

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

DEB WHITEWOOD and SUSAN WHITEWOOD,
FREDIA HURDLE and LYNN HURDLE, EDWIN
HILL and DAVID PALMER, HEATHER POEHLER
and KATH POEHLER, FERNANDO CHANG-MUY
and LEN RIESER, DAWN PLUMMER and DIANA
POLSON, ANGELA GILLEM and GAIL LLOYD,
HELENA MILLER and DARA RASPBERRY, RON
GEBHARDTSBAUER and GREG WRIGHT, MARLA
CATTERMOLE and JULIA LOBUR, SANDY
FERLANIE and CHRISTINE DONATO, MAUREEN
HENNESSEY, and A.W. AND K.W., minor children, by
and through their parents and next friends, DEB
WHITEWOOD and SUSAN WHITEWOOD,

Plaintiffs,

v.

MICHAEL WOLF, in his official capacity as Secretary,
Department of Health; DAN MEUSER, in his official
capacity as Secretary, Department of Revenue; and
DONALD PETRILLE, JR., in his official capacity as
Register of Wills and Clerk of Orphans' Court of Bucks
County,

Defendants.

Civil Action

No. 13-1861-JEJ

EXPERT REPORT OF M. V. LEE BADGETT, PH.D.

EXPERT BACKGROUND AND QUALIFICATIONS

1. I have been retained by counsel for plaintiffs in *Whitewood et al v. Wolf et al.* to provide my expert opinions concerning the economic impact of the exclusion from marriage on Pennsylvania's same-sex couples and their children, as well as the economic impact of the exclusion on the Commonwealth of Pennsylvania, its cities and counties, and the business community. I have also been asked to respond to the statements made by defendants in this litigation and in the legislative record regarding potential economic impacts that may result from the elimination of the marriage exclusion. The opinions expressed in this report are my true opinions as an expert on the intersections of economics, sexual orientation, and public policy.

2. This report is based on my personal specialized knowledge, informed by my education and experience as an economist and policy analyst, and by my familiarity with relevant scholarly work by other scholars on the topic of marriage and family. My background, experience, and list of publications are summarized in my curriculum vitae, appended to this report as Exhibit A. I have actual knowledge of the matters stated in this expert report and could and would so testify if called as a witness.

3. I am a Professor of Economics at the University of Massachusetts Amherst, where I have taught since 1997. I also serve as the University's Director of the Center for Public Policy and Administration. I am currently a Williams Distinguished Scholar at the Williams Institute for Sexual Orientation Law and Public Policy at the UCLA School of Law, where I served as research director from 2006 to 2013. From 2005 to 2007, I was a visiting professor at UCLA School of Law. Prior to those positions, from 1990 to 1997 I was an assistant professor of Public Affairs at the School of Public Affairs, University of Maryland, College Park. I have conducted research at the Amsterdam School for Social Science Research, University of Amsterdam, and conducted research and taught at the Women's Studies and Lesbian and Gay Studies programs of Yale University. I received my A.B. in Economics from the University of Chicago in 1982 and my Ph.D. in Economics from the University of California, Berkeley, in 1990.

4. The primary focus of my research and teaching is in the fields of Economics and Public Policy, including Microeconomics, Labor Economics, and Sexual Orientation and Economics; and Sexual Orientation and Public Policy, including sexual orientation discrimination, family structures and family policy, same-sex partner recognition in the US and Europe, domestic partner health care and pension benefits, and the health insurance status of lesbians and gay men.

5. I am the author of two books and the co-editor of a third on sexual orientation economics and public policy: *Money, Myths and Change: The Economic Lives of Lesbians and Gay Men* (2001); *Sexual Orientation Discrimination: An International Perspective* (2007); and *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage* (2009). I have also authored numerous published articles and book chapters, as set forth in my curriculum vitae.

6. In the past four years, I have testified as an expert through declaration, deposition or trial in *Bassett v. Snyder*, Case No. 2:12-cv-10038 (E.D. Mich.); *Perry v. Schwarzenegger*, Case No. 09-CV-2292 VRW (N.D. Cal.); *Glossip v. Missouri Dep't of Transp. and Highway Patrol Employees' Ret. Sys.*, No. 10-CC00434 (Mo. Cir. Ct., Cole County); *Diaz v. Brewer*, Case No. CV-09-2402-PHX-JWS (previously captioned *Collins v. Brewer*) (D. Ariz.); *Sevcik v. Sandoval*, Case No. 2:12-CV-00578—RCJ-PAL (D. Nev.); *Darby v. Orr, Lazaro v. Orr*, Nos. 12 CH 019718 & 12 CH 019719 (Circuit Ct., Cook County, Illinois); *Kitchen v. Herbert*, No. 2:13-cv-00217 (D. Utah); and *Harris v. McDonnell*, No. 5:13-cv-00077-MFU (W.D. Vir.).

7. In preparing this report, I reviewed the materials listed in the attached list of References (Exhibit B). I may rely on those documents, in addition to the documents specifically cited as supportive examples in particular sections of this report, as additional support for my opinions. The materials I have relied on in preparing this report are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein.

8. I am being compensated at an hourly rate for actual time devoted, at the rate of \$150.00 per hour for deposition and trial testimony only; I am not being compensated for preparing this report. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

I. SUMMARY OF EXPERT OPINIONS

9. The marriage exclusion imposes substantial economic harms on same-sex couples residing in Pennsylvania and their children in many ways. The inability of same-sex couples to marry or, if they married in other jurisdictions, to have their marriages recognized in Pennsylvania, deprives them and their families of significant direct and indirect benefits provided by the Commonwealth of Pennsylvania, causing them to experience such economic harms as increased taxes, increased transaction costs in obtaining legal protections, and loss of or more expensive health care benefits. Because of the marriage exclusion in Pennsylvania, same-sex couples are denied certain federal rights and benefits, and even those who are married may still not be able to access some of those federal protections.

10. The marriage exclusion also imposes substantial costs on Pennsylvania itself, its counties and cities. First, the state and local subdivisions lose significant tax and fee revenue that, but for the marriage exclusion, would accrue as a result of weddings of same-sex couples. Second, denial of marriage to same-sex partners results in additional state spending on TANF and Medical Assistance. These additional expenditures and lost tax revenue outweigh the additional tax revenue generated by unequal treatment of same-sex couples.

11. The denial of the right to marry to same-sex couples also has implications for Pennsylvania's business communities through harms associated with difficulty recruiting and retaining highly productive workers, and forcing businesses that do provide domestic partnership benefits to do so at the cost of increased payroll taxes, shares of which are often paid by both employees and employers. In fact, many employers have publicly stated that giving same-sex couples the right to marry is important to their ability to recruit and retain highly productive

workers and to foster an optimal and more productive work environment. Pennsylvania's marriage exclusion undermines those efforts by Pennsylvania businesses.

12. Because of the marriage exclusion, over the next three years, the Commonwealth's economy will lose \$65-99 million in wedding-related business. Pennsylvania also will lose \$4.2-5.8 million in tax revenue over the next three years that would have accrued as a result of weddings by same-sex couples, and each year the state will pay \$1.8 million in additional Medicaid expenses and \$1.9 million in additional TANF costs. These figures far outweigh the revenue gains the Commonwealth is currently experiencing as a result of discriminatory taxation on same-sex couples, which I estimate to be \$4.1 million per year. Moreover, these figures do not include the widely-recognized but more difficult to quantify economic losses, such as the loss of creative class workers and the additional expenses and administrative inefficiencies for businesses that try to remediate this problem by providing domestic partner benefits to their employees.

13. Finally, I have reviewed defendants' statements in this litigation and the legislative record regarding supposed economic consequences the state would experience in the absence of a statute banning marriage for same-sex couples. The statements in the legislative history are cursory and do not indicate any rational analysis from an economist's point of view, and I have found no empirical support for those statements. In fact, to the contrary, the net economic impact to the state would be positive if it would allow and recognize marriage for same-sex couples, even without the ability to quantify more intangible issues such as creative class loss in Pennsylvania.

14. I may supplement these opinions and analyses as new information is provided to me.

II. OPINIONS AND THEIR BASES

A. Background.

1. I Have Seen No Study By Pennsylvania Reaching Any Conclusions of Supposed "Adverse Economic Consequences" to the State for Recognizing and Allowing Marriages of Same-Sex Couples.

15. I have reviewed the responses by defendants to Plaintiffs' First Set of Interrogatories, including their statements that "the legislative history suggests that the General Assembly would

have reasonable cause for concern that redefining marriage would bring about adverse economic consequences” (Response to Interrogatory No. 2) and that “the legislative history suggests that the General Assembly would have reasonable cause for concern that redefining marriage would detrimentally affect Pennsylvania businesses” (Response to Interrogatory No. 3). I address the stated rationales in the legislative history further in section D of my opinions.

16. I note here that some statements in the legislative record indicate the General Assembly had not studied or even fully contemplated the economic impacts of allowing same-couples to marry. Senator Afflerbach stated that a statute prohibiting marriage for same-sex couples would enable more time for Pennsylvania to “conduct a study” of the “economic dislocations that would occur if [Pennsylvania] were to permit same-gender marriages that we have not even begun to conceive at this point” (1996 Legis. J. Senate 2454.) Representative Egolf stated, “The financial costs imposed on society by the forced recognition of same-sex marriage cannot even be calculated at this time.” (1996 Legis. J. House 2017). I understand that if any such study had been conducted by Pennsylvania in the 18 years since 1996, that Plaintiffs’ discovery requests would have required the defendants to produce such studies, but that no such study has been produced by defendants. In fact, the only documents I am aware of that indicate any sort of analysis by Pennsylvania of the economic impacts of recognizing same-sex relationships is that Pennsylvania, through the Pennsylvania Employee Benefit Trust Fund (PEBTF), actually decided that Pennsylvania *should* provide domestic partnership benefits to qualifying same-sex couple employees. As referenced in paragraph 80, PEBTF stated that it decided to provide domestic partnership health benefits after it had “cost[ed] things out” and that one of the primary reasons for providing such benefits was to be “competitive with other employers.”

17. Had Pennsylvania conducted such a study as referenced in 1996, I would have reviewed it and provided my opinions regarding any analysis contained in such a study. I have, however, reviewed and analyzed other publicly available studies, information, and data, in reaching my conclusions in this report.

2. Brief Summary of Economic Principles of Marriage.

18. Economists and other scholars have suggested several ways that marriage promotes interdependence and enhances economic efficiency for couples through a series of benefits and obligations and, therefore, enhances economic efficiency for society as a whole, too.

19. In general, marriage provides a legal framework for living an interdependent economic life. In practice, the contractual nature of civil marriage is set forth and promoted by laws that set default ground rules that are understood or accepted, and marriage facilitates a more efficient use of time and money resources for families than is likely in the absence of the ability to marry.

20. More specifically, marriage can enhance a couple's economic efficiencies in the following ways:

21. *Promoting Specialization of Labor:* Nobel Prize-winning economist Gary Becker has argued that the marriage contract allows for increasing household efficiency (Becker, 1991). Partners pool time and money, and then divide up their labor in ways that increase the family's productivity in producing goods and services for family members. Without the presumed long-term nature of the relationship that marriage implies, as well as the division of marital property and the possibility of spousal support payments if a marriage ends, specialization by either party would not necessarily be efficient for individuals in the long-term. For instance, marriage gives couples the economic security to make decisions about education and labor force participation knowing that one spouse can provide the primary economic support if the other can contribute less cash income to the family. If the relationship ends, a spouse who has sacrificed some earning potential will be eligible for spousal support payments and a share of marital property to compensate him or her for those financial losses.

22. *Reducing Transaction Costs:* Marriage also promotes economic efficiency through reducing transaction costs for couples, removing the need to renegotiate the terms of the legal relationship as couples experience changed circumstances (e.g., acquiring property or goods together, increasing or decreasing in wealth, or having children) (Pollak, 1985).

23. *Providing Social Insurance:* Marriage also facilitates wealth and income pooling across individuals and within families, which provides insurance against bad times, such as a disability or death or the loss of a job (Pollak, 1985).

24. *Taking Advantage of Economies of Scale:* By encouraging larger household sizes, marriage helps families take advantage of economies of scale. In other words, doubling the inputs of time and other resources in some tasks results in more than double the output of family-related goods and services (Nelson, 1988).

25. *Signaling Commitment:* In addition, the willingness to marry is an important signal of commitment to a relationship (Eskridge, 1996; Badgett, 2009). Through the decision to marry, each partner signals greater effort to maintain the relationship, a greater likelihood that the relationship will endure, and an agreement to make a fair settlement if, despite the good intentions of the parties, the relationship should end. The commitment to a long-term relationship and the rules for distribution of assets and income should the relationship end underlie the specialization, transaction costs, and social insurance functions of marriage.

26. *Promoting The Provision Of Caring Labor:* The long-term nature of the marital commitment promotes reciprocity and altruism, as partners take care of one another and any children they might be raising together. The unpaid work done in families is essential for the survival of healthy human beings (Folbre, 1995).

27. According to these scholars of the family, the legal institution of marriage promotes efficiency at the family level and therefore at the social level. Both individual couples and societies have an incentive to seek out and utilize this relatively efficient institution.

28. Same-sex couples without civil marriage rights and obligations can and do attempt to replicate these economic aspects of marriage. However, as addressed in this report, any such replication is obtained less efficiently and is more costly than if these couples could rely upon the status of civil marriage. For example, to obtain health care decision-making rights for one another (e.g., at times of incapacity and death), same-sex couples require specialized legal documents, often at the cost of hiring an attorney. Civil marriage, however, grants automatic, default rights to

spouses to make such decisions for each other. In other areas, full replication of these economic efficiencies of civil marriage cannot be obtained at all. For example, the spousal exemption from inheritance taxes protects surviving spouses in recognized marriages. Regardless of their estate planning attempts, same-sex couples cannot fully protect themselves from potentially huge and devastating economic losses from paying such taxes, which often are due at a time when the surviving partner is most vulnerable (e.g., older and potentially out of the workforce, as well as dealing with loss of a loved one).

3. Characteristics of the Population of Pennsylvania’s Same-Sex Couples and Their Families.

29. For purposes of the demographic information in this report, I use the term “same-sex couple” to mean two people of the same sex who live together and indicated on a Bureau of the Census survey that they are either “unmarried partners” or spouses. Because the U.S. Census Bureau has changed some of its data collection practices, there are two different sources of information about same-sex couples in Pennsylvania used in this report. The first source is the 2012 American Community Survey, which is a survey of about 2 million U.S. households per year. The second source is the 2010 Census, which consisted of a short questionnaire with minimal demographic data and no long form for any households. In its analysis of the 2010 Census data, the Census Bureau made corrections to some of the questions used to generate the count of same-sex unmarried partner couples, and in this report I use the counts that are labeled by the Census Bureau as their “preferred estimates” of same-sex couples for the most up-to-date count of same-sex couples in Pennsylvania (Lofquist et al., 2012).

30. The Census Bureau counted 22,336 same-sex couples living together in Pennsylvania in 2010 (U.S. Census Bureau, “Detailed Tables,” 2011, App Tab 6b). Same-sex couples comprised at least 0.4% of all households in Pennsylvania (Lofquist, et al., 2012). Approximately 16% of these same-sex couples in Pennsylvania are raising children under the age of 18 (U.S. Census Bureau, “Supplemental Tables,” 2011).

31. Additional findings about same-sex couples living in Pennsylvania are available from the 2012 American Community Survey. People in same-sex couples are active contributors to Pennsylvania's economy, culture, and future: 69% are employed and 6% are veterans, compared with 65% of people in married different-sex couples who are employed (not statistically significantly different from the percentage employed among same-sex couples) and 12% of whom are veterans (statistically significantly different from the percentage of veterans among same-sex couples). Approximately 3.1% of adopted children in Pennsylvania live with a lesbian or gay parent (Gates, Badgett, Macomber, and Chambers 2007).

32. Relevant data also indicates that same-sex couples engage in interdependent lives. For example, there are often large disparities between the individual incomes of both members of a same-sex couple in Pennsylvania. In the average same-sex couple living in Pennsylvania in the 2012 American Community Survey (ACS), the average difference in total individual incomes between the two partners was \$51,686, which is somewhat higher than the average difference of \$46,392 for married couples but the difference is not statistically significant. The medians for the within-couple income difference were also close: \$26,500 for same-sex couples and \$26,900 for different-sex couples. Both measures suggest a high degree of interdependence among same-sex couples since the disparities would likely be generated by interdependent or joint decision-making. Some of the interdependent decisions that might result in these disparities include deciding together how many hours each partner will work, whether each partner participates in the paid labor force, how much time each partner spends in child rearing, etc. However, same-sex couples are making these joint decisions without the protections, such as marital property, provided for by marriage.

33. Couples also care for each other when one partner is aging, sick or disabled. In 19% of same-sex couples in Pennsylvania, one or both partners are 65 or older. (The figure for married different-sex couples is 25% and is not statistically significantly different.) In 28% of same-sex couples (and 20% of married couples, statistically significantly different), at least one member of the couple has a disability. In these couples, members may be taking on the responsibility to

provide for or care for a senior or disabled member. However, when they do so they are not afforded the support that marriage would provide under Pennsylvania law.

B. Pennsylvania’s Marriage Exclusion Imposes Substantial Costs on Same-Sex Couples And Their Families.

34. The marriage exclusion deprives same-sex couples and their children of significant economic benefits associated with marriage. Some of these benefits, such as exemption from certain taxes, the right to inherit from an intestate spouse, the automatic right to make medical decisions for a spouse, or to have automatic recognition of a child born in the relationship, are provided at the state level. Other benefits come from the federal government, but some are available only to married couples whose marriages are recognized in the state in which they reside (e.g., the right to receive Family Medical Leave Act rights).

35. In this section, I address the costs imposed on two groups of same-sex couples living in Pennsylvania: (1) same-sex couples who wish to marry in Pennsylvania and have not married elsewhere (“unmarried couples”) and (2) same-sex couples who have married in another state (“couples married in another state”) and therefore receive at least some federal, but not state, rights and benefits of marriage.

36. Subsection (1) outlines some of the direct costs imposed by the Pennsylvania marriage exclusions on both same-sex unmarried couples and same-sex couples married in another state: (a) increased taxes, including inheritance taxes, realty transfer taxes, and income taxes; (b) increased transaction costs in obtaining legal documents in an attempt to cure some of the exposures same-sex couples face as a result of the marriage exclusion; and (c) the loss or increased difficulty of obtaining valuable employment-related benefits, such as health insurance coverage.

37. Subsection (2) briefly outlines the federal economic benefits that unmarried same-sex couples are deprived of in the state of Pennsylvania.

1. Pennsylvania’s Marriage Exclusion Imposes Substantial State-level Costs on Unmarried Same-Sex Couples and Same-Sex Couples Married in Another State.

38. The total cost to the significant number of unmarried same-sex couples and same-sex couples married in another state is substantial and takes a variety of forms, including:

a. Increased Tax Liabilities for Same-Sex Couples.

39. This section addresses some common taxes in Pennsylvania that are directly affected by marital status, applying taxes or increased taxes to same-sex unmarried couples or couples married in another state that are not applied or applied as greatly against recognized married couples. Below I analyze the impact on same-sex couples, which is potentially significant and can be devastating depending on the circumstances of an individual couple, such as large inheritance tax liabilities at a time when a surviving partner is likely older and out of the workforce already.

40. *Inheritance Tax.* Pennsylvania collects an inheritance tax on property owned by a resident that is transferred to anyone other than a legal spouse and “is imposed as a percentage of the value of a decedent's estate transferred to beneficiaries by will, heirs by intestacy and transferees by operation of law. The tax rate varies depending on the relationship of the heir to the decedent.”¹ Surviving spouses incur no transfer taxes; non-lineal heirs incur a transfer tax of 15%. A 5% discount on the actual tax paid (not on the tax rate) is available if the tax is paid within 90 days.² Thus, if same-sex spouses or partners have wills leaving their property to one another, the survivor will be required to pay an inheritance tax on all property left to him or her.

41. As an example of its application, I review how the tax would be applied to the value of a typical home, aside from any other inherited assets. The median home price in Pennsylvania is \$147,100.³ If a same-sex couple owns a \$147,100 home jointly with rights of survivorship, and one spouse or partner dies, the survivor would inherit \$73,550 in value. Applying the 15% tax rate, the

¹ Pennsylvania Department of Revenue, *Inheritance Tax*, available at http://www.portal.state.pa.us/portal/server.pt/community/inheritance_tax/11414.

² *Ibid.*

³ Zillow Real Estate, *Pennsylvania Median Home Prices and Home Values, 2013*, available at http://www.zillow.com/local-info/PA-home-value/r_47/.

surviving partner would owe the Commonwealth \$11,032.50 (or \$10,480.87 with the early payment discount) just for the value of the very home they already are living in.

42. If, in the above example, the property were only in the deceased spouse/partner's name, the impact could be even worse. For example, where one spouse/partner owns property before a relationship begins, the couple may decide not to transfer the property to joint ownership so as to avoid paying Pennsylvania's realty transfer tax, which applies to transfers between individuals absent certain exceptions, such as transfers within a marriage. If the spouse/partner who had title to the property dies, the survivor would owe 15% on \$147,100 or \$22,065 (or \$20,961.75 with the early payment discount). In this example, I assume the deceased partner has documented in a will that the surviving partner should inherit the property, since the laws of intestacy do not appear to recognize same-sex partners/spouses at all.

43. Any other jointly owned assets in the above examples would also be subjected to this inheritance tax.

44. It is possible to estimate the inheritance taxes paid by the average same-sex couple when one partner dies. To estimate the size of the estate, I use the mean net worth of households in the United States by quintiles, cut that in half for each individual in the couple, and then subtract probate fees, costs of a funeral, estimates of charitable donations, and likely bequests to children.⁴ The estimated impact is a payment of \$21,000 in inheritance taxes by a decedent's estate that is left

⁴ Net worth: Bricker, Jesse, Arthur B. Kenneckell, Kevin B. Moore, and John Sabelhaus, "Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances" *Federal Reserve Bulletin* 98, no. 2 (2012), available at <http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf>; Probate Fee schedule: Register of Wills, "Probate Fee Schedule" Philadelphia: Phila.gov, 2008, available at <http://secureprod.phila.gov/wills/fees.aspx>; Internal Revenue Service. "Charitable Bequests, by State of Residence." In SOI Tax Stats- Estate Tax Statistics Filing Year Table 32. Washington DC, 2011, available at <http://www.irs.gov/uac/SOI-Tax-Stats---Estate-Tax-Statistics-Filing-Year-Table-3>; Estimates of charitable deductions and bequests to children: "The Impact on Maryland's Budget of Allowing Same-Sex Couples to Marry," M. V. Lee Badgett, Amanda K. Baumle, Shawn Kravich, Adam P. Romero, R. Bradley Sears, *University of Maryland Law Journal of Race, Religion, Gender and Class*, Vol. 7, No. 2, 2007, pp. 295-339; National Funeral Directors Association. "Trends and Statistics: 2012 Funeral Costs," 2012, available at <http://nfda.org/about-funeral-service-/trends-and-statistics.html#fcosts> .

to his or her same-sex partner. Estate planning efforts by same-sex couples may lessen this exposure and risk, but even those efforts obviously cost resources to obtain and maintain, and likely will afford incomplete protections for the surviving spouse/partner.

45. *Realty Transfer Tax.* The Commonwealth of Pennsylvania also subjects real estate transfers to a one percent transfer tax of the selling price.⁵ Certain kinds of transfers are exempt from taxation, including transfers of property between spouses or former spouses. Under current law, transfers of property between same-sex spouses or partners are taxable. Therefore, if same-sex couples are allowed to marry, some transfers that were once taxable will no longer be taxed. For example, in the case of a couple where one spouse or partner transfers half the value of the home to the other, it would result in \$736 per transfer to the state for the median home price of Pennsylvania \$147,100. This is a cost they would not have to pay if they could be married or have their marriage recognized.

46. *Income Taxes.* A recent study simulates the impact of marriage on same-sex couples' state income tax obligations and finds that couples filing as married in Pennsylvania would reduce their state income taxes by an average of \$49.40 (Alm, et al, 2013) if permitted to filed as married. For some couples, the savings could be higher and for others lower.⁶

b. Increased transaction costs.

47. Because the marriage exclusion denies same-sex couples a host of automatic legal protections (e.g., the right to make medical decisions for an incapacitated spouse, the right to inherit if a spouse dies intestate, a presumption of parentage for the spouse of a woman who gives birth to a child), same-sex couples who are able to do so must create legal documents (e.g., health care proxies, durable powers of attorney, wills, second parent adoptions) to attempt to replicate these protections.

⁵ Pennsylvania Department of Revenue, *Realty Transfer Tax*, available at http://www.portal.state.pa.us/portal/server.pt/community/realty_transfer_tax/11417.

⁶ In addition, as addressed later, unmarried same-sex couples also must pay federal payroll taxes on the value of any health insurance benefits provided by an employer to their same-sex partner. For unmarried same-sex couples this could be an additional cost of thousands of dollars.

48. Creating these legal documents, which at best create an incomplete patchwork of family protections, can often cost same-sex couples thousands of dollars in legal fees (Bernard and Lieber, 2009). Some such documents also require maintenance and upkeep, costing more money. In addition to the pure financial costs, couples also face economic inefficiencies in terms of expending time, effort and stress in dealing with such matters. If couples were allowed to marry or have their marriages recognized, these protections and rights would be automatically conferred by Pennsylvania law through marriage.

c. Loss of Employer-Provided Benefits.

49. Many same-sex couples lack health insurance as a result of the marriage exclusion. Recent studies show that people with same-sex partners have been more likely to be without health insurance than are married people (Ash & Badgett, 2006; Heck et al; Ponce et al; Buchmueller and Carpenter, 2012). In the United States, the most common source of insurance is through one's own or one's spouse's employment (DeNavas-Walt, et al., 2009, Fig 7).

50. Although many employers have made the decision that providing domestic partnership benefits to gay and lesbian employees makes good business sense (see section C.4 *infra*), domestic partnership benefits can be somewhat more expensive for employers to provide than spousal benefits because of additional payroll taxes paid on the taxable value of benefits and additional administrative resources needed (Badgett 2007).

51. Lesbians and gay men whose employers do not offer domestic partner health benefits—or those whose personal tax situation make employer coverage cost-prohibitive—might turn to the individual insurance market to purchase insurance for their spouse or partner. But, because the price of insurance on the open market for individual coverage is more expensive than an employee's share of spousal coverage, many persons without employment-based insurance may be unable to afford it (see Badgett, 2010). While the Affordable Care Act reforms might reduce the cost of individual health insurance on the insurance exchanges, some individuals are likely to still find the cost prohibitive and remain uninsured (and also subject to the tax penalty for lacking

coverage). Also, since Pennsylvania is not currently participating in the Medicaid expansion part of the Affordable Care Act, many low-income individuals in same-sex couples are likely to remain uncovered.

2. Costs From Loss of Federal Rights and Benefits.

52. Same-sex couples who have not married in another state but would marry if allowed in Pennsylvania are not eligible for a wide range of federal rights and benefits. Some of those federal benefits are not even available to same-sex spouses who are married if they reside in a state that does not recognize their marriage. As set forth below, being denied these federal rights and benefits imposes substantial economic penalties on same-sex couples, exposing them to increased financial risks including the loss of their home. These penalties include, among other things, (a) an increased federal tax burden; (b) decreased access to Social Security benefits; (c) decreased Medicaid protections; and (d) loss of Family Medical Leave Act rights.

a. Federal Tax Liabilities.

53. Some same-sex couples will pay higher income taxes because they cannot marry. In particular, same-sex couples whose incomes are very different are most likely to benefit from filing joint federal income tax returns (see Badgett, 2010). One study estimates that the average same-sex couple in Pennsylvania would pay \$812 less in federal taxes if they could marry (Alm, et al. 2013).⁷

54. Unmarried same-sex couples who receive domestic partner health coverage from their employers might also pay more in taxes than they would compared to married couples. The federal government taxes the employer contribution to a domestic partner's benefits as income to the employee whose partner is covered. However, the federal government does not tax the employer contribution to a spouse's benefits, including for a same-sex spouse. A 2007 study shows that the average person receiving domestic partner benefits is taxed \$1069 in additional federal income and payroll taxes (Badgett, 2007).

⁷ James Alm, J. Sebastian Leguizamon, and Susane Leguizamon, "Revisiting the Income Tax Effects of Legalizing Same-sex Marriages," forthcoming in *Journal of Policy Analysis and Management*.

55. Inability to marry also has federal estate tax implications upon the death of a partner for some couples. Transfers of assets from the estate of a deceased person to that person's spouse are tax-free, while transfers to an individual not recognized as a spouse are taxed if the transfers exceed the current estate tax exclusion limit (\$5.34 million in 2014).

b. Social Security Benefits.

56. The Social Security system provides a variety of benefits to spouses and surviving spouses of covered workers for retirement benefits, disability benefits, and survivor benefits. Unmarried same-sex couples -- and possibly even married same-sex couples who reside in states that do not recognize their marriages⁸ -- are deprived of these benefits, which are designed to assist couples in old age or in the event of death or disability, because they cannot marry under Pennsylvania law. Notably, they are deprived of the benefits even though individuals in same-sex couples must pay into the social security program at the same rates as individuals in different-sex married couples.

57. On retirement, a married Social Security recipient is entitled to the larger of either his or her own retirement benefit or one-half of his or her covered spouse's retirement benefit. In Pennsylvania, the average monthly spousal retirement benefit was \$684 in December 2012, or \$8,209 per year. Since same-sex couples are not allowed to marry, they are not able to receive this spousal benefit at all.

58. On the death of a retired spouse, the surviving spouse receives the deceased spouse's benefit if it is greater than the survivor's own Social Security retirement benefit. The Census Bureau data show that the average difference between the two benefits is \$5,700 a year for same-sex couples in the U.S. (Goldberg, 2009). If the higher earning partner were to die, the surviving partner would lose the higher earner's entire Social Security payment and continue to receive their lower payment. By contrast, if same-sex couples could marry, the lower earning surviving spouse would receive the higher earner's benefit, which would be on average \$5,700 over his or her own

⁸ As of the date of this report, the Social Security Administration has not announced how it will treat married same-sex couples living in states that do not recognize those marriages.

benefit. Thus, denying same-sex couples the right to marry could cost approximately half of the surviving members of such couples on average \$5,700 a year in lost Social Security payments. Social Security also provides a survivor benefit to widows and widowers whose spouses have paid into the system but have not yet retired. According to the Social Security Administration, it provides a surviving spouse not only a \$255 lump sum benefit on the death of a covered worker, but survivor benefits that are the equivalent of a \$433,000 life insurance policy for a young family (Rosenblatt, 2008). In Pennsylvania, the average monthly survivor benefit was \$1,240 in December 2012, or \$14,883 per year. Because they are not allowed to marry in Pennsylvania, members of same-sex couples are not allowed this survivor benefit at all.

59. If a covered worker becomes disabled, his or her spouse who is 62 or over receives a benefit of one-half the disabled recipient's Social Security benefit. In December 2012, the average spousal disability benefit in Pennsylvania was \$305 per month, or \$3,655 per year. Because they are not allowed to marry in Pennsylvania, members of same-sex couples are not allowed this spousal disability benefit at all.

c. Medicaid Protection For Spouses of Individuals Who Enter Nursing Homes.

60. Members of same-sex couples in Pennsylvania—even if married in another state—are at risk of losing their home when a partner enters a nursing home because the Commonwealth does not allow them to marry, the Commonwealth does not recognize their valid marriages entered into elsewhere, and the Commonwealth does not protect unmarried same-sex partners in spousal impoverishment protections. Because long-term care costs are so high, Medicaid steps in to pay those costs when a nursing home resident's savings run out. However, special Medicaid regulations protect a married resident from having to “spend down” assets and impoverishing and/or displacing their spouse who is not in the nursing home. First, a still-healthy spouse of such a nursing home resident has a special claim to some of the nursing-home resident's income and assets. Second, these protections extend to a married couple's home. The government will eventually seize the

home and force a sale to recover what it spent on nursing home bills—but only after the other, surviving spouse dies as well.

61. Because they cannot marry or have their marriages recognized, same-sex couples in Pennsylvania are not provided these protections in paragraph 60. The results can be financially catastrophic. Same-sex partners are not entitled to some of the nursing-home resident’s income or assets, and their home is not protected while the partner is still alive. Medicaid regulations also presume that joint bank accounts of same-sex couples are owned by the nursing home resident, so the government will require that the money in such accounts be spent down too. If the deed to a house is in the nursing home resident’s name and she has no chance of coming home, the home must be sold at fair market value. It does not matter how long the couple has been together, shared the home, and shared responsibility for the mortgage payments.

d. Family and Medical Leave Act.

62. The federal Family and Medical Leave Act allows covered employees to take up to 12 weeks of unpaid leave per 12 month period for specified family or medical reasons. An unmarried partner is not included in the definition of family, and the U.S. Department of Labor defines “spouse” for this purpose as “a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including ‘common law’ marriage and same-sex marriage.”⁹ Therefore same-sex couples in Pennsylvania, whether married in another state or not, will not qualify for FMLA benefits to care for a same-sex spouse or partner.

C. The Marriage Exclusion Imposes Costs on State and Local Governments and Businesses in Pennsylvania.

63. The Commonwealth of Pennsylvania and its various counties and cities have been suffering and will continue to suffer increased costs as a direct result of the marriage exclusion.

⁹ U.S. Department of Labor, Wage and Hours Division, “Fact Sheet #28F: Qualifying Reasons for Leave under the Family and Medical Leave Act,” August 2013, available at <http://www.dol.gov/whd/regs/compliance/whdfs28f.htm>(last accessed 2/4/14).

Over the next three years, if the ban on marriage for same-sex couples persists, the Commonwealth's economy will lose \$65–99 million in business revenue and \$4.2–5.8 million in tax revenue that would have accrued as a result of weddings by same-sex couples. The state will also continue to spend more on Temporary Assistance to Needy Families and on Medicaid that they would if same-sex couples could marry. Even when tax savings to the state due to the discriminatory tax treatment of same-sex couples is factored in, the Commonwealth's bottom line is harmed by the marriage exclusion. The state's economy and private businesses with the state will also suffer as Pennsylvania remains a comparatively less attractive location for highly qualified workers and businesses, and businesses absorb higher costs such as taxes and administrative costs in providing domestic partnership benefits.

1. Lost Wedding-Related Business and Tax Revenue for Resident Couple Marriages.

64. To assess the amount of wedding-related tax revenue lost by the Commonwealth of Pennsylvania, I first estimated the number of same-sex couples who would marry in Pennsylvania but cannot as a result of the marriage exclusion. I used two different calculations to arrive at the number of couples, in order to provide both an upper-bound and a lower-bound estimate. I then multiplied the number of couples by an estimate of average spending per wedding.

65. First, for an upper-bound estimate, I use figures from Massachusetts, in which 51% of in-state same-sex couples married from 2004 to 2007. Based on those figures, it is reasonable to conclude that a number equal to approximately one-half of Pennsylvania's same-sex couples would marry in the first three years of having the option to do so. Half of the 22,336 same-sex couples in Pennsylvania in the 2010 Census would be 11,168 couples. The upper-bound estimate assumes that all of the 11,168 couples will marry.

66. Second, to arrive at a lower-bound estimate of the number of same-sex couples who would marry in the first three years of having the option to do so, I assume that some of Pennsylvania's same-sex couples have traveled to Maryland, New Jersey, New York, or other state that allows same-sex couples to marry given the proximity to those states. Given the unavailability

of data from those states on the residence of out-of-state same-sex couples who might have married there, I instead use the fact that the 2010 U.S. Census found 3,228 same-sex couples in Pennsylvania who indicated that they were the husband or wife of the householder on the census form (U.S. Census Bureau, “Detailed Tables,” 2011, App Tab 6b). If those couples were, in fact, already married in another state or were likely to get married since 2010, then subtracting those same-sex couples in Pennsylvania from the 11,168 provides a lower-bound estimate of 7,940 new weddings that would occur if Pennsylvania allowed same-sex couples to marry.

67. Based on wedding industry statistics, we conservatively predict that in-state couples would spend 25% of the \$25,945 reportedly spent on the average wedding in Pennsylvania, or \$6,846 per wedding. This assumption is consistent with the experience in Massachusetts, in which the average wedding spending by same-sex couples was approximately \$7,400 per wedding (Goldberg, Steinberger, and Badgett, 2009). The range of new wedding spending, then, would be \$52 million (for 7,940 weddings) to \$72 million (for 11,168 weddings).

68. In addition to spending by the couples who marry, those couples are likely to invite guests who live in other states and would therefore be injecting new spending into the state’s economy. In Massachusetts, same-sex couples reported 16 out-of-state guests per wedding. If same-sex couples in Pennsylvania were to do the same and their guests spent only one day in Pennsylvania for the wedding, standard per diem rates used by the U.S. General Services Administration suggest that each of those guests would spend a total of \$110 on food, lodging, and other expenses. Using the range for the number of weddings suggests that spending by out-of-state guests would generate \$14 to \$20 million.

69. The total lost spending by the Pennsylvania couples and out-of-state guests would thus cost Pennsylvania and its counties and cities \$65 to 92 million in taxable spending over three years. That lost spending would generate \$4.2 to 5.8 million in state sales tax revenue, given the state’s sales tax rates (Tax Foundation, 2013).

70. After the pent-up demand for marriage is met over the first few years, same-sex couples in Pennsylvania and elsewhere would continue to generate wedding-related spending, tax, and fee revenues for businesses and state and local governments, although at a lower level.

71. It is reasonable to expect an added boost to Pennsylvania's economy from out-of-state couples who travel from other states to marry in Pennsylvania. For purposes of making a conservative estimate, however, I leave out that amount. It has become increasingly difficult to predict the number of same-sex couples likely to travel to Pennsylvania to marry, because (1) the states already allowing same-sex couples to marry will continue to absorb the pent-up demand for marriage until Pennsylvania allows same-sex couples to marry and (2) even when Pennsylvania allows same-sex couples to marry, the state would be competing with other states for the remaining unmarried same-sex couples.

72. Yet the economic boost due to out-of-state couples marrying in Pennsylvania could be substantial. Since only seventeen states (California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Washington) and the District of Columbia allow or will soon allow same-sex couples to marry, same-sex couples who wish to marry in the other states must travel to do so. State marriage license statistics in Iowa and Connecticut show that about 60% of licenses issued to same-sex couples have been to out-of-state same-sex couples (Badgett and Herman, 2011, p. 10). Same-sex couples from nearby states form the largest groups of out-of-state marriage licenses issued in those states. Demand for marriage by same-sex couples from other states is likely to increase now that the federal government recognizes the marriages of same-sex couples, regardless of place of domicile, for purposes of federal income taxation, estate taxes, employment benefits governed by ERISA, federal employee benefits, immigration rights, and potentially other federal benefits.

2. Higher Costs For Health Care of Uninsured Same-Sex Partners.

73. As noted earlier, the number of uninsured Pennsylvanians is higher than it would be if same-sex couples could marry. This situation results in increased state expenditures on uncompensated care (Hadley, et al., 2008; Buettgens, et al. 2011). Uninsured workers increase the financial burden on Commonwealth and local governments by requiring increased expenditures on various programs, including Pennsylvania's Medicaid program and other state- and locally-funded programs to reimburse providers for uncompensated care. They also increase the financial burden on local governments that provide health care through county hospitals that are not fully reimbursed for the services they provide to some uninsured patients.

74. It is possible to estimate the amount of additional pre-Affordable Care Act spending on Medicaid caused by the fact that same-sex couples cannot marry. Low-income state residents with young children, those who are blind or have a disability, or are aged are also eligible to apply. Eligibility for these programs is also means-tested, meaning that eligibility is determined by an individual's or family's income and assets. When a married couple applies for benefits, the non-applicant spouse's income is included in the overall determination. Currently, these public assistance programs do not require the state government to take into account a same-sex spouse or partner's income and assets. People with a same-sex spouse or partner are considered "single" when eligibility for these programs is determined and are therefore more likely to be eligible than they would if they were recognized as married. When eligibility rates drop there are fewer participants in public assistance programs and state expenditures decrease.

75. In Pennsylvania, average spending for an adult on Medicaid (FY10) was \$3,173,¹⁰ and the state paid 37.8% of Medicaid costs (FY11),¹¹ so state spending on the average adult was \$1,199. According to the 2012 American Community Survey, 12.2% of individuals in the 22,336 same-sex couples in Pennsylvania had Medicaid as their source of health insurance, or 5,450

¹⁰ The Henry J. Kaiser Family Foundation, "Medicaid Payments Per Enrollee, FY2010," available at <http://kff.org/medicaid/state-indicator/medicaid-payments-per-enrollee/>.

¹¹ Kaiser Family Foundation, "Federal and State Share of Medicaid Spending," available at <http://kff.org/medicaid/state-indicator/federalstate-share-of-spending/>.

people, while only 5.4% of individuals in married different-sex couples were on Medicaid. If same-sex couples could marry, I predict that same-sex couples' rate of Medicaid utilization would fall to similar rates as different-sex married couples, leading to 1,519 fewer individuals receiving Medicaid. If each of those individuals incurred the same average expenditures, then the state would save \$1.8 million per year.

3. Higher Expenditures in TANF.

76. The Commonwealth of Pennsylvania and the federal block grants fund Temporary Assistance to Needy Families (TANF), which provides means-tested cash transfers and job training for eligible low-income residents. Eligibility for these programs is means-tested, meaning that eligibility is determined by an individual's or family's income and assets. As with Medicaid, when a married couple applies for benefits, a spouse's income is typically included in the overall determination. Currently, regulations for these programs could but do not require the state government to take into account an unmarried same-sex partner's income and assets. 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. When eligibility rates drop, there are fewer participants in these programs, so state expenditures would fall.

77. To estimate the impact of same-sex marriage on TANF, I first estimate the average cash TANF benefit in Pennsylvania. In Pennsylvania an average of 71,741 families received TANF funds.¹² The total combined state and federal contributions to TANF cash assistance in Pennsylvania were \$202 million, a combined spending average of \$2,810 per family. Any reductions in the state's own spending on TANF would be directly returned to the state budget; leftover federal block grant funds can be redistributed towards other TANF programs.¹³ To

¹² Falk, Gene, (2013) "The Temporary Assistance for Needy Families (TANF) Block Grant: Responses to Frequently Asked Questions" (Washington DC: Congressional Research Service).

¹³ Falk, "The Temporary Assistance for Needy Families (TANF) Block Grant: A Primer."

estimate the impact on the state revenue, we will utilize average spending in conjunction with same-sex participation rates before and after marriage.¹⁴

78. According to the 2012 American Community Survey, 3.8% of individuals in the 22,336 same-sex couples in Pennsylvania received “public assistance” as a form of income, or 1,698 individuals, while only 0.7% of married different-sex couples do. If they could marry, I again project that half of the individuals in same-sex couples receiving TANF would marry and their rate of TANF utilization would fall to similar rates as different-sex married couples, leading to 692 fewer individuals receiving TANF. If each of those individuals received the average cash benefit of \$2,810, then the state would save \$1.9 million per year.

4. Productivity and Competitiveness Losses to Businesses and the Commonwealth.

79. Policies and workplace climates supportive of lesbian, gay, bisexual, and transgender (LGBT) workers are linked to greater job commitment, improved workplace relationships, increased job satisfaction, and improved health outcomes among LGBT employees.¹⁵ Employers recognize these links and cite them in their own public communications (Sears and Mallory, 2012) and in two recent amicus briefs related to the Windsor and Perry cases.¹⁶ In those briefs, hundreds of employers, including Google, Apple, Verizon, Walt Disney, Viacom, Nike, Morgan Stanley, and

¹⁴ Our estimate of 50% of same-sex couples marrying reflects the possibility that loss of benefits would deter some couples from getting married. Additionally, some same-sex couples will continue to receive benefits once married; this could occur in single income earner households or in instances where the combined income of both earners is still below the eligibility threshold. Further, some spouses may become newly eligible for benefits as a result of marriage.

¹⁵ The equal treatment of LGB people in the workplace tends to increase the disclosure of sexual orientation by people in same-sex couples and single LGB people (Badgett, 2001; Badgett, 2009; Ramos, Goldberg, and Badgett, 2009; Driscoll, Kelley, and Fassinger, 1996; Griffith & Hebl, 2002; Ragins & Cornwell, 2008; Rostosky & Riggle, 2002). More openness of LGB employees leads to positive workplace outcomes for those individuals and their employers, such as greater job satisfaction, increased work commitment, and lower turnover (see also Day & Schoenrade, 1997; Griffith & Hebl, 2002; Ellis & Riggle, 1995). Institutionalized conditions of inequality, such as state denial of the right to marry and private denial of employment benefits associated with marriage, undermine these goals.

¹⁶ Bradley Sears and Christy Mallory, “Economic Motives for Adopting LGBT-Related Workplace Policies,” October 2011, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

Microsoft, argued that they want to recruit and retain the most creative and productive workers to make their businesses competitive, and that includes LGBT workers. State laws excluding same-sex couples from marriage hurt recruitment. Moreover, they want their LGBT employees to be able to focus on their jobs, not on dealing with the stigma and inequality that creates problems for their families:

Finally, Proposition 8 leaves companies in the untenable position of being compelled implicitly to endorse the second-class status to which their gay and lesbian employees, clients, customers, and business associates are relegated. . . . This separation intolerably relegates same-sex couples to second-class status and sends the signal that gay men and lesbians are unable to form long-term, committed, familial relations. . . . No matter how welcoming the corporate culture, it cannot overcome the societal stigma institutionalized by Proposition 8 and similar laws.

Brief of American Companies as Amici in Support of Respondents, *Hollingsworth v. Perry*, No. 12-144 (Sup. Ct.), at 16, 4, 2.

80. Pennsylvania itself provides domestic partner benefits to its own employees. Statements by the Pennsylvania Employee Benefits Trust Fund¹⁷ at the time Pennsylvania decided to provide domestic partner health benefits indicate that Pennsylvania made that decision for the same types of reasons as private businesses – e.g., competitiveness, recruitment and retention:

“It was a matter of costing things out and making sure it was affordable but, putting that aside, this is something we should have done a while ago, and we’re glad we’re doing it now,” said Dave Fillman, chair of the PEBTF board of trustees. “It’s just the right thing to do.”

Fillman noted that the domestic-partner policy will help the state recruit new workers interested in an employer that offers such benefits and assist Pennsylvania in retaining qualified employees.

¹⁷ The PEBTF “established in 1988, administers health care benefits to approximately 77,000 eligible Commonwealth of Pennsylvania employees and their dependents and 63,000 retirees and their dependents, as well as additional employer groups. The PEBTF is governed by a Board of Trustees comprised of both Commonwealth and Union representatives.” PEBTF, “About Us,” available at <https://www.pebtf.org/AboutUs/>.

“As with any benefit enhancement, we’re hoping that this will provide a benefit for someone who was considering state service that wasn’t provided before,” he said. “It’s pretty much a win-win for everyone.”

Christy Leo, PEBTF communications director, said the policy puts Pennsylvania in a better position to vie with other states and companies for the most-qualified employees.

“We basically want to become competitive with other employers,” Leo said. “A lot of other employers do provide such a benefit, so in order to be competitive we thought we needed to extend benefits to domestic partners.”

Domestic-partner benefits are offered at the majority of Fortune 500 companies — including all 27 headquartered in Pennsylvania. State employees in 15 other states, including Connecticut, Maine, New Jersey, New York, Rhode Island and Vermont, are also eligible for domestic-partner benefits.

Pennsylvania already offers employees life-insurance and long-term care options for domestic partners, but they were not eligible for the medical benefits.¹⁸

81. Just as Pennsylvania has already recognized in its capacity as an employer, Pennsylvania and businesses within the state are likely to find it more difficult to attract and retain some highly qualified members of the labor force because of the marriage exclusion for same-sex couples. By refusing to allow same-sex couples to marry or have their marriages recognized, Pennsylvania and its businesses are at a disadvantage in attracting highly skilled workers, particularly those in the “creative class” occupations that may be central to further economic growth in high technology industries (Florida and Gates, 2001). Heterosexual and non-heterosexual members of the “creative class,” or the highly-educated, relatively young workers in occupations such as IT workers, engineers, scientists, teachers, artists/entertainers, banking/finance workers, managers, and medical professionals, might be deterred from moving to Pennsylvania.

82. Two sources of data suggest that marriage equality enhanced Massachusetts’ ability to attract and retain workers in the creative class. First, a study of Census data found that migration

¹⁸ Jen Colletta, Breaking News: Pa. grants domestic-partner benefits, Philadelphia Gay News (2009), available at http://www.epgn.com/pages/full_story/push?article-Breaking+News-+Pa-+grants+domestic-partner+benefits%20&id=2559458.

patterns shifted in Massachusetts before and after same-sex couples could marry (Gates, 2009). In the three years before same-sex couples could marry, Massachusetts lost 603 people in same-sex couples. In the three years after same-sex couples could marry, the state saw a net gain of 119 people in same-sex couples. Net migration to Massachusetts by people in same-sex couples who are in creative-class occupations accounted for the migration shift between the two periods. The timing suggests that the right to marry attracted same-sex couples among the creative class.

83. Second, a 2009 survey of 559 individual members of same-sex married couples living in Massachusetts in May 2009 found that 8% of those couples had moved to the state since their right to marry was affirmed there (Gates, 2009). More than half (51%) of those couples who had recently moved to Massachusetts reported that their decision to move to Massachusetts was influenced by marriage equality or the state's lesbian, gay, bisexual, and transgender (LGBT) rights climate.

84. These findings suggest that as other states allow same-sex couples to marry, Pennsylvania will find itself in an increasingly disadvantaged situation in competing nationally for the creative-class and other highly skilled members for the state's own workforce and for businesses located in Pennsylvania. In fact, Pennsylvania's competitive disadvantage is exacerbated by its close proximity to many competitive state and metropolitan markets like New York (especially New York City), New Jersey, Massachusetts (especially Boston), Washington, D.C., Maryland and Delaware, that already provide and recognize marriage rights for same-sex couples.

5. Payroll Taxes and Other Inefficiencies That the Marriage Exclusion Forces Upon Businesses.

85. As noted below, for those businesses that have decided to provide domestic partner benefits to same-sex partners and spouses, the marriage exclusion makes it more difficult for those businesses to do so. Since it is likely that most or all of the state's same-sex couples are not married, businesses that want to treat their employees with same-sex partners as equally as possible must incur start-up costs to create domestic partner health benefits for their employees with same-sex partners, and then the employers must maintain them. In addition, in those situations, domestic

partnership benefits are treated as imputed income and are subjected to payroll taxes, liability for which employees and employers share (Badgett 2007).¹⁹ In addition, domestic partner benefits requires administrative effort, as opposed to a more efficient process of providing spousal benefits for both married same-sex couples and different-sex couples.

6. The Additional Taxes the State Currently Collects as a Result of its Discriminatory Treatment of Same-sex Couples Are Clearly Outweighed By Additional Costs the Marriage Exclusion Imposes on the State.

86. I do not address in this report whether it is legal or proper for a government to support an otherwise discriminatory law on the basis of generating tax revenue; I address only the economic consequences of doing so.

87. As addressed above, same-sex couples must pay higher taxes than recognized married couples in Pennsylvania. If same-sex couples were granted marriage rights, and thus saw a reduction in tax liability regarding certain taxes, this logically means that the state would experience a corresponding reduction in tax revenues for those certain taxes. But what the estimates below reveal is that despite the individual harms to same-sex couples of these tax liabilities, the total impact on the state budget of granting marriage rights would be a small decrease in certain tax revenues that is outweighed by the other fiscal benefits to the state that I've discussed (e.g., increased sales tax revenues from weddings and lower governmental assistance program expenditures).

88. Income tax revenue might decline very slightly. As stated above, a recent study finds that same sex couples filing as married in Pennsylvania would reduce their state income taxes by an average of \$49.40 (Alm, et al, 2013). If half of same-sex couples marry, then state income

¹⁹ Some employers, in an effort to level the playing field for gay and lesbian workers, will also engage in “grossing up,” where the employer increases the employee’s salary in an amount sufficient to cover the additional income taxes paid by employees with domestic partners. Tara Siegel Bernard, “For Gay Employees, and Equalizer,” available at http://www.nytimes.com/2011/05/21/your-money/health-insurance/21money.html?_r=0. This, however, just means that businesses take on the full financial burden of unequal taxation of same-sex couples who cannot marry.

tax revenue would fall by \$550,000 per year, only 0.005% of the \$11.7 billion total income tax revenue expected in 2013-14.²⁰

89. Inheritance tax revenue would fall to a relatively small extent. It is possible to estimate the total inheritance taxes paid by same-sex couple households in several steps. First, I apply Pennsylvania's annual age-adjusted death rate (.0076)²¹ to the estimated 11,168 same-sex couples who would marry (22,336 individuals), to project that 170 same-sex spouses per year would die. Next, I estimate the tax that would be paid by decedent's' surviving same-sex partners in the absence of same-sex marriage. For this analysis, I use the mean net worth of households in the United States by quintiles and then subtract probate fees, costs of a funeral, estimates of charitable donations, and likely bequests to children.²² The estimated total yearly impact is a payment of \$3.6 million in inheritance taxes by same-sex decedents' estates for their partner's inheritance.

90. Realty transfer tax revenue might decline slightly as well. As stated above, a transfer of property to joint ownership between same sex couples, or a transfer from joint ownership to sole ownership upon a dissolution of a relationship, would result in a \$736 tax liability on a \$147,100 home, the median home price in Pennsylvania. However, the difference in taxes collected before and after allowing same-sex couples is likely to be minimal for several reasons. First, in an effort to avoid such taxes now, couples might buy their homes together, and those who do not might be discouraged from transferring the property at all to a partner. Second, it is also possible that the right to marry could generate additional sales of homes to same-sex couples, thus increasing state transfer tax revenues. Third, such tax revenue from same-sex couples over and above what married couples pay would likely only be generated on one or two occasions over the lifespan of a couple's relationship (i.e., upon turning a solely owned property into joint ownership or upon dissolution of

²⁰ Michael Wood, "Modest General Fund Revenue Growth Forecasted for 2013-14," Pennsylvania Budget and Policy Center, <https://pennbpc.org/modest-general-fund-revenue-growth-forecasted-2013-14>.

²¹ Pennsylvania Department of Health, "Mortality," Harrisburg, 2010, available at http://www.portal.state.pa.us/portal/server.pt/document/1275202/pa_vital_statistics_mortality_2010_pdf.

²² See *supra* n.4.

the relationship). Taking these factors all together, the total annual decrease in realty transfer tax fees to Pennsylvania would be expected to be insubstantial.

91. Overall, these smaller tax effects of allowing same-sex couples to marry or recognizing their marriages add up to approximately \$4.1 million per year (assuming that the net realty transfer tax loss is insignificant). That loss is clearly outweighed by additional sales tax revenue and reduced spending on TANF and Medicaid. Subtracting the \$4.1 million reduction in income, realty transfer, and inheritance tax revenue from the \$1.4 to \$1.9 million in additional sales tax revenue from weddings (the previously estimated range of \$4.2 to 5.8 million averaged over three years) and \$3.7 million savings in expenditures on TANF and Medicaid still results in a net gain to the state budget of \$1.0–1.6 million per year, even when not accounting for the negative impact that the marriage exclusion has on Pennsylvania businesses.

7. Net Magnitude of Cost.

92. The economic harms to Pennsylvania and its economy discussed above are substantial. First, Pennsylvania businesses will lose approximately \$65 to 92 million in wedding-related business spending over three years. Second, the Commonwealth and its subdivisions will lose approximately \$4.2 to 5.8 million in lost tax revenue over three years due to the inability of same-sex couples to marry. Third, Pennsylvania will spend an additional \$1.8 million in Medicaid and \$1.9 million in TANF per year. Fourth, the Commonwealth and Pennsylvania businesses may suffer further significant losses due to the increased difficulty of recruiting and retaining valuable employees. Fifth, businesses that seek to remedy this problem by providing domestic partner benefits must pay more than they do for spousal benefits and expend greater administrative resources. The approximately \$4.1 million in revenue generated for Pennsylvania by taxing same-sex couples differently due to the marriage exclusion (even assuming disparate taxation could be appropriate at all) does not come close to compensating for these economic losses to the state.

D. Pennsylvania's Asserted Economic Impacts.

93. Plaintiffs' Interrogatories sought information regarding the basis for any contention by defendants that the marriage exclusion is supportable because allowing or recognizing marriages for same sex couples would have adverse economic impacts on Pennsylvania or its businesses. In their responses, the defendants referenced the legislative history of the Commonwealth's 1996 marriage statute, and specifically directed attention to the statements of Representative Egolf.

94. Within his remarks, Representative Egolf said:

In the case of marriage, the exception allows States not to recognize marriages if they are repugnant to the public policy of the home State.

Since no State has ever recognized same-sex marriages before, the question has never come before the courts. If and when the question comes to Pennsylvania courts, we want to remove any potential confusion and misinterpretation. This amendment introduced by Representative Maitland and myself specifically states what our policy is and always has been - that these so-called marriages are contrary to our public policy and will not be recognized in Pennsylvania.

This amendment does not take anything away from anyone that they now have. It is simply an expression of Pennsylvania's traditional and longstanding policy of moral opposition to same-sex marriages, as described by *DeSanto v. Barnsley*, Pennsylvania Superior Court, 1984, and support of the traditional family unit. In addition, this amendment serves many other practical purposes for the Commonwealth of today and the future.

For example, legalizing same-sex marriages would place another unfunded mandate on our business community. Any existing pension or insurance program providing benefits to a spouse would now have to include an entirely new supply of so-called spouses. The providers of these benefits would have to assume a liability they never conceived when the promise was made. To avoid these new liabilities, providers would have to cancel and rewrite the agreements, and future agreements might even delete the coverage of spouse and family that Pennsylvania workers have come to depend on.

The burden on the public sector could be great as well. In recognizing same-sex marriages, courts would also have to hear all

same-sex divorce suits. This will only compound the backlog of cases in our judicial system. Social Security, tax, and other benefits presently conferred on spouses would have to be expanded to include married partners of the same sex. The financial costs imposed on society by the forced recognition of same-sex marriage cannot even be calculated at this time.

95. Thus, Representative Egolf purports to identify a few different economic impacts on the Commonwealth and its businesses that could result from the recognition of same-sex marriage. The law supposedly would (i) avoid “an unfunded mandate on [Pennsylvania’s] business community”; (ii) “courts would have to hear all same-sex divorce suits,” which would “only compound the backlog of cases in [Pennsylvania’s] judicial system”; and (iii) Social Security, tax, and other benefits presently conferred on spouses would have to be expanded to include married partners of the same sex.” Representative Egolf also states that any such financial costs “cannot even be calculated at this time,” implying that they had not been calculated at that time.

96. Addressing each of these stated reasons in turn from an economist’s perspective, I find that they do not have merit and are counter to relevant data and facts. The effects on Pennsylvania are just the opposite as stated by Representative Egolf.

97. *Unfunded Mandate on Business Community.* Eliminating the marriage exclusion would not place any sort of “unfunded mandate” on the business community. To the contrary, it would reduce some businesses’ employment costs and administrative costs. I note first that during questioning from another legislator, Representative Egolf acknowledged that “there is no law in Pennsylvania” “requiring businesses to offer benefits to spouses” (2018). Thus, if a company desired to provide spousal benefits, it would be a voluntary act of the company, and allowing same-sex couples to marry or have their marriages recognized would not force any “mandate” on companies. On the contrary, as noted above, many businesses voluntarily provide domestic partner benefits to gay and lesbian employees because they see it in their competitive interest to do so. But because of the marriage exclusion, those businesses must pay payroll taxes for benefits for unmarried same-sex partners and must undertake the additional expenditure of administrative and financial resources to create a substitute for the more efficient but unavailable option of simply

recognizing same-sex spouses. Accordingly, from my perspective as an economist, this concern of an “unfunded mandate” as stated by Representative Egolf is unwarranted and incorrect.

98. *Divorces and Purported Backlogs.* Here again Representative Egolf’s statements are incorrect. I refer here to the expert report of Leonore F. Carpenter. From my perspective as an economist, the marriage exclusion actually promotes a wasteful and inefficient expenditure of public resources on legal proceedings involving same-sex couple’s families.

99. Prof. Carpenter explains that in Pennsylvania, upon dissolution of a marriage, married couples have access to Pennsylvania’s Divorce Code, which provides a set of universally known or accepted default ground rules to deal with the complicated issues presented by any contested divorce, such as disposition of jointly held assets, equitable distribution of property, child custody matters, etc. In addition, in more populous counties, specific family courts provide access to judges specializing in that very system. Same-sex couples dissolving their relationship are not provided the same type of access or the same type of default ground rules. Same-sex couples will be subject to different rules of the game, relying on other statutes and various common law principles, as opposed to being governed by the Divorce Code. In addition, in various counties that have family courts, same-sex couples with disputes over property and non-custodial matters must file litigations in courts of general jurisdiction, which by the very design of the system, are going to be less knowledgeable and experienced than family courts in dealing with dissolution matters. Such litigations are even more complicated when child custody disputes are involved. In such situations, couples must file custody matters in the family courts while simultaneously filing disputes over other issues, such as ownership of property and assets, in courts of general jurisdiction. Thus, in some instances, same-sex couples not only are routed to a less efficient or specialized disposition of their disputes, but they are actually forced to file multiple actions, as opposed to married couples who file all such disputes together in a single divorce petition before the family courts. In either instance, the marriage exclusion can only be viewed as introducing economic inefficiencies into

Pennsylvania's court system, and not somehow protecting Pennsylvania from a backlog of divorce proceedings.²³

100. It also must be noted that same-sex couples are forced to use judicial resources at times other than divorce when married couples are not. As Prof. Carpenter explained, although the husband of a married woman who gives birth is presumed to be the father and has automatic parental rights for the child, no such presumption attaches for same-sex couples. If a lesbian woman gives birth, her partner does not have automatic parental rights and to obtain those parental rights, the partner must file for a second-parent adoption, requiring increased use of court resources that married couples do not use.

101. *Social Security, tax and state benefits.* Since social security retirement benefits are federal benefits, there is no impact on the state from allowing and recognizing marriages by same-sex couples, although there is of course an impact on same-sex couples. As covered above, whatever tax revenue the State would lose if same-sex spouses were treated the same as different-sex spouses for state tax purposes would be far offset by cost savings to the state through increases in sales tax revenue from weddings and lower costs on public assistance programs and uninsured residents. Further, as discussed above, elimination of the marriage exclusion would provide many tangible financial benefits for Pennsylvania businesses (e.g., wedding-related business, lower payroll taxes) and more intangible economic benefits (e.g., better recruitment and retention of employees). Pennsylvania itself recognized these principles in deciding to provide domestic partnership benefits for its own employees. From an economist's perspective, I again see no basis for any view that reduced tax liabilities or the use of public resources by married spouses in same-sex couple relationships would have a net negative economic impact on the state.

²³ While same-sex couples that would otherwise amicably dissolve their relationship without the courts due to the marriage exclusion now would need to file divorce petitions, these couples would have to pay filing fees associated with an uncontested divorce petition. However, any uncontested petition appears to require de minimis use of public resources, and filing fees, which can vary in amount but stretch into the hundreds of dollars depending on the county, would either cover any such costs or likely produce a net positive gain in revenue.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 14, 2014.

By: M.V. Lee Badgett
M.V. Lee Badgett, Ph.D

EXHIBIT A

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University of California, Berkeley	Ph.D.	1990	Economics
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PREVIOUS POSITIONS:

Research Director, Williams Institute, UCLA School of Law (2006-2013)
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Adjunct Professor, Whittier Law School (Summer 2011)
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Assistant Professor, School of Public Affairs, University of Maryland, College Park (1990-1997)
Visiting Assistant Professor, Women's Studies and Lesbian and Gay Studies, Yale University (1995-1996)
Research Analyst, National Commission for Employment Policy, U.S. Department of Labor (Summer 1994)

RECENT COURSES TAUGHT:

Economics: Microeconomics (University of Massachusetts)
Microeconomics and Public Policy (University of Massachusetts-Amherst)
Political Economy of Sexuality (University of Massachusetts-Amherst)
Labor Economics--undergraduate and Ph.D. level (University of Massachusetts-Amherst)
Feminist Economics (co-taught as visiting professor at University of Minnesota)

Policy: Policy Analysis (University of Massachusetts-Amherst), Capstone course (University of Massachusetts-Amherst)
Social Inequality and Social Justice: Problems and Solutions (University of Massachusetts-Amherst)
Social Science and Public Policy on LGBT Issues (Whittier Law School Barcelona program; University of Massachusetts Online)

CURRENT RESEARCH TOPICS:

Sexual orientation and gender identity discrimination in labor markets and impact of public policy
Poverty in LGBT community
Family structures and family policy, especially same-sex partner recognition in US and other countries
Domestic partner health care and pension benefits

BOOKS:

When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage, New York University Press, 2009. Distinguished Book Award, American Psychological Association, Division 44, 2010.

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Review of *Counted Out: Same-Sex Relations and Americans’ Definitions of Family*, in *Gender & Society*, August 2012, Vol. 26, No. 4, 674-676.

“Gay Marriage Good for Family and Economy,” *The Drum Opinion*, ABC Online (Australian Broadcasting Corp.), March 6, 2012.

“What Obama Should Do About Workplace Discrimination,” *New York Times*, February 6, 2012.

“High Costs of Discrimination,” *Worcester Telegram*, M. V. Lee Badgett and Jody Herman, May 11, 2011.

Featured guest column, *The Economist* debate on marriage for same-sex couples, January 6, 2011, <http://www.economist.com/debate/days/view/638>.

“Summer of Love and Commitment,” *The Huffington Post*, September 3, 2008.

“Sexual Orientation, Social and Economic Consequences,” in *International Encyclopedia of the Social Sciences*, 2nd Edition, ed. William A. Darity, Jr., Macmillan Reference USA, 2008.

“The Wedding Economy,” *The New York Times*, January 7, 2007.

“The Closet Door’s Open: What’s Behind Hartford’s Surge in Gay Population?” *The Hartford Courant*, Gary J. Gates and M. V. Lee Badgett, November 5, 2006.

“The Future of Same-Sex Marriage,” *Social Work Today*, November 2006.

“The Gay Health Insurance Gap,” www.alternet.org, October 26, 2006.

“What’s Good for Same-Sex Couples is Good for Colorado,” *The Daily Camera*, Boulder, CO, October 28, 2006.

Book review of *Inheritance Law and the Evolving Family*, by Ralph Brashear, *Feminist Economics*, vol. 12, no. 1-2, 2006.

“Equality Doesn’t Harm ‘Family Values’”, with Joop Garssen, *National Post* (Canada), August 11, 2004.

“Prenuptial Jitters: Did Gay Marriage Destroy Heterosexual Marriage in Scandinavia?” *Slate Magazine*, May 20, 2004, <http://slate.msn.com/id/2100884/>.

Brad Sears and Lee Badgett, “Tourism and Same-sex Marriage,” *San Diego Union-Tribune*, June 2, 2004. http://www.signonsandiego.com/uniontrib/20040527/news_lz1e27sears.html

“Equality Is Not Expensive,” *Connecticut Law Tribune*, April 19, 2004.

“Domestic Partner Bill Won’t Be Burden to Business,” *Orange County Register*, April 18, 2004, with Brad Sears.

“Economics” and “Boycotts”, entries for *Encyclopedia of Gay, Lesbian, Bisexual, and Transgender History*, ed. by Marc Stein, Scribners, forthcoming December 2013.

“Recognizing California Couples: Domestic-Partner Law Attacked by Anti-Gay Senator Could Boost Flow of Cash to State,” M. V. Lee Badgett and R. Bradley Sears, *Daily Journal*, October 14, 2003.

“A Win at Cracker Barrel,” *The Nation*, February 10, 2003.

“Why I was a Dem for a Day,” *Daily Hampshire Gazette*, June 2002.

Commentary on Boy Scouts of America, WFCR, Amherst, MA, August 13, 2001.

"Sexual Orientation," Richard Cornwall and M. V. Lee Badgett, entry for *Encyclopedia of Feminist Economics*, ed. by Meg Lewis and Janice Peterson, Edward Elgar, 2000.

"Lesbians, social and economic situation," entry for *International Encyclopedia of the Social and Behavioral Sciences*, forthcoming.

"One Couple's 'Penalty' remains another's privilege", with James Alm and Leslie A. Whittington, *Boston Globe*, September 3, 2000, p. E2.

“Domestic partner status unfair to gay couples,” *Springfield Sunday Republican*, op-ed April 2, 2000, p. B3.

“Do Sexual Orientation Policies Help Lesbians?” in *Women's Progress: Perspectives on the Past, Blueprint for the Future*, Institute for Women’s Policy Research, Fifth Policy Research Conference Proceedings, Washington, DC, 1998.

"Census Data Needed," letter to the editor, *The Washington Blade*, November 7, 1997, p. 37.

“Same-sex partners bring nurturing--and financial benefits--to the altar,” op-ed piece with Gregory Adams, *Chicago Sun-Times*, June 8, 1996, p. 16.

"The Last of the Modernists: A Reply," *Feminist Economics*, Vol. 1, No. 2, 1995.

"Domestic Partner Recognition: Doing the Right--and Competitive--Thing," *Synthesis: Law and Policy in Higher Education*, Vol. 6, No. 4, Spring 1995.

"Equal Pay for Equal Families," *Academe*, May/June 1994.

"Lesbian and Gay Campus Organizing for Domestic Partner Benefits," in *Higher Education Collective Bargaining During a Period of Change*, Proceedings, Twenty-Second Annual Conference, April 1994, The National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, CUNY, 1994.

"Beyond Biased Samples: Challenging the Myths on the Economic Status of Lesbians and Gay Men," pamphlet published by National Organization of Gay and Lesbian Scientists and Technical Professionals and the Institute for Gay and Lesbian Strategic Studies, 1994. (Early version of book chapter of same title.)

Co-author and co-editor, *Labor and the Economy*, published by the Center for Labor Research and Education, Institute of Industrial Relations, UC Berkeley, 1989.

"Looking for the Union Label: Graduate Students at U.C.," *California Public Employee Relations*, No. 85, June 1990.

"Rusted Dreams: Documenting an Economic Tragedy," *Labor Center Reporter*, No. 219, October 1987.

"How the Fed Works," *Labor Center Reporter*, No. 177, November 1986.

EXPERT WITNESS EXPERIENCE (LITIGATION 2009-2013):

Written testimony, *Harris v. McDonnell*, No. 5:13-cv-00077 (W.D. Va.), December 2013 (challenge to Virginia's marriage equality prohibition)

Written testimony, *DeLeon v. Perry*, No. 5:13-cv-00982 (S.D. Tex.), November 2013 (challenge to marriage equality prohibition in Texas)

Written testimony, *Kitchen v. Herbert*, No. 2:13-cv-00217 (D. Utah), October 2013 (challenge to Utah's marriage equality prohibition)

Written testimony, *Darby/Lazaro v. Orr*, No. 12 CH 19718 (Ill. Cir. Ct., Cook Cnty.), April 2013 (challenge to Illinois' marriage equality prohibition)

Written testimony, *Sevcik v. Sandoval*, No. 2:12-cv-00578 (D. Nev.), 2012 (challenge to Nevada's marriage equality prohibition)

Written testimony, *Bassett v. Snyder*, No. 2:12-cv-100382012 (E.D. Mich.), 2012 and 2013 (challenge to Michigan's Domestic Partner Benefit Restriction Act).

Written testimony, *Glossip v. Missouri Dep't of Transp. and Highway Patrol Employees' Ret. Sys.*, No. 10-CC00434 (Mo. Cir. Ct., Cole Cnty.), 2011 (challenge to denial of death benefit to state trooper's surviving same-sex partner).

Written testimony, *Collins v. Brewer* (later *Diaz v. Brewer*), No. 2:09-cv-02402 (D. Ariz.), 2010 (challenge to Arizona's cancellation of domestic partner benefits).

Deposition and trial testimony, *Perry v. Schwarzenegger* (later *Perry v. Brown*, *Hollingsworth v. Perry*), No. 3:09-cv-02292 (N.D. Cal.), 2010 (challenge to California's Proposition 8).

LEGISLATIVE WITNESS EXPERIENCE (Selected):

U.S. Senate Committee on Health, Education, Labor, and Pensions, S.811, The Employment Non-Discrimination Act of 2011, June 12, 2012.

Written testimony, S. 598, The Respect for Marriage Act: Assessing the Impact of DOMA on American Families, M. V. Lee Badgett, Ilan H. Meyer, Gary J. Gates, Nan D. Hunter, Jennifer C. Pizer, Brad Sears. July 2011.

U.S. House of Representatives, Committee on Oversight and Government Reform, Subcommittee on Federal Workforce, Postal Service, and the District of Columbia on HR 2517: Domestic Partnership Benefits and Obligation Act of 2009, July 2009.

U.S. House of Representatives, Committee on Education and Labor, Subcommittee on Health, Employment, Labor, and Pensions, Testimony on Employment Non-Discrimination Act (HR 2015), September 2007.

Written and oral testimony on legislation or regulations in Alaska, California, Hawaii, Maryland, Massachusetts, New Hampshire, Oregon, Rhode Island, Vermont.

SELECTED MEDIA APPEARANCES:

Featured guest, *Tell Me More*, NPR, June 10, 2013.

Featured guest, *Encounter*, Radio National, ABC (Australian Broadcasting Corp), October 9, 2011.

Featured guest, *Faith Middleton Show*, January 13, 2011. <http://www.yourpublicmedia.org/content/wnpr/faith-middleton-show-when-gay-people-get-married>

Featured guest, "Same-Sex Marriage, Five Years On," *On Point*, National Public Radio, May 27, 2009. <http://www.onpointradio.org/2009/05/same-sex-marriage-five-years-on>

Featured guest, "Gay Commerce," *Talk of the Nation*, National Public Radio, 1997.

Featured guest, "Gay Market," *Odyssey: A Daily Talk Show of Ideas*, NPR nationally syndicated show, 2005. http://www.chicagopublicradio.org/DWP_XML/od/2005_05/od_20050512_1200_4906/episode_4906.ram

Interviewed on *All Things Considered*, "Gay Marriage in Massachusetts, One Year Later," May 2005. <http://www.npr.org/templates/story/story.php?storyId=4655621>

Featured guest, *CNN American Morning*: "The Future of Marriage," June 2006. http://www.law.ucla.edu/williamsinstitute/images/CNN_AmericanMorning_FutureOfMarriage_LeeBadgett_062006.mov

WORK IN PROGRESS AND PAPERS UNDER REVIEW:

"Assessing the effect of nondiscrimination policies related to sexual orientation and gender identity," M.V. Lee Badgett and Samantha Schenck.

"Uncovering Gay, Lesbian, and Bisexual Poverty in the United States," Randy Albelda, M. V. Lee Badgett, and Alyssa Schneebaum.

"Are Gay People Happy?" M. V. Lee Badgett and Alyssa Schneebaum.

"Minority stress and its association with cohabitation and Domestic Partnership registration in California," Natalya Maisel, Gary J. Gates, and M. V. Lee Badgett, August 2007, under review.

"Gay and Lesbian Families: A Research Agenda," Gary J. Gates and M. V. Lee Badgett, August 2006.

"Breadwinner Dad, Homemaker Mom: An Interdisciplinary Analysis of Changing Gender Norms in the United States, 1977-1998." Lee Badgett, Pamela Davidson, Nancy Folbre, and Jeannette Lim, in progress, 2000.

SELECTED PRESENTATIONS OF PAPERS SUBMITTED TO ACADEMIC CONFERENCES:

"Assessing the effect of nondiscrimination policies related to sexual orientation and gender identity," Badgett and Samantha Schenck. Presented at: Sexual Orientation Discrimination in the Labor Market, University of Paris 1 Pantheon-Sorbonne, 6/20/2012; International Association for Feminist Economics, Barcelona Spain. 6/27/2012; APPAM conference, November 2012.

"Waves of Change: Is Latin America Really Following Europe in Same-Sex Couples?," at 8th Annual Update, Williams Institute, "Global Arc of Justice: Sexual Orientation Law Around the World, March 14, 2009.

"Gay poverty," Presented at 2009 Allied Social Science Association Meeting; 2009 Association for Public Policy Analysis and Management Research Conference; 2008 IAFFE Research Conference, Torino, Italy, June 2008; Williams Institute Annual Update, February 2008.

"Registered Domestic Partnerships Among Gay Men and Lesbians: The Role of Economic Factors," (with Gary J. Gates and Natalya Maisel), presented at 2007 APPAM Meeting, Washington, DC; 2008 Allied Social Science Associations Annual meeting, New Orleans.

"Predicting Same-Sex Marriage in Europe & the US," Presented at 2008 IAFFE Research Conference, Torino, Italy, June 2008.

"Social Lab Outcomes: Same-Sex Couples and Legal Recognition," Temple University Law School, "States as Social Laboratories," October 20, 2007.

"The Double-Edged Sword in Gay Economic Life: Marriage and the Market." Washington & Lee School of Law, Feb 2008.

"Why Marry?" Presented at 2006 IAFFE Research Conference, Sydney, Australia, July 2006; New School for Social Research, October 2006; Sociology Family Working Group, UCLA, 2006.

"An exploration of foster care and adoption among lesbians and gay men," joint work with Jennifer Macomber, Kate Chambers, Gary Gates. Family Pride conference, Philadelphia, PA, May 2006.

"Survey Data on Sexual Orientation: Building a Professional Consensus," presented at 2005 Joint Statistical Association Meetings, August 2005. Also presented to Canadian Population Society, June 2005; Williams Project Annual Update, UCLA Law School, February 2005.

"Alternative Legal Statuses for Same-sex couples and other families: Can Separate Be Equal Enough?" Presented at International Association for Feminist Economics, Washington DC, July 2005; APPAM, Washington, DC, November 2005; UCLA Law School 2006.

"Looking into the European Crystal Ball: What Can the U.S. Learn About Same-Sex Marriage?" Tulsa Gay and Lesbian History Project, October 2004; University of Connecticut, October 2004; Yale University, February 2005; American Psychological Association, August 2005; National Council of Family Relations (invited special session), 2005.

"Predicting Partnership Rights: Applying the European Experience to the United States," Yale University Law School, March 5, 2005.

"Asking the Right Questions: Making the Case for Sexual Orientation Data," Joint Statistical Meetings of the American Statistical Association, Toronto, August 2004; Williams Project Annual Update, UCLA, February 2005; Canadian Population Society, June 3, 2005.

"A New Gender Gap: Sex Differences in Registered Partnerships in Europe," International Association for Feminist Economics research conference, London, August 2004.

"Variations on an Equitable Theme: International Same-sex Partner Recognition Laws," Research Conference of International Association for Feminist Economics, July 2002. Stockholm University, September 2003; University of Linz, Austria, November 2003; University of Amsterdam, June 2004; American Political Science Association, Chicago, September 2004.

"The Myth of Gay Affluence and Other Tale Tales: The Political Economy of Sexual Orientation," University of California, San Diego, June 2002.

"A Family Resemblance: Legal Recognition of Same-Sex Partners in the United States," Research Conference of International Association for Feminist Economics, Oslo, Norway, June 2001; University of Southern Maine, October 2001; University of Massachusetts, February 2002; Washington University Political Science Department, March 2002; University of Wisconsin, LaCrosse, April 2002.

"A Movement and a Market: GLBT Economic Strategies for Social Change," University of Wisconsin, LaCrosse, April 2002; Macalester College, April 2002.

"Job Gendering: Occupational Choice and the Marriage Market," Research Conference of International Association for Feminist Economics, Ottawa, CA, June 1999.

"Tolerance, Taboos, and Gender Identity: The Occupational Distribution of Lesbians and Gay Men," Research Conference of International Association for Feminist Economics, Amsterdam, The Netherlands, June 1998.

"The Impact of Affirmative Action on Public-Sector Employment in California," ASSA Meetings, 1997.

"Tolerance or Taboos: Occupational Differences by Sexual Orientation," presented at American Economic Association Meetings, January 1996, and American Psychological Association convention in Toronto, August 1996.

"A Race, Ethnicity, and Gender Analysis of the 1990-91 Recession," ASSA Meetings 1995.

"Choices and Chances: Is Coming Out at Work a Rational Choice?" The Sixth North American Lesbian, Gay, and Bisexual Studies Conference, University of Iowa, November 18, 1994.

"Civil Rights and Civilized Research: Constructing a Sexual Orientation Policy Based on the Evidence," Association for Public Policy Analysis and Management Research Conference, October 27, 1994

"Where the Jobs Went in the 1990-91 Downturn," National Conference on Race Relations and Civil Rights in the Post Reagan-Bush Era, The Roy Wilkins Center, Humphrey Institute, University of Minnesota, October 1994.

"Lesbian and Gay Campus Organizing for Domestic Partner Benefits," The American Political Science Association meeting, September 1994.

Panelist, "Developing Lesbian/Gay Studies in Economics," ASSA Meetings, 1994.

"The Rainbow at Work: Differences in the Economic Status of Women Workers in the United States," presented at the 5th International Interdisciplinary Congress on Women, 1993.

"The Economic Well-Being of Lesbians and Gay Men: Pride and Prejudice," December 1992, presented at 1993 ASSA Meetings.

"Affirmative Action in a Changing Legal and Economic Environment," revised, December 1992, presented at 1993 ASSA Meetings.

"The Effects of Structural Change on the Race and Gender Distribution of Employment," with Rhonda M. Williams, presented at Eastern Economic Association Meeting, 1992.

"Changes in Racial Inequality Among Women: Evidence from Unemployment Rates," presented at AEA Meetings, 1992.

"Labor Market Discrimination--Economic and Legal Issues for Gay Men and Lesbians," presented at AEA Meetings, 1992.

"Rising Black Unemployment: Changes in Job Stability or in Employability?" presented at National Economic Assoc., 1992.

"Rising Black Unemployment and the Role of Affirmative Action Policy," presented at APPAM Research Conference, October 1990.

INVITED KEYNOTES AND OTHER PRESENTATIONS (Selected):

Invited Keynote Speaker, "Workshop on Comparative Experiences in Protection of LGBT Rights in the Family and Marriage Relations," hosted by Ministry of Justice, Viet Nam, and UNDP, December 20-21, 2012, Hanoi.

"When Gay People Get Married," London School of Economics and Politics, Keynote for LSE Pride Week, November 2012.

Keynote speaker at Roundtable, "Taking Poverty Out of the Closet," Horizons Foundation, San Francisco, March 19, 2012.

"The Impact of Allowing Same-sex Couples to Marry," Australian National University College of Law. March 1, 2012; Gough Whitlam Institute, Sydney Australia, March 2, 2012.

Australian Parliament, Canberra, "The Impact of Allowing Same-Sex Couples to Marry," February 27, 2012.

Keynote lunch speaker, E-Marriage Symposium, Michigan State University Law School, "My Marriage, No Marriage," November 11, 2011.

"When Gay People Get Married," University of North Carolina Chapel Hill, October 13, 2011.

IAFFE, 2011, Hangzhou China: Roundtable on Sexuality and the Economy, Roundtable on Enhancing IAFFE's Vision in the 21st Century. June, 2011.

Panelist, "Same-Sex Marriage: Past, Present and Future," M. V. Lee Badgett, David Boies, and Nancy Cott, UCLA History Department, February 24, 2011.

Janus Lecture, Debate on same-sex marriage, Brown University, February 17, 2011.

Panelist, "Queering Where We Work: Bridging LGBTQ Policy Advocacy, Front-Line Activism, and Research," University of Toronto, Rotman School of Management, November 5, 2010.

"The Economic Value of Marriage," Drake Constitutional Law Center's Annual Symposium, The Same-Sex Marriage Divide, Drake University, Iowa. April 10, 2010.

Keynote address, "Out and Equal in the Workplace: Sexual Orientation Discrimination, Univ of Pittsburgh School of Law. March 18, 2010.

"When Gay People Get Married": Portland State Univ Portland, OR. 4/23/2010; University of Chicago Alumni Weekend, Chicago, IL; University of Chicago, June 3, 2010; Kennesaw State University, Atlanta, GA, March 24, 2010; Andrew Young School of Public Affairs; Georgia State University, March 25, 2010; and many other bookstores and locations.

"Challenges for LGBT Workers" Department of Labor at invitation of Assistant Secretary for Policy, January 29, 2010.

Keynote Address on Sexual orientation and economics, University of Illinois-Chicago, September 30, 2009.

Multiple talks, University of Minnesota, Duluth, April 2009.

"On the Road to Equality: Health Care for LGBT Americans," Opening address, 2007 National LGBT Health Expo, Washington, DC, November 2, 2007.

"Does diversity make a difference? A view from the marketplace." *Keynote Address*, 7th annual international conference on diversity in organizations, communities, and nations, Amsterdam, The Netherlands, July 1, 2007.

"Not-So-Gay Divorce: A Reason for Marriage," Gay Divorce Conference, King's College London, May 20, 2006.

"Thinking for Change/Changing our Thinking: Effective Research in GLBT Policy Debates", Presidential Invited Address, Division 44, American Psychological Association Convention, August 2005.

"Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men," University of Toronto, March 16-17, 2005.

Panelist, "Aging in the Gay Community," American Association of Retired Persons, June 2000.

"Money and Our Discontents," Keynote speech, Smart Women/Smart Money conference by the Astraea Foundation. November 1999.

"Homo Economics: The Myth of Gay Affluence and Other Tall Tales," University of Connecticut, March 1999; American University, October 1999.

Same-Sex Couples and Public Policy, panel member, University of Maryland, College Park, October 1999.

"A Bridge to the Future or the Road to Nowhere? Respectability and Lesbian and Gay Think Tanks," Remarks prepared for the Politics of Respectability Conference, University of Chicago, April 1999

Panelist, Unifying Anti-Subordination Theories, DePaul University Law School, February 1999.

"Lesbians, Gays, and Bisexuals in a Gender Agenda," Roundtable on Feminism and Public Policy, 1998 ASSA Meetings, Chicago, IL.

"Economic Issues for Lesbians," Workshop on Lesbian Health Research Priorities, Institute of Medicine, Board on Neuroscience and Behavioral Health, Washington, DC, October 6, 1997.

"Lesbians, Gays, Bisexuals, and Transgenders: Who Gives, How Much, and Why," OutGiving Conference, Aspen, CO, September 1997; Horizons Foundation and United Way, San Francisco, CA, October 1997; NGLTF Creating Change conference, San Diego, November 1997; Cream City Foundation Milwaukee, WI; Chicago, IL; Boston Foundation, February 1998.

"Lesbian and Gay Money: Is There a Gender Gap?" Towson State University, March 1997.

Panelist, "Out in the Workplace," University of Pennsylvania, February 10, 1997.

"Workplace Policy Issues for Lesbian, Gay, and Bisexual People," Gender, Race, Economics, and Public Policy Conference of the New School for Social Research, April 5, 1996.

Panelist, "Compensating for Gender, Race, and Class Inequalities: Is Affirmative Action the Means to Social Justice," A Future of Equality: Feminist Rethinkings of the Affirmative Action and Welfare Debates, Yale University Women's Center, March 30, 1996.

"Equal Pay for Equal Work," University of Delaware Lavender Scholars Series, March 7, 1996.

"Lesbian and Gay Think Tanks," Center for Lesbian and Gay Studies, CUNY Graduate School, February 9, 1996.

Panelist, Affirmative Action in the 21st Century, Chicago United, February 15, 1996.

"The Economic Status of Lesbians and Gay Men: Discrimination, Data, and Debate," Bureau of Labor Statistics, U.S. Department of Labor, June 15, 1995; Institution for Social and Policy Studies, Yale University, September 1995; University of Massachusetts, Boston, May 1996.

Panelist, "Gay Money: Power of the Purse," National Lesbian & Gay Journalists Association, October 19, 1995.

Panelist, Domestic Partner Benefits and Other Gay Rights Policy Issues: Creating Change on Campus, American Association of University Professors, June 9, 1995.

Prepared testimony, Select Education and Civil Rights Subcommittee, Committee on Education and Labor, U. S. House of Representatives, Testimony on the 30th Anniversary of the Equal Pay Act, 1994. (Hearing cancelled at the last minute.)

"Economic Evidence of Sexual Orientation Discrimination," Gay, Lesbian, and Bisexual Studies Faculty Seminars, Univ. of Massachusetts, Amherst, Dept. of Economics and Program for Gay, Lesbian, and Bisexual Concerns, May 11, 1994.

"The Economics of Being Lesbian, Gay, or Bisexual: Pride, Prejudice and Politics," Brown Bag Series in Gay, Lesbian, and Bisexual Studies, University of Massachusetts, Amherst, May 11, 1994.

"Thinking Homo/Economically," conference presentation, Center for Lesbian and Gay Studies, CUNY Graduate School, May 7, 1994.

"Lesbian and Gay Campus Organizing for Domestic Partner Benefits," Annual Conference, The National Center for the Study of Collective Bargaining in Higher Education and the Professions, Baruch College, CUNY, April 19, 1994. Also presented at the American Political Science Association meeting, September 1994.

"The Changing Contours of Discrimination: Race, Gender, and Structural Economic Change," presented at University of Michigan, School of Social Work, Profs. Mary Corcoran and Sheldon Danziger, March, 15, 1994.

"Redefining Families: Research and Policy," American Political Science Association meetings, Washington, D.C., September 3, 1993.

"A Cost/Benefit Analysis of Coming Out," presented at OUT Magazine press conference, broadcast on CSPAN, April 21, 1993.

GRANTS:

National Science Foundation, "Building an Interdisciplinary Equal Employment Opportunity Research Network and Data Capacity," 7/1/13 to 6/30/16 (\$245,216), co-PI.
Five Colleges Inc (from Mellon Foundation): Bridging the Liberal Arts and Professional Training in Public Policy & Social Innovation (\$178,000)
Five Colleges Inc: Social Justice Public Policy Practitioners-in-Residence (\$95,000)
Ford Foundation, 2003-2006 (2 grants), Data on Sexual Orientation (total \$600,000)
1995 Wayne F. Placek Award, American Psychological Foundation, "The Impact of Attitudes on Lesbian and Gay Male Earnings and Occupations." (\$15,000)
The Aspen Institute, Nonprofit Sector Research Fund, "Lesbian, Gay, and Bisexual Giving and Volunteering," 1996. (\$40,000)
2002 Wayne F. Placek Award, American Psychological Foundation, "Health Insurance Inequality for Gay, Lesbian, and Bisexual People," with Michael A. Ash.

PANELS AND COMMITTEES:

Chair, Diversity Committee, International Association for Feminist Economics, 2011-present.
Association for Public Policy Analysis and Management (APPAM): Institutional representative, 2007-present and Vice Chair 2011-12; Program Committee for 2010 conference.
Nat'l Association of Schools of Public Administration and Affairs (NASPAA): Leslie Whittington Teaching Award Committee, 2010.
Advisory Committee for "Real Families, Real Facts: Research Symposiums on LGBT-headed Families," Family Pride, held May 2006.
Planning committee and facilitator for research meeting held at Out & Equal Workplace conference, September 2005.
Reviewer, Wayne F. Placek Award, American Psychological Foundation
Women's Funding Network, Lesbian Donor Research Project Advisory Committee, 1997-1998
Visiting Lecturer and co-designer, Traveling Feminist Economics Ph.D. Course, Univ. of Minnesota, 1997-1998

FELLOWSHIPS AND HONORS:

Samuel F. Conti Faculty Fellowship, University of Massachusetts Amherst, 2013-2014.
"When Gay People Get Married," Distinguished Book Award, American Psychological Association, Division 44, 2010; chosen for Diversity Book Club, Kennesaw State University, 2010.
Distinguished Faculty Lecture, University of Massachusetts-Amherst, November 9, 2009, and Chancellor's Medal (the highest honor bestowed on individuals for exemplary and extraordinary service to the campus)
Named one of twenty most influential lesbians in academia, *Curve Magazine*, 2008
Rockwood Leadership Fellow in Lesbian, Gay, Bisexual, and Transgender Community & Advocacy, 2008-09
2005 Dukeminier Award for Best Sexual Orientation Law Review Article
College Outstanding Teacher Award, Social and Behavioral Sciences, University of Massachusetts, 2000-2001
Out 100, *Out Magazine*, 2001.
One of Our Best and Brightest Activists, *The Advocate*, 2000.
Lilly Fellow, Center for Teaching, University of Massachusetts- Amherst, 1999-2000
Certificate of Appreciation, Stonewall Center, 1999.
Certificate of Recognition, University of Maryland at College Park Diversity Initiative, 1994-95
Graduate Opportunity Fellowship, 1985-86, UC Berkeley
A.B. with General Honors, University of Chicago
Maroon Key Society, University of Chicago
Abram L. Harris Prize, 1978-79, 1979-80, University of Chicago

AFFILIATIONS

Association for Public Policy Analysis & Management
American Economic Association
Editorial Board (and past Associate Editor), *Feminist Economics*
International Association for Feminist Economics (past board member)
Editorial board, *Sexuality Research and Social Policy; Sexuality & the Law (Social Science Research Network); Law and Social Inquiry*

REFeree:

Quarterly Journal of Economics, Industrial Relations, Journal of Human Resources, Feminist Economics, Journal of Policy Analysis & Mgmt., Amer. Sociological Review, Review of Social Economy, Review of Economics and Statistics, Columbia University Press, National Science Foundation, Qualitative Sociology, Social Problems, Social Forces, University of Wisconsin Press, Journal of Population Economics, Routledge Press, Princeton University Press, Industrial and Labor Relations Review, Demography, American Journal of Sociology, Contemporary Economic Policy, Journal of Marriage and the Family, Cambridge Journal of Economics, Social Forces, Health Affairs, and others

EXHIBIT B

References

23 Pa. C.S. §§ 1102, 1704, with Compiled Legislative History (Senate Bill No. 434, 1996 Legis. J. -- Senate 544, 2452-54; 1996 Legis. J. -- House 2016-35, 2186-87, 2193-94).

Alms, James, J. Sebastian Leguizamon, and Suzanna Leguizamon. "Revisiting the Income Tax Effects of Legalizing Same-Sex Marriages." *Journal of Policy Analysis and Management* (n.d.).

Ash, Michael, and M. V. Lee Badgett, "Separate and Unequal: The Effect of Unequal Access to Employment-Based Health Insurance on Gay, Lesbian, and Bisexual People," *Contemporary Economic Policy*, 24: 582-599, 2006.

Badgett, M.V. Lee, and Jody L. Herman. "Patterns of Relationship Recognition by Same-Sex Couples in the United States." Los Angeles: The Williams Institute, 2011, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-Herman-Marriage-Dissolution-Nov-2011.pdf>.

Badgett, M. V. Lee, "Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits," Center for American Progress and Williams Institute, December 2007.

Badgett, M. V. Lee, *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men*, University of Chicago Press, 2001.

Badgett, M. V. Lee, *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*, New York University Press, 2009.

Badgett, M. V. Lee, "Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits," Center for American Progress and Williams Institute, December 2007. 2008, pp. w399-w415.

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Bernard, Tara Siegel and Ron Lieber, *The High Price of Being a Gay Couple*, *New York Times*, Oct. 3, 2009, at A1. Retrieved from <http://www.nytimes.com/2009/10/03/your-money/03money.html> (last accessed Sept. 4, 2012).

Brief of American Companies as Amici in Support of Respondents, *Hollingsworth v. Perry*, No. 12-144 (Sup. Ct.), at 16, 4, 2.

Bricker, Jesse, Arthur B. Kenneckell, Kevin B. Moore, and John Sabelhaus, "Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances" *Federal Reserve Bulletin* 98, no. 2 (2012), available at <http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf>.

Buchmueller, Thomas and Christopher S. Carpenter, "Disparities in Health Insurance Coverage, Access, and Outcomes for Individuals in Same-Sex Versus Different-Sex Relationships, 2000–2007," *American Journal of Public Health*, Vol. 100, No. 3, March 2010, 489-495.

Buettgens, M., S. Dorn and C. Carroll, "Consider Savings as Well as Costs State Governments Would Spend at Least \$90 Billion Less With the ACA than Without It from 2014 to 2019," July 2011, Urban Institute, <http://www.urban.org/uploadedpdf/412361-consider-savings.pdf> (last accessed Nov. 13, 2013).

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