The Economic Impact of Same-Sex Marriage on Today's Society

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THE ECONOMIC IMPACT OF SAME-SEX MARRIAGE ON TODAY’S SOCIETY

By Lane Leidy Marmon
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ABSTRACT:

The traditional concept of marriage for the purpose of procreation is being challenged by one of the smaller states, Massachusetts, with the advent of same-sex marriage. With the court decision in the landmark case Goodridge v. Department of Public Health (440 Mass. 309 [2003]), the Massachusetts courts were forced to provide equal marriage rights to homosexual couples. With marriage rights being debated, same-sex married couples began to look at the impact marriage would have on their economic status. The government quickly passed both DOMA (Defense of Marriage Act) in 1996 and FMA (Federal Marriage Act) in 2003 that specifically stated that same-sex marriages are not recognized within the federal government. Thus, homosexual married couples face problems economically in five areas: insurance and beneficiaries, taxes and governmental aid, estate planning and retirement, employee benefits, and children. Each of these areas has hurdles for same-sex couples; however, with guidance, some of these bridges may be crossed. In addition, one realizes that married homosexuals should have basic rights that are provided to heterosexual married couples. By looking at four different factual perspectives of homosexuals from Massachusetts, a more encompassing picture can be seen. By combining factual economics with humanistic qualities, same-sex marriage has a strong case in the courts. These new laws in Massachusetts are being compared to those of other states and the impact that this may have on the future.

Key Words: same-sex, marriage, homosexuality, economics, Goodridge v. Department of Public Health, and partner
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I would like to dedicate this honors thesis to my parents, 
James Louis Marmon and Leah Leidy Marmon, 
who have always supported me and believed in me. 
Thank you for everything. 
You both are my world.
CHAPTER ONE:  
HISTORY OF MARRIAGE AND LEGAL BACKGROUND

You hear the sound of “Pachelbel’s Canon” playing in the background accompanied by the scent of hundreds of roses. You look around and see all the people in front of you rise to their feet. On your left side is your father, your arm laced through his. The organ begins to play the famous “Wedding March,” as your feet begin to travel toward the front of the crowd. All eyes are focused on you, being the only person in the room who is wearing white. As the ceremony begins, you feel butterflies in your stomach and you know that the person standing next to you is the one whom you love. As the final “I do’s” are spoken, a blessing is given, along with the instructions to kiss. “I now pronounce you man and man. You may now kiss your husband.”

Traditional marriages, between two heterosexual people, are now beginning to morph into marriages or partnerships with two men or two women. Recently the topic of gay marriage has filtered into news rooms, causing both conflict and hope in the minds of many Americans. To date, the American view of marriage has always been between a man and a woman, quite often sanctified by a blessing from a religious institution. To call into question this age-old tradition, while attempting to modify the concept to include a wider range of people, has caused an outcry in a variety of different communities. The topic of gay marriage and the values of matrimony, which first began on the floor of the newsroom, has since progressed to the floor of the House of Representatives in the form of a bill to ban gay marriage. The Supreme Court will soon be forced to discuss the legality of gay marriage in the American system of the federal and state governments.
Although same-sex marriage can be viewed as a civil right, it can just as easily be seen as detrimental to society by certain religious institutions and their beliefs. A third method of viewing same-sex marriage is through its economic impact on society. By taking an economic approach, secular opinions are eliminated and there is pure factual and numeric evidence. In order to approach the subject of the economics of same-sex marriage, one needs to look at the history and laws behind how marriage is defined and how it has changed over the years.

**The Concept of Matrimony**

The word matrimony has evolved in meaning over time to incorporate a variety of definitions, including both secular and contractual ones. According to the *Catholic Encyclopedia*, “the word marriage may be taken to denote the action, contract, formality, or ceremony by which the conjugal union is formed or the union itself as an enduring condition is formed.”¹ In the US Federal Code, marriage is “a legal union between one man and one woman as husband and wife.”² Through this outlook people can perceive marriage to mean quite different things. However, a more common definition used by the Catholic Church to describe matrimony is, “the legitimate union between husband and wife. ‘Legitimate’ indicates the sanction of some kind of law, natural, evangelical, or

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civil, while the phrase, ‘husband and wife,’ implies mutual rights of sexual intercourse, life in common, and an enduring union.”

Although marriages today occur in a variety of secular places, the state still is required to sign a marriage certificate prior to any nuptials. This would be the “legitimization” for a marriage to be seen as legal in the eyes of the government. A “legitimate” marriage must be sanctified by the state through paperwork and then could be blessed by a religious leader. The words “husband and wife” under state law mean more than just sexual intercourse, common living spaces, and a common union, but also impact insurance and survivorship rights, in addition to a variety of other financial and personal agreements. In this respect, marriage is an important aspect of our culture.

Throughout history, societies have formed rules and unwritten regulations as to the context of marriage. Until late in the 20th century, the notion of interracial marriages was socially taboo. This is because unspoken rules were interlaced into society making it unacceptable for people of color to marry their white counterparts. If a biracial marriage was formed, the newlyweds would be outcasts in society by both the white and the black cultures. Even though society shunned marriage between a black and a white person, white masters would procreate with their female black slaves, producing biracial children that could not be associated with either the white or the black cultures. This was not considered to be the normal occurrence for the time and was thus seen as unfit.

Similarly, we can apply this philosophy to the current trends in marriage with regard to same-sex couples. “Marriage systems involve the sets of rules used in societies to govern the establishment, continuance, and dissolution of marriage. These include rules concerning who may be married and who may not. They also include rules

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3 Ryan, p. 1.
concerning the holding and transmission of property or status."\textsuperscript{4} The regulation that was controversial more recently is that of gay marriage. Prior to Vermont Governor Howard Dean’s passing a rule regarding the acceptance of “homosexual unions,” the United States’ perception of same-sex unions was that of rejection. It was an unwritten rule that deemed it unacceptable for two gay people to be in love and truly share life potentially under the same roof. In this regard, the concept of marriage and marriage partners are deeply integrated into the perception of our current societal values. “The functioning of marriage systems also needs to be fully related to the overall economic and political situation within which families and individuals must make their way. That overall situation ought in turn to be looked at historically, for it constantly changes from the situation for which the currently used rules were made.”\textsuperscript{5} This is a valid point when discussing the trends in matrimony and marriage systems.

Marriage systems are comprised of the basic structures for rules and regulations, which in turn affect certain groups within society. When reviewing marital trends, one should take into account the historical context, the social standards, and the perception of the church. “Society sustains, shapes, and controls family life in ways too important to ignore. Moreover, each member of the family, as an individual, participates in social relations outside the family that affect his behavior within it. Thus collectively and individually the external environment of the family impinges upon it.”\textsuperscript{6} The degree to which society influences a couple depends on a case-by case basis. Each of these factors can clearly influence marriage systems through indirect means, which will be explained further.

\textsuperscript{5} Quale, p. 1.
Through each of these spheres, marriage is considered to be an alliance. This is true not just on the grounds of two people vowing to love each other for eternity, but also a union of two worlds merging into one. “Marriage is an alliance, before it is anything else. At a minimum, it is an alliance between the two it brings together.”7 When two people commit to each other, it is expected that they will merge certain aspects of each other’s lives. Through this merger, both parties are required to give a little on either end. Otherwise the marriage will not be equal and begin to crumble. In addition, the alliance is between more than simply the two who are married, but also includes those around them and the institutions that will influence them.

Marriage can also be seen as a transaction of wealth between the couple. “Marriage is often as an alliance through which property may be transmitted in some way, or through which status of some type is conferred or confirmed. In particular, marriage normally confers the status as wife and husband, which have been and still are regarded in many societies as necessary to being seen as an adult rather than as a child.”8 When the female reaches the proper maturation age, her family begins to look for suitors. As she gains the title of wife, she not only is accepted in the community as a woman but also as an object of wealth. Looking back at past societies, the tradition of marriage was often arranged as a financial means for the parents. In colonial times in the United States, the female was often told whom to marry, while the father negotiated the price (dowry) that he would receive for her. Since he was losing her as a valued helper within the house, naturally he should be compensated for his loss.

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7 Quale, p. 1.
8 Quale, p. 2.
In today’s world, there is no negotiation of a dowry, however, finances are still an issue within the marriage. Pre-nuptials are often signed to protect the wealthier party, if by chance a divorce occurs and the marriage is ended. Thus, the wealthier individual is protected and does not lose any funds, which were accumulated prior to the marriage, to the spouse. In addition, marriages also involve various other forms of value, including property, that will be passed between the couple. For example, any property that is bought once the couple is married is usually placed in both parties’ names. This creates a more complex relationship, morphing the marriage into a partnership or alliance. Children can rightfully inherit their parents’ assets after their death creating the ability to pass on their wealth to future generations. Although toward the beginning of their life children require the tender care of a parent, quite often the parents will eventually depend on their offspring for support.

Keep in mind that the ideal of the traditional Western marriage revolves around the original fact that two people need to be in love with each other. “Love, they say, cannot be forced. It is the spontaneity of love that makes it so wonderful.”\(^9\) On this basis, a marriage only lasts when two people accept the fact that they are in love and want to spend the rest of their lives together. This would be the basic necessity for the institution of marriage.

\(^9\) Blood, p. 15.
The Church:

The Catholic Church will be the prime example for the discussion of marriage, since it holds the highest matrimonial values. The marriage contract within the Catholic Church is the accepting sacrament of matrimony, which proves the utter holiness of the act to be performed\(^\text{10}\). The notion of the sacrament can be traced back to Saint Paul, who compared the relations of Christ and his church to the matrimonial relations of a husband and a wife [Eph. V, 23-32].\(^\text{11}\) Matrimony, the act of marriage, has strict rules and regulations pertaining to the function of the marriage and the standards that are required in order for one’s marriage to be blessed by the Catholic Church. “The very name matrimony derives from two words – *matris* and *munus* – meaning the office and function of motherhood.”\(^\text{12}\)

The Catholic Church views motherhood as a means to procreate and as the sole purpose of marriage. The expectation of the church is that the sexual organs, which were God’s gift to humans, will be used in procreation to produce children and extend the human race. “[One] views marriage not only as the union of man and woman for the purposes of procreation. It is more. It is a partnership with God; a union with Him to do His work of creation and redemption and sanctification upon earth.”\(^\text{13}\) The organs are made for the proper contour of the male to female bodily interactions. Despite the overshadowing thought in people’s minds is the intense pleasure that arises through


\(^{13}\) Pisani, p. 9.
sexual intercourse, however, according to the Catholic Church, the true use of the organs is for reproduction. “The act of sex for married people has a high place in God’s plans. It is a creation of God. He intended it to be used, for He gave mankind no other method of bringing life into the world and of cementing the marriage bond.”\textsuperscript{14} The Catholic Church is against not only the use of reproductive organs for other purposes besides sexual reproduction, but it is also against the use of birth control devices that would unnaturally alter the normal reproductive scheme. The Catholic Church does allow only one form of birth control, the rhythm method. This is where the female counts the number of days between her period and estimates when the egg will be able to be fertilized. “The Catholic Church remains resolutely opposed to artificial birth control, but Pope Pius XII announces that the Church will sanction the use of the rhythm method as a natural form of birth control. Previously, the only option approved by Rome was abstinence.”\textsuperscript{15} The birth-control pill is a method of adding a higher level of natural hormones to the body to prevent ovulation. These pills, although considered to be natural, alter the natural act of reproduction, which God intended. Thus, the pill is considered to be immoral.

This notion of the “natural” transcends into the view of the marriage. The man was stereotypically viewed as the head of the household ("Pater Familias") and breadwinner of the family, whereas the female was the caregiver and nurturer. According to the biblical passage Ephesians 5:23, “He intended man to be the head and woman to be the heart of the home.”\textsuperscript{16} Furthermore, the church goes onto explain that

\begin{flushright}
\textsuperscript{14} Pisani, p. 31.
\textsuperscript{16} Pisani, p. 5.
\end{flushright}
because the male and the female have opposite occupations, as mentioned in the Bible, they are the perfect complement to one another. “He chose to create a man and a woman; moreover, He decided that these two should complement each other, that the weaknesses of the one should be offset by the strengths of the other. Every man, therefore, is made different from every woman, and every woman, different from every man.”\textsuperscript{17} According to the Catholic tradition, therefore to every man, there is beside him a female to complement his every move.

Another concern for same-sex couples still remains the Catholic Church who monitors the institution of marriage through certain rules and regulations. For example, the Catholic Church does not allow a non-Catholic to marry a Catholic by the usual wedding ceremony, based on receiving the sacrament during mass. Instead, the priest conducts a limited ceremony to suffice.\textsuperscript{18} All non-Catholics are also required to sign the Ante-Nuptial Contract and Promises. The “Ante-Nuptial Contract and Promises [will be] signed in duplicate in the presence of the priest by the parties entering a mixed marriage, and by two witnesses.”\textsuperscript{19} This is just another means for the Catholic Church to influence the institution of marriage. In addition, the Catholic Church has been facing difficulty in recent years regarding marriage. Divorce was not practiced in the Catholic Church. Today, the Catholic Church grants annulments, also known as the dissolution of marriage. Since today divorce has become a commonplace in our society, the Catholic Church is facing this problem with greater difficulty.

\textsuperscript{17} Pisani, p. 5.
\textsuperscript{18} Blood, p. 81.
\textsuperscript{19} Blood, p. 82.
A Brief History of Marriage:

Originally marriage was a concept that was established for the benefit of men: women were required to be with one man. For example, in the Mormon culture, polygamy was acceptable for a man, while females were only permitted one mate. While the man had multiple partners, women were forced to be at only one man’s beckoning call. Later, this custom developed into a monogamous law: the man and the woman were not allowed to have other mates. Today, there is a federal law that prohibits a spouse to be married to more than one mate. This monogamous relationship was sanctified through the act of giving the spouse a gift. A custom that originally started in Ancient Rome to sanctify a marriage between two people was the use of the wedding ring. “It is believed that the roundness of the ring represents eternity. Therefore, the wearing of wedding rings symbolizes a union that is to last forever. It was once thought that a vein or nerve ran directly from the ‘ring’ finger of the left hand to the heart.”20 Even though this may seem like a touching story, the tradition of the engagement ring and wedding band has carried on to present day, centuries later. Engagement bands are placed on the left “ring” finger, later accompanied with the wedding band.

The history of marriage within the United States begins around colonial times of unrest. A majority of the men and women who were marrying in the Colonies was around the “ages of 21 for women and 22 for men.”21 When compared to the ages for marriage in Western Europe, the age for Americans to wed was about ten years earlier. Courtship patterns were passed down through tradition and brought to the Colonies.

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20 Stritof, p. 1.
21 Quale, p. 286.
At least among Puritans that meant the companionship expected in marriage required the two to become well acquainted before agreeing to marry. It also meant that they should have their families’ approval. In the cold winters of New England the Puritans accepted bundling, with a bundling-board down the center of the bed to be sure that conversations under the quilts did not become too intimate.\(^2^2\)

Marriages had a sexual element, clearly, but its major premise was for reproduction. Marriage lines were rigid and not permitted to be violated. Marriage was the accepted occurrence for males and females when they reached the appropriate age.

As time progressed, marriage began to morph into a highly developed, intricate institution, changing the old concepts of matrimony to better fit the ever-changing society. In the United States during the nineteenth century, young people were transitioning from parochial and collegiate institutions to the work force. Marriage was still out of sight and out of mind. Those who entered the educational system at earlier ages had the ability to become self-reliant individuals and would be acceptable for marriage at an earlier age. Society still influenced the primary perceptions and suitability of marriages; self-sufficiency was a major claim. “Working-class members married earlier than salaried-class members, then as now. Those who went to work earlier might also be urged to put off marriage a bit. In late 19\(^{\text{th}}\)-century, middle children married latest, rather than firstborn or lastborn, possibly because they were asked to keep on ‘helping out’ until the youngest began to earn.”\(^2^3\) The demands of society prevailed over the desire for people to marry at a younger age, thus raising the mean age of marriage.

Following the trend of marriage to present day, females as well as males often desire a career prior to marriage. This is raising the mean age of marriage in today’s society. In addition, the notion of procreation has become a second in peoples’ minds

\(^2^2\) Quale, p. 286.
\(^2^3\) Quale, p. 288.
when thinking about marriage. The concept of marriage today is about love, not necessarily children. Married couples of today may choose to not have children at all, which is accepted by society. One could say that marriage has become an art form of love, not necessarily geared toward reproduction.

The Development of Homosexual Marriage:

A different marriage trend can be plotted through the 20th century, relating to the development of same-sex marriages and domestic partnerships. When looking at the development of gay marriage, first one needs to take into account the American perception and development of homosexuality. Homosexuality was hinted at in the early 1900s with the famous Tammany Hall politician, Murray Hall, who masqueraded as a man for over thirty years. Hall was married twice and it was not discovered until after his death that Hall was really a woman in disguise.24 During the early 1900s, homosexuality was an “out of sight, out of mind” type of issue for people. Because people were not faced with it, they did not think about those around them possibly as being gay. Homosexuality resurfaced in 1969 when the Reverend Troy Perry of the Metropolitan Community Church of Los Angeles, California founded the first gay, bisexual and transgender church. Soon after the church was founded, Reverend Troy began

conducting same-sex marriage ceremonies, which he called holy unions.\textsuperscript{25} Reverend Troy implemented the first steps toward the development of same-sex marriages.  

In 1971, Jack Baker and James McConnell sued for a marriage license in Minnesota on the basis of being sexual partners. The case was unsuccessful. However, the judge allowed them to acquire a legal relationship by having McConnell adopt Baker. Only earlier this year four states, Colorado, Idaho, Oregon, and Hawaii had repealed the sodomy laws. The court systems in other states, as Texas, were utterly shocked about the repeal of the sodomy acts. In the 1970s, it was clear that Americans and the court system were not prepared for the growth in homosexuality, and in 1978 the United States Supreme Court declared marriage to be “of fundamental importance to all individuals” in the case of \textit{Zablocki v. Redhail}.\textsuperscript{26} The court described marriage as “‘one of the basic civil rights of man’ and ‘the most important relation in life.’”\textsuperscript{27} 

Pursuing rights for homosexuality in the court system continued in such cases as \textit{Jones v. Hallahan} (1973), where a lesbian couple filed for a marriage license in Kentucky and lost. Those types of cases continued through the 70s and 80s where a homosexual couple sued for marriage rights in different states. Another type of case (\textit{DeSanto v. Barnsley} [1984]) arose in regards to common-law marriages and an equitable division of assets after a couple splits. This brought into question the idea of a common law marriage, and the issue of same-sex couples who have lived together for a given number of years possibly filing for a common law marriage.\textsuperscript{28} The courts decided that their

\textsuperscript{25} “An Interactive History of Same-Sex Marriage.”  
\textsuperscript{27} “Same-sex marriage: A history of the law.”  
\textsuperscript{28} “Same-sex marriage: A history of the law.”
relationship did not constitute a common-law marriage and thus could not have a legal divorce that would require the equitable division of the assets. In the case *Matter of Estate of Cooper* (1990), Cooper’s same-sex partner filed for property inheritance as the surviving spouse in the state of New York. However, the court once again did not recognize their partnership as a legal marriage and thus was not able to claim spousal privileges of inheritance.

There was a glimmer of hope in 1994 when IKEA aired “a gay couple shopping for furniture” in a landmark television commercial. This was groundbreaking for the notion of homosexuality because it was the first time that homosexuality was being shown intimately on television. Another notable moment in broadcasting history in 1994 involved the show “Northern Exposure” where the two “innkeepers Ron and Erick are married…[however,] the two men do not kiss as the ceremony ends.” Both of these instances began paving the way for homosexuality to be accepted on television and in the eyes of the general public.

It was not until 1996 when homosexuality was mentioned or shown again in primetime. NBC made a bold move with their hit sitcom “Friends,” where “Ross’s ex-wife and her girl-friend get married.” The public watching the show had mixed responses to the same-sex marriage. The government, seeing homosexuality becoming more prevalent, also began to put up red flags about marriage and started talking about the Defense of Marriage Act. In 1996, President Clinton signed the Defense of Marriage Act (DOMA), which was a federal denial of the recognition of same-sex marriages. Congress passed DOMA to ensure the traditional form of the word marriage.

29 “An Interactive History of Same-Sex Marriage.”
30 “An Interactive History of Same-Sex Marriage.”
31 “An Interactive History of Same-Sex Marriage.”
states, “under DOMA, the word ‘marriage,’ as used in any federal statute, ruling or regulation, or interpretation of federal agency, means only a legal union between one man and one woman as husband and wife, and the word ‘spouse’ refers only to a person of the opposite sex who is a husband or a wife.”³² With this regulation taking away homosexual’s possible right of marrying, same-sex partners began to feel demoralized and hopeless.

In 1999, Vermont took a bold stand on the issue of homosexual partnerships. The Vermont Supreme Court ordered the state legislature to produce a plan that would provide homosexual couples “traditional marriage benefits and protections.”³³ Thus, in 2000, the Vermont state legislature voted to pass the Vermont Civil Union Law that provided homosexual couples with some of the same rights as traditionally married people. Below is a list of a few of the rights that were granted to homosexual couples with the new Civil Unions law:

- Use of family laws such as annulment, divorce, child custody, child support, alimony, domestic violence, adoption and property division
- The right to sue for wrongful death, loss of consortium and any other tort or law related to spousal relationships
- Medical rights such as hospital visitation, notification and durable power of attorney
- Family leave benefits
- Joint state tax filing
- Property inheritance without a will³⁴

Although these new benefits are a great accomplishment for same-sex couples, they still only provide rights to couples residing in Vermont. In addition, these new benefits...
benefits are only recognized as state rights. Because of DOMA, the federal government does not have to recognize the civil unions as marriages that would be eligible for federal funds. Thus, homosexual couples cannot apply for “Social Security benefits, Immigration privileges, or Federal Tax Exemption.” However, homosexuals saw this as a step in the right direction by aiding in extending their civil rights.

The *New York Times* newspaper in 2002 announced the first homosexual union. Daniel Andrew Gross’s and Steven Goldstein’s ceremony was to take place in Vermont as a civil-union matrimony. A civil matrimony was created as a settlement instead of marriage that provides certain rights to the union similar to a marriage. However, unions are not viewed as being equal to marriages under the law. The print media was now taking an interest in homosexuals, establishing a sentiment of acceptance. In 2003, *Bride Magazine* ran a one-page article on homosexual weddings. *Bride Magazine* with this landmark article became the first magazine to publish anything on the subject of homosexual marriage. The next groundbreaking reform took place in Massachusetts with the advent of same-sex marriage. Same-sex marriage, which is different from civil unions, provides all the same rights to married homosexual couples as the state would to a heterosexual couple. In 2003, the Supreme Judicial Court of Massachusetts ruled that homosexual couples were permitted to marry under the constitution of the Commonwealth. The Supreme Court’s decision in *Goodridge v. Department of Public Health* (440 Mass. 309 [2003]) held that a state regulation excluding homosexual marriage was unlawful, reprimanded the legislature for the discrimination of civil rights, and designated within six months that the law be changed.

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35 “Same-sex marriage: Developments in the Law.”
36 “An Interactive History of Same-Sex Marriage.”
37 “An Interactive History of Same-Sex Marriage.”
In February of 2004, the Massachusetts court ruled that a state that provided civil unions instead of allowing civil marriages would not meet the criteria stipulated in the *Goodridge v. Department of Public Health* decision. “Despite the fact that all legal rights and benefits were provided in the civil unions legislation, the court rejected this alternative legislation, insisting marriage itself must be redefined.”38 A civil union instead of a traditional legal marriage is selling homosexuality short. A civil union does not provide the same rights as a marriage and is technically discrimination against same-sex persons in a partnership.39 By May of 2004, the Massachusetts court had passed regulations allowing same-sex marriage licenses and civil marriages. Unmarried heterosexuals had the option to marry if they so chose, however, homosexuals to this point were only permitted to be partners. Thus, when the court determined that marriage was the only solution, the courts were flooded in May as hundreds of thousands of homosexual couples flocked to the city to be married under the Commonwealth law. The Massachusetts state legislature is currently debating an amendment that could take effect as early as 2006 to the state constitution that would not allow same-sex marriage.40 Massachusetts was the greatest step toward equalization of homosexual and heterosexual marriages thus far in American history. Below is a chart representing the state laws that have been passed regarding same-sex marriages and unions. Massachusetts was the landmark state to allow same-sex marriages.

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39 “Same-sex marriage: Developments in the Law.”
Equality for homosexuals took a step backward when the Federal Marriage Amendment (FMA) was introduced in the United States House of Representatives in 2003. This amendment that was presented on the floor stated: “marriage in the United States shall consist only of the union of a man and a woman. Neither this constitution or the constitution of any state, nor state or federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.”

This marriage amendment was addressed to a bipartisan House and although receiving both positive and negative support, has not been approved by the majority. As of late, the common trend among states has been toward a traditional view of marriage and permitted in a few liberal states civil unions or reciprocal beneficiaries.

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Same-Sex Marriage:

After looking at the relationships among the various institutions that can affect views on marriage, one must take a step back to see the overall principles. Firstly, the idea of marriage, as indicated earlier, has been around for centuries. Although the meaning has changed over time, the general principle of marriage still remains the same. Marriage can be influenced by a variety of institutions including social, political, and secular organizations. History shows that over time, marriage has become more about the individuals, rather than the parents’ benefit. Also, the mean age for marriage these days has risen due to the impact of the industrial economy and goals by either spouse to have careers. Finally, the Catholic Church has been imposing its views about marriage over newlyweds. The church incorporates the teachings of the Bible to encourage a man and a woman to marry and reproduce, since it is the wish of God, and because it is their vocation. Each of these aspects plays a key role in the issues at hand in today’s society with the debate over gay marriage (same-sex marriage).

Marriage, as was discussed earlier, is more than just a relationship between a male and a female; it is about a love that can transcend all boundaries. Love does not know gender, nor does it see race, or ethnicity. This is the key principle that will carry over to the anticipated debate of homosexual marriage. Society has already established certain stereotypes and unspoken rules pertaining to gay marriage, which have already filtered into the institution of marriage. What happened to the view that marriage is meant as a means to deepening a relationship that is shared between two individuals?

As long as we cannot love people of our own sex, we will be trapped by role-playing already set up by patriarchal culture, and we will continue to cooperate in
heterosexist oppression. By gay love we do not necessarily mean genital sex; we mean loving with intelligence and playfulness, with physical caring, with sensual delight and with tenderness and strength. In getting in touch with abundant love inside ourselves, orgasm is not the issue; caring is what matters. Gayness enhances sexual liberation and helps close the gap between sensuality and sexuality.\(^{42}\)

Quite a few of the values that people currently hold dear are being questioned. For instance, the value of “actual reproduction” between a married couple as being the sole purpose for marriage is being examined. Two men that share an undying bond of love towards one another are unable to sexually reproduce a child. Should their marriage be prohibited because their relationship would not be based on the sole purpose of reproduction? In addition, the values of what is deemed masculine and feminine need to be revisited. Some wish that eventually “in our new society, the images of ‘masculine’ and ‘feminine’ will disappear. These character ideals are made up of human traits which have been distributed between the two genders.”\(^{43}\) Maybe then the stereotypical notions about marriage and the “requirements” will disappear, and people can marry whomever without the input from outside institutions.

The question currently remains: what is the issue at hand behind same-sex marriage? Would it be deemed a civil rights case?

The recent confirmations of Clarence Thomas to the Supreme Court of the United States and California Governor Pete Wilson’s repeated betrayals of civil rights for people of color, women and lesbians, and gay men are living testimony to an America that never has been. They are not the first but only the latest example of a nation that has failed in its promise of freedom and justice and equality for all. Free America, a just America is the land that never has been yet – not for the peoples of the great nations that roamed this land before any European ever laid


\(^{43}\) Goodman, p. 49.
eyes on it; not for African Americans; not for poor people of any color; not for women; and definitely not, for queers.\textsuperscript{44}

Hopefully, it will not be long until the issue is resolved and the rights that are respectfully their own are agreed upon.

\textbf{Economics and Homosexual Marriage:}

Economics have always been at the forefront of people’s minds when discussing homosexual marriage. How does their marriage impact my benefits? People are not looking at the effect that same-sex marriage has beyond their own well-being. What people do not think about is how homosexuals who are in a long-term, committed relationship are affected by not being married. By taking a closer look at different benefits that are offered to married couples and comparing them to benefits or lack thereof that homosexuals receive, there is a great void that forms with regards to civil rights. The different components of benefits that are offered to heterosexual married couples range from simple gym memberships being used by the spouse to employment benefits for the spouse. Some of the topics include: health benefits, employee benefits, the federal government, court proceedings, and miscellaneous economic topics.

Massachusetts as a state has faced drastic changes relating to the health field and estate work. Because homosexual marriages are seen as equal to heterosexual marriages, the spouse can claim visitation rights, notification of an accident and durable power of

attorney. “As a result of ERISA [Employee Retirement Income Securities Act] controlling insurance, employers participating in group health and dental insurance plans will be legally required to extend spousal coverage to same-sex spouses of employees participating in such plans within Massachusetts.” Under the state law for COBRA [Congressional Omnibus Budget Reconciliation Act], which was created to regulate insurance companies, employers are not required by law to provide coverage to domestic partners or spouses. However, employers are trying to offer the coverage merely to avoid any liability that could occur. In addition, the state also granted family leave benefits, state joint taxes and property inheritance to homosexual partners, each of which impacts the state economically. For example, “federally regulated employment benefits also include an employee’s use of pre-tax dollars to pay for certain benefits, like spousal health insurance premiums. Thus, under DOMA, same-sex couples in Massachusetts will not be able to use pre-tax dollars to pay for premiums associated with spousal coverage. Moreover, same-sex couples will be taxed on the imputed value of same-sex spousal benefits.”

Companies in Massachusetts are left to fend for themselves and determine what the effect of this law has on their employee-benefits. The Massachusetts court’s ruling unequivocally requires companies in the state to offer identical health coverage and additional benefits to married homosexual partners as they currently do for heterosexual partners. “May 17, 2004, employers must recognize same-sex marriages and provide same-sex spouses the full range of employee benefits provided to opposite-sex spouses. This includes leave under the Massachusetts Small Necessities Leave Act, which

45 Schneck, p. 1.
46 Schneck, p. 2.
provides 24 hours of leave per year for school activities and medical appointments for certain relatives (by blood or marriage).\textsuperscript{47} Beginning in 1992, Lotus Development Corp. in Cambridge, MA became the first publicly traded company to give coverage to domestic partners.\textsuperscript{48} Today, with the advent of legalizing gay marriage, companies are on the ball initiating partner packages, identical to those of heterosexual partner benefits.

Similarly, the federal government has been placed in a position whereby Massachusetts is ruling differently on what the definition of marriage is. This impacts any benefits that same-sex marriages should receive from the federal government, which heterosexual marriages receive. For example, Social Security and the unlimited marital deduction for federal estate tax purposes would not apply to those married in the state of Massachusetts because they are federal regulations, which supersede state precedents. The federal government has not deemed to recognize same-sex marriages, thus separating economic responsibility and federal marriage benefits.

The Massachusetts courts’ recognizing homosexual marriages as legal have impacted court proceedings. For example, terms in marriage, such as annulment and divorce, now become applicable to same-sex marriages. These are just a few court proceedings that have been impacted with the extension of homosexual marriages. This has greatly influenced same-sex marriages economically, since a majority of the proceedings involve monetary means of some kind. The state, businesses, and courts have each been influenced economically, but the benefits that are out of sight out and out of mind are quite often the ones that influence people the most. For instance, a majority of people do not begin to think about retirement until later in their life. “In general, the

\textsuperscript{47} Schneck, p. 1.
Employee Retirement Income Security Act (ERISA) preempts state laws regarding employer-sponsored benefit plans...the legalization of same-sex marriages in Massachusetts will not grant spousal rights and benefits to same-sex spouses under ERISA retirement or welfare plans, or COBRA coverage stemming from ERISA welfare plans."^{49}

Quite often people discuss homosexuality as against religion or their lack of marriage rights as being inhumane, but what people do not look at are the economic differences that impact people. How does a lack of tax benefits change the way a couple lives? How do health benefits between partners impact the health care that the partner receives? The subsequent chapters will be discussing in greater detail same-sex marriage and the relation that it has to economics through four case studies.

^{49} Schneck, p. 2.
The topic of same-sex marriage has flooded headlines in the past year regarding the humanistic equality and the sacrilegious nature of allowing these types of marriages to occur. What people are not looking at are the figures behind a marriage and how mere economics and the legal ramifications that are created once a couple says “I do” can impact their relationship. People quite often forget the smaller benefits that are granted to a couple once they are married, such as filing joint tax returns and allowing one’s spouse to make medical decisions. These are the very reason why same-sex couples are struggling all over the United States to be recognized as married partners. Instead, these couples are forced to try and bend the current laws to their benefit by meeting with estate planners and financial advisors to discuss ways in which their partner can receive their estate.

Heterosexual couples have the ability to wed, whereas, same-sex couples are still striving to have this option. In addition, heterosexual couples can file for a common law marriage and never come close to the altar. Granted, the regulations of a common law marriage differ from state to state and some states do not even permit it, however, “they are: a present agreement to enter into the relationship of husband and wife, cohabitation, and a reputation as a married couple.”\textsuperscript{50} It is seen as a perfectly respectable form of cohabitation and can even be considered to be a form of legal marriage. Goldie Hawn and Kurt Russell still have not officially tied the knot, however, they are seen by the

public as a happily married couple. Unfortunately, same-sex partners are not allowed this luxury and can only achieve a similar bond through contracts and adoption.

In 1981, *Jones v. Daly* in California was a case in which Randal James sued the estate of James Daly on the basis that an oral contract was violated. Randal James claimed that in return for his services “as James’s ‘lover, companion, homemaker, housekeeper, and cook,’” he should be entitled to compensation. However, the courts disagreed and held that the complaint did not state a cause of action. This case, although similar to previous same-sex contract cases with the use of an oral contract regarding services rendered, expanded the definition to include lover.

*Whorton v. Dillingham* in California (1988) again addressed a breach of an oral contract regarding services rendered to a same-sex partner for compensation. Donnis Whorton had an oral contract with Benjamin Dillingham detailing that he, Donnis, “was to be Benjamin’s chauffeur, bodyguard, business secretary, business partner and lover.” Whorton sued Dillingham for the breach stating that any area of the agreement found to be unenforceable was to be eliminated. The court held that the complaint stated a cause of action.

In New York in 1989, *Braschi v. Stahl Association Company* was one of the groundbreaking cases to acknowledge the status of a surviving same-sex partner. It was determined by the court that the surviving “partner falls within the statutory phrase ‘some other member of the deceased tenant’s family who has been living with the deceased tenant’ and therefore entitled to rent and eviction protections.” *Braschi v. Stahl Association Company* gave hope to same-sex partners regarding estates and spousal legal

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51 Gallanis.
52 Gallanis.
53 Gallanis.
matters. Although same-sex partners were still not considered to be equal to married spouses, it was a start.

In the following year, 1990, New York had an appealing case of *Matter of Estate of Cooper*, where Cooper died and left a majority of his estate to his ex-lover. Cooper’s current lover sued for inheritance as a surviving spouse under the state inheritance laws. However, the case was not successful since the state laws only allowed actual husbands and wives to sue for legitimate inheritance. Cooper’s lover did not receive compensation or inheritance because of the state law.

Recently, the only case talked about regarding same-sex partners is the *Goodridge v. Department of Public Health* (440 Mass. 309 [2003]) case decided by the Supreme Judicial Court of Massachusetts. As stated earlier, homosexual couples were permitted to marry under the constitution of the Commonwealth of Massachusetts and held that a state regulation prohibiting homosexual marriage was unlawful. The Supreme Judicial Court also reprimanded the legislature for the discrimination of civil rights and designated within six months that the law be changed. By February of 2004, this court ruled that a state that provided civil unions instead of allowing civil marriages would not meet the criteria stipulated in the *Goodridge v. Department of Public Health* decision. Presently in Massachusetts, same-sex couples are permitted to marry, however, in other states it is not the case. In order for same-sex couples to ensure that they are provided for by their partner, they can even go to the extreme of adopting a partner or even creating an actual written contract with an estate lawyer regarding their assets. “Presently, many gays and

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54 “Same-sex Marriage: A History of the Law.”
lesbians enter traditional marriages with a heterosexual or a friend who is gay or lesbian to obtain these basic rights and protections.”

Some people still view same-sex marriage as an argument over ideals, others about natural rights; but it is useful to look at the basic facts and figures regarding asset management and estate planning. A few Western heterosexual people believe that a commitment of marriage (monogamy) is difficult, yet necessary. It is a form of sexual exclusivity that is essential to have a marriage that is acceptable. “Since gays and lesbians are often thought, under this traditional Western view, to be incapable of being sexually exclusive, it is claimed that they should not be allowed to marry, because they cannot meet a ‘necessary condition’ of marriage.”

Putting those thoughts aside, a more direct approach to the notion of marriage is economical. By looking at insurance and beneficiaries, taxes and government aid, estate planning and retirement, employment benefits, and children, a general analysis can be formed. Heterosexual married couples do not realize the benefits that they gain when they marry. In fact married couples quite often do not know of these benefits until they are incurred. However, when those benefits are not permitted a person or a person’s partner because the person is not officially “married,” one tends to take a closer look and notice what elements or benefits are missing.

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56 Bolte, p. 31.
PART I: INSURANCE

Most people first learn about insurance at the age of sixteen, when they are forced to get car insurance at a premium. Quite often insurance is not talked about except when medical bills are paid or when an accident occurs. Life insurance is a topic that children do not hear about until they are older and can receive a small portion as a beneficiary, and inherit a sum of money when the policy owner dies. What is quite often ignored are the benefits that one can acquire through insurance. Under certain medical plans, quite often all the family members are provided paid health care. In addition, a family can be set financially if a husband names his spouse as his life insurance beneficiary.

Health insurance, usually provided in part by the employer, provides a basic coverage for both a person and a person’s family. There are two types of medical plans: the basic plan and the major medical coverage plan. Both have their benefits and drawbacks.

The basic plan reimburses you for doctor’s bills, drugs, outpatient surgical procedures, and other medical expenses up to a certain annual dollar limit. The second plan, called major medical, covers extended hospital visits and other major medical procedures. Both the basic and major medical plans, if offered by an employer, usually cover the employee, his or her spouse, and any children age 23 or younger if the children attend school.57

The basic plan is cheaper, yet does not cover extended health costs or major procedures. On the other hand, the major plan is more expensive, but has a larger coverage to include long term medical stays. What is often recommended to the client is to choose the plan that best fits a person’s needs. If one has a need for long medical treatment, then he or

57 Goodman, p. 541.
she must pay for the more expensive medical plan because it covers more services that are needed.

Both medical plans cover a person, the spouse, and children up to the age of twenty-three. What if a person is homosexual and has a partner who needs to be covered under the partner’s medical plan? That is not an option for the general public currently. A majority of the plans specify in the clause the word “spouse,” meaning it may not be a substitute for domestic partner. Med-pay is yet another form of medical coverage that aids in paying for health bills, doctors appointments, hospital bills, and even funeral expenses if needed. “Med pay also kicks in if you or a family member is hit by a car when walking as a pedestrian or if you or a family member is hurt when riding in someone else’s car.”

Once again the wording of the coverage only extends to those who are considered family. This excludes all domestic partners because they are not considered to be family or directly related.

COBRA, Congressional Omnibus Budget Reconciliation Act, allows employees who switch companies to carry their group health insurance from the previous job to the new employment for up to eighteen months. It was originally created to aid those who suffered an event that qualified under COBRA, yet did not have coverage because of the change in their group health insurance. This Congressional Act falls under the jurisdiction of the government and therefore directly specifies who is included under the act.

Health insurance coverage under COBRA, with the same payment requirement, also applies to the following people: Spouses and children of employees who reach age 65 and qualify for Medicare, at which time a company usually stops paying for health benefits (for up to three years), spouses who divorce employees, as well as the employees’ children, even if they live with the ex-spouse (for up to

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58 Goodman, p. 531.
three years), and employee’s children who reach maturity (for up to three years). Normally, a child graduating from school at age 23 would no longer be covered under his or her parent’s group policy.\textsuperscript{59}

Even in Massachusetts, same-sex couples, married or divorced, are not entitled to COBRA benefits because of the same-sex spouse. Even if a state agrees to same-sex marriage, the COBRA benefits are federal, and thus do not fall under state jurisdiction. With that said, any non-governmental programs are permitted to extend benefits to include same-sex spouses, as long as the funding is not federal. Thus, insurance companies could still provide coverage. “Insurance companies are subject to both COBRA and state insurance regulation, and COBRA provides that continuing coverage conform to state standards. This will not be an issue for employers with fewer than twenty employers who are governed by Massachusetts’ ‘Mini-COBRA’ law. M.G.L. c. 176J, §9 (F).”\textsuperscript{60}

Employee Retirement Income Security Act, ERISA, plans affect retirement plans, health insurance that is self provided, dental plans, and other plans. ERISA was created to preempt state insurance plans and regulate benefits under the US Department of Labor. ERISA, does not fall under state law, yet it will not provide for a same-sex spouse if it preempts state law. “Thus, a same-sex spouse could designate his or her spouse as a beneficiary of an employer-sponsored life insurance policy, as life insurance is state-regulated, M.G.L. c. 175, §133, but may not be able to designate his or her spouse as a 401k plan beneficiary.”\textsuperscript{61} 401k plans, which will be addressed later under governmental regulations, fall under the jurisdiction of the government, rather than state law. An

\textsuperscript{59} Goodman, p. 542-3.
\textsuperscript{60} Ellen M. Majdloch, “Same-Sex Marriage: What does it mean for Massachusetts Employers?” Employment Law Alert. (Nixon Peabody LLP., 1 March 2004), p. 3.
\textsuperscript{61} Majdloch, p. 3.
insurance company, generally being private, can designate if same-sex spouses are covered under plans, so long as the insurance monetary funding is not federal or falls under federal law. In addition, even if a same-sex spouse is covered under a family medical group health plan, the taxes that would be saved because the primary recipient and the partner are not actually related under federal law.

Thus, a same-sex spouse participating in family coverage under a group health or dental plan will not be entitled to a federal pretax deduction for the cost of the entire premium, even though such a person is entitled to family coverage for his or her spouse under state law M.G.L. c. 175, §108. This will be a minefield for the payroll departments of employers who are not presently providing domestic partner coverage and therefore are not already familiar with the tax rules governing the benefits of same-sex couples.62

The needs and dilemmas of the employer will be addressed in the section of employee benefits.

A general life insurance plan, by a privately owned insurance company, allows same-sex partners to receive the benefits without batting an eye. This is because life insurance policies state specifically that the beneficiary, named by grantor, shall receive the proceeds of the policy. If that beneficiary is a same-sex partner, there are no adverse legal ramifications. “Life insurance and retirement plans may name the partner as a beneficiary, thereby providing the partner with a sense of security during lifetime and with funds at the insured’s and/or plan participant’s death.”63 When discussing property and casualty insurance, it is important that couples tell their advisor to list both domestic partners on the policy. Beneficiaries can be changed at any point while the policy owner

62 Majdloch, p. 3.
is still alive with little or no difficulty. This makes insurance one of the easier aspects for a same-sex domestic partner or married homosexual couples.

Some other issues that need to be addressed regard insurance over property items and living arrangements. For example, when a person rents an apartment with multiple roommates, the company who is insuring the contents of the apartment would not only list the policy holder, but could also list the roommates who are also living there and their contents. This allows domestic partners another clause that permits their lover to be listed on the insurance coverage. Granted, if a roommate changes, the insurance company should be notified and he or she should be added to the policy. “Unmarried couples living together can also obtain coverage if it is specifically allowed in the contract. Some policies automatically extend coverage to any future resident of a policy holder’s household who is considered a domestic partner.”64 This is a clause that permits homosexual couples to be covered under each other’s property insurance because they are living together in the same apartment.

What life insurance policy holders need to understand is that the insured is not the beneficiary; it is the person(s) who are named on the policy as the beneficiary. Life insurance is designed to protect those who remain after the policy holder dies by providing a financial cushion. It provides a financial cushion for families, children and dependents. “Your beneficiaries can receive the money in one lump sum, free of federal income taxes. The funds should be enough to replace the insured’s paycheck, cover daily living expenses, and pay the insured’s final medical bills and burial costs. In addition, the insurance proceeds should provide income for long-term needs such as retirement,

64 Goodman, p. 553.
estate taxes, or college costs.” This is because income from a beneficiary’s policy is not subject to city, state, or federal taxation. Insurance is a way for partners to provide financial support to one another without the aggravation of taxes.

This policy of life insurance is often called the second-to-die or survivorship life insurance, where the spouse that is alive automatically receives the cash benefits. “If you are married and want to receive your benefits on the life annuity option or assign your survivor benefit to someone other than your spouse, you must obtain written spousal consent confirming that your spouse knows what he or she is relinquishing and that he or she does so willingly.” However, if one is not a married couple, there is no assurance clause or signature that a domestic partner must sign to relinquish these benefits. Thus, it is very easy for a domestic partner to be shocked when the insurance policy is read after death and names another heir. Policy holders are not required to produce a signature of a domestic partner to change a beneficiary’s name on the insurance policy. This variation in how a domestic partner and a married couple are treated regarding survivor insurance benefits can make a huge difference when the partner is left to support him/herself without financial support.

It is important for singles living outside of marriage (same-sex domestic partners) to create a life insurance policy that provides for any dependents and each other. Because partners quite often rely on each other’s income, when the other dies, a supplemental income is useful and beneficial. “You must make sure to designate your mate as the beneficiary of the policy, however, because your family members may object if your

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65 Goodman, p. 561.
66 Goodman, p. 573.
mate, not your family members, receives the death benefit.” 67 Same-sex partners need to realize that insurance is an easy means to pass wealth from partner to partner without the nuisance of taxes and/or the legal system.

PART 2: THE GOVERNMENT AND TAXES

The federal government, since DOMA (Defense of Marriage Act) and FMA (Federal Marriage Act) were created, has become conservative with regard to marriage and the benefits that can be incurred with a legal nuptial. When looking at federal taxes, Social Security, the unlimited marital deduction, and child care, the federal government has made it quite clear that heterosexual marriage is the only form of marriage that can be used to claim spousal benefits. Looking at recent requirements for a federal tax return, the amount of tax that is due to the government reflects the number of people, spousal or dependent, and the amount of money that the person, or couple earns in a given year. For the year 2001, a single person, younger than the age of 65 would have to file a return if his or her income was over $7,200. On the other hand, a married couple with both spouses younger than 65 must file a return if their combined income is over $12,950. It is noted that a married couple “will almost always pay less tax if they file jointly, rather than separately.” 68 This is because a married couple filing separately must have an income of $2,800 to file a return. Head of the Household is another title under which a person can file a return. This means that the person is the head of a household “if you are

67 Goodman, p. 916.
68 Goodman, p. 639.
single and pay for at least half the cost of keeping an unmarried child or grandchild in your home or if you support and claim as a dependent your married children or grandchildren, your parents, or another close relative.” \(^{69}\) For a person who is under the age of 65 and filing as Head of Household, one must have the income of $9,250 to file a return. Finally, a widow or widower supporting a dependent child and is younger than 65, needs an income of $10,150 to file a return. In an attempt to allocate the nations tax burden on all strata of society fairly, these tax brackets are adjusted annually to take into account inflation and the cost of living.

Unmarried people have two options when filing their tax returns: as a single person or as Head of Household. Usually, filing as a single person is more costly than filing as Head of Household because one runs the risk of moving into the higher tax bracket with a lower level of income. “For example, in 2001 the 28 percent tax bracket began at $26,250 for single filers and $35,150 for head-of-household filers. For instance, in 2001 your personal exemption began to be phased out when your adjusted gross income exceeded $128,950 as a single or $161,150 as a head of household.” \(^{70}\) A single person would typically save more in a lower tax bracket by paying less, than a higher bracket, where the person is forced to pay more for taxes.

When looking at taxes, a person can also consider tax exemptions, which are quite often a means to pay less to the government. Everyone in the household is allowed at least one exemption. So in the year 2001, the exemptions could equal about $2,800, an amount that is designed to increase yearly with inflation. “If you are married with dependent children, you can claim an exemption for yourself, your spouse, and each of

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\(^{69}\) Goodman, p. 639.

\(^{70}\) Goodman, p. 916-7.
A dependent parent can also be claimed as a tax deduction if he or she is living with the person claiming the deduction.

For example, for a married couple filing jointly, your start to lose your exemption if your AGI totals $193,400 ($96,700 for a married couple filing separately). If you are single, the value of your exemption diminishes when you report an AGI [adjusted gross income] of $128,950, and for heads of household at $161,150. You reduce the dollar value of your exemption by 2 percent for each $2,500 that your AGI exceeds the threshold. For married couples filing jointly, the exemption disappears completely if the reported AGI is over $315,900. For married couples filing separately, the exemption is gone if AGI is over $157,950.

As one can tell, there are positives and negatives to filing with a spouse. However, even though the exemption is gone at a low value, the money still saved by filing in a tax bracket together is much greater.

A standard deduction is an amount that is determined based on the amount of income not subject to tax. Thus, the amount can then be used to reduce the adjusted gross income (AGI) of the taxpayer. It is then combined with the filing status, age, and the claim as dependent or independent. Each year, everyone qualifies for the standard deduction, which is a part of your income on which you do not pay taxes. In 2001, a single person could claim a standard deduction of $4,400; a head of household, $6,450; a married couple filing jointly, $7,350; and a married couple filing separately, $3,675.

Even though the amount of money that a person can claim by filing separately is merely half of the joint amount, it is still usually much easier and lucrative if the couple files together. This is because the amount of money that one person generates combined with the amount of money that the spouse generates can create a tidy sum. There is no benefit

71 Goodman, p. 646.
72 Goodman, p. 646.
74 Goodman, p. 642.
to filing separately unless a tax planner can locate a way one and one’s spouse could save money. In addition, “married couples filing jointly can deduct up to $3,000 in such losses from capital gains ($1,500 for married couples filing separately), thereby reducing capital gains taxes.”

When a person sells his or her home, a capital gains tax is places on the profit that is acquired with the closing price. The amount that is determined is based on the difference between the original price of the house and the market value of the house on the date of sale. “When you sell your home, you do not have to pay any capital gains taxes if your profit is $500,000 or less for a married couple filing jointly or $250,000 or less for a single. This applies only to your primary residence if you have lived there for at least two of the past five years.”

Even though there is little difference between a joint and a single filing since the amount is merely halved, the difference still remains when a couple takes into consideration whose name is on the deed and who is contributing the money to purchase the property. Granted if a couple has both names on the deed and both agree to sell the residence, the difference in capital gains savings is minimal.

Partners that are not married are not permitted to file joint income tax returns. This is because the federal government has made it clear that partners who are not married do not qualify for benefits. In addition, “there are no spousal attribution rules between unmarried partners, so one partner could sell an asset to the other at a loss and claim the loss deduction.”

The federal government has taken this into consideration when regarding same-sex couples. The federal government believes that partners would

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75 Goodman, p. 649.
76 Goodman, p. 660.
merely attempt to take advantage of the government benefits. Thus, the government has eliminated the chances of this occurring by not permitting the possibility. Couples who are not married receive little if any benefits from the government. Quite often a partner will be claimed as a dependent if one is making more money than the other. It allows the partners to receive a limited deduction regarding a dependent person. Even though this is not the same as receiving a marital deduction or benefits, it still acts as a tax break to a degree.

In addition, the federal government stated in the

Taxpayer Relief Act of 1997 mandated that these limits be raised annually through the year 2007 until they reach $50,000 for a single and $80,000 for a married couple filing jointly. For singles, the limit rises to $1,000 a year from 1998 through 2002, then jumps to $40,000 in 2003, $45,000 in 2004, and hits the $50,000 ceiling in 2005. For married couples filing jointly, the ceiling rises from $50,000 by $1,000 a year through 2002, then jumps to $60,000 in 2003, $65,000 in 2004, $70,000 in 2005, $75,000 in 2006, and tops out at $80,000 in 2007.  

Granted that the difference between the single and spousal deduction is not double, the benefit still remains in filing jointly. This is because the differences in monetary amount accounts for inflation and then is slightly altered to still create a benefit.

Another topic that falls under the heading of the federal government tax program regards the spousal inheritance and Marital Deduction clause which addresses inheritance and estate taxes. It is often stated that the most important benefit to the married individual’s estate is the estate tax marital deduction. The estate marital deduction which was created in 1982, also known as the unlimited marital deduction, allows a spouse to transfer all the communal property and estate to his or her spouse without paying estate tax. This can be done both before and at death as a means of differing

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78 Goodman, p. 707.
estate tax. “The share of a community-property decedent’s surviving spouse has to be included in the surviving spouse’s gross estate, it is only fair that when the surviving spouse of a decedent in a common law state dies, the share of the decedent’s estate that escapes estate taxation at the decedent’s death by virtue of the marital deduction is, therefore, not a tax-avoidance device; it is merely defers taxation until the death of the second spouse.” 80 This means that a spouse is not required to pay taxes on the estate inheritance until he or she dies and the estate is turned over to a non-spousal beneficiary. Theoretically a couple is not receiving a waiver on taxes, merely an extension till death of the inheritor. “Today, a federal estate tax-free inter-spousal transfer is allowed either during lifetime or at death.” 81 The spouse merely needs a written agreement to transfer the property and money over to his other half.

A spouse may transfer his or her property through the marital deduction by means of a “will, intestacy, or similar law; by election against the will; by transfer to a spouse made by the decedent during lifetime and for some reason includible in the estate; in the form of life insurance death proceeds; by survivorship; and by power of appointment.” 82 In each of these cases, a lawyer needs to be present to make the transfer legal and receive the proper care. Granted the spouse will eventually pay tax on all the inheritance, but not until his or her death. Thus, the paperwork that the lawyers use to affirm the transfer needs to be highly detailed and up to date. Spouses need to be careful when buying life insurance policies because life insurance provides that a spouse is covered financially in the event of death. Thus, “no marital deduction is allowed when a wife purchases a life insurance policy on the life of her husband with her own funds and is the owner and

80 Leimberg, p. 380.
81 Leimberg, p. 371.
82 Leimberg, p. 374-5.
beneficiary of such a policy because the proceeds of the policy are not includible in the husband’s gross estate in the first place, they do not qualify for a marital deduction." 83

Although the marital deduction allows spouses to transfer property from one to the other without tax, current laws also permit a person to give up to $11,000 per year in either cash or value to any person without incurring a gift tax. However, there are some exceptions to the rule when giving gifts to relatives who are also named as beneficiaries in one’s will. “If you give gifts to relatives who are named in your will, add a provision that these gifts should not be considered advances on their inheritance. Otherwise, your gifts could be deducted from their share of your assets upon your death.” 84 Spouses do not need to worry about gifting to each other because of the unlimited marital dedication, which allows unlimited transfers between spouses. This also allows a married couple to arrange their estate to allow the most inheritance to pass to their children with little or no tax. This deduction allows you and your spouse to balance your assets among both of your estates to take maximum advantage of the $675,000 (rising to $1 million by the year 2006) you each can pass on to heirs estate-tax-free.” 85 A child can receive up to $1 million of tax free gifting from a parent over a lifetime. In addition, the child can receive the difference between the $1.5 million inherited tax free from the estate and $1 million gifted. Thus, through the combined gifting from both spouses, a child could inherit up to $3 million in estate assets after his or her parents die with no resulting estate tax.

It is mentioned in estate planning books that even unmarried partners can receive up to $1.5 million in tax free inheritance from the estate with the proper planning. “Even unmarried partners get a tax-free step up in basis to the extent of at least the first $1.5

83 Leimberg, p. 374.
84 Goodman, p. 752.
85 Goodman, p. 752.
million - $3 million with proper planning – of their assets. It may be easier to secure a debt deduction for caretaking and other services rendered to each other than in the case of married partners.86 This is a means for a domestic partner to attempt and receive a slight tax-free benefit from the government regarding joint assets and the common estate.

Another means for domestic partners to be taxed is by the generation-skipping tax (GST) transfer. Since age is the primary factor regarding the generation-skipping tax transfer, partners cannot avoid taxes by using major age differences.

Accordingly, a gift from one partner to the other where there is an age difference of 39-1/2 years or more would result in the simultaneous imposition of a gift or estate and a GST tax. Similarly, a gift to a partner’s child who is not the donor’s child and who is 39-1/2 or more years younger than the donor would be treated as if the partner’s child were the donor’s grandchild and be subject to both a gift or estate and a GST tax.87

This means that domestic partners not only are receiving a gift tax but in addition a GST tax. Domestic partners have a rough time coping with the federal government’s imposition of taxes and lack of understanding regarding partner transfers of assets without a tax. The marital deduction tax does not provide any tax benefits for domestic partners. In addition, being able to file as a married couple is not an option. Thus, same-sex partners are forced to pay more than a married couple because they are not officially deemed married by the federal government.

Families also can take into account federal benefits for children. A parent can claim a credit from the federal government of up to $5,000 if the child is adopted under the age of 18 or if the child is mentally or physically handicapped. “Such a ‘special needs’ child adoption can qualify for a $6,000 tax credit. That credit is phased out if your

86 Rubenstein, p. 10.
87 Rubenstein, p. 10.
adjusted gross income is between $75,000 and $115,000. To claim these adoption credits, you must show what your adoption expenses included, such as attorney’s costs and court fees.”\textsuperscript{88} Quite often people do not consider the aid that the federal government provides to families with adopted children. Thus, domestic partners who adopt a child may claim up to $5,000 as a tax credit. This however only can be used as a tax credit for one of the partners since the federal government does not acknowledge a domestic marriage to be legal. In addition, a person can claim a tax credit of $500 for a child who is a minor (under the age of 18).

To receive benefits from the United States government, the child must be dependent and must be one’s own child, a grandchild, stepchild, or adopted child. “However, the credit is phased out if your modified adjusted gross income is more than $110,000 for a married couple filing jointly, $55,000 for a married couple filing separately, and $75,000 for single parents.”\textsuperscript{89} This does not include the educational tax credit that a child can receive. These are also a variety of tax benefits that can be incurred with having children or adopting children. “You can qualify for a Child Tax Credit, the Hope Scholarship, and Lifetime Learning Credit for your children. You also may claim an Adoption Tax Credit if you adopt a child. You also may be able to save up to $500 a year tax-free in an Education IRA for your kids.”\textsuperscript{90} These tax credits and benefits aid in the support of having a child if one is a heterosexual person or homosexual person. However, the benefits that are incurred for a heterosexual marriage apply to both partners, whereas domestic partners need to choose which partner receives the benefits.

\textsuperscript{88} Goodman, p. 647.
\textsuperscript{89} Goodman, p. 647.
\textsuperscript{90} Goodman, p. 657.
Social Security is the third source of income from the government that benefits most individuals. A majority of retired persons use social security as one of their primary sources of income, followed by private savings, investments, and employer pensions. Social Security provides a family a small fixed income that may be used by the family for personal uses or to pay basic bills. In addition, Social Security is a means to provide a steady income to one’s family after death. However, a person must qualify for survivor benefits.

Family members can collect if they are a(n):
- widow or widower at least 60 years old;
- widow or widower at least 50 years old who is disabled;
- widow or widower of any age who cares for a child 16 years old or younger or a disabled child receiving Social Security benefits;
- unmarried child younger than age 18;
- unmarried child younger than age 19 who is enrolled in an elementary or a secondary school full-time;
- unmarried child 18 years or older who has a severe disability that started before he or she reached age 22;
- parent who depended on the deceased for at least half his or her income;
- ex-spouse who is at least 60 years old and was married to the deceased for at least ten years before the divorce; or
- ex-spouse of any age if he or she still cares for a child eligible for benefits on the deceased’s record. 

Although these seem like reasonable requirements to receive Social Security survivor benefits, these rules only really apply to heterosexual people. This is because the government specified in the above the word “spouse” and “widow/widower.” Both of these terms have a specific meaning within the government to exclude domestic partners of same-sex marriages.

Although the state government may agree that same-sex marriages are permitted, the federal government has different regulations through the FMA and DOMA acts that

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91 Goodman, p. 688.
92 Goodman, p. 695-6.
were passed. Although it may seem like a hopeless cause for same-sex partners, there are ways around the terms spouse and widow in order to claim benefits. Such means include adoption of one partner by the other, claiming financial dependence, or marrying a heterosexual friend who is a devoted bachelor/bachelorette. This concept will be discussed in greater detail during the synopsis of general findings.

PART 3: ESTATE PLANNING AND RETIREMENT

“A will or living trust is the basic building block of almost every estate plan. [It is] the statutory will created for them by the laws of intestacy and family support.”

Those are the first words that typically come out of a financial planners’ or estate lawyers’ mouth. A will is a legal declaration of how an individual’s assets are divided and disposed of after their death. A will is drawn up by an attorney in one’s presence, detailing certain assets and who the beneficiaries will be upon death. “To specify that certain people should inherit particular tangible assets, insert in your will a provision known as a tangible personal property memorandum (TPPM). Other rights and benefits, like pension rights and life insurance proceeds, are normally handled outside of your will.”

Traditional wills take into account assets and how they will be divided among family members, whereas a living will is a document that issues control over assets and even health care decisions. A health care power of attorney (living will or durable power of attorney) form gives a person whom one deems trustworthy to make all medical

93 Rubenstein, p. 9.
decisions for he or she if he or she is determined to be incapacitated to do so. In both cases of a living will and traditional will, the party creating the contract may determine who is receiving control over the assets and decisions.

Married couples do not need a will regarding assets and emergency medical decisions, since by law the spouse inherits all mutual assets. A living will is a legal document that is constructed by a lawyer that has a person’s wishes pertaining to medical care, medication, and resuscitation that may be carried out if a person is unable to communicate one’s desired wishes. A will, unlike a living will, pertains to inheritance, money and property that are left to people upon one’s death. However, for official documents and avoiding a court case filed by a family member, quite often people place in a safety deposit box a living will or durable power of attorney. For unmarried individuals, it is extremely important that a living will be created especially if one would like this person to make his or her medical decisions.

Otherwise, by law, the next of kin will be the legal guardian and make the decisions. Thus, for domestic partners, a living will is a necessity because under certain state laws, domestic partners are not seen as legally married and thus not family. “Unmarried partners do not have automatic rights to contract in each other’s name and to make health care decisions or sign medical releases. It is therefore crucial for unmarried partners to execute powers of attorney and health care documents.” However, if a couple decides to separate, it is necessary for the living wills to be amended to officially denounce the ex-partner as the decision maker. Under some state laws, when a married

95 Goodman, p. 750.
96 Rubenstein, p. 11.
couple divorces, the documents are revoked. However, same-sex partners do not have the option of an official divorce to make the documents invalid.

In recent years estate planning has become a normal occurrence with families to create a long term goal of how to provide for children or inheritors. “The two-thirds of Americans who do no estate planning might be shocked to learn that when people die without wills (or, as lawyers put it, intestate), the probate court takes over and can dominate survivors’ lives for years.”

Legally, without a will the courts become involved in the estate proceedings. Quite often this process can take years and be very costly because of the evaluation that must be done on the estate and the number of people involved in the procedure. Most people (gay or straight, single or married) do not discuss their finances and quite often make hasty decisions based on pure emotion. The goal of a document (like a will) provides a person a thoroughly thought out decision regarding assets and the estate. However, more often than not, couples take the longer haul and do not discuss finances until a breakup or severe accident. Any agreement that is created between partners should also include all expenses and property incurred during the relationship and the ownership of each. It is important to document each asset with ownership just in case of the dissolution of a relationship. It makes the division of assets much simpler.

Regarding assets, singles quite often have what is called an IRA (individual retirement account) to store money in a tax deferred fund. Each year a person may put a certain percentage of his or her paycheck in an IRA. An IRA reaches maturity at 65, when the funds may be used without penalty. A person is the beneficiary of his or her own personal IRA account. However, it is easy to appoint another to inherit one’s IRA

97 Goodman, p. 745.
account as a signed beneficiary. “The rules also make it easier for you to select and change the beneficiary of your IRA account. You can even select a new beneficiary after payouts have begun, and your heirs can even change the beneficiary after you have died. However, if you name someone who is not a spouse to receive your IRA proceeds, you must spell out in the plan to whom you want the money distributed.”98 An IRA is an easy way to receive tax deferred savings that has been accumulating interest. Also, an IRA may be inherited while still being nontaxable. This is a good way to provide for both oneself and his or her family or partner. However, there is a small catch regarding an IRA. If one’s spouse does not work and is a dependent, he or she can still contribute up to $2,000 in a spousal IRA on top of $2,000 to a regular IRA.99 However, if a couple is not married a spousal IRA is not an available option.

Property is another asset that needs to be considered during the estate planning process. When a person buys a piece of property he or she can note on the deed whether one person is buying it or if it is owned by a group or partnership. However, for a name to be added to a property deed that person needs to contribute funds to pay for their part. Thus, a family can create a partnership with their close family, allowing the inheritance of the property to travel from parent to child without tax. “Titling property as joint tenants with right of survivorship is one way of providing for a partner. At death, the property passes directly to the surviving party to the relationship.”100 However, in order for a person who is not married or a direct relative to be a part of the joint tenancy, he or she must contribute a percentage of the cost. If that person does not contribute a monetary amount to the property, then that person when added as a joint tenancy is being

98 Goodman, p. 711.
99 Goodman, p. 927.
100 Kurlowicz, p. 520.
gifted a percentage of the property. Thus, the creation of a joint tenancy on property may cause problems with regard to the gift tax. Thus, there are high risks involved in joint property ownerships, especially when a couple is not married. It must also be noted when mentioning property that the transfer of property outright through exclusion is not permitted. “Outright transfers of property utilizing the annual exclusion, or the donor’s applicable credit amount if the transfer exceeds the annual exclusion amount, avoid gift tax liability.”101 Quite often a gift tax can be void for a person or couple without the person’s knowledge. This can lead to a large number of taxes for the estate and potentially for the beneficiaries if the estate is unable to generate the proceeds to pay the estate tax.

Some property, owned jointly with the rights to survivorship (JWORS), allows the surviving partner to assume 100 percent ownership. For a heterosexual married couple, when the spouse dies, the next of kin assumes the remaining sum of the property, therefore receiving a step up in basis with regards to the community property. In addition, when the surviving spouse inherits the remaining property the step up in basis is with regard to the fair market value of the property at the date of death. For domestic partners, their partner will receive nothing unless the specific asset is noted in the will. Partners do not receive a step up in basis because they are not married or direct relatives. In addition, it is important that domestic partners be careful with large disparities in income because of dependency policies. It is key that the partner who is paying for more note that amount in his or her records. This is because, upon death, the partner that was less moneyed might be liable for taxes or a lesser proportion of the estate or assets.

101 Kurlowicz, p. 521.
Gifting is yet another tricky area, especially for domestic partners. Partners rely on the notion of gifting to provide as much of the estate intact without taxes as possible. However, for property, gifting can become a problem. If the piece of property is valued at a greater amount than a gift allows, then another alternative should be used. This would require a legal document to be drawn that lists the value of the house and the amount that each party paid. The partner that owns the greater portion can then create a contract that allows the companion to pay the remaining difference over a certain number of years. Thus, the partner’s yearly gift exclusion can be used to forgive their spouse’s debt. Although it takes time for the difference to be paid, the end result is equal ownership of the property. “Similarly, without a will, gays and lesbians cannot ensure that their estates will pass to their partner. Without being married, gays and lesbians cannot even file joint tax returns. Finally, the right of gays and lesbians to live in the community of their choice is limited, if the community specifies by law that only married couples may purchase a house within it.”

As mentioned above, domestic partners should draw up a will to include the partner in the division of assets. If this does not occur, the estate could end up in court with the probate court judge deciding to whom the assets belong. In this case, the court might deem the next of kin as the legal heir. Also, wills can be contested in court, thus it is important for a proper will be drawn by an estate lawyer with a proper witness. “You may also want to place assets in a living trust so that when you die, they pass immediately from you to your housemate outside of probate court. A good lawyer will advise you on the wisdom of this strategy, based on your circumstance.”

102 Bolte, p. 29.
103 Goodman, p. 918.
Trusts can come in many forms ranging from Grantor Trusts, Support Trusts and Discretionary Trusts, to Charitable Trusts, and Estate Tax Trusts. Each trust provides a different benefit to the surviving parties and family. Some trusts permit allowances for charitable donations that can be used for tax relief, while others provide a fixed income to be granted to the surviving parties over the course of the years to come.

Some of the more common methods used to avoid probate court is to create a trust, or a lifetime *inter vivos* trust.\(^{104}\) The person appointed to inherit the assets in the trust is considered to be the beneficiary. The Grantor Trust is set up to allow the grantor to give nontaxable funds to a spouse or beneficiary. “It is generally not possible for a grantor to avoid paying all of the income taxes attributable annually to a trust of which his or her spouse is a beneficiary. In the case of unmarried partners, however, a trust created by a grantor of which the grantor’s partner is a beneficiary is not automatically a grantor trust, and income shifting to the lower bracket tax payer can be accomplished.”\(^{105}\) The Grantor Trust is merely one way of providing for a loved one without taxes. This provides more money for the named beneficiary of the trust.

A Support Trust is created for people with dependents, like a spouse and/or children. The trust is used as a source of income, which allows the family to remain living comfortably on the assets and the income generated from them.\(^{106}\) This can be used for same-sex couples provided the couples name each other as the beneficiaries. It also provides a means to distribute funds without the detriment of taxes. Discretionary Trusts are similar to Support Trusts in that both trusts are created to provide a way to inherit nontaxable funds and provide for dependents. The difference between the two is

\(^{104}\) Goodman, p. 755-8.
\(^{105}\) Rubenstein, p. 11.
“that it gives the trustee even more latitude in deciding how much income and principal must be spent to support the beneficiaries’ lifestyle.” 107 This allows the person creating the trust to have more freedom with the funds discretions. These first few trusts are considered to be more general forms of sheltering money for beneficiaries.

However, there are other trusts that can be created with more control over the monetary assets. For instance, the Spendthrift Trust can be created to ensure that a child or a spouse who appears to be irresponsible only receives a certain amount of money each year. “In such a trust, you instruct the trustee to set strict limits on how much money can be doled out at any time and not to accede to demands for more.” 108 This helps to ensure that the funds be used over longer periods of time, rather than spent in one lump sum. A Standby or Convertible Trust is a type of trust that is created but left empty. It is later activated or converted into a working trust when the person is ready to initiate saving money. 109

A Bypass Trust is created in the instance “when a couple’s assets exceed the $675,000 (rising to $1 million in 2006) unified credit limit, a bypass, or credit shelter, trust may help provide for the surviving spouse and pass principal on to the children free of estate taxes.” 110 The Bypass Trust is used to not only provide assets for the surviving spouse to live on, but also to minimize the estate tax that would be paid. For example, when a married couple has net assets that constitute approximately $2 million dollars, a million in the wife’s name and a million in the husband’s name, it is wise to setup a Bypass Trust. This allows the wife to leave a million in the trust upon death. The

109 Goodman, p. 756.
110 Goodman, p. 756.
widower then can only receive the income that is generated by the million dollars for the rest of his life with the option to invade the principal if needed. This avoids the million dollars passing tax free through the marital deduction and later being hit hard with estate taxes. Because the Bypass Trust only allows the spouse limited access to the assets, the money is not included as part of the marital deduction and thus is not subject to estate tax in the future. Thus when the husband dies and his $1 million dollars passes to the beneficiaries through the inheritable gift, the remaining $1 million in the Bypass Trust also passes tax free to the beneficiaries.\footnote{Goodman, p. 755-8.} This allows approximately $2 million dollars to pass estate tax free to heirs with little difficulty.

The Qualified Terminable Interest Property Trusts (Q-TIP Trust) allows a married couple to take full advantage of the unlimited marital deduction, while still controlling who inherits the assets after both spouses die. A husband can create a Q-TIP Trust, so that upon death his assets will be transferred into the trust. His wife is the only person allowed to receive a stipend from the trust. This provides a lifetime income for a spouse, yet still gives one the control over the beneficiary once one’s spouse dies. The spouse is not permitted to transfer that income to anyone else during life or at death. The Q-TIP Trust is a good way to avoid estate taxes, provide for a spouse, and yet still control how the assets are handled. An Insurance Trust is created to ensure that the value of one’s life insurance policy does not push the value of the estate over the estate tax threshold. Thus, the Insurance Trust is kept separate with a controlled stipulation of how the assets are to be dispensed to the beneficiaries.\footnote{Goodman, p. 755-8.} This gives families a break with their estate tax because the Insurance Trust is not included in the amount that the estate is worth.
The Charitable Trust is created for people who wish to still contribute to a charitable institution, while receiving a tax deduction. A Charitable Remainder Trust allows one to “make such an arrangement with your alma mater, a hospital that once cared for you, or your church or synagogue. If you deposit assets such as stocks or bonds in the trust, you receive an immediate income tax deduction for your contribution equal to the discounted present value of some of the assets. During your lifetime, you also receive an annuity generated by the trust assets. When you die, the assets are retained by the charity.” A Charity Trust is yet another way for family members to not be hit hard with a hefty estate tax while still giving money to an organization of one’s choice. The Charitable Trust with the Irrevocable Insurance Trust or a Wealth Replacement Trust is a great way for families to save income, gift, and estate taxes, while still giving back to the community. An unmarried partner may use trusts provided that his or her partner is named as the beneficiary on the plan. Otherwise the trust could go to court and a blood relative could end up inheriting the assets. It is important that domestic partners discuss their financial situation with an estate planner and an estate lawyer. From there, the proper trusts, wills, and other vehicles can be created to ensure financial stability for both partners.

114 Kurlowicz, p. 521.
PART 4: EMPLOYMENT BENEFITS

Employers provide employees with benefit packages at the outset of joining a company. Although these policies are not necessary to accept a job, they are often key incentives and typically have a premium rate discounted for employees. Benefit packages can include retirement packages, health coverage, and disability coverage, just to name a few. For example, “if you die before you reach retirement age, your spouse will receive a portion of your pension benefit. The plan usually begins payment in the year you would have received the benefit. This is known as a qualified pre-retirement survivor annuity (QPSA).”\(^{115}\) If the person does not have a spouse, a document can be constructed to specify a partner (if the company deems this as acceptable). The employer has all the control and can thus designate the package type that is offered and whom the coverage includes. Family members, a spouse and children under the age of twenty-three, can be included in the packages as dependents. “When an employer offers a health plan, it usually covers all employees, as well as their spouses and children.”\(^{116}\) However, domestic partners might or might not be included in the coverage, depending on the company and the state regulations.

According to www.hrc.org, “domestic partner benefits are offered by 227 of the Fortune 500 companies, 11 state governments, 125 city and county governments, and 276 colleges and universities.”\(^{117}\) These benefits could range from health care policies to retirement clauses to include a domestic partner as the survivor beneficiary. A recent study that was conducted by Aon Consulting revealed:

\(^{115}\) Goodman, p. 777.
\(^{116}\) Goodman, p. 797.
\(^{117}\) Gallanis.
- Only 11.3% of human recourses (HR) managers said their organization currently provides benefits such as health coverage to same-sex domestic partners.
- Only 11.3% provide such benefits to opposite-sex domestic partners.
- 21.6% offer it to both groups.
- 55.8% do not offer such benefits to either group.
- 33% would extend health benefits to employees’ same-sex spouses as best they could if requested by a company employee, 40% would not, and the rest did not know.
- 43% would have to amend their health plan to clarify whether spousal coverage will be provided to same-sex spouses.118

Although these numbers are growing in the business world, the requirement of having an employee ask for a certain policy to include a domestic partner can lead to an uncomfortable work environment. Thus some employers have taken this challenge upon themselves to include domestic partners in their policies. From a human resources perspective, including domestic partners in policies aids in a business’s diversity and attracts a wider range of employees. However, on the down side some employers feel as though employees should have to ask for the domestic partner benefits, supplying domestic partner benefits is not “moral,” and benefit costs that are provided by employers will increase exponentially.119 Businesses are having a hard time comparing those negative reasons to provide domestic partner benefits to the positive aspect. Diversity becomes a large portion of the positive aspects of offering same-sex partner benefits.

There are some other problems that an employer faces when offering domestic partner benefits under a company policy. Since federal tax law allows spouses to be covered under each other’s benefits without an additional tax, the government would require a tax be administered on domestic partner policies. “Since the tax law grants the married couple tax savings that are unavailable to any unmarried couple, employers must

decide whether they should ‘gross up’ the employee salary to cover that differential or force the unmarried couple to bear the additional tax burden from the benefit.”¹²⁰ This once again places the employer in a tricky predicament. There is no precedent stating how to handle including a policy that is not seen fit in the government’s eyes. Some questions that have arisen in Massachusetts regard the difference between state and federal law. According to state law in the Commonwealth, same-sex marriages that were conducted legally are seen under state law to be official, thus employee benefits should be administered to include the partner. However, for companies that have their main headquarters in a state that has a state law prohibiting same-sex marriages, the company faces a problem. Does one abide by the state laws of Massachusetts, the state laws of the conservative state, or the general consensus of the company itself?

In 1992, the Lotus Development Corporation (a division of IBM) located in Cambridge, Massachusetts became the first publicly traded company to offer domestic partner benefits.¹²¹ This began the trend of companies offering same-sex partner benefits. “By 2000, according to a study by the Society for Human Resource Management, about 21 percent of companies with more than 5,000 employees offered partner benefits.”¹²² The companies that provided the partner benefits received an image boost in the eyes of the younger generation. This is because even if those from the young generation are not gay themselves, it is still a means to determine the tolerance policy of the company. It has become a major selling point for many college graduates when applying for jobs. In addition, even though some companies provided benefits for same-

¹²⁰ Morrow, p. 12.
¹²² Kiger, p. 66.
sex partners, these benefits might not be as inclusive as those for married couples. “In the Hewitt survey, only slightly more than half of companies extended benefits such as life insurance coverage or family and medical leave to domestic partners, and only about a fifth offered other benefits such as access to prepaid legal-expense plans and relocation expenses.”123

Retirement planning is another benefit that is quite controversial for domestic partners, since most plans specifically state the spouse as the surviving beneficiary. If the couple is not married and the relationship ends, the partner who paid for the living expenses cannot claim half of the retirement account. This is because there is no legal agreement binding the couple. “Unmarried partners also have no guaranteed interests in their partner’s retirement plans.”124 Companies are also put in a position to begin discussing if retirement plans can be extended to include domestic partners. However, the decision in the Commonwealth of Massachusetts of *Goodridge v. Department of Public Health* does not bind employers to offer extended benefits. “Once same sex-couples marry and file for benefits, they’ll realize that they have no rights under FMLA [Family Marital Leave Act] and COBRA, and that their income is taxed where heterosexual couples’ is not.”125 This creates a problem in Massachusetts especially regarding the legal precedent that *Goodridge v. Department of Public Health* provided for employers. There is a difference in federal and state law and employers are caught in between the two. In addition, “Federal tax laws also require companies to report the premiums they pay to insure the spouse of a gay worker as taxable income to the

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123 Kiger, p. 67.
124 Rubenstein, p. 10.
employee. That means health insurance will be more costly for gays. And they won’t be able to file a joint federal tax return or take advantage of other married benefits, including inheriting a spouse’s estate tax-free.”

Thus, even if employers attempt to aid domestic partners within their company, the government will still create tax issues, insurance issues, and other benefits. One such benefit that gay couples will not be able to take advantage of is the Family Marital Leave Act (FMLA), unless the allowance is specified by the employer.

The Family Marital Leave Act (FMLA) was created in 1993 originally to allow parents who are employed the opportunity to spend time with a new child, welcoming him/her into the family. “Parental leave must be granted to covered employees for a maximum of 12 weeks for a new child whether it is natural, adopted, or in foster care. According to the FMLA, leave must also be granted to employees with serious health conditions that prevent them from performing their job and to employees who need time to care for a family member such as a spouse, child, or parent.”

This act was extremely beneficial for employees who just had a new child in the family and allowed the spouse the chance to enjoy their beginning new family. Because FMLA is a federal act that was created for married couples, employers are beginning to consider expanding the act to include domestic partners. The loophole of FMLA allows employers to allow time off to an employee if there is a good business reason to do so.

Furthermore, employers who tend to provide over-expansive FMLA coverage, for example, by shortening the employee eligibility period, should be wary of denying coverage to employees requesting coverage for same-sex spouses. For

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some employers, expanding the scope of FMLA coverage will be unattractive, notably those employers operating in multiple states.\textsuperscript{128} Thus, employers are currently still debating as to whether or not extending FMLA would be beneficial or actually more detrimental to the company.

In total, employers are starting to extend benefit coverage to employees who have domestic partners if it provides a benefit to the company. Although it might not seem much to ask for extended health care benefits, retirement benefits, or Family Marital Leave benefits, it is costly and can be inconsistent from state to state. Employers are facing tough decisions regarding benefits and are looking to each other to determine the correct route.

\textbf{PART 5: CHILDREN}

Children are usually associated with heterosexual couples even though there are approximately “three to four million gay and lesbian parents raising between six and fourteen million children.”\textsuperscript{129} Children are not often seen as having an economic benefit for families, however they can be. Children are the future for one’s family’s assets. Some worry that allowing same-sex partners the chance to raise children, that their children are more likely to be gay or lesbian. “Given studies on the sexual orientation of the children of gays and lesbians, these children are no more likely to be gay or lesbian

\textsuperscript{128} Majdloch, p. 4.
\textsuperscript{129} Bolte, p. 27.
than other children." With that said, same-sex partners are facing the problem of both parents being able to adopt their child. Unlike heterosexual married couples, same-sex partners are not permitted to adopt the same child because they are not married. In addition, when one partner dies, the custody of the child does not pass directly to the other because they are not married.

Normally for inheritance purposes, when an individual adopts a child, that child becomes a child of the adopting parent for inheritance purposes and is not longer the child of the birth parent. Unfortunately, it can have the unintended effect of taking a child out of the birth partner’s line for inheritance purposes when his or her partner adopts the child, even though the birth parent continues to live with the child. But other states do not permit unmarried individuals to adopt the same child. Whether an adult adoption has any impact upon trusts for the benefit of the adopting partner which are to pass to his or her children or issue upon his or her death.

Thus it is important that same-sex partners live in a state that permits each partner to adopt a child, in case of a death and serious injury. In addition, it is difficult for same-sex partners to work with birth parents, especially since some birth parents prefer heterosexual parents over gay parents. Although these are hurdles for same-sex partners, these obstacles can be overcome through legal documentation and a liberal state that permits same-sex partnerships.

It is often said that children who grow up in a homosexual environment will be subject to harm and ridicule, along with confusion regarding sexual orientation. With the changing times, the new future of children will be subject to less ridicule than in the past. However, although same-sex adoptions are allowed, there are no institutions structured to ensure that the children who are involved in the relationship are taken care of, even if the partnership dissolves. “A partner who leaves a same-sex relationship is under no

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130 Bolte, p. 30.
131 Rubenstein, p. 12.
obligation to provide financial support for children what he or she may have cared for and supported for years. Given the vast number of children with same-sex parents, by not allowing same-sex marriage, many children are adversely affected.”\textsuperscript{132} Divorce laws are structured in this country to provide protection to children when the relationship dissolves. Thus, with the court system in place, children are required to be supported and financially secure. “The divorce laws are devised to help protect children by ensuring that child support is paid if necessary for the welfare of a particular child. Moreover, when a spouse dies, custody of the children is designed to pass to the living spouse, thus ensuring that the children are not removed from a familiar environment.”\textsuperscript{133} Currently these laws only support married couples.

Some other forms of protection that same-sex couples need to consider regarding children are the notion that the parent who officially adopted the child is the only parent who is permitted to sign permission slips for class, make medical decisions, and be the official guardian. These are important points for parents to consider regarding children. Quite often heterosexual married couples take for granted the little aspects of their relationship, like a permission slip, that same-sex couples struggle with on a daily basis.

\textsuperscript{132} Bolte, Angela. p.27.
\textsuperscript{133} Bolte, Angela. p.27.
CHAPTER THREE:
A HUMANISTIC PERSPECTIVE

The following narratives are a combination of different points of views pooled together to form a well-rounded humanistic perspective regarding same-sex marriage. These stories will be told from four perspectives, two female and two male, some with children and some without. As indicated, the names of the characters have been changed to protect those who shared their personal story. Katie Jones is a married woman whose spouse is a resident alien from Canada. Peter Smith is a professor who is newly married. Rebecca Thomas is married and has an adopted child. James Murphy is a student who would like to eventually marry and adopt children. Each one of these individuals has a different perspective on the current state of the world regarding same-sex marriage, and each has had to face different problems regarding his or her sexual orientation. With the help of these four persons, the economics of same-sex marriage can be understood from a more humanistic standpoint.

STORY 1: KATIE JONES

I was born in the Midwest to a very large Catholic family with twelve children. I attended Catholic school through high school, which was the normal course for my family. I always had boyfriends in high school and did not think twice about being a bisexual or a lesbian. It just had never crossed my mind. Leaving the Midwest was a
huge change. I was attending a liberal arts school for women in the Northeast. The females on that campus were very open and honest with their thoughts and feelings. That was probably the first time that I had talked about the possibility of being gay. I suppose being in that type of environment helped me to see who I really was and what I really wanted. Approaching my very Catholic family was a whole other story. I spoke with my two closest siblings first, who were both straight. They accepted what I had to say, no questions asked. They did not love me any less and actually were very supportive of me. My parents also accepted what I had to say, but believed in a “don’t ask, don’t tell” policy. It was not a subject that was ever really addressed or even mentioned in the household.

At college I felt included. I did not feel as though I was ostracized for being gay, but then again the school that I was attending was very liberal and all the cool and fun people were gay. While I was in college, I still had boyfriends. I did not experience my first female relationship until senior year of college. After graduation, I continued to see a woman and began to volunteer speaking about gay relationships and participated in volunteer groups in graduate school. In the 1980s, I did not really think about the political point of view that a same-sex relationship would have on future laws and regulations. I was once again back in the Midwest and received decreased tuition and benefits from the state during graduate school. It wasn’t until Hawaii offered state rights for same-sex partners that I began to take notice about state laws. I could never have imagined that I would be able to see a same-sex marriage during my lifetime. When Vermont began offering civil unions to instate residents, I thought that it was a step in the right direction, yet was not too overly excited. We were still being offered only limited
rights. Yes, there were more rights than partners had been receiving in the past, however, we still were not equal. We could not get married. However, any progress is good progress.

When Massachusetts began offering same-sex marriages, I was skeptical at first waiting for the court’s decision to be overturned. The state began to offer same-sex marriages in April. In July of 2004, I married a wonderful woman from Canada. My family was ecstatic because they finally were able to come to terms with the notion that if the court had allowed our marriage, then it was an accepted ideal. Currently we reside in Cambridge, Massachusetts enjoying married life and cherishing the opportunity for us to get married. It was truly a historic event.

Even though we are a married couple under the eyes of the state, there are still many inconsistencies regarding the differences between heterosexual marriage and same-sex marriage. My wife is an immigrant who is unable to apply for her green card because according to the federal government she is not technically married to a United States citizen. Because of FMA and DOMA, the federal government has put us in a hard situation. If my wife’s visa expires and she is unable to renew it, then we might end up moving to Canada where our marriage is accepted whole heartedly. The federal government has not granted us our full rights as US married citizens, which is a shame. Quite often the little things that people take for granted are the main problems that homosexual couples face. Before same-sex marriage was initiated in Massachusetts, homosexual couples had to pay extra for using their partner’s membership at the gym. This is because we were not viewed as being married. After the Massachusetts law
changed, gyms were forced to renege their policy and offer the same benefits to same-sex couples as they do for heterosexual couples.

My spouse and I have faced inequalities though taxation and applying under each other’s benefits packages. However, what we have found regarding employment benefits is that it depends on the institution. For example, my academic institution would not offer domestic partner benefits until it was forced by state law to offer the homosexual married couples packages that included their partner. Granted it is a Catholic institution, but it was quite a struggle to get the administration to offer these benefits. In the end, my spouse’s employer offered much better benefits that also included her partner. The trick is to find a liberal employer who is willing to offer extended benefits. I feel as though now, if you are not married in the state of Massachusetts and want to receive benefits for your partner, you will not find any. This is because now under state law employers have to offer all married couples the benefits. But, if the domestic partners do not want to get married, they are not guaranteed any extended benefits.

We have been speaking with an estate planner for a while regarding our joint assets and the best means to retain as much of our estate as possible. However, it has been difficult. The federal government does not offer same-sex partners any benefits that a heterosexual married couple would receive. We do not receive a tax break or an inheritance clause that allows us to give our spouse assets under the unlimited marital deduction. Either way, we as a country are moving in the correct direction regarding same-sex marriage, however, I will find it very interesting to see what will occur regarding the current inequalities. Universities and colleges, through pressure from students, have been changing discriminatory policies regarding homosexuality. I am
looking forward to seeing what the future generation will change regarding same-sex couples.

**STORY 2: PETER SMITH**

I, Peter Smith, was born in 1955 to a large New York Italian family. I was one of six noisy children who were brought up very traditionally with regards to the Catholic Church. I attended a Catholic parochial school through high school. Because of what I was exposed to in school and at home, the word homosexuality never really entered my vocabulary. I never even considered that I might be gay because in my mind it was not accepted. In high school I was always interested in other things and really did not associate myself with dating anyone. I was too busy with my work and trying different activities. I joined the priesthood at the age of twenty-eight and became a Jesuit from 1983 till 2003 (three years ago).

I joined the priesthood to make a difference. I was a scholar who was devoting all my efforts to the church, which was a service that I was more than happy to fulfill. Up until I joined the priesthood I had not dated anyone of either sex. Once a member of the clergy I was not permitted to date and was celibate. I was still a member of the clergy when Vermont began permitting homosexual unions. I felt a great sense of hope for civil rights in general, especially for gay rights. It was the start of yet another chapter in our society’s struggle with civil rights. I thought that this would be the beginning for overthrowing centuries of old stereotypes of beliefs and the demoralization of gay people.
Gays to this point were always seen as sub-human and even evil. With Vermont passing this legislation, the tables were beginning to turn and there was less fear and hatred toward homosexuals. Gay people will not be considered equal to heterosexuals until they are permitted to marry. A legal marriage would mean a long-term committed relationship with a marriage contract that is binding by the state government. Even though Vermont had permitted civil unions, it did not register in my head that I would be interested in such a thing. I was a priest who had accepted and gladly taken an oath to be celibate.

By the time Massachusetts had announced that same-sex marriages were legal, I was in a relationship with my partner. I was in a difficult position because I was still in the priesthood, yet wanted a committed lasting relationship with this other man. I made a decision to leave the priesthood and move in with my partner. I was ready to make our relationship legal in Massachusetts and the passage of same-sex marriages was the ticket that we needed. I felt as though being married solidified our marriage and made it acceptable in our parents’ eyes. In addition, I feel as though we are provided in state benefits, similar to traditional married couples. However, if we choose to ever leave the state of Massachusetts, our marriage will not be valid in the state’s eyes. The federal government has also denied homosexual marriages as being legal. Thus, we are almost forced to take the state benefits in Massachusetts and file separately with the federal government. I feel as though I have not been discriminated against in my work environment or outside. In fact, the university that I teach at has provided coverage to my spouse and recognizes our marriage because we reside in Massachusetts.

My spouse and I were married September 11, 2004 in a big public religious ceremony. The Unitarian minister was a friend of mine and pronounced the vows very
traditionally. There were approximately one hundred people of all ages there, including both sets of relatives. We decided to wait to get married until more recently so the two of us could setup all the legal documents that would be needed for our marriage: power of attorney, health care proxy, as well as others. We wanted to make this marriage as real as possible and as close to a normal marriage as we could. These papers allowed us to receive certain benefits as a married couple and be recognized in the state as a married couple.

I feel as though the Defense of Marriage Act (DOMA) was a means for the government to slow down the progress that gays were making with regard to civil rights. This was a way to slow down and limit certain rights that are permitted only “legally” married individuals. People view a gay marriage to be a lot of handle emotionally and quite often compare it to the old views about interracial marriages. I hope to see the day that this act will be repealed and allow homosexuals the same rights as traditional marriages within the federal government.

After we were married, my employer offered benefits to my partner under my contract. I am a professor at a Jesuit university in Boston that is offering spousal benefits to my gay spouse. Although this was a forced concession by the employer because of the new Massachusetts law, it is still a step in the right direction regarding for civil rights. I am proud to be who I am. I am proud to be married to such a wonderful man as my spouse. I am extremely grateful that my family is as accepting as they were and still are regarding my relationship. I will continue to be grateful for everything that I am given and am waiting the day that heterosexuals and homosexuals will be completely equal.
STORY 3: REBECCA THOMAS

I was born in Cuba and came to the United States when I was six years old. I was raised in New York City and Key West, Florida. My parents divorced when I was only eight years old and I have always lived with my mother, grandmother, and sister. I grew up very normal with support from my family and with a strong education. It did not even cross my mind that I might be gay until after college. It was not acceptable for someone in the family to be gay. My sister and I had attended Catholic parochial schools and at the time it was not considered to be hip in the least to be homosexual. All throughout college I had various boyfriends and even girlfriends. It was a liberal school, but it did not even have a gay-straight alliance.

It was not until my late twenties that I told my family that I was gay. There hardly was a reaction. My family had more of a reaction of “don’t ask, don’t tell” and they would be quite happy not acknowledging my sexuality. They were not mean with regards to my sexuality; they just were not ready to outwardly speak about it. I was one of two children and all I wanted was to not lose my parent’s love. I was never ostracized from a group because I traveled well. At the beginning there was a little anger that I had to deal with from my mother, but that soon dissipated.

It became clear to me in my late twenties, once I understood the basic vocabulary, that I was gay. At that point I understood the impact that my sexuality would have on my life and other people’s perspectives of me. I knew that I might not have the chance to marry a person that I loved and I decided to not let that get to me. If you know that you can’t have something, you do not waste your energy thinking about it. You work around
it. In my thirties, people were performing commitment ceremonies. I just could not get my head around this concept. It was not as though I thought it devalued the commitment, it was just a different concept. I knew that I did not want a commitment ceremony. I wanted the full traditional wedding, but once again I knew that was not a possibility.

When Vermont began allowing homosexual unions, I was interested in learning more about the commitment, but I knew that it was still shy of marriage. But, I thought to myself that if this type of ceremony would help in the future with children and our commitment, then I would do it. Even in Vermont this type of commitment was not state sanctioned, thus the commitment meant very little to others outside the marriage. The benefits of Vermont unions were minimal, but it started me thinking about my rights as a gay individual. In 1994, I joined GLAD and watched the Vermont case put together with regards to same-sex marriage. I watched the trial and waited to see the outcome. At the time, I was dating the attorney for GLAD.

When Massachusetts announced that same-sex marriages were legal, I was awestruck. I was at the frontlines. I knew the litigators and they were all extremely excited about the outcome, yet I was skeptical. I was stunned for a week and then said to my partner at the time, “Let’s do it. We have all the reasons to get married, kids, a mortgage, health care coverage, why not do it?” We were married July 30, 2004. Both sets of in-laws were great and loved the idea of marriage. They saw this legal marriage as acceptance of our homosexual marriage. The relatives had us registered at various stores and threw a number of congratulatory parties in our honor. We had already been together for fifteen years, so it was amusing to see all the fuss now just for the legal
wedding. The relatives were all Catholic and very traditional. The wedding was a symbol of acceptance and an official merging of the families.

Even though we are married, we are still short-changed various benefits, most of them at the federal level. In addition, my spouse and I are almost forced to stay in Massachusetts because that is the only state that currently recognizes our marriage as legitimate. When DOMA was passed, I knew that it would be a long struggle for gay rights in the United States. There are a lot of people who are against the idea of same-sex marriage and homosexuals. It is undemocratic to restrict gay civil rights. The fundamentals of our country rely on the separation of church and state. Although these two areas do crossover, the general principles of our country should be separate. Looking at history, there was a controversy about prayer in public schools. Gay marriage is very similar. In addition, the struggles of homosexuals parallel the hurdles that black Americans faced during the nineteen and twentieth centuries.

Even though marriage is legal in Massachusetts, there are still issues with regard to rights that are denied. For example, if you and your spouse have children in public schools, only one spouse is allowed the rights to their records because only one spouse adopted the child. Homosexual couples are forced to co-adopt children if their state permits it. This allows both parents to sign permission slips, pickup their child, and call the child out of school, and more importantly have the ability to make medical decisions. Although these issues are small, they can lead to complicated problems. Only a parent or appointed responsible guardian by a legal document have the right to visit the child or family member and sign consent forms and make formal medical decisions. It is all the
little things that we take for granted that become issues for homosexual parents who are not formally married.

I do have to say one thing. I did not anticipate the moment that we were married in Boston to be as important or fabulous as it was. The joy that was created for our small family unit and our extended family made a huge impact on all of us. I underestimated the opportunity that same-sex partners received when homosexual marriage was permitted in Massachusetts.

**STORY 4: JAMES MURPHY**

I was born in 1983 in a small community in New Jersey. Even though homosexuality was not a foreign concept to many, it was a taboo subject within the community. There had never been a Jewish person who lived in our small town and thus the community did not see a need to even really discuss any Jewish history. This was very similar to how homosexuality was treated. It merely did not affect our community at large because it was an issue that affected others. I did not know that I was gay at an early age because it was not accepted. Thus if it is not accepted, then you do not associate yourself with being that type of person.

Freshman year of high school I attempted to date my best friend at the time. It was one of those early years relationships where all we did was hold hands. It was not until we kissed for the first time did I start to have second thoughts. When I kissed her, it was as though I was kissing my sister. I had no arousal at all. We stopped dating soon
there after. I wanted to see if I was attracted to women, so I dated another girl in at my school. She was beautiful and very sweet. But the same thing occurred when I kissed her. All of a sudden I had a rush of fear. I knew deep down that I was gay, but how would everyone else react to this information? I decided to start accepting who I was by speaking with my friends about my situation.

What started as a simple meeting with my close friends soon became the beginning of a gay-straight alliance at my high school. No one, except for my closest friends knew that I was the gay person in the group. We just discussed the lack of acceptance from the community and current gay rights movements. By the end of the school year, I was determined to speak with my mother about the fact that I am gay. I distinctly remember her reaction because it was very unexpected. She just began to cry. She was not upset that I was gay, more upset that she would not be able to have grandchildren or a large family wedding. I could not believe it. I wanted those things too. So we talked more about this and decided not to tell my father till after I graduated from college. My father would be much harder to discuss this topic with since he was raised by a very traditional Catholic family and then trained in the army.

What I just could not understand was the fact that my mother was not really upset with my sexuality, more about the fact that she will not have grandchildren or a wedding. I want a large wedding and eventually want to adopt a child of my own. Granted this is all in the future, however, these are rights that I want to be able to use when I do fall in love with another man. Since that conversation I have been accepted and attending a liberal school in Boston. I have had numerous relationships since college that have all been male and the opportunity to discuss with them gay civil rights has been amazing.
My boyfriend of about a year and I talked about our desires to be married in the future and adopt children. Even though it is premature for us to be discussing our relationship, it was nice to be able to imagine our future.

Living in Boston has opened my eyes to rights that Massachusetts provides its homosexual married couples, which means that I will probably stay in Boston if possible after I graduate.

After hearing the narratives of four respected individuals in the community, one gets a well rounded perspective about gay rights. What these four individuals have in common is the desire to be able to choose marriage and adoption, as well as the ability to use certain marital benefits. Each of these people stated similar perspectives regarding marriage and civil rights. They also stated that this process is going to be a long road, but one that is going to be worth while in the long run.
CHAPTER FOUR:
ANALYSIS APPLIED TO OTHER STATES

Compiling the history and case law of same sex marriage and how it relates to finance is different from state to state and under federal law. However, what is not changed or influenced by law is the human characteristic that homosexual people have. The right to marry not only lies with the state, but can also be argued to be a basic human right. Being a homosexual married couple is very different from being a heterosexual married couple. This is because some rights for homosexuals are limited or deemed not appropriate. As seen in Chapter Two, homosexual couples have a more difficult time with their estate planning and financial needs than do heterosexual couples. In addition, these rules and regulations differ from state to state. In Chapter Three, homosexual couples were shown facing financial situations, coupled with their personal rights and needs. When these two aspects of finance and human rights are combined, a thorough picture can be depicted regarding issues homosexual couples face.

Throughout history, homosexuality was the taboo subject that was never openly discussed until recently. It was not until recent television shows such as “Will and Grace” and “Friends” began addressing the subject of homosexuality to a broader audience. In addition, state laws were challenged and changed in Massachusetts in 2003 by the Goodridge v. Department of Public Health case. Although employers were already beginning to add homosexual benefit rights within companies, for Massachusetts residents, the laws made these benefits official. Although state laws in Massachusetts now require homosexual couples to be compensated similar to heterosexual couples,
under the federal government, these unions/marriages are not viewed as legal. Thus, homosexual couples are not permitted to file joint government tax returns or inherit property from a spouse tax free. As seen in Chapter Two, which focused on the economics of same-sex marriage compared to a heterosexual marriage, in each of the headings including insurance and benefits, taxes and governmental aid, estate planning and retirement, employment benefits, and children, heterosexual couples were provided many more rights and could easily compensate for family members than a homosexual couple. Although full equality is hard to accomplish without the support of the federal government, it remains difficult for homosexual couples to view their marriage as a marriage without some of these basic benefits.

Homosexual couples struggle to create financial plans that will compensate or provide for their spouse and family. Same-sex couples are forced to use financial advisors, estate planners and knowledgeable lawyers in order to achieve successful financial plans. This is costly and aggravating for couples to file the lengthy paperwork required and also to attend numerous meetings. Insurance is the easiest form of financial security that a homosexual couple can receive in state. This is because insurance is provided by a private firm that can list any policy holders’ desired beneficiary on the policy, rather than a direct blood relative. Although there are still some catches regarding insurance policies and a beneficiary being a homosexual partner, these problems can easily be avoided. Homosexual couples must avoid policies that specifically designate “the family” which states a spouse and the children, referring to a heterosexual family. Although these sections in the policy can be rewritten accordingly, it is easier and less confusing to merely avoid such policies. In addition, any governmental insurance policy
(COBRA or ERISA) does not cover homosexual couples because under the federal government, these couples are not deemed to be officially married. This means that any policy that is state-regulated is allowed to cover homosexual couples, but all federal insurance benefits do not include homosexual couples. This means that under ERISA, a homosexual spouse is not able to inherit the 401(k) of the deceased spouse. Quite often couples do not read all the fine print associated with insurance and merely think that being the spouse allows for immediate beneficiary status. Homosexual couples are not provided such a luxury. Thus, it is extremely important for homosexual couples to speak with a financial advisor who is knowledgeable in the area of insurance and what would cover their needs.

After the federal government passed the DOMA and FMA acts, homosexual couples had greater difficulty receiving federal benefits. Federal taxes, Social Security, the unlimited marital deduction, and child care are all benefits that homosexual married couples are not provided. This is because the federal government does not acknowledge the Massachusetts marriages as being legitimate and thus not legal in the eyes of the federal government. Homosexual couples are required by federal law to file separate tax forms with the IRS, even though they are seen as a married couple in the state of Massachusetts. In addition to filling out separate forms, the couple also must determine which expenses to claim on the separate forms, including any children that the couple may have together. This becomes a very confusing process and requires the help of a knowledgeable accountant and sometimes even a lawyer.

A majority of the time, it is more expensive for couples to file separate tax forms, rather than joint ones. This once again places the homosexual couple in a financial
burden where they are paying more money to stay together as a couple. Same-sex couples are also not provided the luxury. They are also not allowed to receive their deceased partner’s Social Security survivor payments because they are not deemed as being married under the federal government. This provides a financial strain on some elderly couples who did not account for this federal ruling. Also with regard to inheritance, a homosexual spouse is not afforded the right to the unlimited marital deduction, which allows the partner to inherit the spouses estate essentially tax free. The unlimited marital deduction was created to provide a means for couples to inherit their joint estate without the burden of paying the estate tax upon their spouse’s death. Homosexual couples are only afforded the amount that is designated as gifting and the remainder is essentially taxed by the estate. Quite often this requires a large sum of money be deducted from the estate, creating a lesser inheritance for the living spouse to live on. For homosexual individuals whose spouse just passed away, it is difficult to watch the estate inheritance divided by taxes and any hope of gaining a great degree of wealth blow away with the wind.

However, homosexual married couples are provided the right to claim federal aid for their children. The catch is that only one parent is allowed to claim the adopted child under the federal government. This is because a child is not permitted to be adopted by two parents if the two parents are not married. The federal government has provided a variety of hurdles for homosexual married couples to follow to receive any monetary compensation and stay out of prison. It is extremely important for homosexual married couples to speak with an accountant, a lawyer, and an estate planner regarding federal laws and the means to file taxes and still achieve a good return.
Homosexual married couples also require a great deal of guidance regarding estate planning and retirement packages and planning. Most people choose a living will as a means for supporting their loved ones after death. For a more secure harness over the inheritance, a variety of trusts can be created and used to secure the beneficiaries finances and permit only those listed on the agreement. In addition, a variety of trusts can be created to fulfill the desires of the policy holder from a charitable remainder trust to estate tax trust. Since trusts are created to provide for family members and others who are dependent on the grantor (creator), it is important to name the correct beneficiaries. For homosexual couples, this allows inheritance to be easier, since the partner may be named on the trust without creating problems. In addition, if the partner has an IRA, the IRA may name the other partner as the beneficiary. There are also other means by which a homosexual married couple can avoid a huge tax burden regarding the transfer of property. A same-sex married couple could potentially create a joint partnership wherein both spouses own a part of the property and either can inherit the remainder without any tax. Although estate planning and retirement planning seems easy, it is very difficult with its many facets. Couples also need to consider wills that specifically state the desires of the estate after one spouse dies. Homosexual couples should also consider living wills regarding their medical wishes including who makes decisions if one should be incapacitated. Thus, it is important for a couple to speak with an estate planner and a lawyer regarding their assets and their goals for inheritance.

Employers are faced with similar problems regarding homosexual married couples. They may wish to offer benefits to all their employees and partners, however, this becomes difficult when a company is national and falls under separate state laws.
Thus, companies have started to take matters into their own hands and deciding within the company if benefits should be awarded to domestic partners and married homosexual couples. According to the human resources departments at a few Fortune 500 companies, it is more beneficial for a company to offer benefits that extend to homosexual couples because the company is then seen in the eyes of the employees as being caring and allowing the acceptance of more diverse personnel. This concept will be continued regarding state to state laws and companies that have offices in a few states with different stances on homosexual couples.

Homosexual couples have a harder time with regard to children and adoption. In a homosexual marriage, only one parent is permitted to adopt the child because the marriage is not viewed as being legal in the eyes of the government. This makes various things such as the Family Medical Leave Act more difficult when only one partner is legally the parent. In addition, because only one parent officially adopted the child, the other parent is not permitted to sign permission slips or make medical decisions for the child. These small little factors create an even greater hurdle for a family and puts strains on the relationships. Although there are means to work around these little problems with the help of an attorney.

Each of these sections presents the differences that homosexual marriage faces in comparison to a heterosexual marriage. Although each hurdle that a same-sex marriage faces can be overcome, it is much more difficult and needs the help and resources of many more people. Although the above differences in marriages are mostly monetary, there are basic human rights differences that these couples face. When looking at Chapter Three, which focuses on four narratives of homosexual people living in
Massachusetts, it was clear that they were pleased with the newly developed concept of same-sex marriage, but still lacked the basic benefits that a couple should be allowed when married, for example, being able to sign a spouse’s child’s permission slip for a school trip or being able to go as a spouse to a partners’ gym. Those rights are often overlooked and not considered to be a major problem. However, when a spouse is unable to make a medical decision for their child because only one spouse was legally able to adopt the child and make decisions, imagine what an impact that has on a person and their relationship? We often neglect to see the entire picture and take into account all the aspects of marriage from finances to human rights.

Let us imagine a homosexual couple who is married legally in Massachusetts and then is transferred to another employment office out of state and the couple is forced to relocate. What happens to the marriage that was deemed as legal in Massachusetts in another state? The state may have different laws regarding same-sex marriage and prohibit the existence of this type of relationship. Then the marriage is not seen under this new state to be legal. The employer is also not forced to provide benefits to the homosexual partner. Once again, the once married couple is seen as separate entities and must file for everything separately, which is much more costly. In addition, the homosexual married couple may move to a state that only provides a domestic partnership. Once again the benefits are lessened to the extent that the state is willing to provide under their state constitutional law. “On November 18, 2003, the Supreme Judicial Court of Massachusetts decided that ‘barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates Massachusetts Constitution.’ Goodridge v. Department of
Public Heath, 440 Mass. 309, 344, 798 N.E.2d 941, 969 (2003).”134 But this ruling is only provisional for Massachusetts residents and employers.

How can a homosexual married couple who was provided a decent amount of rights under Massachusetts law move to another state that does not even acknowledge the possibility of a marriage between two such individuals. Today, “courts in eleven states have rejected presumption against gays and lesbians in custody cases. Eight states and the District of Columbia allow custody to gays and lesbians in second-parent adoptions.”135 We are currently facing the problem where states with different laws are providing benefits for homosexuals with a different name associated with the relationship. For example, Vermont has a domestic partnership policy that provides only certain benefits to these homosexual partners, whereas, Massachusetts provides homosexual marriages the same benefits as full spouses. When an employer is faced with the decision of which state policy to follow regarding benefits, the employer often becomes quite befuddled. For a national firm that has branches in a variety of states, the policy must be consistent throughout the company, but to which state law? “Employers who maintain these types of programs should decide whether 1) to terminate existing programs and thereby compel same-sex domestic partners to legally marry to qualify as a ‘spouse’ under existing benefit programs; or 2) to modify existing domestic partner programs to expand the eligibility criteria; and 3) whether a ‘grandfathering’ provision is appropriate in the latter case.”136 But, is this fair for an employer to qualify homosexual partner benefits to require a marriage license? If a couple is living in Texas, a state that

135 Bolte, p. 35.
136 Schneck, p. 3.
does not provide either marriage or a domestic partner option to homosexuals, they are not allowed to receive spousal benefits by the employer because the employer made the company laws to Massachusetts state law of a homosexual marriage. This becomes quite a large problem for both employers and homosexual couples who are looking for these benefits.

Employers could provide benefits to couples that are not married or in domestic partnerships; however, what is the legal definition that an employer could use to determine that the couple is in a committed long-term relationship? Thus, employers are currently attempting to revise their employee benefit packages to provide a more reasonable amount of benefits that homosexual couples can use. According to a variety of human resource departments, “costs seem to be quite low. They range from less than 1% to about 2% of total benefits costs for the organization.”\textsuperscript{137} With figures being the financial cost to include homosexual partner benefits, it is almost obvious that an employer reorganize these benefits packages to be more inclusive. What is also not mentioned is the requirement that an employee be frank about their sexuality at work to be able to receive these benefit packages. Although the employer is required to have a non-discrimination clause, there may be people at work who are not so friendly to homosexuals. It could become a very different working environment after a homosexual person tells his coworkers that he is indeed gay and also has a partner who is going to be receiving employee spouse benefit packages. How can an employer provide such benefits and not allow word to spread throughout the company? It becomes a difficult question that the employer needs to consider and examine more thoroughly.

\textsuperscript{137} Morrow, p. 13.
Even Robin Lazarow, the chair of employee benefits and law practice at MetroWest that is a chapter of the Worldwide Employee Benefits Network (WEB), states that an employer should start reviewing the benefit packages and employment practices regarding an the definition of an employee’s spouse. “Looking at the definition of ‘spouse,’ and ‘marriage,’ and ‘domestic partner,’ and how they are used for non-ERISA benefits” \(^\text{138}\) can provide a wider picture for the employer to follow regarding structuring the company benefits packages. “Fully-insured plans such as group medical, dental, life, and disability that extend insurance coverage to spouses will most likely need to be provided to same sex-spouses.” \(^\text{139}\) Lazarow also specifically states that Massachusetts employers with operations that extend past the state border should consider implementing a policy for non-Massachusetts residents. This allows the company to maintain a form of consistency and avoid any discrimination cases that may arise.

In addition, a Hewitt survey offered that “85 percent of the companies that offered partner benefits said that it added only 1 percent to their overall health-care costs. Other research has shown the expense to be similarly low, in the 1 to 2 percent range.” \(^\text{140}\) Companies were mostly concerned that after these benefits were added that HIV positive domestic partners would drive up the health care cost with the company. “Insurance companies actually tacked on a surcharge for coverage.”\(^\text{141}\) Once again the notion of discrimination arises within the company workforce and other providers, such as insurance companies.

\(^{138}\) Gresham, p. 9.  
\(^{139}\) Gresham, p. 9.  
\(^{140}\) Kiger, p. 67.  
\(^{141}\) Kiger, p. 67.
In addition, the cost of covering homosexual partners is low because few employees actually use the benefits that are provided for their partner. “Hewitt associates in the 1990s found that only 2 percent or less of companies’ workforces signed up. A major reason, consultants say, is that employees – unlike their heterosexual married coworkers – generally must pay federal taxes on their partners’ benefits, since the federal government doesn’t recognize same-sex marriages.”\textsuperscript{142} However, an employee can claim his or her spouse as a dependent who relies on the employee for at least half of his or her income and thus does not have to pay additional taxes. However, this is difficult to accomplish if both spouses work and the couple needs both incomes to survive. Thus, “when employers correctly describe the tax rules, a quarter to a third of the eligible workers will declare their partners as dependents and apply for the benefits.”\textsuperscript{143} It becomes difficult for employers to provide a fair and desired benefit plan. This is only one aspect that homosexuals face with regard to establishing equality from state to state and non-discrimination.

Homosexual couples also face the problem of not having the ability to have a normal heterosexual marriage that is accepted under the law. For example, heterosexuals are allowed the ability to file for a common law marriage after being committed to one another and living together for a certain extended period of time. The length is determined by state law. However, a common law marriage is not a valid option for a homosexual couple. “There is no evidentiary immunities or privileges in legal proceedings. Unmarried partners also may not make health care decisions for each other

\textsuperscript{142} Kiger, p. 67.
\textsuperscript{143} Kiger, p. 67.
absent a health care proxy.”144 Although this may not seem to be a large issue for couples, when a couple is faced with the fact that under a certain state law their marriage is not legal and they are unable to file for domestic partnership, it becomes a larger issue at hand. How are they as a couple supposed to be accepted within the community if they can not ever be married or even have the hope of some legal commitment to each other? To some the essence of a domestic partnership appears to be the attractive alternative to marriage. “But the benefits of these partnerships are usually limited in scope. Municipalities offering the option of a domestic partnership usually offer the same benefits to both partners and spouses of employees, on the other hand, generally only have access to family memberships at city-owned attractions or the right to hospital or jail visitations. Private sector businesses offering domestic partnership policies usually restrict benefits to health insurance, although sometimes they are restricted further.”145

When comparing the difference between a domestic partnership and a Massachusetts marriage, it is key to look closely at the language that is used for both. The legal definition of a “‘domestic partner’ in the PLFD has four components: ‘two persons of the same or opposite sex, not married to one another; who for a significant period of time; share a primary residence; and a life together as a couple.’”146 Although this is a step in the right direction toward marriage for some states, it severely limits the meaning of a committed relationship. A domestic partnership has no legal ramifications when ending it. In addition, there are limited rights that partners can file for or use. When this definition is compared to the Massachusetts residence definition of marriage which specifically states consequences and legal ramifications when ending the

144 Rubenstein, p. 10.
145 Bolte, p. 41.
146 Gallanis.
commitment and also provides rights to the couple that are equal within the state to those who are heterosexual and married. Massachusetts now faces the problem, however, that the amendment to the Massachusetts Constitution specifically regarding marriages “does not specify what would happen to marriages performed between 2004 and 2006.”

Recently, marriages that were performed in California and Oregon have since been rendered void under state laws. However, the impact that this has on other states creates a domino effect and a slippery slope because the fate of marriages in other states has not been settled.

What some propose to be a valid solution is the concept of a domestic partnership. However, as stated above the concept does not carry the full weight that a marriage would. Currently, the concept of a domestic partnership has limited rights for spouses and no federal rights. What should be considered is that the domestic partnership should carry more legal weight and the state governments and federal governments should begin preparing for the future. It is inevitable that some form of homosexual union be created that has a greater legal weight and impact. Right now, some states are considering a contract form that both partners would sign to state that they are a committed union. However, this piece of paper has little weight regarding right and obligations that the partners have to each other. In addition, the contract does not mean regarding wills, parenting, health care, or estate planning. Each of those aspects will still have to be dealt with separately with regard to state laws.

Some proposals have been made with regard to already existing agreements for heterosexual couples. For example, marriage has often been accustomed to include what

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147 Gallanis.
148 Gallanis.
is called a prenuptial agreement and separation agreement. ¹⁴⁹ When one applies this concept to a homosexual couple, a cohabitation agreement can be constructed. Although this is not the same as an actual contract within a marriage, it comes fairly close. When the cohabitation agreement is constructed, either partner can add clauses to protect one another in case of a separation or dissolution of their relationship. “Just as the parties to a valid marriage can enter into agreements that delineate property ownership, rights, duties, expectations, obligations, and so forth in an ante-nuptial or postnuptial contracts, unmarried persons who live together can also enter into cohabitation agreements.” ¹⁵⁰ However, if this contract is not constructed properly, either party could potentially invalidate it and leave the partnership without consequences.

Wills have also been an area of contention in regards to homosexual couples. In order to avoid problems for his/her partner, quite often one partner may adopt the other. It is an “adoption by one of the adult partners of the other as his or her legal child.”¹⁵¹ This allows for the direct inheritance of the estate without the potential interference from relatives. In addition, some employers are taking matters into their own hand regarding coverage. “Boston-based John Hancock Life Insurance Co., for example, extended partner benefits to gay and lesbian employees because they legally were unable to marry. Now that gay marriage is becoming legal, the company, which provides partner benefits to 44 of its 5,000 employees, will consider offering coverage only to same-sex partners who are married.”¹⁵² Each one of these small steps and proposals bring homosexual

¹⁴⁹ Rubenstein, p. 12.
¹⁵⁰ Kurlowicz, p. 519.
¹⁵¹ Kurlowicz, p. 520.
¹⁵² Kiger, p. 67.
partners closer to marriage status. However, there are still several obstacles that these couples still have to overcome.

What is expected to come in the next few years with regard to same-sex marriages include Full Faith & Credit Challenges, *Goodridge* Copycat Cases, and the Supreme Court Strategy. The Full Faith & Credit Challenge disputes whether a couple can marry in Massachusetts and then file a lawsuit in another state to recognize the Massachusetts marriage. “They likely will argue that federal DOMA is unconstitutional as an overly broad interpretation of the Full Faith and Credit Clause and as inconsistent with principles of equal protection and substantive due process.”\(^{153}\) Although this is a valid case for the court system, it will probably not work since courts have the right to deny seeing a case if there is not just cause. Since each state has different laws regarding marriage, it is difficult to claim a law from another state to be valid in the state that the case is being filed. For example, the concept of common law marriage is different from state to state. Certain states do not even accept the concept of common law marriage as legal. In the past, common law marriage couples from one state have attempted court cases in states that do not offer this form of marriage. The result is that the laws of the state prevail and that a person cannot claim the transference of a non-contractual marriage if the state does not find it legal. In addition, the general case should go to the Supreme Court, instead of surrounding state courts to provide for a common general law rather than individual state laws.

Another type of case that will flood the court room is that of the *Goodridge* Copycat Case. This means that similar cases to the *Goodridge* case will be filed in other

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states. These court cases are demanding the “recognition of same-sex marriage as a constitutional right under state law. The Massachusetts decision will serve as persuasive precedent for other courts interpreting parallel provisions in their state constitutions.” 154 The concept of the copycat case has already started in certain states. However, courts have the right to deny the hearing of cases, which has occurred to this point with regard to similar cases in other states. With the advent of legal same-sex marriages in Massachusetts, other states started amending the state constitution regarding marriage to exclude same-sex couples. Thus, when a case is filed within the amended constitution state, the court automatically may deny the right of hearing the case because it is a direct violation of the law specifically stated.

The Supreme Court Strategy is similar to the other two mentioned above. “Same-sex couples who have ‘married’ in Massachusetts (or who have civil unions, as some do in Vermont) will apply for federal benefits such as federal employee health insurance, and under federal DOMA those requests will be denied.” 155 Then the couples may argue in federal court that the definition of marriage in the federal government is unconstitutional. The case would be against the act that was created under the Clinton administration in 1996, DOMA, stating that it is unconstitutional because it does not provide equal protection under the act. In the end, the case would eventually end up in the Supreme Court with the final decision which would be applied to all the fifty states, without exception.

What is often left unanswered is the question of what could happen to marriages that were conducted in Massachusetts before the Supreme Court case. If the Court

155 Kyl, (29 July 2003), p. 3.
decided that DOMA was constitutional, and that the state law was unconstitutional, Massachusetts would no longer be permitted to conduct same-sex marriages. What would happen to marriages that had already become legal in Massachusetts? That is one of the many questions that remains unanswered and probably will go unanswered until the case is decided.
CHAPTER FIVE: CONCLUSION

It is hard to understand how a concept as simple as marriage could become controversial and actually have federal laws created to “preserve it.” Homosexuals have made strides toward equality, starting with mere acceptance. Today, the controversy is regarding same-sex marriage. On one side, the traditionalists, who see the sanctity of marriage between a man and a woman as God created it to be, as a means for procreation of the species. On the other hand, the liberal views of today’s youth stand to gain equality for all humans, including homosexuals. Looking at the economic differences between married heterosexuals and homosexuals, one can see that progress is being made toward equality. However, the rate at which equality will be achieved is far off in the distance.

Homosexual marriage has taken a large step in today’s world, especially in the state of Massachusetts. Even though same-sex marriages are a step toward equality, it does not mean that married heterosexuals and homosexuals are provided the same luxuries and benefits. Looking at the economic portion of this paper a more thorough perspective of rights can be seen. For example, homosexual married couples are not provided all the same insurance benefits as heterosexual married couples. Although it is possible to assign whomever one chooses as the insurance beneficiary, it is key to remember that if any of the insurance coverage or benefits coverage is provided by the government that a homosexual spouse is not permitted to inherit it.
In addition, all government related topics, such as taxes, social security, and the unlimited marital deduction do not benefit homosexual married individuals because the federal government passed two acts (DOMA and FMA) that distinctly state the definition of marriage as a union between a male and a female. Thus, any benefits that may be applied to married couples can solely benefit a heterosexual marriage. Estate planning and retirement planning can also be tricky for homosexual married couples. When a homosexual couple is married, the spouse is not permitted to automatically make decisions or inherit property. It must be specifically stated in a variety of wills. For homosexual couples, the difficulty remains in the amount of paperwork and necessary documents that have to be constructed to ensure that the spouse is the legal decision maker and inheritor. Another hurdle for same-sex couples comes from the workforce. Employers are not forced to provide benefits to same-sex married couples outside of the state of Massachusetts. In addition, it is at the employer’s discretion to determine what benefits are offered to the spouse of the homosexual couple. Finally, children become a difficult predicament for homosexual married couples because under the federal law, the couple is not legally married, thus only one spouse can formally adopt the child. This problem with joint adoption can provide difficulties with regard to medical care and decision making. Although there are ways to cope with most of the hurdles that were mentioned, there is still a gross inequality between heterosexual couples and homosexual couples.

Same-sex married couples could be seen as the “other,” a distant inappropriate ideal, however, these individuals are just the same as us, merely finding love with the same sex. It is impossible to deny what is ingrained in one’s DNA, which is the key to
understanding homosexuality. To deny a person basic human rights because of marriage to the same-sex is unrealistic and inhumane. Looking at the four narratives that were told by homosexual individuals living in Massachusetts, a more humanistic perspective can be achieved. It is important to understand that it is easy to relate to married couples that are not receiving adequate rights and benefits from the government and have certain hardships because their marriage is not “legally accepted.” In addition, there are no consequences for a homosexual union when the relationship dissolves, whereas a heterosexual marriage is a contract that is being broken with certain ramifications. Thus, it is hard for a homosexual couple who is left to receive any compensation from the partner because there are no laws that bind them. It is just another way that same-sex couples are not provided the same rights as heterosexual couples.

In the up-coming years, cases similar to the Goodridge v. Department of Public Health case will attempt to flood various state courtrooms. Eventually, the Supreme Court will hear the facts behind the Goodridge case or a similar case that has been appealed and accepted to be heard by the court. Until this occurs, there is not going to be a common law across state borders regarding same-sex marriage. Unfortunately for homosexuals this means that they are almost tied to certain states because of better rights and benefits. In addition, once married it is difficult to uproot and move to another state that does not provide similar laws. There will also be a trend in businesses to begin offering extended benefits across state lines for homosexual spouses, even if the state laws do not recognize same-sex marriages. This is because it is very appealing for companies to offer aid to all its employees and thus attracts a wider range of diversification.
It seems as though there will be numerous changes in the up-coming years in regard to state versus federal laws on the concept of marriage and homosexuality. Until this occurs, it is important for these couples to understand their complete rights under the state laws where they reside. In addition, it is important to speak with an expert in each individual area, insurance, estate planning, and wills to receive the best help for one’s family and partner. Thus, by preparing each of these aspects, one is allowing the smooth transference of inheritance to the partner without any problems. Although there is still a long way for homosexual rights to go, at least the first steps toward equality have been taken.
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