Policy Issues Affecting Lesbian, Gay, Bisexual, and Transgender Families

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Published by University of Michigan Press

Tobias, Sarah and Sean Cahill.
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Government recognition of same-sex partner relationships has come slowly in the United States, especially when compared with other industrialized democracies. At the federal level, there have been very few affirmative steps taken, such as the Mychal Judge Act of 2002, providing a federal death benefit to any beneficiary listed in the insurance policy of a police officer or firefighter killed in the line of duty. Such limited advances are overshadowed by the 1996 Defense of Marriage Act, whereby Congress and the president defined marriage as exclusively heterosexual and declared that states did not have to recognize same-sex marriages conducted in other states.¹

Since May 2004, Massachusetts has offered marriage to same-sex couples, as long as they reside in the commonwealth or swear that they intend to move to the commonwealth within the next three months. Vermont and Connecticut offer “civil unions,”² a policy that grants same-sex couples the same rights, privileges, and responsibilities as spouses under state law. A civil union is notably less comprehensive than marriage, because it offers no federal protections, and with few exceptions, it has not been recognized outside Vermont and Connecticut. California has a comprehensive domestic partnership law, securing many rights and benefits for cohabiting same-sex couples. Other states, such as Maine and New Jersey, have set up statewide domestic partner registries conferring a variety of benefits to same-sex couples. More than a dozen states and hundreds of municipalities also provide health benefits to same-sex partners of public sector employees and/or offer domestic partner registries to resident gay and lesbian couples.³ But four in five states have passed laws restricting marriage to heterosexual couples.
THE REST OF THE WORLD: A TREND TOWARD RECOGNIZING SAME-SEX UNIONS

Internationally, there is a distinct trend toward recognizing the committed relationships of same-sex couples. Governments in Latin America and Africa, as well as in Europe and Australia, have gone significantly further than the U.S. federal government and most states in granting benefits and responsibilities to same-sex couples. On March 31, 2001, Holland became the first country to end marriage discrimination against same-sex couples. Two years later, Belgium followed suit, opening up civil marriage to gay and lesbian couples. Spain became the third country to legalize same-sex marriage, in June 2005. Then, the following month, the Canadian parliament approved a bill to make same-sex marriage legal throughout the country—the culmination of an incremental process of granting marriage rights to same-sex couples in different provinces that began in 2003, after an Ontario appeals court ruled unanimously that Canada’s Charter of Rights and Freedoms mandated equal access to civil marriage for gay men and lesbians. Finally, in December 2005, South Africa’s highest court recognized the marriage of a lesbian couple and ruled that it is unconstitutional to deny same-sex partners marriage rights. The South African Constitutional Court ruled that parliament must extend marriage rights to same-sex couples within a year and that if parliament failed to fulfill this mandate, the laws would automatically change to recognize marriages between same-sex partners.

Several European countries offer “registered partnerships” that, with few exceptions, provide legal standing identical to marriage. The first such scheme went into effect in Denmark in 1989, and the Danish Registered Partnership Act has subsequently become a model for other countries seeking to extend greater protection to their gay and lesbian citizens. During the 1990s, Norway, Sweden, Iceland, and France were among the European countries to adopt laws recognizing same-sex relationships. Germany, Finland, Austria, and Luxembourg were among the European countries to follow suit in the early 2000s. At the end of 2005, the British government began to offer civil partnerships, a registration scheme extending a broad range of rights and protections to same-sex couples—and a status largely equivalent to marriage in all but name.

Outside Europe, Brazil allows same-sex couples to inherit each other’s pension and Social Security benefits; Taiwan is considering legalizing same-
sex marriage; and Tasmania, one of Australia’s most conservative states, has created a broad domestic partnership status. Worldwide, at least fourteen countries, including South Africa, Israel, and the United Kingdom, recognize same-sex couples for the purposes of immigration. As this pattern of reform continues internationally—and especially in light of the increased economic and political globalization—the United States will soon be forced to decide what consideration it will give to the laws of sovereign nations who have extended the right to marry to their lesbian and gay citizens. The question will not be limited to tourists whose visits are easily quantifiable but will extend to same-sex couples who are employed in the service of their countries or by multinational corporations and whose jobs will force them to relocate here for long periods.

**THE BENEFITS OF PARTNER RECOGNITION**

Marriage is an institution that has evolved over human history and has come to provide a comprehensive package of protections for committed couples. The inability to access the institution of civil marriage prevents same-sex couples and children of gay and lesbian parents from enjoying many rights and forms of economic and emotional security that married heterosexual families take for granted. Fairness is a core value in the United States. With the increased recognition of the unjust exclusion of a class of people—LGBT people in same-sex relationships—from these protections, local and state governments have begun to take steps toward rectifying this situation. They have offered domestic partnership protections and civil unions as alternative means of recognizing same-sex relationships.

There are distinct advantages to providing formal support to the family relationships of gay and lesbian couples (and the same-sex relationships of bisexual and transgender people) who are in committed same-sex relationships:

- legal recognition enhances their ability to care for one another, particularly in the event of a health emergency or other crisis;
- formal recognition of same-sex partners and parent-child relationships enhances emotional and physical health as well as economic security of all family members;
- children of LGBT parents benefit from increased social acceptance and familial support.
Marriage has advantages as a comprehensive, default system for the couples who participate in it. However, even if marriage discrimination against same-sex couples ends, there will be individuals, couples, and families who will not want to or be able to participate in the institution of marriage. Whether because their family is not based on a committed couple unit, because they are philosophically opposed to marriage as an institution, or because they desire to have more flexibility in defining their relationships, there are individuals who need protections for their families regardless of their marital status. Even as ending marriage discrimination is an important step toward creating legal equality for families headed by same-sex couples, it is important that we acknowledge and support family diversity, including the more complex ways many LGBT individuals structure their lives, care for their children, and maintain extended family networks.

Domestic partnership or reciprocal beneficiary laws offer important alternative systems that should be pursued. In addition, policymakers should create various systems for individuals to affirmatively define their family relationships. These already exist to some extent: individuals may name guardians for their children in the event of their passing, can designate health care and legal decision makers in the event of their incapacitation, or can use a will to leave their possessions to anyone. However, these protections need to be expanded so that people can choose to name other significant individuals as their beneficiaries in different contexts. There also needs to be increased education efforts so that people who can benefit from the existing protections know how to access them.

CIVIL MARRIAGE

... civil marriage is, and since pre-colonial days has been[,] precisely what its name implies: a wholly secular institution.

Civil marriage is a unique private and public demonstration of love and commitment that provides access to an enormous range of familial benefits and protections. In 1996, the U.S. General Accounting Office listed 1,049 ways in which marital relationships are given special treatment by the federal government. In January 2004, a review by the GAO updated these findings, identifying 1,138 federal benefits associated with marriage. There are also hundreds of protections, recognitions, and obligations automatically conferred under state law.
As of mid-2006, when this book went to press, same-sex couples can marry in only one state—Massachusetts. However, same-sex couples in other states, including California, New York, New Jersey, Connecticut, Florida, Washington, and Oregon, have sued to acquire the right to marry. These cases will be decided over the coming years. In 2005, the California legislature passed legislation that would legalize same-sex marriage there; Governor Arnold Schwarzenegger vetoed the bill.8

Because most same-sex couples are denied access to civil marriage, they are also deprived of the benefits associated with this institution. The following list includes some of the protections and responsibilities afforded through marriage.

**Health-related rights and benefits**
- Access to employer-provided health care, prescription drug coverage, and retirement benefits for family members
- Access to a partner’s coverage under Social Security and Medicare
- Ability to take sick or bereavement leave to care for a partner or a nonbiological or adopted child
- Ability to visit or make medical decisions for an ill or incapacitated partner

**Increased financial and emotional security**
- Exemption from taxation of gifts, inheritance rights, and shared health benefits
- Right to sue for wrongful death of partner
- Ability of a surviving spouse to shelter an individual retirement account and 401(k) from early taxation when the other spouse dies
- Access to pensions, workers’ compensation, or Social Security death benefits and spousal benefits
- Access to the courts in case of divorce
- Ability to sponsor one’s partner for immigration
- Protection of one’s home under the Medicaid spend-down provision if one partner has to go to a nursing home
- Cannot be forced to testify against spouse in a court of law

**Protections for children**
- Streamlined stepparent adoption and couple adoption processes, creating a legal tie to both parents
- Access to health benefits, Social Security death benefits, and inheritance from both parents
• Right to maintain a relationship with nonbiological or adoptive parent in the event of the other parent’s death
• Right to financial support and a continued relationship with both parents should they separate

In an attempt to achieve some measure of recognition and protection for their relationships, many same-sex couples have been forced to spend thousands of dollars drawing up legal contracts to secure their families—a financial burden that married heterosexual couples do not have to confront. Many legal protections, including the right to sue for the wrongful death of one’s partner, are conferred by law and cannot be secured by drafting legal documents or by other private arrangements.

This unequal treatment particularly burdens the most vulnerable members of the LGBT community. Low-income LGBT families are often unable to afford the hefty price tag that comes with contractual arrangements and have few legal options to secure their most cherished relationships. Children are especially vulnerable, often having only limited access to health care and economic protections. They are at risk of being severed from nonbiological, nonadoptive parents if their parent-child relationship is ever challenged.

Heterosexual relatives of LGBT family members also suffer as a consequence of discriminatory marriage laws. For instance, the parents of a lesbian are denied their legal status as grandparents when the state refuses to recognize their daughter’s relationship to her partner and nonbiological child. In contrast, a married man is automatically considered to be the legal parent of any child born to his wife during the course of their marriage, even if he is not the biological parent.

THE STRUGGLE FOR SAME-SEX MARRIAGE RIGHTS: AN OVERVIEW

In 1993, the Hawaii Supreme Court set off a firestorm of national debate when it ruled that it was discriminatory to deny three lesbian and gay couples the right to obtain a marriage license. The court’s ruling stipulated that the state could only deny marriage licenses to same-sex couples for a compelling reason. Three years later, a trial court ruled that Hawaii was unable to find such a reason. Judge Kevin Chang, who wrote the trial court’s decision, ruled that Hawaii had “failed to establish or prove that the public
interest in the well-being of children and families, or the optimal development of children[,] will be adversely affected by same-sex marriages.” The court concluded that gay and lesbian couples must be allowed to marry under civil law. In 1998, a trial court in Alaska also ruled that civil marriage was a fundamental right that could not be denied to same-sex couples. Residents of Hawaii and Alaska reacted to these rulings by passing constitutional amendments defining marriage as a union between a man and a woman. The Hawaii legislature then created a “reciprocal beneficiary” law for same-sex and other non-married couples—defining a legal relationship associated with many fewer rights and privileges than marriage.

Fearing that legalization of lesbian and gay marriage in Hawaii would require other states to extend formal recognition to same-sex couples, conservatives in Congress responded to the Hawaii decision by introducing the so-called Defense of Marriage Act. DOMA defined marriage as a union between a man and a woman. The bill thereby ensured that federal benefits would be denied to same-sex couples if, at some point in the future, they won the right to marry in any particular state. DOMA also enabled states to ignore valid marriages entered into by same-sex couples in other states. The bill overwhelmingly passed both houses of Congress in 1996. Following DOMA’s passage, many state legislatures passed laws to prevent same-sex couples from receiving formal recognition. In the late 1990s, dozens of states passed laws similar to the federal DOMA.

DOMA effectively circumvented the traditional role of state governments in determining who could marry, the process by which couples could marry, and the rules for divorce. Until 1996, the federal government always accepted state definitions of marriage and used them to set policy for spouses and families. Although marriage laws have traditionally varied from state to state, couples married in one state have never been required to remarry in another to have their relationship recognized and acquire the benefits associated with marriage. The “portability” of marriage has rendered it unique as a societal institution.

It is no accident that DOMA and the Personal Responsibility and Work Opportunity Reconciliation Act, or the welfare reform act, were passed and signed into law within days of each other in 1996. Both same-sex relationships and welfare “dependency” were decried as a threat to the American family and American society. Politicians and pundits argued that unmarried straight people and same-sex couples create families that threaten the future of American—and even Western—civilization. During the national
debate on welfare that started under the Reagan administration and continues into the present, welfare recipients have been portrayed as lazy, self-indulgent individuals whose incompetence as parents threatens America’s social, cultural, and economic fabric and the “American family.” A 1986 report by the Reagan administration claimed, “[T]he easy availability of welfare in all of its forms has become a powerful force for the destruction of family life through the perpetuation of a welfare culture.”13 In 1994, Robert Rector of the Heritage Foundation reported that “behavioral” poverty continued to grow “at an alarming pace.” He defined behavioral poverty, as opposed to material poverty, as “a cluster of severe social pathologies including: an eroded work ethic and dependency, the lack of educational aspirations and achievement, an inability or unwillingness to control one’s children, as well as increased single parenthood, illegitimacy, criminal activity, and drug and alcohol use.”14 In 1995, Mississippi governor Kirk Fordice averred, “[T]he only job training that welfare recipients need is a good alarm clock.”15

In order to address this alleged dysfunctional and destructive “welfare culture,” the welfare reform act prioritized—in addition to work—marriage, the reduction of out-of-wedlock births, the reinsertion of fathers into families led by single mothers, and the promotion of mother-father families as essential for the successful rearing of children. As Anna Marie Smith notes, the welfare reform act “places most of the blame for poverty—and indeed, for the entire reproduction of poverty—on what it regards as sexually irresponsible women.” Smith concludes, “Wherever heterosexual women selfishly choose to engage in extra-marital sex or to leave their male partners (lesbians have been entirely erased from this imaginary scenario), they are engaging in behaviors that will ultimately impose unacceptable costs on the rest of society.”16 The DOMA debates were rife with similar themes, painting gays and lesbians who want to marry as sexually irresponsible, selfish, and a direct threat to civilization.

Since the federal DOMA’s passage, legal scholars have continued to debate its constitutionality. Critics maintain that it intrudes on state power, thereby violating the Tenth Amendment, which guarantees all unenumerated powers to the states. They also contend that the federal DOMA violates the “equal protection” clause of the Fourteenth Amendment, by singling out a disfavored minority group—gay men and lesbians—for the sole purpose of excluding them from an important civil right. Finally, critics argue that the federal DOMA potentially violates the “full faith and credit” clause of the
Constitution, which requires states to recognize contracts, including marriages, made in other states.17

Experts argue that DOMA would be unable to withstand the scrutiny of the U.S. Supreme Court. But challenging the federal law’s constitutionality has required at least one state to permit same-sex marriages and another state to refuse to recognize them. This has only been an option since gay and lesbian couples began to legally marry in Massachusetts in 2004.

SAME-SEX MARRIAGE IN MASSACHUSETTS

In 2001, Julie and Hillary Goodridge and six other same-sex Massachusetts couples attempted to acquire marriage licenses from their local town and city halls but were denied them. The couples then sued the state’s Department of Public Health, which administers the marriage laws in Massachusetts. They argued that the state violated their constitutional rights by denying them marriage licenses.

On November 18, 2003, the Massachusetts Supreme Judicial Court ruled, by a vote of four to three, that same-sex couples have a constitutional right, under the due process and equal protection provisions of the Massachusetts Constitution, to marry the person of their choice. “The marriage ban works a deep and scarring hardship on a very real segment of the community for no rational reason,” wrote Chief Justice Margaret Marshall in the court’s opinion. She continued, “Limiting the protections, benefits, and obligations of civil marriage to opposite-sex couples violates the basic premises of individual liberty and equality under law protected by the Massachusetts Constitution.”

The court rejected claims, made by some opposed to same-sex marriage, that allowing same-sex couples to marry would undermine the institution of marriage. The court concluded: “Extending civil marriage to same-sex couples reinforces the importance of marriage to individuals and communities. That same-sex couples are willing to embrace marriage’s solemn obligations of exclusivity, mutual support, and commitment to one another is a testament to the enduring place of marriage in our laws and in the human spirit.” In its decision, the court distinguished between civil and religious marriage. It argued that children as well as their parents suffered from the inability to marry; in this context, it noted the social status afforded children of married couples as compared with children of unmarried parents.
The court nevertheless stayed its judgment for 180 days “to permit the Legislature to take such action as it may deem appropriate in light of this opinion.” In February 2004, the court responded to a question posed by the Massachusetts State Senate, asking whether providing Vermont-style civil unions would be an adequate means of conforming the state’s laws to the court’s opinion. The court’s ruling made it unequivocally clear that civil unions would not suffice. They would instead create, in the judges’ opinion, an “unconstitutional, inferior, and discriminatory status for same-sex couples.” The judges argued that enabling same-sex couples to enter civil unions rather than marriages “would have the effect of maintaining and fostering a stigma of exclusion that the Constitution prohibits” and “would deny to same-sex ‘spouses’ only a status that is specially recognized in society and has significant social and other advantages.” “The history of our nation,” wrote the judges, “has demonstrated that separate is seldom, if ever, equal.”

The Massachusetts legislature responded to the court’s ruling by summoning a constitutional convention to debate an amendment that would define marriage as the union between one man and one woman. At the end of March 2004, the legislature approved an amendment that would prevent same-sex marriages in the state and create civil unions for gay and lesbian couples instead. But in September 2005, the Massachusetts legislature reversed its position, voting 157-39 against the amendment. Anti-gay activists are now trying to garner enough signatures to place an antigay marriage amendment on the ballot through citizen initiative in 2008.

Meanwhile, Massachusetts began issuing marriage licenses to gay and lesbian couples on May 17, 2004. Within the first half year or so, some five thousand couples married, the majority of them lesbian couples. Because of the existence of DOMA, however, Massachusetts same-sex couples who marry are currently denied access to all 1,138 federal marriage benefits.

OTHER MILESTONES IN THE STRUGGLE FOR SAME-SEX MARRIAGE RIGHTS

In February 2004, San Francisco mayor Gavin Newsom asserted that the state’s constitution prohibits discrimination against same-sex couples and that the San Francisco County Clerk’s Office should begin issuing them marriage licenses. Barring gay men and lesbians from marriage “denies them more than a marriage license,” said the mayor, who explained, “it pre-
cludes millions of couples from obtaining health benefits, hospital visitation rights and pension privileges.” More than four thousand marriage licenses were issued before the California Supreme Court told officials to stop issuing the licenses in mid-March. Several months later, the California Supreme Court ruled that the marriages were “void and of no legal effect.”

A lawsuit in San Francisco’s Superior Court is currently challenging the constitutionality of California’s marriage law. California voters approved a ballot measure in 2000 stipulating that only marriages between a man and a woman can be recognized in the state. The California Supreme Court said that if this law is found unconstitutional, same-sex couples “would be free to obtain valid marriage licenses and enter into valid marriages.” Lawsuits on behalf of same-sex couples wanting to marry have been filed in states around the country, including New Jersey, New York, California, Connecticut, Oregon, and Washington State.

Inspired by the same-sex marriages in California, gay and lesbian couples in other states requested marriage licenses in their own jurisdictions during February and March 2004. Marriage licenses were issued to same-sex couples—only to be invalidated—in Sandoval County, New Mexico, and Asbury Park, New Jersey. Gay and lesbian couples in Ithaca and Nyack, New York, requested and were denied marriage licenses and have subsequently brought lawsuits against the state. In New Paltz, New York, Mayor Jason West solemnized the marriages of twenty-five same-sex couples who did not have a marriage license. On March 4, 2004, New York state attorney general Eliot Spitzer ruled that state law does not currently allow same-sex marriages to be recorded in the state. But he also noted that state law required legally valid same-sex marriages conducted in other states to be recognized in New York.

Officials began issuing marriage licenses to same sex couples in Multnomah County, Oregon, on March 3, 2004, and continued through April 20, 2004, when a judge ordered them to stop. The same judge said that the state’s laws preventing same-sex marriage were unconstitutional and that Oregon must recognize the marriages of gay and lesbian couples that have already been performed there. A lawsuit about the legality of same-sex marriage in Oregon is currently fast-tracked for the state supreme court. In the November 2004 election, however, Oregon voters passed a constitutional amendment prohibiting same-sex marriage. The legal status of same-sex marriage in Oregon is presently unclear.

## Benefits of marriage for same-sex couples
- Ends discrimination against same-sex couples, giving them access to the same rights, responsibilities, and privileges as opposite-sex couples
- Provides numerous economic and social protections to couples and children, providing a more secure environment for raising children and increasing family members’ ability to care for each other effectively

## Drawbacks of marriage for same-sex couples
- Does not create protections for families that are not centered around an amorous couple, such as adult siblings raising children or other extended family networks
- Does not increase protections for couples who, for personal, religious, or philosophical reasons, may find the institution of marriage objectionable and may choose not to participate
- May require couples who separate to pay thousands of dollars in legal fees for divorce
The backlash to the Hawaii decision has been felt beyond the federal level. Fearing that they could be required to extend formal recognition to same-sex couples, many states have passed laws to prevent this possibility by explicitly defining marriage as limited to heterosexuals. By the end of 1996, sixteen states had laws prohibiting same-sex marriage. By the end of 2005—just nine years later—thirty-nine states had such laws; fifteen of these states went beyond banning marriage and also banned more limited forms of partner recognition.

State anti-gay marriage laws have significant implications for same-sex couples. In 2002, a Pennsylvania court used that state’s Defense of Marriage Act to prevent a second-parent adoption from taking place. A higher court ultimately overturned this decision. Broader anti-gay family laws and amendments in effect in fifteen states threaten or explicitly prohibit any kind of recognition of same-sex relationships, including civil unions. These laws potentially endanger employer-provided domestic partner benefits, joint and second-parent adoptions, the recognition of same-sex couples’ legal contracts, health care decision-making proxies, and any policy or document that recognizes the existence of a same-sex partnership. In some cases, they also affect unmarried, opposite-sex couples.

Nebraska passed the first broad anti-gay family measure in 2000—but the measure was struck down in federal court in May 2005 for being too restrictive. Virginia and Ohio passed laws denying any type of recognition to same-sex relationships in 2004. Voters in nine states—Louisiana, Arkansas, Georgia, Kentucky, Michigan, North Dakota, Ohio, Oklahoma, and Utah—passed sweeping constitutional amendments in November 2004, which prohibit same-sex marriage and threaten or ban more limited protections for unmarried couples. In 2005, voters in Kansas and Kentucky followed suit by passing restrictive anti-gay family amendments. These dangerous laws make same-sex partners and their nonbiological children legal strangers. Such legislation could cause a child to be torn away from a nonbiological parent because a second-parent adoption is not recognized or could cause an ill partner to be denied health care because domestic partner benefits are eliminated. They are an attempt to negate family bonds...
and tear families apart, potentially causing great harm to children and partners during times of crisis.

**THE FEDERAL MARRIAGE AMENDMENT**

As part of a growing backlash against same-sex marriage, a group of federal legislators has begun a campaign to amend the U.S. Constitution to define marriage strictly as a union between a man and a woman. With this goal in mind, Representative Marilyn Musgrave (R-CO) introduced House Joint Resolution 56, otherwise known as the Federal Marriage Amendment, on May 21, 2003. In its original form, the resolution stipulated:

> Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the Constitution of any State, nor State or Federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.

In March 2004, the second sentence of the resolution was revised slightly, and the words “nor State or Federal law” were removed. However, the effect of the amendment, if enacted, would be largely similar. By preventing the recognition of “marital status or the legal incidents thereof,” hundreds of thousands of gay and lesbian couples, along with unmarried heterosexual couples, would lose vital protections—ranging from domestic partnership provisions to the ability to adopt and foster parent.

Before the amendment could be added to the Constitution, two-thirds of the House and Senate would have to approve it, then three-quarters of the states would need to ratify it. In February 2005, the resolution had 131 bipartisan cosponsors. President Bush said that he would support the measure in early 2004. An anti-gay marriage constitutional amendment was expected to be considered by Congress in June 2006, as this book went to press.

**TRANSGENDER PEOPLE IN MARRIAGE**

There are several different ways that transgender people enter into marriage. Sometimes, after a heterosexual couple marries, one of the practice for states (which are bound by secular laws) to recognize marriages that some religious traditions disallow, such as second marriages after divorce. The Roman Catholic Church does not recognize divorce, yet divorce is legal in all fifty states. However, the ability of couples to divorce under secular law does not affect the right of the Catholic Church to not allow divorces by members of its congregation under church law. This distinction is critical. Just as the Catholic Church should not be allowed to dictate divorce policy to other Americans, especially to Jews and Protestants who are able to divorce within their congregations, so conservative religious groups should not be able to dictate that only opposite-sex couples can marry under secular, civil marriage laws.

Q. What about civil unions or domestic partnership benefits—don’t these provide protections for gays and lesbians?

A. Civil unions and domestic partnership are not a substitute for full and equal civil marriage. Only two states, Vermont and Connecticut, allow same-sex couples to enter into civil unions. Although civil unions provide many of the same rights, benefits, and responsibilities of marriage, gay and lesbian couples in a civil union are still denied access to all of the rights and responsibilities provided to married couples by federal law. Also, it remains unclear whether the benefits and obligations associated with civil unions will be recognized in other states. If a heterosexual married couple moves from Vermont to Texas, they retain all the benefits and supports of marriage. But a lesbian couple’s civil union is unlikely to be recognized in the same situation. Civil unions give gay and lesbian couples important rights and protections, but not full equality.

Domestic partner benefits are not
spouses in the relationship subsequently “comes out” as transgender and “transitions” to living as a person of the opposite sex. Alternatively, a transgender person transitions prior to entering into a marriage with a person of a different sex. Finally, in some jurisdictions, a transgender person can legally marry a person of the same sex: this occurs when the jurisdictions themselves refuse to recognize a transgender person as a legal member of his or her reassigned sex.

Some state courts have upheld the validity of marriages involving transgender people. Both California and New Jersey have case law indicating that a transgender person’s sex after transitioning will be recognized for the purpose of marriage. But in most states, all of the paths to transgender marriage are susceptible to legal challenge. Transgender people in marriages must therefore live with the fear that in times of crisis, their relationship will not be recognized—an uncertainty that other married couples do not confront. Many high-profile cases have revealed the vulnerability of transgender people in marriage.

Recently, Jiffy Javenella, the legal spouse of Donita Ganzon, was denied immigration benefits because Ganzon is a postoperative transsexual. Ganzon, who was born in the Philippines, underwent sex-reassignment surgery over twenty-five years ago, transitioning from a man to a woman. The state of California recognized Ganzon’s transition, granting her a new birth certificate that indicates her reassigned sex. Six years after transitioning, Ganzon became a U.S. citizen. U.S. citizens have the right to sponsor their foreign-born spouses for permanent residence. After marrying Javenella, a Filipino who had entered the country legally in 2001, Ganzon applied to the Department of Citizenship and Immigration Services (CIS) to begin this process. But in an immigration interview, Ganzon revealed that she was a postoperative transsexual. Within a month, the CIS denied Javenella permanent residence and revoked his work permit. He is now subject to deportation.

According to the Department of Homeland Security “no federal statute or regulation addresses specifically the question whether someone born a man or a woman can surgically change his or her sex.” However, in a letter to Javenella, the agency cites a CIS memorandum from April 2004 noting that it will not recognize “change of sex in order for a marriage between two persons born of the same sex to be considered bona fide.” The memo cites the 1996 Defense of Marriage...
Act to justify its conclusions. Ganzon and Javenella have filed a suit against the CIS, accusing the agency of discrimination.24

To minimize the problems that can potentially arise when transgender marriages are found invalid, couples are advised to draw up legal agreements like those drafted by lesbian and gay couples, assigning certain rights and privileges to the other partner. Each partner should prepare a will, assign medical and financial powers of attorney to the other, and draft a personal relationship agreement outlining their mutual rights, responsibilities, and expectations, as well as any other issues important to the couple.25 To avoid claims of fraud, the agreement should include a statement that the nontransgender partner is aware of the transgender partner’s status as transgender. Although some states create forms, such as medical power-of-attorney forms, that can be used without charge, the cost of drawing up a legal agreement with the assistance of an attorney can be prohibitive for many low-income people.

CIVIL UNIONS

Civil unions are a limited, alternative way for gay- and lesbian-headed families to formalize their bonds and gain access to legal protections. Vermont and Connecticut are currently the only states to offer civil unions to same-sex couples. An increasing number of election officials, however, have expressed support for civil unions.26 Even President Bush expressed support for civil unions one week before the November 2004 presidential election.27

Civil unions were created by the Vermont legislature in response to a ruling by the state’s supreme court in December 1999. Two lesbian couples and one gay couple had filed suit, and the Vermont Supreme Court ruled that the state could not legitimately deny the “common benefits” of marriage to same-sex partners.28 Instead of striking down the existing marriage law, however, the court commanded the legislature to determine whether those benefits should be administered by allowing same-sex partners to marry or by some parallel means. The legislature’s response was “civil unions,” a mechanism by which same-sex couples could receive all of the state-conferred benefits, privileges, and responsibilities of marriage.29

Any same-sex couple can enter a civil union so long as both individuals are eighteen or older,30 capable of consenting, and not already in a marriage or other civil union. The parties must not be related by
blood to the degree that would prevent them from marriage. Procedurally, the mechanism for forming a civil union in Vermont is similar to that of marriage. The couple obtains a license from any town clerk in the state and then presents the license to a judge, assistant judge, justice of the peace, or clergy member for certification. The form is returned to the town clerk and then filed with the Office of Vital Statistics.

There is no Vermont residency requirement to form a civil union. However, civil union dissolution requires residency. Civil union certification entitles the couple to all of the approximately three hundred rights and responsibilities conferred to married couples under Vermont law. These include

- health care decision making;
- inheritance rights;
- the right to divide property at the end of a relationship;
- rules related to child custody and visitation;
- rules related to “standing” as a parent, such as the right to second-parent adoption;
- state tax benefits;
- the right of a partner or child to make burial decisions;
- guardianship;
- the right to utilize state courts formally to dissolve a relationship;
- protection under domestic violence laws;
- the ability to bring a wrongful death claim on behalf of a partner.

Significantly, civil unions grant same-sex partners the same rights, privileges, and responsibilities as married spouses under state law only. They offer no federal recognition and do not entitle lesbian and gay couples to any of the federal rights and benefits acquired through marriage. Some of the benefits of marriage that a civil union cannot offer include federal tax benefits, Social Security survivor benefits, access to federal family leave to care for a partner, and the ability to sponsor a partner for immigration. In general, civil unions are not deemed portable (i.e., a Vermont couple’s civil union is not recognized in New Mexico). Also, unlike heterosexual married spouses, who can divorce in any state where they reside, the only way for parties to a civil union to divorce is to establish residency in Vermont and file for divorce there. Even if there were no substantive differences in the way the law treats marriages and civil unions, the fact that a civil union remains a separate status just for gay and lesbian people represents real and
powerful inequality for those who want to marry. Mary Bonauto, the attorney for the same-sex couples in *Goodridge v. Dept. of Public Health*, recently wrote:

“Civil unions,” however defined, are not an adequate remedy. By definition they are not marriage. Everyone knows that a married person has the right to be by his or her spouse’s side no matter what emergency may arise. Only a legally married couple has the unique legal status marriage confers and which allows marriage to be respected by state and federal governments, other countries and third parties like banks and employers.36

Vermont’s civil union law went into effect on July 1, 2000. Five years later, in December 2004, almost seven thousand couples from around the country had registered in a Vermont civil union.37 Connecticut created civil unions through its state legislature in April 2005; the law took effect on October 1, 2005. In the 2004 presidential election, exit polls showed that 60 percent of the public supported either same-sex marriage or civil unions for same-sex couples. Hunter College political scientist Kenneth Sherrill notes:

Today, the public clearly views civil unions to be a viable alternative to same-sex marriage. Some 35% of all voters in the 2004 elections supported civil unions, while another 25% supported marriage for gay couples. Thirty-four percent of Kerry voters and 36% of Bush voters supported civil unions, while 40% of Kerry voters supported same-sex marriage.38

In December 2004, *People* magazine asked President George W. Bush and Laura Bush about civil unions: “Is a couple joined by that kind of legal arrangement as much of a family as, say, you two are a family?” The president responded, “Of course.”

**Benefits of civil unions**
- Creates a legal status for same-sex couples akin to marriage at the state level, with a comprehensive, parallel package of rights, benefits, and obligations
- Increases protections for same-sex couples and decreases their unequal treatment in several important areas

**Drawbacks of Vermont’s civil union law**
- Creates a second-class status for same-sex couples, thereby perpetuating bias and infringing on their equality and dignity
TALKING POINTS ON CIVIL UNIONS

Q. Why should same-sex couples be allowed to enter into civil unions?
A. Same-sex couples and their children are denied opportunities for recognition and support that are automatically granted to the families of married heterosexuals. Civil unions are a way of protecting same-sex couples and their children.

Q. Why do the families of same-sex couples need protection? What type of protections do civil unions provide?
A. Civil unions protect families in many of the same ways marriage laws do, in the realms of health care, parenting, and securing close relationships in times of crisis, such as illness or death. When relationships are not recognized, families are vulnerable to being torn apart or to experiencing financial or emotional hardship. A child can be unjustly separated from a parent, a woman can be deemed a stranger to her incapacitated partner, a distant relative can claim inheritance rights over those of a life partner, and a child can be denied health care coverage because his legal parent is not employed. In Vermont, state laws pertaining to married couples apply equally to members of a civil union in all areas, including adoption, taxation, inheritance, and hospital visitation.

Q. Why are civil unions needed? Don’t comprehensive domestic partnership policies provide many of these same benefits?
A. Domestic partnership policies vary hugely. They often only provide work-related benefits, such as health insurance coverage. Only the state of California provides comprehensive domestic partnership benefits. Short of marriage, civil unions provide the most extensive protections for same-sex couples in the United States.

DOMESTIC PARTNERSHIPS

Domestic partnership refers to a range of policy and statutory methods for recognizing the nonmarital relationships of both same-sex and opposite-sex couples. The term domestic partner was coined to describe an identifiable group of loving and committed, cohabiting couples whose relationships were more akin to a marriage than to a relationship between roommates or friends. Domestic partnership benefits reflect the idea that unmarried couples and their children are families and deserve the same supports routinely provided to married couples and their children.

Domestic partnership originated in workplace settings in the early 1980s as lesbian and gay employees, along with unmarried heterosexual couples, sought to broaden workplace benefits policies and make them more inclusive. By the 1990s, hundreds of companies offered benefits to their employees’ same-sex partners. Domestic partnership also became a vehicle by which state and municipal governments could provide limited recognition to unmarried couples through registries. Most city laws and policies related to domestic partnership were intended primarily to allow unmarried city workers to obtain health insurance and other benefits for their partners. However, several cities branched out to allow residents or anyone else in a nonmarital relationship to register with the city. Registries work differently in different places; while most convey little more than a symbolic recognition of the relationship, such cities as New York go beyond the employment context to ensure that city law and policy acknowledge domestic partner relationships in many ways.

The domestic partnership benefits and plans that are offered to employees’ families vary from workplace to workplace. They can include...
• medical benefits, including dental and vision care;
• dependent life insurance;
• accidental death and dismemberment benefits;
• tuition assistance;
• long-term care;
• day care;
• flexible spending accounts;
• bereavement and sick leave;
• adoption assistance;
• relocation benefits;
• child resource and referral services;
• access to employer recreational facilities;
• participation in employee assistance programs;
• inclusion in employee discount policies.41

DOMESTIC PARTNERSHIP IN CALIFORNIA

The state of California provides the most extensive range of domestic partner benefits. California first established a statewide registry for domestic partners in 2000. Initially, this provided registered partners with hospital visitation rights and extended health insurance coverage for certain public sector employees.42 These rights were expanded in 2002 to include rights for partners to

• collect employment benefits, to the same extent as spouses, when they voluntarily quit a job to relocate with their domestic partner;
• use sick leave to care for a partner or partner’s child;
• file disability benefits on behalf of an incapacitated partner;
• have the cost of domestic partner health benefits excluded as taxable income for purposes of state taxation;
• make medical decisions for an incapacitated partner or act as a conservator (one who is appointed by a court to manage the estate/assets of a protected/incompetent person);
• sue for wrongful death or for infliction of emotional distress;
• adopt a partner’s child using the stepparent adoption process;
• continue health coverage for surviving domestic partners and children of retired state employees;
• inherit a share of a partner’s property as next of kin (or interstate heir)
if the partner dies without a will or other estate plan (as of July 1, 2003);\textsuperscript{43}
• take up to six weeks of paid leave from work to care for a new child or sick family member if one is participating in the state-paid family leave insurance plan (as of July 1, 2004).

In January, 2005, Assembly Bill 205, the California Domestic Partner Rights and Responsibilities Act of 2003, went into effect. The new law stipulates,

Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under [California state] law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.\textsuperscript{44}

Domestic partners in California are now financially responsible for each other’s living expenses and debts. They are subject to the state’s community property system and have access to the courts to enforce property divisions in the event of a breakup.

A child born to one parent in the context of a registered domestic partnership in California will automatically be considered the child of the second parent. Parents adopting during the relationship will still be able to use the stepparent adoption process. They can sue for alimony and child support if their relationship ends.

While same-sex couples who decide to terminate a Vermont civil union or a Massachusetts marriage must live in the state where the relationship was originally legally recognized, those ending a California domestic partnership may live out of state. When entering a California domestic partnership, both parties agree to be bound by the state’s laws should their relationship end. “A family is a family not because of gender but because of values, like commitment, trust and love,” said former California governor Gray Davis upon signing Assembly Bill 205 into law.

DOMESTIC PARTNERSHIP BENEFITS ELSEWHERE

In addition to California, Maine and New Jersey have also enacted state laws giving domestic partnerships varying degrees of protections. New
Jersey law now requires that a same-sex domestic partner be treated as a dependent for purposes of administering certain retirement and health benefits. The law does not specifically require private employers to offer health insurance coverage for domestic partners, but it does require insurance companies and HMOs to offer policies that cover domestic partners. Maine law enables partners of same-sex couples to have guardianship over each other if one becomes sick or injured, to act as next of kin when making funeral arrangements, and to have inheritance rights.

Domestic partner benefits are generally employment-related. In addition to California and New Jersey, nine states—Connecticut, Illinois, Iowa, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington State—provide domestic partner health benefits to partners of public employees. Several dozen municipalities also provide these benefits to public employees.

At least 130 cities, local governments, and quasi-government agencies offer domestic partner benefits, and the majority provide these benefits to both same- and opposite-sex couples. These include Berkeley, California; Denver, Colorado; Atlanta, Georgia; Iowa City, Iowa; Brookline, Massachusetts; Takoma Park, Maryland; Ann Arbor and Kalamazoo, Michigan; Minneapolis, Minnesota; Ithaca and New York City, New York; Pittsburgh, Pennsylvania; Seattle, Washington; and Madison, Wisconsin. Many other jurisdictions have considered instituting such laws.

In addition to state and local governments, thousands of private companies in all fifty states provide domestic partner benefits. These include General Motors, Ford, Citigroup Inc., Chevron Texaco, IBM, Verizon, AT&T, Boeing, Bank of America, J. P. Morgan Chase, Fannie Mae, Hewlett Packard, and Morgan Stanley. Many colleges and universities, nonprofits, and labor organizations also offer domestic partner benefits.

A small number of employers, including Bank of America and the local Catholic Charities of San Francisco, have chosen to extend benefits to any designated member of an employee's household, including a relative or friend. A broader definition of domestic partner creates more flexibility for the employee and takes into account a wider range of family relationships. It offers greater security to many more nontraditional families, enabling, for example, two single sisters who cohabit and raise their children together to provide health insurance and other benefits for each other and their children. Unfortunately, some plans limit their scope by requiring that beneficiaries who are not spouses or intimate domestic partners are dependents according to the Internal Revenue Service's definitions.
Typically, nonsalaried benefits constitute around 30 percent of a worker’s compensation and include such things as health and life insurance, tuition benefits, and retirement benefits. Domestic partner benefits may therefore be considered an issue of equal pay for equal work. Unfortunately, however, domestic partners are economically discriminated against, as their benefits are taxed as income whereas spousal benefits are not.

**EQUAL BENEFITS ORDINANCES**

An equal benefits ordinance (EBO) or a contractor law usually requires private companies doing business with a city government to provide domestic partners of employees with the same benefits as spouses of employees. San Francisco was the first city to implement such a law, in 1997. San Francisco supervisor Michael Yaki discussed the rationale behind the ordinance: “In terms of us giving out our public dollars, we don’t want to give them to people to discriminate. It’s as simple as that.” According to a 1999 report, the law was directly responsible for the decisions of more than two thousand employers to offer domestic partner benefits. The law also had the effect of increasing—more than tenfold—the number of insurance companies in California offering domestic partnership benefits. The law withstood two legal challenges, and other cities and counties have subsequently implemented similar laws. Other jurisdictions with EBOs include Seattle and Tumwater, Washington. The state of California has passed a groundbreaking state-level law enabling employees of businesses with state contracts to get benefits for their domestic partners on virtually the same terms as married couples.

**RECIPROCAL BENEFICIARIES**

The term *reciprocal beneficiaries* has been adopted by two states, Hawaii and Vermont, as a means of creating a legal status for people who are involved in close relationships but cannot legally marry. Hawaii’s reciprocal beneficiary law, in its original form, provided very extensive coverage: reciprocal beneficiary status was extended to certain blood relations, such as a widowed mother and her unmarried son, as well as to same-sex partners. By contrast, Vermont’s reciprocal beneficiary law provides relatively little coverage. Also, the Vermont law does not extend to same-sex couples, as they have the option of entering into civil unions.
Hawaii

The concept of reciprocal beneficiary status grew out of the Hawaii legislature’s attempt to derail Baehr v. Lewin, the court case that seemed to be on a clear path toward ending marriage discrimination against same-sex couples. When the legislature put a constitutional amendment before the voters “to reserve marriage to opposite-sex couples,” they simultaneously passed a law creating the concept of reciprocal beneficiaries. This law established a registry for those couples that qualified for the new status, and it extended as many as sixty benefits to those who registered.

Reciprocal beneficiaries are defined as individuals in a close relationship who are legally prohibited from marrying one another. They must be at least eighteen years old, unmarried, and not in another reciprocal beneficiary relationship. They need not live together. In the four-year period between July 1997, when the law went into effect, and August 2001, the health department recorded 592 registrations for reciprocal beneficiary status, with twenty-seven terminations.

Initially, health and life insurance and retirement benefits were available to registered beneficiaries of state employees. But the Hawaii legislature refused to renew portions of the law that expired in June 1999. Currently, the reciprocal beneficiaries law provides much more limited rights, including workers’ compensation, inheritance without a will, protection under domestic violence laws, and standing to sue for wrongful death of a partner. Reciprocal beneficiaries have not been granted tax privileges under state law, rights to property distribution and support upon termination of the relationship, or parenting privileges, such as joint adoption.

Vermont

Tucked in at the very end of Vermont’s groundbreaking civil union law is an adaptation of the equally groundbreaking Hawaii reciprocal beneficiary law. Though much narrower in scope than the Hawaii law, the Vermont provision recognizes that certain family privileges and benefits should be available to individuals who are committed to supporting one another but are unable to marry. The Vermont law also represents an attempt to respond to the volatility associated with the state’s supreme court decision that same-sex couples have an equal right to the benefits of marriage under the state constitution.
While Vermont’s reciprocal beneficiaries policy does not apply to couples who are able to enter into either civil unions or marriages, it does provide a possible framework for other jurisdictions contemplating extending some form of recognition to same-sex couples. To register as reciprocal beneficiaries in Vermont, two people must be related by blood or adoption to the degree that bars them from marriage or civil union. Entering into a marriage or civil union automatically terminates the reciprocal beneficiaries relationship. For instance, a person cannot be simultaneously in a civil union with their partner and in a reciprocal beneficiary relationship with their sibling.

Under Vermont law, the rights of reciprocal beneficiaries are limited primarily to the health care context. Reciprocal beneficiaries can visit each other in the hospital and make medical decisions for each other. They can also dispose of a cobeneficiary’s remains and make anatomical gifts.

TREATMENT OF SAME-SEX UNIONS
IN THE EVENT OF A BREAKUP

Marriage and civil unions are structured to enable the courts to oversee the dissolution of relationships. The goal, in part, is to ensure the equitable division of property when a couple separates. With the exception of Vermont, California, and now Massachusetts, no state has adopted comprehensive legal provisions to govern the division of property between separating unmarried couples. Disputing unmarried partners have typically had to base their claims of financial and personal obligation upon actual, verbal, or de facto contractual arrangements. But since contract law is usually applied in the realm of business and property, its translation to the world of human relationships and emotions is imperfect. Historically, courts have been reluctant to enforce contractual agreements between unmarried people in a sexual or intimate relationship, although this situation has begun to change in recent years.

Many same-sex couples with the financial means to do so have hired lawyers to draft contractual agreements governing the terms of their financial relationship while they remain together and regulating the division of their property in the event of separation. When a same-sex couple has entered a written contract of this sort, even conservative courts have upheld them as long as the contract strictly relates to the couple’s finances and not to their personal relationship.58 Most couples, however, do not have formal,
written contracts governing their separation and property agreements. Since the California Supreme Court opened the door to recognizing verbal and de facto agreements between nonmarital opposite-sex partners in the case of *Marvin v. Marvin*, some courts have gradually started to enforce oral agreements between same-sex partners. If, however, a nonmarital partner cannot prove even an oral agreement but, rather, must rely solely on the existence of a cohabiting relationship and an implicit agreement to share finances, courts generally refuse to apply other legal theories to same-sex couples at the end of a relationship. Courts have been divided when confronted with parenting agreements written to reflect the intentions of a separating couple. Some courts have treated these agreements as irrelevant, while others have seen these agreements as evidence that the biological or adoptive parent wanted their partner to have a parentlike relationship to the child.

**IMMIGRATION POLICY AND BINATIONAL SAME-SEX RELATIONSHIPS**

Unlike binational heterosexual couples, binational same-sex couples face substantial hurdles to building a life together in the United States. Heterosexual partners involved in binational relationships can simply marry, achieve immigration status, and enjoy the benefits this status provides—including the legal right for the foreign partner to find employment in the United States. The current prohibition barring U.S. citizens from sponsoring their same-sex partners for immigration purposes places an enormous burden on couples in binational relationships, causing them to live in constant fear that the foreign partner will be deported. In some instances, this can mean deportation to a country where LGBT people are repressed by the government or live at great risk of persecution. Moreover, because the foreign partner in a same-sex relationship is often unable to secure employment in the United States, these couples often live under tremendous economic pressure. Without economic resources, even the few avenues available to some couples to stay together legally through work and other visas become inaccessible as they are unable to pay the necessary legal fees.

To remedy this situation, in 2000, Congressman Jerrold Nadler introduced the Permanent Partners Immigration Act. This bill would amend numerous sections of the Immigration and Nationality Act—

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**Advantages of relying on contractual agreements**

- Allows flexibility for individual couples to create their own distinct terms for governing their relationships

**Disadvantages of relying on contractual agreements**

- Does not address rights and protections that cannot be acquired through contract, including the right to sue for wrongful death in the event of a loved one’s death, the right to file taxes jointly, and the right of a stepparent to adopt
- Tends to favor the partner with most power and resources in the relationship
- Inevitably results in inconsistent rulings because the law is still unformed, causing many deserving partners great financial hardship
- Not feasible for many unmarried partners who lack the financial resources to seek legal representation to assist with the drafting or enforcement of contractual agreements
<table>
<thead>
<tr>
<th>Relationship</th>
<th>Portability</th>
<th>Federal law</th>
<th>Availability</th>
<th>Benefits provided</th>
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</thead>
<tbody>
<tr>
<td>Marriage</td>
<td>Portable—i.e., those married in one state are recognized as married in every other state.</td>
<td>Federal protections conferred by 1,138 federal laws and policies, such as Social Security, family medical leave, federal taxation, and immigration policy.</td>
<td>Available in all states, unless a couple is same-sex. Massachusetts allows resident same-sex couples to marry since May 17, 2004.</td>
<td>The broadest array of federal and state benefits, including Social Security benefits, inheritance, Medicaid spend-down protections, the right to take family leave under federal law, the right to file federal taxes jointly, the right to sponsor a partner for immigration, and many others.</td>
</tr>
<tr>
<td>Civil unions</td>
<td>Unclear to what extent are portable—i.e., those who have entered into a civil union in Vermont or Connecticut most likely lose some or all the benefits of their status when they enter another state. To date, civil unions have not been recognized by other states.</td>
<td>No federal rights, responsibilities or protections.</td>
<td>Available only in Vermont and Connecticut and only to same-sex couples.</td>
<td>Provides access to all state benefits in Vermont and Connecticut.</td>
</tr>
<tr>
<td>Domestic partnerships</td>
<td>Most commonly not portable</td>
<td>No federal protections.</td>
<td>Available in many states and cities; provisions vary widely. California, New Jersey, and Maine offer the most comprehensive protections.</td>
<td>Benefits can include health care, hospital visitation, and the right to meet with your nonbiological child’s teacher.</td>
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the federal law that governs immigration to the United States—to allow U.S. citizens in same-sex relationships to sponsor their partners for permanent residence. According to Nadler, “The bill is simply a matter of common sense and fairness,” as it is inappropriate for “the government to tear apart committed and loving couples.” Senator Patrick Leahy introduced companion legislation in the U.S. Senate on July 31, 2003.

FORCED TO MOVE TO CANADA TO STAY TOGETHER
A Profile of Charles Zhang and Wayne Griffin

Charles Zhang met Wayne Griffin over the Internet in 1998. Charles was very impressed that the New Hampshire native fluently communicated using “Ping Yin,” Chinese words written with English letters. Wayne had spent several years in China as a missionary and a teacher. They decided to meet up in New York City, where Charles, a native of the Chinese province Hainan, was living under an H1-B work visa. Charles was excited to find a friend who understood his culture and language, and when they met, he says, “It didn’t take me very long to realize this was the person with whom I wanted to spend my time and share my life.”

Wayne decided to leave his home and family in New Hampshire to move to New York. He found a job as a training manager on Wall Street, and in February 1999, the couple moved in together. “We were so overjoyed by our relationship that we spent weeks painting and decorating our new home,” says Wayne. “We thought life from then on would be ‘happily ever after.’”

The couple was determined to stay together and expected to be able to do so because Charles’s boss had sponsored him for a green card. Unfortunately, he also began adding more and more responsibilities to Charles’s already overwhelming workload. The situation was becoming unsustainable, as Charles was supposed to be managing two separate and unrelated departments: shipping and credit. Each day, he considered quitting but stayed on in the hopes the situation would work out. He then discovered from an attorney that the amount he was getting paid was just one-half to a third of what his job title required and so his green card application was unlikely to be approved.

The sole route Charles and Wayne had to staying in the United States together was quickly becoming infeasible. “I realized it was almost impossible to go on like that,” Charles says. When Charles initially came to the United States, he did not come to stay long term. “I used to be a college teacher in China and I had a good life, good income, and respect,” says Charles. “The only reason I decided to stay was I felt I was more free as a gay person. After I met Wayne I became more determined to stay in the States. I wanted to live with him.”

They were quickly feeling more and more hopeless. They wrote hundreds of letters to congresspeople and senators but got no response. In the summer of 1999, Wayne and Charles saw a flyer from the Lesbian and Gay Immigration Rights Task Force. The couple contacted the group about their predicament, and the group suggested they pursue moving to Canada. After looking into it, the couple decided that Charles, who had more education and so would be more likely to qualify under Canada’s point system, should apply first. The couple then contacted a lawyer who had previously worked for Canadian immigration. She recommended that Wayne also apply and that they send a letter explaining their relationship.
In April of 2000, Charles finally quit his job and returned to school, even though they had not yet heard about their applications. In August they received letters inviting them for interviews at the end of October. Charles and Wayne took great care in preparing for their interviews, practicing answers to various questions and dressing appropriately. Their lawyer said they should have no problems. Everyone was very optimistic. Unfortunately, the couple was interviewed by an infamously difficult immigration agent. She quickly told Charles that he did not have the appropriate job qualifications, even before he had described the work he had done. Wayne’s interview was even more brief. “That was the darkest day of our lives,” says Charles. “We became numb. We didn’t know what to do.” Fortunately, their lawyer—who was shocked by their treatment—recommended they write an account of their experience that she forwarded to the Consulate General. Their applications were approved two weeks later.

Wayne quit his job and the couple moved to Toronto in February of 2001. Though they are pleased to have legal status that allows them to stay together without fear of expiring visas and deportation, the transition has not been easy for them. Both of them have made significant sacrifices, not the least of which was moving away from Wayne’s family and starting from scratch in rebuilding their careers. After over a year and a half of frustration in the employment arena in Toronto, Charles and Wayne have decided to start a photography and video business together.

Discrimination has been a significant impediment for the couple. “I hate to say this,” says Charles, “but it is probably true that because I’m Asian, it’s been much harder for me to find a job—even survival jobs at hotels and coffee shops. Wayne and I would both walk in together and Wayne was the only one to ever get called back. At job fairs, people would talk to Wayne, giving him suggestions. I never got anything.” Charles only had one informational interview in his field. It was going very well until the interviewer asked Charles if his wife was working. “I was honest with him,” Charles says, telling the interviewer of his relationship with Wayne. “His face changed right then and that was the end of it.” Of their situation, Wayne says, “It feels very strange to have to leave a country that is supposed to be a leader in human rights . . . The last time I did my taxes, I felt a lot of anger. I was forced to pay for a government that would rather have me leave than help me to keep my family together. When I think about trying to work with my own country to obtain rights that I should have, I feel that it would be more useful to try and push a mountain into the sea with my bare hands.”