligibility determinations for those programs.⁸³ Nonetheless, in assessing eligibility for Medicaid and SSI, Delaware may still be able to take into account the resources of same-sex partners under state and federal regulations that require Delaware to consider the resources of third parties who are legally liable for health care costs.⁸⁴ Medicaid is a provider of last resort, and federal and state law require the State to assure that Medicaid recipients utilize all other available resources, i.e., third parties, to pay for all or part of their medical care needs

before turning to Medicaid. Third parties are entities or individuals who are legally responsible for paying the medical claims of Medicaid recipients.⁸⁵ They include any "individual who has either voluntarily accepted or been assigned legal responsibility for the health care" of a Medicaid applicant or recipient.⁸⁶ The income and assets of a same-sex spouse might be considered under this "third party" category, resulting in essentially the same eligibility determinations as if a "spouse" category was applied.

C. Calculation of Savings

To estimate the impact of permitting same-sex couples to enter civil unions, we first calculate the amount spent per participant by the State after removing the federal share. We include the federal block grant for TANF in our calculation of savings for that program. The total expenditures for TANF, Medicaid, SSI, and DHCP were divided by their overall participation in the same fiscal or calendar year to yield a per-participant annual expenditure figure.⁸⁷

Next, we calculate the rate at which same-sex partners receive public assistance before and after Delaware offers civil unions. To calculate the rate of participation for TANF, DHCP, and SSI, we draw on data from the 2008 American Community Survey (ACS). This survey asks respondents to report the amount of income they received in the past 12 months from any sources, including Supplemental Security Income (SSI) and "any public assistance or welfare payments from the state or local welfare office."⁸⁸ These income data were used to calculate the rate at which same-sex unmarried couples and different-sex married couples receive SSI and public assistance income in the

United States. Due to the small sample size available from the ACS for Delaware, we use these national rates of public assistance receipt in our calculations. We assume that Delaware residents receive income from these sources at the same rate as individuals in the United States as a whole. Because the ACS does not define with any precision "public assistance," we utilize the rate of public assistance receipt for both TANF and DHCP. SSI income is reported separately in the ACS, therefore we use that rate to calculate SSI savings. Rates of Medicaid receipt are based on prior research on Medicaid participation among unmarried different-sex and same-sex couples and married different-sex couples.⁸⁹

Of same-sex unmarried couples, 1.03% received public assistance income, 1.20% received SSI income, and 4% received Medicaid. Therefore, of the 2,677 same-sex couples in Delaware, in any given year, 27 have an individual receiving a form of public assistance, 32 have an individual receiving SSI, and 107 have an individual receiving Medicaid.

Next, we calculate the decrease in this rate of participation for same-sex couples in civil unions. Note that some same-sex partners would continue to qualify for benefits even after they enter a civil union.⁹⁰ According to 2008 ACS data, 0.46% of different-sex married couples received public assistance income and 0.82% received SSI income.⁹¹ According to prior research on Medicaid participation rates, 2.5% of different-sex married couples received Medicaid.⁹² We assume that after civil unions, same-sex partners will qualify for benefits at the same rate as different-sex spouses currently do. Therefore, after three years, only 0.46%

of same-sex couples in civil unions will receive public assistance benefits, 0.82% will receive SSI income, and 2.5% will receive Medicaid.

We assume again that by the third year after civil unions are offered, 28% of all same-sex couples will have entered a civil union.⁹³ Therefore, those same-sex couples will receive public assistance, SSI, and Medicaid at the same rate as different-sex married couples. As a result, by Year 3, of the 27 same-sex couples who receive public assistance in any given year, approximately eight would have entered enter a civil union, and five will no longer receive benefits.⁹⁴ Of the 32 same-sex couples who receive SSI, nine would enter a civil union and six will no longer receive SSI benefits. Finally, of the 107 same-sex couples who receive Medicaid, 30 would enter a civil union and 11 would no longer receive Medicaid. Adding together public assistance, SSI, and Medicaid savings for those same-sex couples who would no longer receive benefits, Delaware will save \$106,000 in Year 3. As in earlier sections, after discounting for the lower take-up rates of civil unions in Years 1 and 2, we find that the State saves \$57,300 in Year 1 and \$84,900 in Year 2.⁹⁵

In total, with civil unions for same-sex couples, we anticipate the total savings to the State in public assistance expenditures to exceed \$240,000 over three years, as summarized in Table 7. Note that TANF monies should be calculated as savings as the TANF block grant Delaware receives from the federal government is not likely to be reduced if fewer people in same-sex couples qualify. That is, if civil unions for same-sex couples mean fewer TANF recipients, but not less federal funding, savings will accrue to the State. These

calculations also assume that DOMA will not bar the State from including a same-sex partner's income and assets to calculate eligibility for Medicaid and SSI. Note, however, even if DOMA prevents the State from directly counting civil

unions for same-sex couples, the State may still be able to count both spouses' incomes and assets via regulations concerning the financial obligations of legally responsible third-parties as discussed above.

Table 7: Expenditures and Savings on Public Assistance Programs⁹⁶

Program	Estimated Savings in State Funds after Civil Unions for Same-Sex Couples			
	Year 1	Year 2	Year 3	TOTAL
TANF	\$39,416	\$58,395	\$72,993	\$170,805
DHCP (CHIP)	\$542	\$803	\$1,003	\$2,348
Medicaid	\$17,290	\$25,614	\$32,018	\$74,922
SSI	\$64	\$95	\$119	\$278
TOTAL	\$57,313	\$84,908	\$106,135	\$248,355

V. Civil Union License Fees

States that have offered civil unions have charged fees for a civil union license. New Jersey, for example, charges the same fee for both a marriage license and a civil union license.⁹⁷ Accordingly, we assume that civil union fees will be the same as marriage license fees in Delaware counties.

The fee for a marriage license in Delaware is \$50.⁹⁸ We multiply this fee by our estimates of the number of same-sex couples who will enter civil

unions in Delaware during the first three years, or 750 couples.

Civil unions by same-sex couples will create \$37,500 from these fees. Spread across three years, the annual fee revenue would be \$20,250 in Year 1, \$9,750 in Year 2, and \$7,500 in Year 3.

Of course, some of the revenues of these fees will be offset by the costs of processing the additional civil union licenses. However, other states that have extended marriage, civil unions, or domestic partnerships to same-sex couples have experienced very small increases in administrative costs.⁹⁹

Summary and Conclusions

In this study, we drew on U.S. Census Bureau data on Delaware residents and the experience of New Jersey and other states to quantify the likely fiscal and economic effects of allowing same-sex couples to enter civil unions in Delaware.

Type of Expenditure/Revenue	Year 1	Year 2	Year 3	Total Fiscal Impact on the Budget
Income Tax	(\$19,515)	(\$28,911)	(\$36,139)	(\$84,564)
Estate Tax	(\$41,445)	(\$61,400)	(\$76,750)	(\$179,595)
Transfer Tax	(\$86,043)	(\$86,043)	(\$86,043)	(\$258,129)
Spending and Tourism Revenue	\$346,121	\$166,651	\$128,193	\$640,965
State Employee Benefits	(\$369,697)	(\$544,751)	(\$673,448)	(\$1,587,897)
Public Assistance	\$57,313	\$84,908	\$106,135	\$248,355
Civil Union License Fees	\$20,250	\$9,750	\$7,500	\$37,500
TOTAL	(\$93,016)	(\$459,796)	(\$630,552)	(\$1,183,365)

- The State will experience a loss in income, estate tax and transfer tax revenues, but these losses are overcome by an increase in revenues from spending and tourism, for a net increase of approximately \$119,000 in tax revenue over three years.
- Extending employee benefits to same-sex employees' partners after civil unions would cost the State nearly \$1.6 million over three years.
- The State will likely save \$248,000 in public assistance expenditures over three years, from granting civil unions to same-sex couples.
- Civil unions for same-sex couples will also increase revenue from civil union license fees, adding \$37,500 over three years.

Our analysis projects that granting civil union rights to same-sex couples will have a negative impact on the state budget. The State will see a loss of \$93,000 in the first year after offering civil unions (Year 1), \$460,000 in the second year (Year 2) and \$630,500 in the third year (Year 3) for a total cost of \$1.18 million over three years. Note however that this annual effect is a tiny fraction—on average a mere 0.01% -- of the State of Delaware's annual \$3.3 billion budget over three years.

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ENDNOTES

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³ All dollar values in this report are in 2010 dollars. We use the Bureau of Labor Statistics to adjust for inflation, accordingly inflating 2006 dollars by 1.08, 2007 dollars by 1.05, and 2008 and 2009 dollars by 1.01. *See* Bureau of Labor Statistics, Databases, Tables & Calculators by Subject, CPI Inflation Calculator, http://www.bls.gov/data/inflation_calculator.htm, (last visited Oct. 20, 2010).

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¹⁴ M.V. LEE BADGETT ET AL, THE IMPACT ON WASHINGTON'S BUDGET OF ALLOWING SAME-SEX COUPLES TO MARRY (2006) *available at* <http://www.law.ucla.edu/williamsinstitute/publications/washington%20econ%20study.pdf>.

¹⁵ M.V. Lee Badgett & R. Bradley Sears, *Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget*, 16 STAN. L. & POL. REV. 197 (2005)

¹⁶ CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH, OFFICE OF FISCAL ANALYSIS REPORT ON HB 5001 (2002) available at http://www1.law.ucla.edu/~williamsproj/connstudy_files/connstudy.htm.

¹⁷ OFFICE OF LEGISLATIVE COUNCIL, REPORT OF THE VERMONT DOMESTIC PARTNERSHIP REVIEW COMMISSION (2002), available at <http://www.leg.state.vt.us/baker/Final%20CURC%20Report%20for%202002.htm>.

¹⁸ *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*, (Mar. 3, 2004) (statement of Alan G. Hevesi, New York State Comptroller), available at <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm>.

¹⁹ Letter from Douglas Holtz-Eakin, Director, Congressional Budget Office, to Steve Chabot, Chairman, Subcommittee on the Constitution, Committee on the Judiciary, U.S. House of Representatives (June 21, 2004) & attached analysis entitled "The Potential Budgetary Impact of Recognizing Same-Sex Marriages," available at <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.

²⁰ This calculation is based upon the most recent data available. Recently collected data reveals that 4,392 same-sex couples entered civil unions in New Jersey within three years of the State allowing civil unions, which began in February 2007. Next, we must obtain the total number of same-sex couples in New Jersey. Data from the pre-2008 ACS over-counts the total number of same-sex couples. See GARY J. GATES, SAME-SEX SPOUSES AND UNMARRIED PARTNERS IN THE AMERICAN COMMUNITY SURVEY, 2008 (2008) available at <http://www.law.ucla.edu/williamsinstitute/pdf/ACS2008FullReport.pdf>. Accordingly, we use 2008 ACS data to estimate the total number of same-sex couples in New Jersey from 2007 through 2009, or 15,443 couples. This suggests that approximately 28% of couples entered civil unions over three years.

²¹ *Id.*

²² *Id.*

²³ U.S. Census Bureau, American Community Survey, 3-year Public Use Microdata Sample (PUMS) from 2006-2008 and 1-year PUMS from 2005. Weights from these PUMSs were adjusted to provide a 4-year data set. Note that these data were adjusted as described in Gates, *supra* note 20, to correct for ACS measurement error.

²⁴ Note that this is a conservative assumption. Under Delaware law, either partner could claim a child in the household as a dependent. In most cases, the partner with the *higher* income would file as the head of household claiming the child as a dependant earning an extra exemption, whether or not they are the legal parent of the child. This may diminish the total amount of taxes paid by the household, since the partner with the higher income may drop down to a lower tax bracket than before. By failing to account for this strategic behavior, we presume that the higher-earning partner *not* listed as the child(ren)'s parent in ACS, remains in the higher tax bracket, and therefore currently pays more taxes. Accordingly, we presume that the State loses more in taxes should the partner marry than may actually be the case.

²⁵ We do not take into account further exclusions taken into account when calculating Delaware Gross Income, including the amount of income received in pensions, higher education exclusions, and additional exclusions for certain persons 60 and over or disabled, as ACS data do not indicate these amounts.

²⁶ STATE OF DELAWARE DIVISION OF TAXATION, RI-1040, DELAWARE RESIDENTIAL INDIVIDUAL TAX RETURN (2010) available at <http://www.tax.ri.gov/forms/2010/Draft%20PDFs/2010%20RI-1040.pdf>.

²⁷ Accordingly, we assume that individuals did not itemize their income tax deduction, that no charitable contributions were claimed, that no alternative minimum or alternative flat tax was paid, and that no earned income, dependent

care, mortgage interest, adoption, federal fuel tax, property tax relief, and other federal credits were not claimed. In effect, we are assuming that the change in taxes for unmarried individuals who itemize their deductions, list charitable contributions or various credits when they married would remain the same as for those unmarried individuals who do not do so.

²⁸ We calculate the percentage based on the 2005-2008 ACS PUMS dataset. The resultant totals are calculated based on the number of same-sex couples in Delaware according to the 2009 ACS.

²⁹ DEL. CODE ANN. tit. 30 § 1501

³⁰ Delaware Form 900-R (2009) available at http://revenue.delaware.gov/services/current_pit/TY09_900r.pdf.

³¹ We presume that only adults file tax returns.

³² According to 2001 SOI data for example, individuals in the top tax bracket who claim a spousal deduction leave nearly 77% of their estate to their spouses. If they were contributing to charity at the same level as non-married individuals, they would also be leaving 49% of their estate to charity, as this is the average proportion left to charities in that tax bracket. This does not even take into account numerous other deductions that would push the proportion of deductions in a top-bracket estate to well over 100%. Similar calculations can be made at other levels, though the disparity in this highest tax bracket is particularly clear.

³³ Mean is \$3.306 million, median is \$1.119 million. See Brian K. Bucks et al., *Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances*, 95 FED. RES. BULL. A1, A11 tbl. 4 (2009), available at <http://www.federalreserve.gov/pubs/bulletin/2009/pdf/scf09.pdf>.

³⁴ See Statistics of Income Division, Internal Revenue Service, SOI Tax Stats - Estate Tax Statistics Filing Year Table 2, <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=210648,00.html> (showing filing data by year and state) This is a total of 102 out of 33,515 in 2009. See <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=210648,00.html> providing estate tax filing statistics by state by year.

³⁵ See *supra* note 33 which suggests extrapolations for median figures.

³⁶ DEL. CODE ANN. tit. 30 § 5402(a) notes that a rate of 2% is assessed when a local municipality assesses less than 1.5% in taxes. However, Delaware state transfer tax forms presume that all counties or municipalities impose a 1.5% tax in computation of taxes. See Division of Revenue 2009-2010 Reality Transfer Tax Form, available at http://revenue.delaware.gov/services/current_bt/09_5402.pdf (last accessed Feb. 1, 2011).

³⁷ DEL. CODE ANN. tit. 30 § 5401; <http://www.Delaware.gov/revenue/propertytax/transfertax/exemption.htm> (accessed February 2009).

³⁸ 2009 ACS data.

³⁹ There are too few same-sex couples in Delaware in order to make reliable estimates of home ownership in same-sex couples. According to 2005-2009 ACS data the homeownership rate is 73.5% in Delaware and 66.9% nationally. Census data from 2000 similarly sets the ownership rate at 72.3% in Delaware and 66.2% nationally. Thus, recent ACS data resembles 2000 Census data.

2000 Census data also shows that same-sex couples own houses at a rate of 59.8%, or over 6% lower than the general population. Accordingly, assuming that same-sex couples owns houses at the same rate as other Delawareans is a conservative assumption.

⁴⁰ Sondra E. Solomon et al, *Pioneers in Partnership: Lesbians and Gay Male Couples in Civil Unions Compared with those not in Civil Unions and Married Heterosexual Siblings*, 18 J. of Fam. Psych. 275 (2004). Some of the data from this study has been replicated more recently. Esther D. Rothblum et al,

Comparison of Same Sex Couples who were Married in Massachusetts, had Domestic Partnerships in California, or had Civil Unions in Vermont, 29 J. of Fam. Issues 48 (2008) shows that couples in domestic partnerships or civil unions in *both* California and Vermont own houses in both partners' names at the same rate as in the 2004 paper.

⁴¹ Because we do not know *when* a couple that will enter a civil union in the next three years would have transferred property and paid tax on that property, we cannot apply the loss to any specific year, and have therefore spread the loss evenly over three years.

⁴² Office of the New York State Comptroller. 2007. *Love Counts: The Economic Benefits of Marriage Equality for New York*. <http://www.comptroller.nyc.gov/bureaus/bud/07reports/Jun07LoveCountBudgetnotes.pdf> (accessed November 2007).

⁴³ WE TV NETWORKS WEDDING REPORT (2010), *available at* <http://www.theweddingreport.com/wmdb/index.cfm?action=db.viewdetail>.

⁴⁴ Gross receipts tax rates vary by type of business. To create a conservative measure, we have selected the lowest gross receipts tax rate from the types of businesses most likely to be utilized by those celebrating their civil union. We selected the gross receipts tax rate for restaurant retailers, which is 0.624% at the low-bound of its range. Restaurant retailers are allowed an exclusion from the tax for the first \$80,000 of receipts each month. We assume in our calculation that the \$80,000 allowance has already been met. This remains a conservative calculation because we do not account for other positive effects on revenue due to the increase in spending, such as increased income tax revenues for those providing professional services during the civil union celebration. See the Delaware Department of Finance, Division of Revenue, Frequently Asked Questions, Gross Receipt Tax, http://revenue.delaware.gov/information/faqs_gr.shtml (last accessed Jan. 20, 2011) and 2010 Gross Receipts Tax Increases, <http://revenue.delaware.gov/information/grincrease.shtml> (last accessed Jan. 20, 2011); H.B. 289 w/HA 2, 145th Gen. Ass. (Del. 2010) for further information about the gross receipts tax and 2010 gross receipts tax rates. See DEL. CODE ANN. tit. 30 §§ 2101-03, 2120-23, 2901-09, 2501-02, 2701-05, 2301-05.

⁴⁵ DEL. CODE ANN. tit. 30 § 4302.

⁴⁶ NAOMI G. GOLDBERG, MICHAEL D. STEINBERGER, & M.V. LEE BADGETT, THE WILLIAMS INSTITUTE, THE BUSINESS BOOST FROM MARRIAGE EQUALITY IN MASSACHUSETTS: EVIDENCE FROM THE HEALTH AND MARRIAGE EQUALITY IN MASSACHUSETTS SURVEY (2009) *available at* <http://escholarship.org/uc/item/96p5k5sz>.

⁴⁷ KENNETH MCGILL, GLOBAL INSIGHT, HOW IMPORTANT IS TOURISM TO DELAWARE? (2008), *available at* http://dedo.delaware.gov/information/tourism/Delaware-TSA-final_Feb2008.pdf. Accuracy and meaning of data presented in the report confirmed by M.Ishaq Saleem Ph.D., Director, Industry Research & Analysis, Delaware Economic Development Office via email Jan. 24, 2011. Emails on file with the authors.

⁴⁸ See *supra* note 47.

⁴⁹ STATE OF DELAWARE, 2010 OPEN ENROLLMENT ACTIVE EMPLOYEES (2010) *available at* http://ben.omb.delaware.gov/oe/2010/oe_active_booklet.pdf. STATE OF DELAWARE, DELAWARE PENSIONS OFFICE, RETIREMENT OVERVIEW (n.d.) *available at* http://www.delawarepensions.com/includes/counseling/retirement_overview_sepp.pdf.

⁵⁰ STATE OF DELAWARE, OFFICE OF MANAGEMENT AND BUDGET, STATEWIDE BENEFITS OFFICE, STATE OF DELAWARE GROUP HEALTH INSURANCE PROGRAM NEW MEDICAL PLAN RATES EFFECTIVE JULY 1, 2010 (2010), *available at* http://ben.omb.delaware.gov/medical/documents/fy11_medical_rates.pdf.

⁵¹ *Id.*

⁵² See *supra* note 50.

⁵³ See *supra* note 50. For FY 2011, the monthly state contributions for the employee health benefits plans are: Employee Only \$514.56, Employee Plus Spouse \$1,064.66, Employee Plus Children \$782.20, and Employee Plus Family \$1,330.86. These contribution levels are the same for both active employees and non-Medicare pensioners. Confirmed via telephone conversations with Faith Rentz, Deputy Director, Statewide Benefits Office, Office of Management and Budget, State of Delaware on January 14, 2011 12:10pm PST.

⁵⁴ An alternate method of calculating the increase in state expenditures on healthcare premiums yields similar results. This method is based on the experience of other employers who have offered domestic partnership benefits to employees. Since civil unions differ from domestic partnership, the actual observed increase could vary from this estimate. Prior research on domestic partnership benefits suggests that 0.1% to 0.3% of Delaware's state employees who receive health care benefits would be likely to sign up a partner after civil unions are granted. See Ash, Michael and Badgett, M. V. Lee. 2006. *Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples*, 24 CONTEMPORARY ECONOMIC POLICY 582 (2006). Multiplying the total number of employees enrolled in each plan by the upper and lower bounds of these rates (0.1% and 0.3%), we are able to determine the approximate number of employees who would sign up a partner. Enrollment data were provided by Faith Rentz, Deputy Director, Statewide Benefits Office, Office of Management and Budget, State of Delaware. Current enrollment in the Delaware state employee health insurance plan (non-retirees) is 30,355. We calculate that the total number of employees who would sign up a partner ranges from 30 to 91. Over three years, state expenditures would increase from \$469,000 to \$1.4 million.

⁵⁵ See *supra* notes 49 and 50.

⁵⁶ See *supra* note 50.

⁵⁷ Data on file with the authors.

⁵⁸ We based this estimate on our calculation of how many same-sex couples have one state employee in the couple (268). We divided this number by the ACS 06-08 estimate of total state employees to calculate an overall rate of same-sex couples with one state employee out of the total state employee workforce. This calculated to 0.7% of state employees having a non-state employee same-sex partner. We applied this 0.7% rate to all retirees currently receiving a service pension (15,648) to find the number of current retirees who would have a non-state employee same-sex partner. A total of 110 current retirees fit this criteria. We estimate that 28% of these retirees would enter civil unions over a three-year period, or 31 retirees.

⁵⁹ DPERS BOARD OF PENSION TRUSTEES, DELAWARE PUBLIC EMPLOYEES RETIREMENT SYSTEM: THIRTY-EIGHTH COMPREHENSIVE ANNUAL FINANCIAL REPORT (2009), available at <http://delawarepensions.com/financials/fy09cafr.pdf>. The Delaware Board of Pension Trustees (Board) is responsible for the administration of nine separate funds (State Employees' Pension Plan, Special Fund, New State Police Pension Plan, Judiciary Pension Plans (Closed and Revised), County & Municipal Police and Firefighters' Pension Plans, County & Municipal Other Employees' Pension Plan, Delaware Volunteer Firemen's Fund, Diamond State Port Corporation Pension Plan, Closed State Police Pension Plan). The Board only manages the investment of the following funds: County & Municipal Police and Firefighters' COLA Fund, Post-Retirement Increase Fund, Delaware Local Government Retirement Investment Pool. While all plans/funds in the Delaware Public Employees Retirement System are pooled for investment purposes, the State does not contribute or appropriate funds for all plans. Plans we are considering in our calculations of fiscal impact include those where the State makes contributions/appropriations and state employees and/or state appointees participate in the plans.

⁶⁰ DEL. CODE ANN. tit. 29 §§ 5527-31; DEL. CODE ANN. tit. 11, §§ 8372; DEL. CODE ANN., tit. 29, §§ 5613-14.

⁶¹ *Id.*

⁶² *Id.*

⁶³ In the State Employees' Pension Plan, a participant must have 5 years of credited service before survivor benefits will apply. An employee participant may elect at the time of retirement to reduce their monthly payment by 3%, which will provide a payment to an eligible survivor of 75% of the employee participant's regular monthly pension payment (after the 3% deduction). If an active employee dies before this election can be made, the survivor will receive the 75% payment. If no 3% reduction election is made at the time of retirement, the survivor will receive one-half (50%) of the employee participant's regular monthly pension payment. This 3% reduction is not subsidized

by the State. In the State Police Pension Plan, survivors receive 50% of the participant employee's regular pension payment, unless the participant died in the line of duty, in which case the survivor payment will be 75%. In the Judiciary Pension Plan, at the time of retirement, the employee participant may elect to have their monthly pension payment reduced by 2%, which will provide a payment to an eligible survivor of two-thirds of the employee participant's regular monthly pension payment (after the 2% deduction). If an active employee dies before this election can be made, the survivor will receive the two-thirds payment. If no 2% reduction election is made at the time of retirement, the survivor will receive one-half (50%) of the employee participant's regular monthly pension payment. *See supra* note 60.

⁶⁴ For instance, in the State Police Pension Plan, an employee would have to have been married to the survivor prior to retirement or have been married to the survivor for at least one year before the employee's death. *See* DEL. CODE ANN., tit. 11, § 8372(c).

⁶⁵ Mortality rate was calculated from data available from The Henry J. Kaiser Family Foundation. *See* The Henry J. Kaiser Family Foundation, Delaware: Number of Deaths per 100,000 Population, 2007, <http://www.statehealthfacts.org/profileind.jsp?ind=58&cat=2&rgn=9>.

⁶⁶ *See supra* note 59.

⁶⁷ *Id.* The Annual Financial Report provided the total of lump sum payments to designated beneficiaries as \$426,000 for FY 2009. Kim Vincent, Deputy Pension Administrator, Delaware Public Employees' Retirement System provided (via email to the authors on January 20, 2011 at 10:55am) the total number of beneficiaries who had received these payments, which was 59. This yields an average lump sum payment of \$7,365, after adjusting to 2010 dollars. Email on file with the authors.

⁶⁸ *See* Ash & Badgett, *supra* note 54.

⁶⁹ *Id.*

⁷⁰ Jack Hadley & John Holahan, *How Much Medical Care Do the Uninsured Use, and Who Pays For It?*, 22 HEALTH AFFAIRS 66 (2002). <http://content.healthaffairs.org/cgi/content/abstract/hlthaff.w3.66v1> (accessed November 2007).

⁷¹ B.R. Ragins & J.M. Cornwell, *We Are Family: The Influence of Gay Family-Friendly Policies on Gay, Lesbian and Bisexual Employees*, in *SEXUAL ORIENTATION DISCRIMINATION: AN INTERNATIONAL PERSPECTIVE* (M. V. Lee Badgett & Jefferson Frank, eds., 2007).

⁷² HUMAN RIGHTS CAMPAIGN FOUNDATION, THE STATE OF THE WORKPLACE FOR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER AMERICANS 2007-2008 (2009), available at http://www.hrc.org/documents/HRC_Foundation_State_of_the_Workplace_2007-2008.pdf. The Human Rights Campaign Employer Index lists 6 employers in the State of Delaware that offer same-sex partner benefits, including one Fortune 1000 company. The index is available online at http://www.hrc.org/issues/workplace/search.asp?form=private_quick_search.aspx.

⁷³ Aharon Tziner & Assa Birati, *Assessing Employee Turnover Costs: A Revised Approach*, 6 HUMAN RESOURCE MGMT. REV. 113 (1996).

⁷⁴ Cheryl Jones, *The Costs of Nurse Turnover, Part 2: Application of the Nursing Turnover Cost Calculation Methodology*, 35 J. OF NURSING ADMIN. 41 (2005).

⁷⁵ *See* Delaware Health and Social Services, Program Information, Rights, and Responsibilities, Oct. 2009, http://dhss.delaware.gov/dhss/dss/files/form100rr_english.pdf (last visited December 9, 2010).

⁷⁶ Social Security Administration, Understanding Supplemental Security Income SSI Benefits, 2010 Edition, <http://www.ssa.gov/ssi/text-benefits-ussi.htm> (last visited December 9, 2010).

⁷⁷ *See supra* note 75.

⁷⁸ *See supra* note 75.

⁷⁹ Del. Admin. Code tit. 16 §§ 3004 & 3028.1. To understand the relationship between marital status and receipt of public assistance and SSI income, we looked at rates of receipt for these types of income in the 2008 American Community Survey for married couples, different-sex unmarried partners, and same-sex unmarried partners. Different-sex unmarried partners had higher rates of receipt of public assistance and SSI couples than married couples and same-sex unmarried partners. Therefore, we do believe there is an effect on rates of public assistance and SSI receipt based on marriage and not based on parenting alone. We assume that civil unions would have the same effect as marriage.

⁸⁰ Del. Admin. Code tit. 16 § 9013.1.B

⁸¹ Once permitted to enter civil unions, some same-sex couples' families may become eligible for some family-related benefits. However, the relative amount of money expended on such programs is very small, and such family-related benefits are not in the form of direct financial assistance; rather, they take the form of assistance via educational and similar programs. Consequently, we do not offset our calculations to account for this possibility.

⁸² With respect to TANF, see Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Register 37,454 (2006). With respect to SCHIP, see U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTERS FOR MEDICARE AND MEDICAID SERVICES, OVERVIEW OF NATIONAL SCHIP POLICY, *available at* <http://www.cms.hhs.gov/NationalSCHIPPolicy/>.

⁸³ 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, 100 Stat. 2419 (1996) (codified at 1 U.S.C. § 7). "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 prevent the State from interpreting the term "spouse" in the regulations to include a same-sex spouse. An issue arose in Vermont with respect to that state's treatment of couples in a civil union within the Medicaid program. David Mace, *Critics Say Rule Change Violates Domestic partnerships*, THE TIMES ARGUS (April 17, 2003). Recent correspondence from the Centers for Medicare and Medicaid Services to state agencies in Vermont and Massachusetts suggests that the states cannot treat same-sex spouses in the same way that different-sex spouses are treated in the Medicaid program.

⁸⁴ With respect to federal law, 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.

⁸⁵ 42 C.F.R. § 433.135 ("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.").

⁸⁶ See *generally* CENTERS FOR MEDICARE AND MEDICAID SERVICES, STATE MEDICAID MANUAL 3900-3910.15, 3900.1, 3900.2 (2003).

⁸⁷ We considered expenditures for four programs: TANF, Medicaid, DHCP (CHIP), and SSI. TANF total state and federal expenditures for FY2008 were \$68,010,869. See U.S. Department of Health and Human Services, Administration for Children & Families, Table F – Combined Spending of Federal and State Funds Expenses in FY 2008, http://www.acf.hhs.gov/programs/ofs/data/2008/tableF_2008.html. Medicaid state-only expenditures were calculated by using the FY2007 total per-enrollee payment of \$5,421. See The Henry J. Kaiser Family Foundation, Delaware: Medicaid Payments per Enrollee, FY2007, <http://www.statehealthfacts.org/profileind.jsp?ind=183&cat=4&rgn=9>. The state share of the total per-enrollee payment for FY2007 was calculated by multiplying the payment of \$5,421 by the overall percentage the State contributed to the payment (50%), which yields a total per-participant state share of \$2,711 (unadjusted). See The Henry J. Kaiser Family Foundation, Delaware: Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier, <http://www.statehealthfacts.org/profileind.jsp?ind=184&cat=4&rgn=9>. Total state and federal SSI payments in 2008 were \$7,063,000. See Social Security Administration, Supplemental Security Record, Table 3: Number of recipients in state (by eligibility category, age, and receipt of OASDI benefits) and amount of payments, by county, December 2008, http://www.socialsecurity.gov/policy/docs/statcomps/ssi_sc/2008/ri.pdf. To calculate total Delaware state-only SSI payments, the national state share of all SSI funding was calculated at 8.7% and multiplied by the 2008 SSI payment total shown above. See Social Security Online, SSI Annual Statistical Report,

2009, http://ssa.gov/policy/docs/statcomps/ssi_asr/index.html. This yielded \$614,481 in state-only payments for Delaware in 2008.

The TANF average monthly participation for Delaware families in FY2008 FY Avg. was 4,023. See U.S. Department of Health and Human Services, Administration for Children & Families, TANF: Total Number of Families, http://www.acf.hhs.gov/programs/ofa/data-reports/caseload/2008/2008_family_tan.htm. Since TANF participation is given on a monthly average, the total FY2008 expenditure was divided by the monthly average participation numbers to yield a per-participant annual expenditure. Total Medicaid enrollment for FY2007 was 184,900. See The Henry J. Kaiser Family Foundation, Delaware: Total Medicaid Enrollment, FY2007, <http://www.statehealthfacts.org/profileind.jsp?ind=198&cat=4&rgn=9>. The number of total SSI recipients for 2008 was 14,837. See Social Security Administration, Supplemental Security Record, Table 3: Number of recipients in state (by eligibility category, age, and receipt of OASDI benefits) and amount of payments, by county, December 2008, http://www.socialsecurity.gov/policy/docs/statcomps/ssi_sc/2008/de.html. Total DHCP (CHIP) enrollment for FY2008 was 11,192. See The Henry J. Kaiser Family Foundation, Delaware: Number of Children Ever Enrolled in the Children's Health Insurance Program (CHIP), FY2008, <http://www.statehealthfacts.org/profileind.jsp?ind=871&cat=4&rgn=9>. Note that we make the conservative assumption here that only one individual in each couple receives public assistance benefits, and that the State will only save on one individual per family no longer receiving public assistance. All per-participant expenditures calculated for this report were adjusted to 2010 dollars.

⁸⁸ U.S. DEPARTMENT OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, U.S. CENSUS BUREAU, THE AMERICAN COMMUNITY SURVEY (2008), available at <http://www.census.gov/acs/www/Downloads/questionnaires/2008/Quest08.pdf>.

⁸⁹ See Michael Ash and M. V. Lee Badgett, *Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Same-Sex and Unmarried Different-Sex Couples*, 24 CONTEMPORARY ECONOMIC POLICY 582 (2006).

⁹⁰ For example, when a couple enters a civil union, the applicant's partner may have few assets and low income, allowing the program recipient to remain in the public assistance program.

⁹¹ National rates are used instead of state-level rates for Delaware due to the statistical limitations of Delaware's small sample size in the ACS. We assume that Delaware's same-sex unmarried couples and different-sex married couples receive public assistance and SSI income at the national rates.

⁹² See *supra* note 89.

⁹³ This assumption takes into account the fact that possible loss of benefits will deter some same-sex couples from entering civil unions. 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*, 30 J. OF ECON. LITERATURE 27 (1992).

⁹⁴ We calculated savings for DHCP (CHIP) slightly differently than described. According to the 2008 American Community Survey, of those same-sex couples receiving public assistance income, only half had a child age 18 or younger in their household. Therefore, we assume the number of same-sex couples that participate in DHCP in Delaware is half the number that participates in other public assistance programs. We calculate, therefore, that roughly 4 same-sex couples would participate in DE DHCP before civil unions for same-sex couples are allowed and roughly 2 same-sex couples would participate in DE DHCP after civil unions for same-sex couples are allowed.

⁹⁵ Since we use rates of participation over 1 year, we also assume that participants on average participate in the program for 12 months. Thus, under this assumption, we do not count Year 1 couples who go off public assistance, and the savings generated by this, *again* in Years 2 and 3. Thus, if we calculate that 27 same-sex partners obtain public assistance each year, we also presume that these 27 individuals change from one year to the next, though the rate of participation remains constant, at 1.03%. Thus, the individuals who leave public assistance in Years 1, 2 and 3 are different individuals, all which savings can be attributed to benefits of civil unions for same-sex couples. Note that any inflation in the savings figure is corrected by our conservative assumption that only one individual per couple participates in public assistance.

⁹⁶ Columns may not total exactly due to rounding. Figures presented have been adjusted to 2010 dollars.

⁹⁷ New Jersey Department of Health and Senior Services, Entering Into A Marriage Or Civil Union In New Jersey, *available at* <http://www.state.nj.us/health/forms/reg-d30.pdf>.

⁹⁸ *See e.g.* Sussex County Marriage Bureau, Fee Schedule, <http://www.sussexcountyde.gov/dept/cop/>, Kent County Levy Court, Kent County Clerk of Peace, <http://www.co.kent.de.us/Departments/RowOffices/ClerkofPeace/mldetail.htm>

⁹⁹ CONNECTICUT GENERAL ASSEMBLY, OFFICE OF LEGISLATIVE RESEARCH. 2002. OFFICE OF FISCAL ANALYSIS REPORT ON HB 5001, *available at* http://www1.law.ucla.edu/~williamsproj/connstudy_files/connstudy.htm (accessed March 2008); OFFICE OF LEGISLATIVE COUNCIL, REPORT OF THE VERMONT DOMESTIC PARTNERSHIP REVIEW COMMISSION (2002) *available at* <http://www.leg.state.vt.us/baker/Final%20CURC%20Report%20for%202002.htm> (accessed March 2008); Alan G. Hevesi, 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 (Mar. 3, 2004) *available at* <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm>.