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## The Impact on New Mexico's Budget of Allowing Same-Sex Couples to Marry

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# The Impact on New Mexico's Budget of Allowing Same-Sex Couples to Marry

## EXECUTIVE SUMMARY

**SAME-SEX MARRIAGE IN NEW MEXICO WILL POSITIVELY IMPACT THE STATE BUDGET BY \$1.5 MILLION TO \$2 MILLION ANNUALLY.**

This analysis by UCLA's Williams Institute on Sexual Orientation Law and Public Policy, estimates the impact of allowing same-sex couples to marry on New Mexico's state budget. Using the best data available, we estimate that allowing same-sex couples to marry will result in a net gain of approximately \$1.5 million to \$2 million each year for the State. This net impact will be the result of savings in expenditures on state means-tested public benefit programs and an increase in sales and lodging tax revenue from weddings and wedding-related tourism.

We base our analysis for New Mexico on the same methods that we used in previous studies on New Hampshire,<sup>1</sup> California,<sup>2</sup> Connecticut,<sup>3</sup> New Jersey,<sup>4</sup> and Vermont.<sup>5</sup> The full methodology for our analysis is set out in *Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget*.<sup>6</sup> In these studies, we have concluded that extending the rights and obligations of marriage to same-sex couples would have a positive impact on each State's budget. Similar conclusions have been reached by legislative offices in Connecticut<sup>7</sup> and Vermont<sup>8</sup> and by the Comptroller General of New York.<sup>9</sup> In addition, the Congressional Budget Office has concluded that if all fifty states and the federal government extended the rights and obligations of marriage to same-sex couples, the federal government would benefit by nearly \$1 billion each year.<sup>10</sup>

We base our analysis of the fiscal impact on New Mexico's state budget of extending marriage to same-sex couples on the following estimates:

**APPROXIMATELY 2,248 OF NEW MEXICO'S SAME-SEX COUPLES WILL MARRY IN THE SHORT TERM.**

According to Census 2000, New Mexico has 4,496 same-sex couples. Based on the experiences of other states that have extended the rights and obligations of marriage to same-sex couples, we predict that half of those couples—or 2,248 couples—will choose to marry during the first three years that New Mexico makes same-sex marriage available.

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### STATE EXPENDITURES ON MEANS-TESTED PUBLIC BENEFIT PROGRAMS WILL FALL.

Extending marriage to same-sex couples will reduce the State's public assistance expenditures. Spouses are obligated to provide for one another's basic needs. After marriage, a same-sex spouse's income and assets will be included in assessing an individual's eligibility for means-tested public benefits, reducing the number of people eligible for such benefits. We take into account the possibility that losing public benefits may create a disincentive for some of these couples to marry and the fact that low-income couples might still qualify for benefits. Nevertheless, using Census 2000 data, we estimate that legalizing same-sex marriage will save the State between \$74,000 and \$569,000 per year in its spending on public benefit programs, depending on how much discretion the State is granted to determine whether the income of same-sex spouses is included in Medicaid eligibility standards.

### STATE SALES AND LODGING TAX REVENUES WILL RISE.

If New Mexico permits same-sex marriage, the State will collect \$365,000 in sales tax revenue from New Mexico same-sex couples' spending on their weddings, or approximately \$122,000 for each of the first three years that same-sex marriage is available. In addition, couples from other states are likely to travel to New Mexico to marry and celebrate their weddings, generating a boost to tourism that will lead to higher tax revenues, as well as higher business profit and more jobs. Using Census data and research on New Mexico's tourism market, we estimate that the State will collect approximately \$4.1 million in tax revenue on spending by out-of-state same-sex couples who travel to New Mexico to marry, or approximately \$1.35 million each year for the first three years.

Thus, wedding-related spending by in-state and out-of-state couples will raise a total of \$4.4 million in additional tax revenue for the State, or approximately \$1.47 million each year for the first three years that same-sex marriage is available.

### THE STATE WILL EXPERIENCE A NEGLIGIBLE IMPACT ON INCOME TAX REVENUES.

If same-sex couples are allowed to marry and file jointly, the number of couples paying higher taxes will offset the number whose taxes will decrease. The net impact on the State's income tax revenue will be negligible.

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### EXPENDITURES ON STATE EMPLOYEE BENEFIT PROGRAMS WILL NOT BE AFFECTED.

The State already provides equal employee benefits for state employees who are married and for those who have different- or same-sex domestic partners. Thus, we predict that the State will not incur any additional costs for such benefits if it extends marriage to same-sex couples.

### ADMINISTRATIVE COSTS WILL BE LESS THAN FEES GENERATED.

The State will incur the cost of reprinting marriage forms with sex-neutral language, but the fees paid by New Mexico same-sex couples for marriage licenses will more than offset those expenses.

### REVENUES GENERATED BY THE STATE ESTATE TAX WILL NOT BE AFFECTED.

Changes at the federal level have eliminated the estate tax from the current New Mexico tax code, beginning in 2005. Thus, extending marriage to same-sex couples will not impact estate tax revenues.

### NO INCREASES IN COURT SYSTEM EXPENDITURES ARE LIKELY TO RESULT.

Any increase in demands on the family court system will be very small relative to the existing average caseload of judges and to the normal year-to-year variation in total caseloads. Accordingly, we predict no increase in costs for the State's court system as a result of extending marriage to same-sex couples.

### EXTENDING MARRIAGE TO SAME-SEX COUPLES WILL BENEFIT NEW MEXICO'S STATE BUDGET.

Overall, we estimate that extending marriage to same-sex couples in New Mexico will result in a net benefit to the state budget of at least \$1.5 million to \$2 million each year. Conferring the rights and obligations of marriage on same-sex couples will be fiscally responsible for the State.

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### SUMMARY OF IMPACTS OF SAME-SEX MARRIAGE ON THE NEW MEXICO STATE BUDGET

Impact on State Budget	Net effect (1)*	Net effect (2)^
Savings from means-tested public benefit programs	\$568,888	\$73,855
Increased tax revenue from wedding-related spending:		
-in-state couples	\$121,667	\$121,667
-out-of-state couples	\$1,350,000	\$1,350,000
<b>Total</b>	<b>\$2,040,555</b>	<b>\$1,545,522</b>

\*Including same-sex spouses in Medicaid determinations.

^Excluding same-sex spouses from Medicaid determinations.

For further information about our analysis for New Mexico, contact [williamsinstitute@law.ucla.edu](mailto:williamsinstitute@law.ucla.edu).

# The Impact on New Mexico's Budget of Allowing Same-Sex Couples to Marry

## INTRODUCTION

New Mexicans are currently discussing the extension of equal marriage rights to same-sex couples. One potential concern about expanding the right to marry is the fiscal impact of such a change. Marriage comes with a variety of rights and obligations that might affect the State of New Mexico's expenditures and revenues. This study assesses the links between those rights and obligations and various budget categories to estimate the overall effect of same-sex couples' marriages on the state budget.

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

Similarly, state tax revenues might be expected to change. In particular, we estimated the effect of same-sex marriages on revenues from the income tax, the sales and lodging tax, and the estate tax.

We drew on data collected by the State of New Mexico, in addition to other relevant data sources. The Census 2000 data on same-sex couples in New Mexico provide important estimates of the number of same-sex couples who might marry if that option were available. Based on Vermont's experience with same-sex civil unions, we predict that 2,248, or half, of New Mexico's 4,496 same-sex couples will marry when offered the opportunity.<sup>11</sup>

In general, we estimated the net effect of costs and benefits conservatively. In other words, we chose assumptions that are the most cautious from the State's perspective, those which tend to predict higher costs to the State and lower benefits. Even so, **we find that the net effect of allowing same-sex couples to marry will be a positive impact on the state budget of \$1.5 million to \$2 million per year.** Moreover, evidence suggests that there are significantly more same-sex couples in the State than the Census reports.<sup>12</sup> If so, the net gains to the State will be even greater.

### 1. STATE INCOME TAX REVENUES

Extending marriage to same-sex couples will have a negligible impact on the income tax revenues collected by the State. Same-sex couples who marry will have the right to use the "married filing jointly" tax status. Two individuals who previously filed as "single" will combine their incomes, and as a result, some of them will pay more in income tax. Marriage will also likely eliminate the ability of currently "single" taxpayers who have dependent children to use the "head of

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household” filing status, increasing the taxes that some couples owe. Overall, our simulations suggest that extending marriage to same-sex couples in New Mexico will have a negligible impact on state income tax revenues.

To estimate the net tax impact of allowing same-sex couples to marry, we used the income and household characteristics of same-sex “unmarried partner” couples living in New Mexico gathered in 2000 by the Census Bureau.<sup>13</sup> We used the Census data on total income and on the number of children in a household to estimate each couple’s taxes twice. First, we estimated the total tax that couples who filed as separate individuals would have paid in 2003. Then we estimated their likely 2003 tax payments as a married couple. Finally, we calculated the difference between their unmarried and married tax liabilities.

We made several assumptions to simplify the tax calculations. First, if the householder reported “own children under eighteen” in the household on Census 2000, we assumed that the householder filed as head of household and the partner as single.<sup>14</sup> Second, we assumed everyone claimed the federal standard deduction. Third, we assumed that the only additional exemption or deduction claimed by taxpayers on form PIT-ADJ was the exemption for persons age 65 and older. Fourth, we assumed that individuals and couples had no New Mexico additions to federal adjusted gross income and no New Mexico tax credits on form PIT-ADJ.

Table 1 summarizes our income tax calculations. Overall, the effect on most couples is quite small. If same-sex couples married, 46% would see their taxes rise, 46% would see a decline, and 8% would see no change in their taxes. The average increase is \$313 and the average decrease \$309. Couples with children are slightly more likely to see their taxes rise when married, since a legally unmarried parent can file as head of household, a filing status that provides a larger deduction and credit. Couples in which one partner has a very low income tend to see the biggest reductions in taxes when marrying.

If all same-sex couples identified by Census 2000 in New Mexico married, the estimated net effect on tax revenues would be an increase of almost \$8,272. If only half of these couples marry, the revenue effect will be \$4,136.<sup>15</sup> Thus we conclude that the impact of legalizing same-sex marriage on State income tax revenues will be negligible.



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Table 1: Summary of income tax revenue calculations

Type of Couple	Number of couples	Percentage of all couples	Average change in taxes per couple	Total change
Taxes increase	1,034	46%	\$313	\$323,642
Taxes don't change	180	8%	\$0	\$0
Taxes decrease	1,034	46%	-\$309	-\$319,506
<b>Total</b>	<b>2,248</b>	<b>100%</b>		<b>\$4,136 revenue</b>

**Net change in income tax revenue**

### 2. PUBLIC ASSISTANCE PROGRAMS

The State of New Mexico funds several public benefit programs that provide assistance to low-income individuals and families. NMWorks/Temporary Assistance to Needy Families (TANF) and the state supplement to Supplemental Security Income (SSI) provide cash grants.<sup>16</sup> Medicaid and the New Mexikids program (the State Children's Health Insurance Program) provide health insurance.<sup>17</sup> The federal government also provides funding for some of these programs.

Eligibility for these programs is means-tested, which means that eligibility depends on the individual's and family's income and assets. When a married individual applies for benefits, the non-applicant spouse's income and assets are included in the eligibility determination. Currently, regulations for these public assistance programs do not require the state or federal government to take into account an unmarried same-sex partner's income and assets.<sup>18</sup> People with same-sex partners are considered "single" when eligibility for these programs is determined and are therefore more likely to be eligible than they would be if they were married. If a participant were married to a same-sex partner, the spouse's income and assets would be counted, making it less likely that the participant would remain eligible. When participation drops, state expenditures on the program also fall.

For NMWorks/TANF (and, therefore, for individuals qualifying for Medicaid because they receive TANF), the State determines the eligibility standards and will be able to count a same-sex spouse's income and assets in determining the eligibility of an individual or family. For Medicaid, the federal government determines the generally applicable eligibility standards, and states have more limited discretion in developing their own standards and procedures. Because of the federal

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Defense of Marriage Act (DOMA), the State may be unable to include a same-sex spouse's income and assets in determining eligibility.<sup>19</sup>

However, in assessing Medicaid eligibility, the State may still be able to consider the resources of same-sex spouses under state and federal regulations. These regulations require New Mexico to consider the resources of third parties who are legally liable for health care costs. Medicaid is a provider of last resort, and federal and state law require the State to assure that Medicaid recipients use all other resources before turning to Medicaid, including third parties available to them to pay for all or part of their medical care.<sup>20</sup> These third parties are entities or individuals who are legally responsible for paying the medical expenses of Medicaid recipients.<sup>21</sup> They include any "individual who has either voluntarily accepted or been assigned legal responsibility for the health care" of a Medicaid applicant or recipient.<sup>22</sup> Examples of legally responsible third parties in federal and state Medicaid manuals include absent and custodial parents. In addition, state and federal law require that the income of an immigrant's sponsor be considered when determining eligibility.<sup>23</sup> If the State considered the income of same-sex spouses when determining Medicaid eligibility, it would maximize the savings from allowing same-sex couples to marry. We distinguish below among sources of savings to capture the uncertainty about the State's (and possibly the federal government's) future decisions about Medicaid.

To estimate the impact of same-sex marriage, we again drew on New Mexico data from Census 2000. The Census asks respondents to report their income from various sources. The publicly available data specify the amount of income received from "public assistance or welfare payments from the state or local welfare office" in 1999.<sup>24</sup> Therefore, we can total the payments to individuals in same-sex couples: in 1999, members of same-sex couples in New Mexico received \$600,000 in public assistance.

Unfortunately, neither the Census nor other data sets can tell us how many people in same-sex couples are enrolled in Medicaid or New Mexikids. However, from the Census and other data we know that 1.1% of state TANF spending goes to people in same-sex couples. We can use that 1.1% share of spending to Medicaid and New Mexikids to estimate the amount spent on people in same-sex couples in those programs.<sup>25</sup> The second column of Table 2 shows estimated expenditures for same-sex couples in each program.

To estimate the State's savings, we adjust the current expenditures in several ways:

We assume that 50% of same-sex couples will marry, an assumption that reflects the possibility that a loss of benefits would deter some marriages.<sup>26</sup>

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We assume that some married same-sex couples will continue to receive benefits: the new spouse might also have little income and few assets, allowing the program recipient to remain eligible for public assistance. Furthermore, some spouses may become eligible for family-related benefits as a result of marriage. We make an adjustment that assumes an equal proportion of married same- and different-sex couples will continue to receive benefits. According to the Census, in 1999 1.6% of individuals in same-sex couples, but only 1.3% of married individuals, received “public assistance.” Thus, spending on public assistance will fall by roughly 20%.<sup>27</sup>

We inflate the earlier dollar figures to put the savings in 2004 dollars.

We use data on the State's share of spending to isolate the State's share of savings.<sup>28</sup>

Table 2 shows that the total expected savings to the State is \$568,888 each year. The largest savings come in the Medicaid category. This estimate of \$0.5 million in savings on Medicaid is in accord with a recent Congressional Budget Office report on the fiscal impact of same-sex marriage on the federal budget, which predicted \$300 million in Medicaid savings for all 50 states in 2014.<sup>29</sup> However, if the federal government prohibits the State from counting a same-sex spouse's income and assets to calculate Medicaid eligibility, the savings will be \$73,855 per year.

**Table 2: Reduced expenditures on public assistance programs**

	Annual spending (federal & state)	Annual spending (state only)	State savings
TANF	\$660,200	\$660,200	\$70,188
Medicaid	\$23,160,059	\$5,141,533	\$495,033
New Mexikids	\$197,430	\$37,255	\$3,667
<b>Total savings</b>			<b>\$568,888</b>
<b>Total savings (no Medicaid)</b>			<b>\$73,855</b>

### 3. REVENUE GAINS FROM WEDDINGS

If the State of New Mexico grants same-sex couples the right to marry, we predict that the State will see a surge in spending on weddings by same-sex couples who currently reside in New Mexico, as well as an increase in wedding and tourist spending from an influx of same-sex couples from other states. This increase in spending will benefit New Mexico's tourism-related businesses, generating additional tax revenue for the State. Based on the analysis outlined in detail below, we

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predict that in each of the first three years when same-sex marriage is legal, New Mexico's wedding- and tourism-related businesses will see sales rise by \$29.4 million. As a result, the State's gross receipt tax revenues will rise by \$1.47 million per year.

The experiences of San Francisco, California, and Portland, Oregon, suggest that the local economic benefits of same-sex weddings are substantial. The couples who married in San Francisco during a one-month window of availability in 2004 came from 46 states and eight countries.<sup>30</sup> Businesses in Portland<sup>31</sup> and San Francisco<sup>32</sup> reported that same-sex wedding visitors spent significant amounts of money on wedding-related goods and services. Furthermore, Massachusetts witnessed increased demand for hotels, catering services, and other wedding-related goods and services when same-sex couples began to marry there in May 2004.<sup>33</sup> If Massachusetts permitted out-of-state same-sex couples to marry there, it is estimated that it would experience new spending in excess of \$100 million.<sup>34</sup>

As of today, New Mexico has no competition from other states for these visitors, since Massachusetts prohibits out-of-state same-sex couples from marrying there.<sup>35</sup> Even if other states allow same-sex couples to marry, New Mexico's tourist attractions will attract some out-of-state same-sex couples.

To estimate potential wedding expenditures by in-state and out-of-state same-sex couples, we first estimated the number of couples who might wish to marry in New Mexico, using Census 2000 data on same-sex unmarried partner couples in New Mexico and other states. Then we multiplied the number of couples by average tourist spending plus average wedding spending to get an estimate of total spending. Finally, to calculate the tax revenue impact, we multiplied total spending by the State's gross receipts tax rate.

### *Tourism and wedding spending by out-of-state couples*

According to studies of tourism in New Mexico, the states that send the most visitors to New Mexico are California, Texas, Florida, Illinois, and Arizona.<sup>36</sup> California is the only one of these states to offer statewide partnership recognition to same-sex couples, in the form of a domestic partnership law that provides most of the rights and responsibilities of marriage to same-sex partners.<sup>37</sup> The four states that do not recognize same-sex partnerships have a total of 119,179 same-sex couples, according to Census 2000. Based on Vermont's experience with same-sex civil unions (a status similar to marriage), we predict that half of same-sex unmarried partners in these states will wish to marry.<sup>38</sup> Thus, we predict that approximately 59,590 same-sex couples from these four states will wish to marry. Because they cannot marry in their home states, these couples will have to travel to New Mexico to do so.

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Of course, the need to travel out of state and the fact that a New Mexico marriage may not be recognized by same-sex couples' home states may deter some from coming to New Mexico to marry, but our model compensates for this deterrent in two ways. First, we focus on the four states where the travel deterrent would be the least—states that already send a large number of tourists to New Mexico—and we assume that only half of the couples in those states who will wish to marry, or 25% of those identified in Census 2000, will travel to New Mexico to marry. Second, we assume that only 5% of couples from the other 45 states (and the District of Columbia) will travel to New Mexico to marry. We include California in the 5% estimate because some California same-sex couples will choose to marry for the symbolic meaning that a domestic partnership may lack. Table 3 below shows the breakdown of visitors by state.

**Table 3: Estimate of same-sex couples who will travel to New Mexico to marry**

State	Number of same-sex couples	Number of same-sex couples traveling to New Mexico
Texas	42,912	10,728
Florida	41,048	10,262
Illinois	22,887	5,722
Arizona	12,332	3,083
Other 45 states and D.C. (5%)	470,716	23,536
<b>Total</b>	<b>589,895</b>	<b>53,331</b>

To arrive at the average tourist spending per couple, we used data from a 2004 study<sup>39</sup> that estimated average spending by New Mexico tourists at \$57 per night per travel party, including all expenses (lodging, meals, retail shopping, gasoline, rental car, entertainment, and any other spending related to the visit).<sup>40</sup> Overnight visitors stayed an average of 3.8 nights per visit. Therefore, we estimate that each out-of-state couple will spend an average of \$217 on basic expenses.

According to the Association of Bridal Consultants, the typical bride and groom in New Mexico spend approximately \$13,000 per wedding in the State.<sup>41</sup> We assume that out-of-state same-sex couples will spend less than is spent on a traditional wedding, but that they will spend more than typical tourists. For instance, the additional spending could represent friends or family members who accompany the couple, or special accommodations, meals, clothing, flowers, or gifts. We conservatively assume that the additional wedding spending is one-tenth of the typical wedding expense, or \$1,300, resulting in an average spending of \$1,517 for each couple.

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Even this low estimate of spending suggests that the 53,331 out-of-state same-sex couples would bring approximately \$81 million into the State's economy.

### *Wedding spending by in-state couples*

According to Census 2000, New Mexico has 4,496 resident same-sex couples. We assume, as we previously stated, that 50% are likely to marry if given the option. These 2,248 in-state couples are likely to have larger celebrations and spend more than out-of-state couples because their friends and family are more likely to be local. However, since some of these couples may already have had commitment ceremonies, spending is likely to be less than for a typical wedding. Also, because of societal discrimination, same-sex couples may receive less financial support from their parents or other family members to cover wedding costs. Finally, only spending that comes from couples' savings would truly be new spending for the State's businesses, rather than money diverted from some other use. Accordingly, we assume that same-sex couples will spend only 25% of the average amount different-sex couples spend on their weddings, or \$3,250. Total spending for all 2,248 couples would come to \$7.3 million in additional wedding spending.

### *Additional gross receipts tax revenue*

The State of New Mexico will directly benefit from this increased spending through the gross receipts tax.<sup>42</sup> (Municipalities and counties will also benefit from their add-on to the gross receipts tax and from additional taxes charged on lodging.) Taxed at a rate of 5%, the \$7.3 million in wedding spending by in-state couples will generate approximately \$365,000 in tax revenue. The \$81 million worth of spending by out-of-state couples will raise approximately \$4.1 million for the State. Together, this represents a total increase in tax revenue of \$4.4 million dollars.

Because couples will need to make travel and weddings plans in advance, we can reasonably expect this increase in spending and tax revenue to be realized over time. While the largest number of weddings might occur in the first year that same-sex couples can marry, we would expect that the total benefit would accrue over a longer time, perhaps over the first three years. Therefore, the State's businesses would see additional spending of \$29.4 million per year, \$2.4 million spent by in-state couples and \$27 million by out-of-state couples. The State's gross receipts tax revenue would rise by \$1.47 million per year, with approximately \$122,000 generated by in-state couples' spending and \$1.35 million by out-of-state couples' spending.

## 4. STATE EMPLOYEE BENEFIT COSTS

In 2003, Governor Bill Richardson signed Executive Order 2003-010, requiring the State to offer equal employee benefits to state employees, whether married or with long-term committed

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domestic partners. This Order includes state employees with same-sex partners, a group that likely constitutes most, if not all, of the state employees who would marry a same-sex partner if allowed to do so. Therefore, because the State has already incurred the potential benefit costs for same-sex spouses of state employees, we estimate no fiscal impact in this spending category from the extension of marriage to same-sex couples.

### 5. ADMINISTRATIVE COSTS

If New Mexico extended marriage to same-sex couples, the State's Department of Health would need to print new marriage license forms and marriage dissolution forms. The current marriage forms, for example, ask for information on the "bride" and "groom." States can expect the cost of reprinting such forms to run approximately 10 cents per form.<sup>43</sup> Thus, the onetime cost to reprint 90,000 license and dissolution forms in order to reflect same-sex marriages would be approximately \$9,000, at 10 cents per form.<sup>44</sup>

Revenue from the state marriage fee, however, would offset these costs through a charge of \$25 for a marriage license.<sup>45</sup> Moreover, most couples would pay an additional \$1.50 to obtain a certified copy of their marriage certificate. If half of resident same-sex couples in New Mexico (2,248) marry, that will generate revenues of \$59,572, or \$19,857 each year for the first three years that New Mexico extends marriage to same-sex couples. Further, if 53,331 out-of-state same-sex couples marry in New Mexico, the State will generate additional revenue of \$1,413,272 from these fees alone, \$471,091 each year for the first three years. Thus, the total revenues could be as high as \$1.47 million for marriage license fees, \$0.49 million per year for the first three years. (See above for an explanation of the number of out-of-state couples.) However, the State will also incur administrative costs for processing new applications. We assume that the fee income will largely be offset by those additional administrative costs (and the reprinting costs discussed earlier), so we do not include the fee income in our summary analysis.

### 6. IMPACT ON ESTATE TAX REVENUE

Extending marriage to same-sex couples will have no impact on the amount of revenue that New Mexico collects from its estate tax because, starting in 2005, the federal government has phased out the credit to which New Mexico's tax is tied. In short, changes at the federal level have eliminated the state estate tax from the current tax code.

The New Mexico estate tax was levied on the estate of a decedent before the property was distributed to beneficiaries of the estate. It acted as a pick-up tax or credit against the federal estate tax. As such the state estate tax was affected by passage of the federal Economic Growth

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and Tax Relief Reconciliation Act (EGTRRA) of 2001, which increased the amount that could pass free of federal estate tax, allowing for additional incremental increases until the federal estate tax is repealed in 2010.<sup>46</sup> The tax cut legislation also limited the amount of the credit against the federal estate tax that is allowed for state estate tax payments, phasing out the credit completely for 2005 and after. Unlike some states, New Mexico has not acted to decouple its estate tax from the federal code (or institute a separate tax structure to recapture lost estate tax revenues). Thus the State's estate tax expired at the end of 2004 with the phase-out of the federal credit.

New Mexico's dependence on federal changes in the estate tax means that the legalization of same-sex marriage will have no impact on estate tax revenues because the state estate tax has ceased to exist.

The State of New Mexico has no inheritance tax.

### 7. IMPACT ON THE JUDICIAL SYSTEM

Legalizing same-sex marriage will allow same-sex couples the same access to New Mexico's courts that is provided to all spouses. Married persons can use state courts to protect wills, enforce the responsibilities of marriage, end a marriage, and provide for a child. Married persons also have certain rights to sue third parties who may have been responsible for the death of their spouse.

The impact of legalizing same-sex marriage on the State's court system depends on two things: (1) the number of cases that will be added to the dockets of the State's courts as a result of the new legislation and (2) the cost of resolving these cases.

Although New Mexico state employees can access benefits for their domestic partners, there is no statewide domestic partnership registry, and no New Mexico law expressly grants rights to same-sex couples based on their relationship. Same-sex couples can, however, access certain limited rights by obtaining or creating specific legal documents. These include co-parent adoption, custody orders, and visitation rights. Thus, legalizing same-sex marriage will not increase the burden on courts with regard to these proceedings.

It is likely that the legalization of same-sex marriage will affect testation proceedings only in the sense of changing beneficiaries in proceedings that would occur otherwise. However, even using the most conservative assumptions, we have estimated that an average of only 37 people in same-sex marriages would be expected to die each year,<sup>47</sup> which means that the courts would in no way experience a noticeable increase in the number of testation proceedings.



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Same-sex petitions for dissolution of marriage are the only significant way in which legalizing same-sex marriage might increase court filings. To estimate the number of dissolution cases that would be added to state court dockets, we considered the New Mexico divorce rate and the Vermont civil union dissolution rate. We determined the dissolution rate for same-sex couples under Vermont's civil union legislation by dividing the total number of civil unions by the number of terminations of unions filed each year. We then multiplied these rates by our projected number of same-sex couples who would marry. Based on the New Mexico divorce rate<sup>48</sup> and the experience of Vermont under its civil union legislation,<sup>49</sup> we estimate that legalizing same-sex marriage will add only 10 to 27 dissolution cases to the docket each year.

**Table 4: Estimate of the dissolution rate for New Mexico same-sex marriages**

Estimate Method	Rate	Estimated same-sex marriages in New Mexico	Estimate of dissolutions
Vermont civil unions	1.2%	2,248	27
New Mexico marriages	0.44%	2,248	10

Currently, New Mexico's District Courts handle over 13,000 divorce filings each year.<sup>50</sup> Adding 27 filings to this caseload would be an increase of only two-tenths of one percent (0.0021). The annual fluctuations in divorce filings are far greater than this. In the ordinary course of business, New Mexico courts handle fluctuations ranging from 95 to 1,017 filings each year. New filings by married same-sex couples will be an insignificant blip on this radar screen.

**Table 5: Annual fluctuations in divorce filings, 1998-2002**

Year	Divorce filings	Change from prior year
2002	13,364	95
2001	13,459	218
2000	13,241	170
1999	13,071	1,017
1998	14,088	-

Source: National Center for State Courts, "Court Statistics Project," available at [http://www.ncsconline.org/D\\_Research/CSP/CSP\\_Main\\_Page.html](http://www.ncsconline.org/D_Research/CSP/CSP_Main_Page.html).

The insignificance of the cost of these filings is also evident when they are compared to the caseload of the average District Court judge, who handles approximately 1,368 cases each year.<sup>51</sup> Even if all 27 new cases added by legalizing same-sex marriage went to one judge, it would

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increase his or her docket by less than 2%. Alternatively, if these cases were spread out among the 72 District Court judicial positions in New Mexico, 38% of these judges would have just one (1) case added to his or her docket, while the other 62% would receive no additional cases. This estimate assumes that the number of new cases will fall at the high end of our predicted range of same-sex marriage dissolutions.

Regardless of how the cases are distributed, the number of additional cases is so small that we conclude legalizing same-sex marriage will not result in any actual expenditure by the State court system. In other words, the court system will not need to hire any additional judges, clerks, bailiffs, or staff, or build any additional courtrooms or infrastructure, to handle these cases. Indeed, any same-sex dissolution cases would generate revenue from the standard filing fees, which would be available to cover variable administrative costs.<sup>52</sup>

We conclude that because there will be no need for additional judges, staffing, courtrooms, or programming to handle the number of cases that legalizing same-sex marriage will add, it is likely that revenues created from additional filing fees will offset any other administrative or marginal costs for handling these cases. New Mexico's state courts will not incur any financial burden as a result of legalizing same-sex marriage.

In addition, extending marriage to same-sex couples will move some cases out of civil court and into family court or onto the docket of the judge who is assigned family law matters, where they will be handled under a more efficient legal regime. Specifically, when same-sex partnerships dissolve under current New Mexico law, couples do not have access to family court and the family law rules that apply to married couples. Instead, same-sex partners must resolve their disputes in civil court according to the rules devised for "palimony" cases, that is, under the rubric of contract and, possibly, quasi-contract.<sup>53</sup>

Palimony cases are likely to impose considerably greater burdens on courts than are dissolutions in family court for several reasons: (1) palimony cases require a threshold fact-intensive inquiry into whether the relationship and acts of the parties have created any legal obligations, while extending marriage to same-sex couples will automatically impose on the partners the legal obligations of marriage; (2) the sparsely developed rules applicable in palimony cases make them difficult to settle or litigate efficiently, as opposed to the well-established rules under the New Mexico statutes governing marriage; (3) District Court judges handling occasional palimony cases have little experience with those cases, while family court judges will routinely apply the same law to the dissolution of the new same-sex marriages that they routinely apply to the dissolution of marriages; (4) litigants in civil court do not have access to the more efficient procedures, including standard forms and expedited proceedings, available in family court; (5) parties have a right to jury

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trial in civil court but not in family court; and (6) in family court dissolutions, many issues are resolved by mediation, negotiation, arbitration, and private adjudication, where the parties bear most of the costs. By transforming often contested palimony cases in civil court into dissolution cases in the family court system, where they can be handled more efficiently and where, in most cases, the parties will settle and bear most of the costs, extending marriage to same-sex couples might even result in some savings for the State court system.<sup>54</sup>

### 8. CONCLUSIONS

Table 6 summarizes the findings of earlier sections on the annual impact of same-sex marriages on the New Mexico state budget. Overall, all of the budget categories we examined show a negligible or net positive impact. Taking all of the estimated effects described earlier implies that the State budget will see a net gain of \$2 million from marriages of same-sex couples if the State uses a same-sex spouse's income and assets to determine eligibility for Medicaid (net effect 1) or \$1.5 million without the Medicaid savings (net effect 2).

**Table 6: Summary of fiscal impact of marriages by same-sex couples**

Impact on State Budget	Net effect (1)*	Net effect (2)^
Savings from means-tested public benefit programs	\$568,888	\$73,855
Increased tax revenue from wedding-related spending:		
-in-state couples	\$121,667	\$121,667
-out-of-state couples	\$1,350,000	\$1,350,000
<b>Total</b>	<b>\$2,040,555</b>	<b>\$1,545,522</b>

\*Including same-sex spouses in Medicaid determinations.

^Excluding same-sex spouses from Medicaid determinations.



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### Notes

- <sup>1</sup> M.V. Lee Badgett, R. Bradley Sears, et al., Institute for Gay and Lesbian Strategic Studies and the Williams Project on Sexual Orientation Law, *The Impact on New Hampshire's Budget of Allowing Same-Sex Couples to Marry* (November 2005), available at <http://www.law.ucla.edu/williamsproj/publications/New%20Hampshire%20Econ%20Study.pdf>.
- <sup>2</sup> M.V. Lee Badgett and R. Bradley Sears, Williams Project on Sexual Orientation Law and the Institute of Gay and Lesbian Strategic Studies, *The Impact on California's Budget of Allowing Same-Sex Couples to Marry* (May 2004), available at <http://www.law.ucla.edu/williamsproj/publications/CASameSexMarriage.pdf>.
- <sup>3</sup> M.V. Lee Badgett, R. Bradley Sears, et al., Williams Project on Sexual Orientation Law and the Institute for Gay and Lesbian Strategic Studies, *Counting on Couples: Fiscal Savings from Allowing Same-Sex Couples to Marry in Connecticut* (March 2005), available at <http://www.law.ucla.edu/williamsproj/pdf/CountingOnCouples.doc>.
- <sup>4</sup> M.V. Lee Badgett and R. Bradley Sears, with Suzanne Goldberg, Williams Project on Sexual Orientation Law and the Institute for Gay and Lesbian Strategic Studies, *Supporting Families, Saving Funds: A Fiscal Analysis of New Jersey's Family Equality Act* (November 2003), available at <http://www.law.ucla.edu/williamsproj/publications/NJ-DPASStudy.pdf>.
- <sup>5</sup> M.V. Lee Badgett, Institute for Gay and Lesbian Strategic Studies, *The Fiscal Impact on the State of Vermont of Allowing Same-Sex Couples to Marry* (1998), available at <http://www.iglss.org/media/files/techrpt981.pdf>.
- <sup>6</sup> Badgett, M.V. Lee and R. Bradley Sears, *Putting a Price on Equality? The Impact of Same-Sex Marriage on California's Budget*, 16 *Stan. L. & Pol'y Rev.* 197 (2005), available at [http://www.law.ucla.edu/williamsproj/publications/16\\_Stan\\_L\\_&\\_Poly\\_Rev\\_197.pdf](http://www.law.ucla.edu/williamsproj/publications/16_Stan_L_&_Poly_Rev_197.pdf).
- <sup>7</sup> Connecticut General Assembly, Office of Legislative Research, Office of Fiscal Analysis Report on HB 5001 (2002), available at [http://www1.law.ucla.edu/~williamsproj/connstudy\\_files/connstudy.htm](http://www1.law.ucla.edu/~williamsproj/connstudy_files/connstudy.htm).
- <sup>8</sup> Office of Legislative Council, Report of the Vermont Civil Union Review Commission (2002), available at <http://www.leg.state.vt.us/baker/Final%20CURC%20Report%20for%202002.htm>.
- <sup>9</sup> Testimony of New York State Comptroller Alan G. Hevesi to New York City Council in Support of the Right to Civil Marriage for Same-Sex Couples in New York State, Office of the New York State Comptroller (March 3, 2004), available at <http://www.osc.state.ny.us/press/releases/mar04/030304b.htm>.
- <sup>10</sup> "The Potential Budgetary Impact of Recognizing Same-Sex Marriages," letter from Douglas Holtz-Eakin, director, Congressional Budget Office, to chairman of House Subcommittee on the Constitution, dated June 21, 2004, available at <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf>.
- <sup>11</sup> We make this assumption having considered several factors. First, the fact that 57% of Vermont's same-sex partners have chosen to enter civil unions leads us to the conclusion that the more comprehensive set of rights provided to same-sex couples under Vermont law and the higher social status attributed to civil unions have caused a larger percentage of couples to seek legal recognition of their relationships, in contrast to jurisdictions such as California, where only 27% of same-sex couples have registered as domestic partners. At the same time, we assume that the percentage of same-sex couples who marry will not equal the percentage of different-sex couples who marry, which is over 90%. See R. Bradley Sears, Williams Project on Sexual Orientation Law, and M.V. Lee Badgett, Institute for Gay and Lesbian Strategic Studies, *The Impact on California's Budget of Allowing Same-Sex Couples to Marry* (May 2004). Vermont civil union statistics provided by Richard McCoy, Office of Vital Records, Vermont Department of Health, e-mail dated July 11, 2005 (on file with authors).
- <sup>12</sup> For evidence that the 2000 Census undercounted the number of cohabitating same-sex couples in the United States, see M.V. Lee Badgett & Marc A. Rogers, Institute for Gay and Lesbian Strategic Studies, "Left Out of the Count: Missing Same-Sex Couples in Census 2000" (2003) (noting that two surveys estimated the undercount at 16% to 19%), [http://www.iglss.org/media/files/c2k\\_leftout.pdf](http://www.iglss.org/media/files/c2k_leftout.pdf) (last visited on December 7, 2005). David M. Smith & Gary J. Gates, Human Rights Campaign, "Gay and Lesbian

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Families in the United States: Same-Sex Unmarried Partner Households" (2001) (estimating undercount at 62%), [http://www.hrc.org/Template.cfm?Section=Census\\_20001&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=23&ContentID=27201](http://www.hrc.org/Template.cfm?Section=Census_20001&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=23&ContentID=27201) (last visited December 7, 2005).

<sup>13</sup> We extracted the same-sex unmarried partner couples from the 5% Public Use Micro Sample of Census data for New Mexico and used household weights to make statewide estimates.

<sup>14</sup> "Own children" are those legally related by birth or adoption to the householder. The Census does not provide information on whether the children are also related to the partner, nor do the census data allow us to identify other children in the household who belong to the partner.

<sup>15</sup> Social science research suggests that the prospect of paying higher taxes does not discourage most couples from marrying, so we assume that the half of couples marrying will include couples with tax increases as well as decreases. *See* James Alm and Leslie A. Whittington, "For Love or Money? The Impact of Incomes Taxes on Marriage." *Economica*, Vol. 66, August 1999, pp. 297-316.

<sup>16</sup> Because of the small amount of money New Mexico spends, and therefore would save, on SSI, we have not included SSI in our calculations of savings from means-tested public benefit programs.

<sup>17</sup> For descriptions of these programs, *see* the New Mexico Human Services Department, <http://www.state.nm.us/hsd/isd.html> (last visited on December 7, 2005).

<sup>18</sup> For a definition of the spousal support requirement for recipients of public assistance, *see* 9 N.M. Reg. 217, 224, Title 8, Chapter 4, Part JUL, 511.1: "Resource Deeming - Resources belonging to household members who have a support responsibility for a member of the Category 002 Medicaid assistance group are considered available to the assistance group as set forth below. A. Spouses - Spouses are responsible for the support of spouses. This support responsibility is met through the division of community property."

<sup>19</sup> DOMA is a federal law that limits the definition of "spouse" in all federal laws and regulations to refer "only to a person of the opposite sex who is a husband or a wife." Defense of Marriage Act, Pub. L. 104-199, § 1, 100 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 (1997)). "Spouse" is the term used to specify individuals whose assets and income may be counted for SSI and Medicaid eligibility purposes. Thus, arguably, DOMA would prohibit the State from interpreting the term spouse in the regulations to include a same-sex spouse. A related issue has arisen in Vermont with respect to that state's treatment of couples in a civil union within the Medicaid program. David Mace, "Critics Say Rule Change Violates Civil Unions," *Times Argus*, April 17, 2003. Recent correspondence from the Centers for Medicare and Medicaid Services to state agencies in Vermont and Massachusetts suggests that the states cannot treat same-sex spouses in the same way that different-sex spouses are treated in the Medicaid program.

<sup>20</sup> For example, federal law mandates that states "take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available under" Medicaid and to seek reimbursement in cases "where such legal liability is found to exist." 42 U.S.C. 1396a.

<sup>21</sup> *See* 42 CFR 433.135 (2004) ("Third party means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan").

<sup>22</sup> *See generally*, Centers for Medicare and Medicaid Services, State Medicaid Manual, 3900-3910.15, 3900.1, and 3900.2 (2003).

<sup>23</sup> *See* 8.200.410.11 NMAC (2004): "To be eligible for Medicaid, an individual must be a citizen of the United States; or an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in Subsection A of 8.200.410.11 NMAC or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five-year bar listed in Subsection B of 8.200.410.11 NMAC...B. Aliens who entered the United States on or after August 22, 1996:...3) Alien sponsors (where an affidavit of sponsorship was executed pursuant to Section 213 of the Immigration and Nationality Act subsequent to August 22, 1996): The income and resources of an alien sponsor, and the

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spouse of the sponsor, of any individual applying for Medicaid, is deemed available to the applicant, when an affidavit of support is executed pursuant to Section 213 of the Immigration and Nationality Act, on or after August 22, 1996. This counting of alien sponsor income and resources is effective until the sponsored alien achieves citizenship, or can be credited with 40 qualifying quarters.”

<sup>24</sup> Wording from the Census questionnaire, published in U.S. Department of Commerce, U.S. Census Bureau, Public Use Microdata Sample, 2000 Census of Population and Housing, Technical Documentation, (April 2003), at D-8.

<sup>25</sup> Calculated using Census data for the numerator. The denominator is expenditures on basic assistance and comes from U.S. Department of Health and Human Services, Administration for Children and Families, FY 2003 TANF Financial Data, [http://www.acf.hhs.gov/programs/ofs/data/tableA\\_summary\\_2003.html](http://www.acf.hhs.gov/programs/ofs/data/tableA_summary_2003.html), (last visited on December 7, 2005).

<sup>26</sup> Research on welfare benefits finds at most a very small disincentive effect. See Robert Moffitt, “Incentive Effects of the U.S. Welfare System: A Review,” 30, *Journal of Economic Literature*, Mar. 1992, at 1, 27-31.

<sup>27</sup> The reduction equals  $(1 - 1.3/1.6) = 0.19$ .

<sup>28</sup> For example, in 2002 the state spent only \$171,000 to supplement Medicaid. U.S. Social Security Administration, Annual Statistical Supplement, 2003, available at <http://www.ssa.gov/policy/docs/statcomps/supplement/2003/7b.html#table7.b7> (last visited December 7, 2005). We estimate the amount spent on same-sex couples to be quite small and the savings if these couples marry to be almost zero (\$206); therefore, no line for SSI appears in Table 2.

<sup>29</sup> Congressional Budget Office, “The Potential Budgetary Impact of Recognizing Same-sex Marriages,” June 21, 2004, p. 9.

<sup>30</sup> Mabel S. Teng, San Francisco Assessor-Recorder, Demographics Breakdown of Same Gender Marriages slides 2-3 (2004), available at <http://www.alicebtoklas.org/abt/samesexmarriagestats.ppt> (last visited December 7, 2005).

<sup>31</sup> See Helen Jung, “Gay Marriages May Bring Joy to Tourism,” *Oregonian*, March 5, 2004, at D1. Joe D’Alessandro, president of the Portland Oregon Visitors Association, is quoted as saying that gay marriage has provided an “economic boost” to Portland as gay couples and their families fly in for weddings. David Sarasohn, “Gay Marriage, Tourism: A Package Deal,” *Oregonian*, April 11, 2004, at C4, also quotes D’Alessandro as saying, “It’s definitely having a positive impact, because more people are coming to Portland. They fly in, sometimes with families, friends, children, whatever. I’ve talked to the hotel people, and they say they’ve seen an increase in gay and lesbian customers.”

<sup>32</sup> See Douglas Belkin, “Wedding Bell Bonanza: Tourism, Marriage Industry Foresee Boom in Same-Sex Nuptials,” *Boston Globe*, Feb. 26, 2004, at 1. Laura Bly, “Localities Cashing in on Same-Sex Marriages,” *USA Today*, Feb. 27, 2004, at 1D. Jung reports that hotels were full and Macy’s department store ran out of wedding rings during the month that San Francisco let same-sex couples marry. Heather Knight, “Windfall in Castro: ‘Giddy’ Newlyweds Have Been Boon for S.F. Neighborhood,” *San Francisco Chronicle*, Feb. 18, 2004, at A1, reports that same-sex marriages were “great for business as newlyweds throw their money at the neighborhood’s florists, jewelry stores, liquor shops, bookstores and photo processors.” Dean E. Murphy, “*San Francisco Toasts Gay Weddings*,” *New York Times*, Feb. 29, 2004, at 3.

<sup>33</sup> See, e.g., Bly, at D1; Thea Singer, “Three Swank Cities are Becoming Marriage Meccas for Gay Couples,” *Boston Herald*, March 22, 2004, at 27. She reports that wedding-related businesses such as hotels, banquet halls, florists, and jewelers, in Boston, Cambridge, and Northampton have seen “an upsurge of 10 to 100 percent in inquiries and bookings from gay couples” looking to marry. See also Marie Szaniszló, “P’town Set for Gay-Wed Rush,” *Boston Herald*, April 11, 2004, at 10.

<sup>34</sup> Singer, at 27.



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<sup>35</sup> Shortly after same-sex marriage became legal in Massachusetts, Governor Mitt Romney ordered clerks to comply with a 1913 Massachusetts law that makes it illegal for out-of-state couples to enter into a marriage that would not be legal in their own state. *See, e.g.*, Pam Belluck, "Romney Won't Let Gay Outsiders Wed in Massachusetts," *New York Times*, April 25, 2004, § 1, at 1.

<sup>36</sup> E-mail to authors, Southwest Market and Planning, Feb. 25, 2005.

<sup>37</sup> Cal. Fam. Code §§ 297-299 (enacted as AB 205: the California Registered Domestic Partner Rights and Responsibilities Act of 2003).

<sup>38</sup> In Vermont, 1,933 same-sex couples identified themselves in the 2000 Census. Tavia Simmons & Martin O'Connell, United States Census Bureau, Married-Couple and Unmarried-Partner Households: 2000, at p. 4, Table 2 (2003). At the end of 2004, 1,104 Vermont same-sex couples, or 57% of the number of couples who identified themselves on Census 2000, had entered into a civil union. E-mail from Richard McCoy, Office of Vital Records, Vermont Department of Health, to co-author R. Bradley Sears (July 11, 2005) (on file with authors).

<sup>39</sup> *Findings: VIC Intercept Survey; September 1, 2004 through December 29, 2004*. Southwest Planning and Marketing.

<sup>40</sup> Use of this estimate is conservative in that it does not distinguish between New Mexico tourists who pay for overnight accommodations and those who do not, either because they are day visitors or because they stay with friends or family.

<sup>41</sup> Interview with Fran Myers, Association of Bridal Consultants, November 24, 2004. Estimates of average wedding costs vary widely; here we use a conservative figure at the lower range of available estimates.

<sup>42</sup> New Mexico Taxation and Revenue Department, "Gross Receipts and Compensating Taxes: An Overview July 1, 2004-June 30, 2005," FYI-105, available at <http://www.state.nm.us/tax/pubs/fyi-105.pdf> (last visited on December 7, 2005).

<sup>43</sup> For example, the Connecticut Office of Fiscal Analysis reports a reprinting cost of 10 cents per form in its report on the fiscal impact of legalizing same-sex marriage. Connecticut General Assembly, Office of Fiscal Analysis Report, Oct. 4, 2002, available at <http://www.cga.ct.gov/olr/ofadoc/ofacivilunion1.htm> (last visited December 7, 2005).

<sup>44</sup> Approximately 13,000 to 15,000 heterosexual marriages are entered into in New Mexico annually, while 7,000 to 9,000 divorces are obtained. National Center for Health Statistics, National Vital Statistics Reports, Vol. 53, No. 18 (April 19, 2005); 2003-04 figures projected from Table 3, available at [http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53\\_18.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr53/nvsr53_18.pdf) (last visited December 7, 2005). With the estimated number of same-sex couples expected to marry under the new law and the need for sufficient extra forms, we assume the State would need to print roughly 90,000 revised forms.

<sup>45</sup> N.M. Stat. Ann. § 40-1-11 (2004).

<sup>46</sup> Under the current law's sunset provision, the estate tax will be reinstated in 2011 at its 2001 rate, with \$1 million allowed to pass free of federal estate tax. It is as yet unclear whether the federal tax cuts will be extended beyond 2010 by additional legislation.

<sup>47</sup> Assuming that 2,248 same-sex couples, or 4,496 individual same-sex spouses, will marry, we use New Mexico's age-adjusted total mortality rate (0.00818) to estimate the mortality rate for individuals in these couples. United Health Foundation, *America's Health: State Health Rankings – 2005 Edition*, available at <http://www.unitedhealthfoundation.org/shr2005/components/totalmortality.html#Table33> (last visited February 13, 2006).

<sup>48</sup> The National Center for Health Statistics reports a divorce rate of 4.4 per 1,000 population for New Mexico in 2002. "Marriage and Divorce Rates by State: 1990, 1995, and 1999-2002," National Center for Health Statistics, available at <http://www.cdc.gov/nchs/data/nvss/mar&div.pdf>.

<sup>49</sup> Vermont has recorded 7,400 civil unions from 2000 through 2004, of which 1,104 involved Vermont



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residents. In this same time period, there have been 65 dissolutions of civil unions entered by Vermont's family courts, or an average of 13 per year (civil unions may only be dissolved by Vermont residents). E-mail from Richard McCoy, Office of Vital Records, Vermont Department of Health, to R. Bradley Sears (July 11, 2005) (on file with authors).

<sup>50</sup> National Center for State Courts, "Court Statistics Project," available at [http://www.ncsconline.org/D\\_Research/CSP/CSP\\_Main\\_Page.html](http://www.ncsconline.org/D_Research/CSP/CSP_Main_Page.html) (last visited December 7, 2005).

<sup>51</sup> National Center for State Courts, State Court Caseload Statistics, 2003, Table 8, available at [http://www.ncsconline.org/D\\_Research/csp/2003\\_Files/2003\\_SCCS.html](http://www.ncsconline.org/D_Research/csp/2003_Files/2003_SCCS.html) (last visited December 7, 2005).

<sup>52</sup> The fee for initiating a dissolution proceeding is \$137. State of New Mexico, Second Judicial District Court Fee Schedule, as provided by N.M. Stat. Ann. § 34.6.40 (2005).

<sup>53</sup> See *Dominguez v. Cruz*, 617 P.2d 1322 (N.M. Ct. App. 1980).

<sup>54</sup> Interview with Professor Grace Blumberg, UCLA School of Law (May 20, 2003). Professor Blumberg teaches property, community property, and family law. She is a reporter for the *American Law Institute's Principles of the Law of Family Dissolution*, for which she co-authored the chapters on nonmarital cohabitation. Professor Blumberg's recent publications include *Casebook, Community Property in California*, 4<sup>th</sup> ed., New York, NY: Aspen (2003); *Blumberg's California Family Code Annotated*, St. Paul: West Group (2002); and "The Regularization of Nonmarital Cohabitation: Rights and Responsibilities in the American Welfare State," 76 *Notre Dame Law Review* 101 (2001). See also *Principles of the Law of Family Dissolution: Analysis and Recommendations, Domestic Partners (Nonmarital Cohabitation)*, Chapter 6, Philadelphia: American Law Institute (2002). Letter from Fred Hertz, Esq. (May 19, 2003). Fred Hertz has handled a number of gay and lesbian dissolution cases and has written several books, including serving as co-author of the 10th edition of *Living Together: A Legal Guide for Unmarried Couples* (Nolo Press 2002). He is also the author of *Legal Affairs: Essential Advice for Same-Sex Couples* (Owl Books) and co-author of Nolo Press's *The Living Together Kit* and *A Legal Guide for Lesbian and Gay Couples*.