



NEW YORK
CITY BAR

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REPORT OF THE NEW YORK CITY BAR ASSOCIATION

WHY SHOULD NEW YORK SUPPORT MARRIAGE EQUALITY FOR SAME-SEX COUPLES?

A Majority of New Yorkers Support Marriage Equality

In over a decade's worth of reports and amicus briefs,¹ the New York City Bar Association (the "Association") has demonstrated that the right to a civil marriage – regardless of a spouse's sex – is essential for full equality for all New Yorkers. As the New York Court of Appeals concluded in 2006 in *Hernandez v. Robles*,² full marriage equality requires the Legislature to act. Such action would now reflect the will of a majority of New York voters, who have shown their support for same-sex marriage in recent polls conducted by Siena College (58%) and Quinnipiac University (56%).³

The Inability To Marry in New York Causes Real Harm to New York's Same-Sex Couples and Their Families

The Association lauds New York's public servants for the actions they have taken in recent years to help advance the goal of recognizing the validity of same-sex marriages performed in other jurisdictions. However, such recognition has only come from cobbling together piecemeal statutes,⁴ executive measures and regulations,⁵ with significant gap-filling occurring through

¹ See New York City Bar Committee Reports, http://www2.nycbar.org/Publications/reports/index_new.php?type=subject&alpha=S (last visited April 28, 2009).

² *Hernandez v. Robles*, 7 N.Y.3d 338, 855 N.E.2d 1, 821 N.Y.S.2d 770 (N.Y. 2006).

³ See Siena Research Institute, *Siena College Poll: Cuomo is Budget Winner Say Voters, as His Ratings Go Higher; After Budget, Voters Feel Better About Legislature, Not its Leaders* (Apr. 11, 2011), available at http://www.siena.edu/uploadedfiles/home/Parents_and_Community/Community_Page/SRI/SNY_Poll/041111SNYPollReleaseFINAL.pdf; see also Quinnipiac Univ. Polling Institute, *Gay Marriage Wins Highest Support Ever in New York, Quinnipiac University Poll Finds; Voters Oppose Public Financing For State Candidates* (Jan. 27, 2011), available at <http://www.quinnipiac.edu/x1318.xml?ReleaseID=1553>. See also CNN Opinion Research Corporation, *CNN Opinion Research Poll* (Apr. 19, 2011), available at <http://i2.cdn.turner.com/cnn/2011/images/04/19/rel6h.pdf> (national polls show that a majority of Americans (51%) now favor legalizing same-sex marriage, which is consistent with polling results in New York).

⁴ See N.Y. PUB. HEALTH LAW § 4201 (McKinney 2006) (recognizing registered domestic partnerships for purposes of disposition of partner remains); N.Y. EXEC. LAW § 354-b.2(b) (McKinney 2004) (supplemental burial allowance
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expensive and contentious legal battles in our courtrooms in order to secure much needed legal protections for same-sex relationships.⁶ Though we are now in a position where same-sex couples who marry out-of-state are able to reliably enjoy this patchwork of protections, it is no substitute for the full panoply of automatic legal rights and respect afforded to opposite-sex couples who are able to marry in New York. Moreover, the protections afforded to same-sex couples who have been married out-of-state provide no benefit to same-sex couples in stable, loving, long-term relationships within New York where the partners are unable to, or have chosen for one reason or another not to, avail themselves of out-of-state marriage.

As long as this distinction between same-sex couples residing in New York who have been able to marry out-of-state and those who have not remains, even despite the efforts of governors, state officials, local executives and legislators of both parties up to this point, the lack of equal marriage rights will continue to generate decades of litigation, complex private domestic partnership agreements, and scattershot legislation and regulations necessary to establish inheritance, divorce, child custody, pension and tort rights under a range of relationship recognition rules.

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for domestic partners of deceased military personnel killed in combat); N.Y. WORKERS' COMP. LAW § 4 (McKinney 2002) (workers' compensation benefits for surviving domestic partners of September 11, 2001 terrorist attacks); 2002 N.Y. Sess. Laws, ch. 73, § 1(7) (McKinney) (legislative history stating that domestic partners are intended to be eligible for federal Victims Compensation Fund).

⁵ See Memorandum from David Nocenti, Counsel to the Governor, N.Y. State, to All Agency Counsel, New York State (May 14, 2008), available at http://data.lambdalegal.org/in-court/downloads/exec_ny_20080514_martinez-decision-on-same-sex-marriages.pdf (last visited Apr. 11, 2011). See also Westchester Cnty. Exec. Order No. 3 of 2006 (Spano, Cnty. Exec.) (county recognizes same-sex marriages for purposes of couple rights and benefits); Letter from Anthony W. Crowell, Special Counsel to Hon. Michael A. Bloomberg, to Alan Van Capelle, Exec. Dir., Empire State Pride Agenda (Apr. 6, 2005) (New York City recognizes civil unions and same-sex marriages for purposes of couple rights and benefits); Letter from Michael A. Cardozo, N.Y.C. Corp. Counsel, to Hon. Michael A. Bloomberg (Nov. 17, 2004) (New York City pension plans recognize same-sex marriages, civil unions and equivalents); Letter from Alan G. Hevesi, N.Y.S. Comptroller, to Mark E. Daigneault (Oct. 8, 2004) (recognizing civil unions and same-sex marriages for purposes of state pension benefits); Letter from Frederic P. Schaffer, Gen. Counsel & Vice Chancellor for Legal Affairs, CUNY, to Anthony W. Crowell, Special Counsel to the Mayor (June 17, 2005) (recognizing civil unions and same-sex marriages for purposes of state agency CUNY's pension system); Exec. Order No. 113.30 (2001) (Pataki, Gov.), codified at 9 N.Y.C.R.R. § 5.113.30 (2001) (compensation for surviving same-sex partners of World Trade Center victims); Ian Fisher, *Cuomo Decides to Extend Domestic-Partner Benefits*, N.Y. TIMES, June 29, 1994, at B4; Kevin Sack, *Pataki Drops Threat to Close Down Government*, N.Y. TIMES, Mar. 29, 1995, at A1 (gubernatorial extension of health insurance benefits to same-sex domestic partners of New York State executive branch employees).

⁶ *Martinez v. Cnty. of Monroe*, 50 A.D.3d 189, 850 N.Y.S.2d 740 (4th Dep't 2008) (requiring recognition of valid out-of-state same-sex marriages). See also *Godfrey v Spano*, 57 A.D.3d 941, 871 N.Y.S.2d 296 (2d Dep't 2008) (upholding Westchester County executive order recognizing same-sex marriages), *aff'd*, 13 N.Y.S. 3d 358, 920 N.E.2d 328, 892 N.Y.S.2d 272; *Lewis v. N.Y.S. Dep't of Civil Svcs.*, 60 A.D.3d 216, 872 N.Y.S.2d 578 (3d Dep't 2009) (upholding Civil Service Dept. recognition of same-sex marriages), *aff'd sub nom.* *Godfrey v. Spano*, 13 N.Y.S. 3d 358, 920 N.E.2d 328, 892 N.Y.S.2d 272; *Godfrey v. DiNapoli*, 22 Misc.3d 249, 866 N.Y.S.2d 844 (Sup. Ct. Albany County 2008) (upholding New York State comptroller recognition of same-sex marriages); *Beth R. v. Donna M.*, 19 Misc.3d 724, 853 N.Y.S.2d 501 (Sup. Ct. N.Y. County Feb. 25, 2008) (recognizing marriage for purpose of awarding divorce and child custody). See also *Braschi v. Stahl Assocs.*, 74 N.Y.2d 201, 212-13, 543 N.E.2d 49, 55, 544 N.Y.S.2d 784, 790 (1989) (state administrative code grants rent stabilization successor rights for unmarried life partners).

Furthermore, the failure to afford same-sex New Yorkers the rights and protections that their opposite-sex counterparts have available to them sends a clear message to same-sex couples and their children – that their families are less deserving of the rights and protections automatically granted to opposite-sex couples who are permitted to marry in New York. It cannot be denied that the lack of protections for unmarried same-sex couples in New York has a long-lasting and stigmatizing impact on these families. This impact is made worse by the fact that the policy of not permitting same-sex couples to marry in New York does nothing to change the discriminatory attitudes of private citizens towards same-sex couples and in fact bolsters those same attitudes in many instances.⁷ Ultimately and sadly, such discrimination and stigmatization have effects that are felt well outside of the marriage context. The daily impact on our gay and lesbian youth who deal with the trickle-down effects of treating same-sex couples as being less deserving of marriage equality in particular is shockingly compelling.⁸

All of this is to say that New York's more than 50,000 same-sex couples,⁹ and their families, confront many of the same life challenges as, and are in most other respects equal to, their opposite-sex counterparts, but many of them do so without the protections and security afforded by marriage.¹⁰ Many have modest incomes; approximately 20% are raising children under age 18; and more than 25% are in relationships where one partner has a disability.¹¹ The inability of these long-term couples to marry has devastating real-world consequences. For example, unmarried same-sex couples may not be able to obtain employer-sponsored health insurance that would cover the entire family, and even where they are able to do so, they are burdened with additional taxes on such coverage. Additionally, unmarried same-sex couples cannot rely on the

⁷ See, e.g., *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 974 (N.D. Cal. 2010) (expert testimony of social epidemiologist noting specifically that “laws are perhaps the strongest of social structures that uphold and enforce stigma”); see also Gregory Herek, Regina Chopp, & Darryl Strohl, *Sexual Stigma: Putting Sexual Minority Health Issues in Context*, in *The Health of Sexual Minorities: Public Health Perspectives on Lesbian, Gay, Bisexual, and Transgender Populations* 171, 181 (Ilan Meyer & Mary Northridge, eds. 2007) (“[T]he legal system is an important institution through which stigma is expressed and reinforced. . . . [L]aws that advantage one group over another also send a message to society about the relative status of the ingroup and the outgroup”).

⁸ See, e.g., Joseph Kosciw, Emily Greta, Elizabeth Diaz, & Mark Bartkiewicz, *The 2009 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools* 26 (2010) (reporting that 84.6% of lesbian and gay students had been verbally harassed because of their sexual orientation and 40.1% had been physically harassed); see also *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1151 (C.D. Cal. 2000) (in light of the disproportionate number of lesbian and gay youth who take their own lives each year, courts have recognized that the reduction of antigay bias “may involve the protection of life itself.”).

⁹ See Williams Inst., *Census Snapshot New York* (Apr. 2008), available at <http://www2.law.ucla.edu/williamsinstitute/publications/NewYorkCensusSnapshot.pdf>.

¹⁰ Cf. Williams Inst., *Marriage, Registration and Dissolution by Same-Sex Couples in the U.S.* (July 2008), available at <http://www2.law.ucla.edu/williamsinstitute/publications/Couples%20Marr%20Regis%20Diss.pdf> (While it is unknown how many of New York's same-sex couples have entered into lawful marriages outside of New York, arguably a majority have not done so. For example, even in states that provide legal recognition of same-sex couples, only approximately 40% of same-sex couples have married, entered a civil union, or registered their relationships.).

¹¹ Cf. *id.*

spousal privilege in legal proceedings¹² or spousal protections in bankruptcy proceedings.¹³ These challenges become even more complicated when an unmarried same-sex couple breaks up. In the absence of formal relationship dissolution such as divorce, there is no legal right to equitable property distribution, maintenance, custody or visitation, resulting in chaos and confusion for both partners and their children.¹⁴

Perhaps one of the greatest inequities, though, is the treatment of a surviving partner following the death of the other partner in a non-marital same-sex relationship. At a time when legal and financial clarity and protection are most needed, surviving partners are mostly left to fend for themselves in situations where traditional married couples are inherently protected by law. For example, a surviving unmarried partner does not have automatic succession rights to a rent-stabilized apartment following the death of the other partner and must qualify under stringent objective criteria as a “non-traditional couple.”¹⁵ Nor does a surviving unmarried partner have a right to file a claim for wrongful death¹⁶ or workers’ compensation benefits¹⁷ following the

¹² See *Greenwald v. H & P 29th St. Assocs.*, 241 A.D.2d 307, 307, 659 N.Y.S.2d 473, 474 (1st Dep’t 1997) (“[T]he spousal privilege of CPLR 4502(b), which, by its terms, protects confidential communications between a ‘husband’ and ‘wife’ ‘during marriage,’ does not extend, in plaintiffs’ words, ‘to homosexuals in a spousal relationship.’”).

¹³ See A. Mechele Dickerson, *Family Values and the Bankruptcy Code: A Proposal to Eliminate Bankruptcy Benefits Awarded on the Basis of Marital Status*, 67 FORDHAM L. REV. 69 (1998) (seeking revision of the bankruptcy law “to ensure that it awards benefits based on the economic, rather than the marital relationship between two individuals”).

¹⁴ See, e.g., *Cytron v. Malinowitz*, 1 Misc.3d 907(A) (Sup. Ct. Kings Co. 2003) (no statutory right to division of property for same-sex couples -- division must be based upon legal theories of partition or joint venture); *Debra H. v. Janice R.*, 2010 N.Y. Slip Op. 03755, 14 N.Y.3d 576 (N.Y. 2010) (finding very narrow exception to New York’s general rule that only biological or adoptive parents may seek visitation rights but only due to same-sex couple’s legal status established by Vermont civil union).

¹⁵ See New York City Rent Guidelines Board, *Succession Rights FAQ*, available at <http://www.housingnyc.com/html/resources/faq/succession.html#rules> (last visited April 9, 2011); see also *Braschi v. Stahl Assocs.*, 74 N.Y.2d 201, 212-13, 543 N.E.2d 49, 55, 544 N.Y.S.2d 784, 790 (1989) (State administrative code grants rent stabilization successor rights for unmarried life partners based on an objective assessment of the relationship, “including the exclusivity and longevity of the relationship, the level of emotional and financial commitment, the manner in which the parties have conducted their everyday lives and held themselves out to society, and the reliance placed upon one another for daily family services.”).

¹⁶ See *Raum v. Restaurant Assoc.*, 252 A.D.2d 369 (1st Dept. 1998) (surviving same-sex partner did not have right to bring wrongful death claim); see also *Langan v. St. Vincent’s Hosp. of N.Y.*, 25 A.D.3d 90, 802 N.Y.S.2d 476 (2d Dep’t 2005), review denied, 850 N.E.2d 672 (N.Y. 2006) (finding no right to bring wrongful death claim even where same-sex couple had formalized its relationship by civil union under Vermont law).

¹⁷ See *Valentine v. American Airlines*, 17 A.D.3d 38, 40 (3d Dept. 2005) (finding that domestic partners are not “surviving spouses” under Workers’ Compensation Law § 16(1-a)(2)); but see Workers’ Compensation Law § 4, in which the New York legislature allowed domestic partners of those killed in the September 11, 2001 terrorist attacks to receive death benefits; cf. John O. Enright, *New York’s Post-September 11, 2001 Recognition of Same-Sex Relationships: A Victory Suggestive of Future Change*, 72 FORDHAM L. REV. 2823 (2004) at 2829 (New Yorkers who lost a same-sex spouse or partner in the September 11, 2001 terrorist attacks were confronted by the invisibility of their relationships under state and federal laws relating to “(1) the right to distribution of property under probate law, (2) delegation of healthcare and monetary benefits from public and private sources, and (3) the right to damages payable under states’ wrongful death statutes,” which have traditionally only protected heterosexual spouses).

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death of his or her same-sex partner. Similarly, unmarried same-sex couples enjoy no statutory inheritance rights, and even same-sex couples who carefully draft a will and other legal documents to establish a considered estate plan remain uncertain as to whether those expressions will suffice to fend off litigation.¹⁸

Instead of its traditional leadership in the area of equality and civil rights, New York lags on marriage equality. In the United States, five states and the District of Columbia have adopted same-sex marriage.¹⁹ Globally, Canada and nine other countries have full marriage equality.²⁰ Yet New York's domestic laws deny unmarried same-sex couples at least 1,324 legal rights and duties²¹ that married different-sex couples currently receive. Marriage provides the legal stability that many couples, lacking financial resources, knowledge or willingness to plan for the future, fail to create on their own. Half or more of the general public has failed to prepare many crucial documents: only 53% of New York State residents have a health care proxy;²² nationwide, only 50% of people have wills;²³ 42% have living wills;²⁴ and a mere 5-10% have prenuptial agreements.²⁵

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¹⁸ See, e.g., *In re Estate of H. Kenneth Ranftle*, 81 A.D.3d 566, 917 N.Y.S.2d 195 (1st Dep't 2011) (holding that because the surviving partner was lawfully married in a foreign jurisdiction, deceased's sibling's challenge to validity of deceased's will should be dismissed).

¹⁹ See Human Rights Campaign, *Marriage Equality & Other Relationship Recognition Laws* (updated February 5, 2011), available at http://www.hrc.org/documents/Relationship_Recognition_Laws_Map.pdf (the five states that are issuing marriage licenses to same-sex couples are Connecticut, Iowa, Massachusetts, New Hampshire and Vermont).

²⁰ See Wikipedia, http://en.wikipedia.org/wiki/Same-sex_marriage (last visited Apr. 27, 2011) (the ten countries that provide full marriage equality to same-sex couples are Argentina, Belgium, Canada, Iceland, the Netherlands, Norway, Portugal, South Africa, Spain and Sweden).

²¹ See Empire State Pride Agenda Found. & N.Y.C. Bar, *1,324 Reasons for Marriage Equality in New York State* (June 12, 2007), available at http://www.nycbar.org/pdf/report/marriage_v7d21.pdf.

²² See Siena Research Institute, *Siena New York Poll* (Apr. 11, 2005), available at http://www.siena.edu/uploadedFiles/Home/Parents_and_Community/Community_Page/SRI/SNY_Poll/SNY_05Apr_ALL.pdf (last visited Apr. 11, 2011).

²³ See Gary Langer, *You Know You Should But You Don't: Americans Say They Should Plan for The Future, But Don't*, ABCNEWS.COM (Aug. 26, 2002), available at http://abcnews.go.com/sections/us/DailyNews/planning_poll020826.html (last visited Apr. 11, 2011); *Most Americans Still Don't Have a Will, Says New Survey* by FindLaw, FINDLAW (Aug. 19, 2002), available at <http://company.findlaw.com/pr/2002/081902.will.html> (last visited Apr. 11, 2011).

²⁴ See Langer, *supra* note 23; Pew Research Ctr., *Strong Public Support for Right to Die*, Jan. 5, 2006, available at <http://www.people-press.org/reports/display.php3?ReportID=266> (last visited Apr. 11, 2011); Caroline Wellbery, "Improving Advance Directive Completion Rates," 72 AM. FAM. PHYSICIAN 694 (2005).

²⁵ See Arlene G. Dubin, *Prenups for Lovers: A Romantic Guide to Prenuptial Agreements* 15, Random House (2001); Gary Belsky, *Living by the Rules*, MONEY, May 1996, at 100, 102.

Civil Unions Would Be a Backward Step in New York

Since New York already recognizes same-sex marriages validly performed in a foreign jurisdiction as discussed above, enacting civil unions would be a backward step in New York. Although civil unions have been advanced by some states as an acceptable compromise to marriage equality, the Association advocates only for legislation that supports full same-sex marital recognition. Civil unions enshrine second-class status in the law, and are not an adequate substitute for the status and rights conferred by marriage. In New York, civil unions would add very little to what some couples already enjoy by virtue of this state's recognition of their foreign jurisdiction marriages.

Most importantly, civil unions would not provide the widely-recognized legal status conferred upon married individuals by the federal government and other states.²⁶ Notwithstanding the fact that marriage portability and access to the over 1,138 federal rights, privileges and benefits²⁷ ranging from social security benefits and taxes to immigration will not occur while the Defense of Marriage Act ("DOMA")²⁸ remains in force, the Department of Justice's recent decision to no longer defend the constitutionality of DOMA²⁹ has strengthened the prospect of DOMA's demise in the near future. As a result, once DOMA is repealed or struck down, same-sex couples who enter into civil unions in New York would still be denied all federal rights and benefits, a consequence that is seemingly contrary to New York's intent as evidenced by its substantial recognition of out-of-state same-sex marriages.

As Vermont, New Jersey and other states have come to recognize, civil unions are poorly understood, erratically recognized and widely viewed as a second-class status by government officials, employers, hospitals, and the general public.³⁰ For example, in Vermont, residents who

²⁶ See *Civil Unions vs. Civil Marriage*, NOW.ORG, available at http://www.now.org/issues/marriage/marriage_unions.html (last visited Apr. 11, 2011).

²⁷ See Letter from U.S. Gen. Accounting Office, to Hon. Bill Frist (Jan. 23, 2004) re: Defense of Marriage Act: Update to Prior Report, available at <http://www.gao.gov/new.items/d04353r.pdf> (last visited Apr. 11, 2011) ("Consequently, as of December 31, 2003, our research identified a total of 1,138 federal statutory provisions classified to the United States Code in which marital status is a factor in determining or receiving benefits, rights, and privileges.").

²⁸ Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419, 2420 (1996) (codified at 1 U.S.C. §§ 7 & 28 U.S.C. § 1738C).

²⁹ Letter from Eric Holder, U.S. Attorney Gen. to Hon. John A. Boehner (Feb. 23, 2011) re: Defense of Marriage Act, available at: <http://www.justice.gov/opa/pr/2011/February/11-ag-223.html> (last visited on April 11, 2011).

³⁰ See Joanna L. Grossman, *The Vermont Legislature, Inventor of the 'Civil Union,' Grants Full Marriage Rights to Same-Sex Couples: Why It Decided Civil Unions Were Not Sufficient to Ensure Equality*, FINDLAW (Apr. 13, 2009) available at <http://writ.lp.findlaw.com/grossman/20090413.html> (last visited Apr. 11, 2011); see also Tara Parker-Pope, *Well: How Hospitals Treat Same-Sex Couples*, N.Y. TIMES, May 12, 2009, available at <http://well.blogs.nytimes.com/2009/05/12/how-hospitals-treat-same-sex-couples/?apage=2> (last visited Apr. 11, 2011) (hospitals reportedly fail to recognize California and Oregon domestic partnerships); Tina Kelley, *Equality Elusive Under New Jersey Civil Union Law*, N.Y. TIMES, Apr. 13, 2007 (health insurance and tax confusion under civil unions); Tina Kelley, "Couples Not Rushing to Civil Unions in New Jersey," N.Y. TIMES, Mar. 21, 2007

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entered into civil unions have testified that they were not accorded all of the rights granted to them under Vermont's civil union law due in part to a general misunderstanding of civil union status.³¹ Similarly, a New Jersey commission found, contrary to the popular notion that "civil unions" and "marriage" are equivalent if not in name, then in substantive state rights, that civil unions actually create challenges to equal health care access and perpetuate psychological harm to same-sex couples and their families, whereas marriage equality would have a positive impact.³²

Even if technically equivalent rights exist, if one same-sex partner is suddenly hospitalized and the other denied visitation and other next of kin rights, a later lawsuit is cold comfort, particularly when some courts simply refuse to give civil unions effect.³³ Additionally, civil unions have been reported to create confusion for employers, especially with respect to the rights and benefits generally afforded to married employees.³⁴ Civil unions are also recognized to have a particularly disparate impact on people of color – African Americans and Latinos tend to have less financial resources to afford counsel to advocate that civil unions should be given the same status as a marriage by an intransigent employer or government official or to prepare legal

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(hospitals fail to respect New Jersey domestic partnerships); Laura Mansnerus, *Doubts Persist As New Jersey Moves Toward Civil Unions*, N.Y. TIMES, Dec. 14, 2006 (hospitals fail to respect New Jersey domestic partnerships).

³¹ See Vermont Office of Legislative Council, *Report of the Vermont Commission on Family Recognition and Protection* (April 21, 2008), available at http://hrc.vermont.gov/sites/hrc/files/pdfs/ss%20marriage/VCFRP_Report.pdf (specifically noting that Vermonters who entered into civil unions "have encountered a multitude and variety of instances where they find the promise of equality to be unfulfilled. They find many of these instances to be significant, if not substantial, deficits in the civil union law, with clear and negative financial, economic, and social impacts on their lives and the lives of their children and families. In addressing the Commission's charge, these witnesses find "legal and practical challenges [with civil union]... as compared to heterosexual marriage couples.").

³² See New Jersey Civil Union Review Commission: Final Report, *The Legal, Medical, Economic & Social Consequences of New Jersey's Civil Union Law* (Dec. 10, 2008), available at <http://www.gardenstateequality.org/civilunionsdontwork/Final%20report%20of%20the%20CURC.pdf>.

³³ See, e.g., Langan, 25 A.D.3d, 802 N.Y.S.2d 476 (Despite a "close, loving, committed, monogamous relationship as a family unit in a manner indistinguishable from any traditional marital relationship", a surviving partner in an out-of state civil union is not entitled to bring a wrongful death action in New York against an alleged tortfeasor because civil unions are not equivalent to marriage); *but see* Debra H. v Janice R., 14 N.Y.3d 576 (2010) (according comity to an out-of-state same-sex marriage for parentage purposes).

³⁴ See *Interim Report of the New Jersey Civil Union Review Commission* (Feb. 19, 2008), available at <http://www.nj.gov/lps/dcr/downloads/1st-InterimReport-CURC.pdf> (last visited Apr. 11, 2011) (The New Jersey Civil Union Review Commission was appointed by that state's legislature to evaluate the effect on same-sex couples and their families of being provided civil unions rather than marriage. Among the report's conclusions are that civil unions: create a second-class status, hurt children being raised by same-sex couples, have a disparate impact on people of color and do not provide the same employment protections as do full marital rights for same-sex couples in Massachusetts.). See also Christine Vestal, *Civil Unions Spread, but Gays Want to Wed*, STATELINE.ORG (May 31, 2007), <http://www.stateline.org/live/details/story?contentId=212354> (noting that "one in eight couples [in New Jersey] with a civil union license has been denied benefits by employers, insurers and financial institutions") (last visited Apr. 11, 2011).

documents to avoid misunderstandings in moments of crisis.³⁵ Permitting same-sex couples to marry is the only way to ensure that the full benefits and protections of marriage, to the extent permitted on a state level, are shared by all couples in New York.

In addition, civil unions are in stark contrast to full marriage equality offered by several of our neighboring states. As professional same-sex couples residing in New York grow to perceive our state as discriminatory and unwelcoming, New York may start to see a flight of talent and loss of tax revenue to Connecticut and Massachusetts, which have become more attractive states of residence to same-sex couples now that they both provide for same-sex marriage.³⁶ Yet, full marriage equality is projected to add \$210 million to New York's economy in the three years after enactment.³⁷

Passage of a Marriage Equality Bill Would Ensure Equality and Benefit All New Yorkers

There is no legitimate reason for denying the basic civil right of marriage to same-sex couples or for creating second-class status by offering only civil unions and not full marriage equality. By passing a bill that provides full marriage equality, the legislature will clearly determine who is married under New York law and their rights and duties. When the bill becomes law, it will benefit New York and its residents. The Association respectfully requests the support of all New York State legislators to make marriage equality a reality.

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³⁵ See *Interim Report of the New Jersey Civil Union Review Commission supra* note 34. Cf. Brief for Ass'n of the Bar of the City of N.Y. et.al. as Amici Curiae Supporting Plaintiffs-Appellants, *Hernandez v. Robles*, 26 A.D.3d 98, 805 N.Y.S.2d 354 (2006) (Nos. 103434/2004, 1967/04) at 48, available at http://www.nycbar.org/pdf/report/Hernandez_Marriage.pdf (last visited Apr. 11, 2011) (similarly, lower-income same-sex couples residing in New York are priced out of the legal services that are needed to obtain recognition for their relationships).

³⁶ By open letter dated April 28, 2011, New York's business leaders urged the legislature to pass a marriage equality bill so that New York can "remain competitive" and "recruit top talent" from around the world. See *An Open Letter from Business Leaders on The Importance of Marriage Equality*, available at <http://www.nytimes.com/interactive/2011/04/29/nyregion/20110429-Business-Leaders-Letter.html?ref=nyregion> (last visited May 1, 2011).

³⁷ See Jeremy W. Peters, *Would Gay Marriage Help the State Economy?*, N.Y. TIMES, May 26, 2009 (citing a 2009 update of a 2007 analysis conducted by the New York City comptroller's office) available at <http://cityroom.blogs.nytimes.com/2009/05/26/would-gay-marriage-help-the-state-economy> (last visited Apr. 11, 2011); see also, Williams Inst., *The Effect of Marriage Equality and Domestic Partnership on Business and the Economy* (Oct. 2006) (increased benefits to businesses, including a \$2 billion gain in wedding and tourism-related revenues, and to federal and state budgets as a result of allowing same-sex marriage), available at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1035&context=uclalaw/williams> (last visited Apr. 11, 2011); Letter from Douglas Holtz-Eakin, Dir. Congressional Budget Office, to Hon. Steve Chabot, Chairman of the Comm. of the Judiciary of the House Subcommittee on the Constitution (June 21, 2004), re *The Potential Budgetary Impact of Recognizing Same-Sex Marriages* (one billion dollar net federal budget gain in each of first ten years following 50-state adoption of same-sex marriage), available at <http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf> (last visited Apr. 11, 2011).

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