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For Richer, For Poorer



by Evan Wolfson



On the historic, horrific morning of September 11, 2001, John kissed his wife, Rosa, goodbye before heading to his job as an office-cleaner in the World Trade Center's North Tower. Rosa never heard from her husband again. After searching frantically for days, Rosa accepted the reality of his disappearance. She filed for a death certificate and arranged her husband's memorial service. Rosa received Workers' Compensation from the state and a small Social Security death benefit from the federal government. She contacted John's former employer, who arranged for receipt of his pension. Because John and Rosa had few assets, they had never seen the need for a will, nor did they have the financial means to hire a lawyer to prepare one. Nonetheless, John's assets, which included a small savings account, their home and a car, were given to Rosa by law.

That same morning, Juan kissed Ryan, his partner of 21 years, goodbye and headed to his job as a file-clerk in that same North Tower. Like Rosa, Ryan never heard from Juan again. Ryan applied for Workers' Compensation and Social Security, but, unlike Rosa, he was told he was not eligible for those benefits because he was not Juan's legal spouse. Even though Juan and Ryan had taken some precautions to protect their

commitment — such as registering as domestic partners, designating one another as beneficiaries on insurance policies, and executing health care proxies and powers of attorney — and even though Juan paid the same taxes as John, Ryan was not automatically entitled to any of the compensations given to Rosa. In addition to his emotional devastation, Ryan was financially devastated as well.¹

They had never seen the need for **a will**, nor did they have the **financial means** to hire a lawyer to prepare one. Nonetheless, **John's assets**...were given to Rosa **by law**.

Why did Rosa have an economic safety net, while Ryan did not? The answer can be summed up in two words: “I do.”

By getting married, John and Rosa gained access to critical legal protections and benefits for couples and their children that provided for them in their time of need. Married couples are entitled to literally hundreds of rights and protections that permeate their financial relationship, both in extraordinary circumstances such as the one mentioned above, or in everyday matters, like simply renting a car.

1 John, Rosa, Juan, and Ryan are representative of the experiences that real-life people, gay and non-gay, have had in the aftermath of the September 11, 2001 terrorist attacks. For true and detailed stories of the hardships and discrimination experienced by gay 9/11 survivors, see <http://www.lambdalegal.org>.

A 1996 government study found that there are at least 1,049 such protections, rights, and responsibilities that come with marriage under federal law alone. These protections include access to health care and medical decision making for a partner and children, parenting and immigration rights, inheritance, taxation, Social Security and other government benefits, rules for ending a relationship while protecting both parties and the ability to pool resources to buy or transfer property without adverse tax consequences.

There are **at least 1,049** such **protections, rights,**
and **responsibilities** that come with **marriage**
under **federal law** alone.

Juan and Ryan, however, like all same-sex couples, were denied the freedom to legally marry and were eligible only for the limited protections they could arrange privately.

Throughout the United States — regardless of how long they have been in a committed relationship, no matter how much they and their loved ones, often including children, need the protections that come with marriage — same-sex couples are denied the safety net that is automatically in place for couples like Rosa and John.

Exclusion from the protections that come with marriage, and the attendant social and legal inequality, affects all gay people, regardless of sex, race, religion, ethnicity, or physical ability. Like with most civil injustices, marriage inequality falls particularly hard on those living on the margins: the poor, less educated, immigrants, the elderly, the ill, and those otherwise most vulnerable.

The **struggle** to win the **freedom to marry** is
at least as much about **love** and **equality**
as it is about **law** and **economics**

A landmark study of African-American lesbian, gay, bisexual, and transgendered people in the U.S., *Say It Loud: I'm Black and I'm Proud*, released in March 2002 by the National Gay & Lesbian Task Force Policy Institute, found that marriage/family protections rank among the three most important issues facing LGBT communities of color alongside HIV/health care access and protection against violence. Ending the exclusion of same-sex couples from civil marriage would provide especially significant protections to LGBT people of color.

Although the struggle to win the freedom to marry is at least as much about love and equality as it is about law and economics, let's take a closer look at the important protections, benefits, and responsibilities that come with civil marriage.

MARRIAGE MAKES LIFE TOGETHER MORE AFFORDABLE

Marriage makes almost every aspect of a relationship less expensive. Without money, a lawyer or any forethought, married couples receive the benefits of a complex set of legal rules that create default choices most couples would select anyway. Thus:

- Spouses are allowed to make life-saving decisions for each other without drafting powers of attorney or other complicated legal documents;
- Spouses presumptively inherit each others' estates without the need for intricate wills;
- Spouses may cohabit in public housing units;
- Divorce laws protect both members of the relationship and minimize the power of one partner to keep the other in a situation of domestic violence;
- The spouse of a U.S. citizen may obtain residency in the United States without a long legal battle;
- Married people may adopt the children of their spouses easily and cheaply;
- Dependent health benefits are tax-free for a married couple, whereas an unmarried couple is taxed;
- By filing jointly, married couples in which one partner has a much higher income pay significantly less tax than similarly situated unmarried couples.

Ending sex discrimination in civil marriage is the only means of providing same-sex couples equal treatment by our own government. Beyond that, inclusion in civil marriage is an important step to assuring the benefits that the private sector offers to married people. Some of these are lower insurance rates; availability and lower-cost of loans from banks; employer-sponsored events; free and reduced tuition for spouses of university employees; and family discounts.

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**MARRIAGE DISCRIMINATION HARMS
POOR AND OTHERWISE DISADVANTAGED COUPLES**

Compared with the relatively cheap option of marriage, the creation of a legal web meant to simulate some of the protections of marriage is an expensive and time consuming project that simply cannot serve as a viable alternative for people of lesser means.

Working and middle-class same-sex couples who cannot afford legal services are therefore without the ability to properly plan for:

MEDICAL EMERGENCIES: Living wills and powers of attorney are intricate and expensive legal documents to draft. Doctors can leave same-sex partners out of critical decision-making processes without these documents. Marriage eliminates the need for any legal documents because spouses are not only allowed, but indeed expected, to make these important decisions for one another;

Doctors can leave same-sex partners out of critical decision-making processes.

DIVORCE: Unmarried partners cannot take advantage of the benefits of the forum of the divorce court to “wind-up” their relationships. Even without substantial assets to divide, issues of child support, childcare, and partner support arise that poor people will not have been able to plan for in advance through sophisticated legal mechanisms;

THE DEATH OF ONE PARTNER: Even the lowest wage workers, if legally employed, pay to support the Social Security system. Unmarried partners, though, cannot receive the Social Security survivor benefits that married partners do, and may therefore be left without any means of supporting themselves.

In addition to important tax benefits, other governmentally provided rights and privileges are simply unavailable to same-sex couples because they are unable to marry, disproportionately impacting the poor. These include:

HEALTHCARE AVAILABLE TO MARRIED COUPLES: Allowing same-sex couples to marry would extend Medicare and Medicaid spousal benefits and would allow for the tax-free provision of benefits by an employer to the same-sex partner of an employee;

Marriage is a basic human right. You cannot tell people they cannot fall in love.

HOUSING BENEFITS: Same-sex couples do not receive the protections of joint rental leases with automatic renewal rights. In highly competitive public housing slots, families can lose their homes.

IMMIGRATION BENEFITS: A foreign-born national has a presumptive right to a green card when married to an American citizen or legal permanent resident. The spouse may then obtain a work permit and eventually become a U.S. citizen. Spouses of U.S. citizens and lawful permanent residents also face a far shorter waiting period. These spousal rights even trump the United States' ban on immigration for HIV+ individuals. Same-sex partners are denied the family respect that otherwise governs immigration law.

SOCIAL SECURITY BENEFITS: No spousal benefits, including survivor benefits and disability benefits, are available to same-sex couples.

MARRIAGE DISCRIMINATION HARMS CHILDREN

Marriage protects the economic interests of children by providing an economic safety net to their families, and the kids themselves.

The children have automatic and undisputed access to the resources, benefits and entitlements of both parents.

The **children** of same-sex couples...**suffer** from their parents' **lack of access** to all the rights and entitlements that **maximize** their economic **well-being**.

Married couples do not have to incur any expenses, legal or otherwise, to ensure that both parents have the right to make important medical decisions for their children in case of emergency.

The children of legally married couples are automatically eligible for health benefits from both parents, as well as child support and visitation from both parents in the event of separation.

If one of the parents in a marriage dies, the law provides financial security not only for the surviving spouse, but for the children as well, by ensuring eligibility to all appropriate entitlements, such as Social Security survivor benefits.

This economic safety net is critical for children in families of lesser means. However, the children of same-sex couples, whose marriages are unrecognized by law, do not have such a safety net. They suffer from their parents' lack of access to all the rights and entitlements that maximize their economic well-being. They are deprived of economic protection in case of death, disability, divorce, or other life-changing events. These disadvantages have a disproportionately high impact on children in families of lesser means.

The **United States** will still be **far behind**...Canada, which seems poised to end **marriage discrimination** within the **next few months**.

A 2000 report out of Stanford University surveyed the legal and economic landscape and concluded that because same-sex couples are denied the freedom to marry, “the children living with same-sex partners are made to suffer.” These and other significant disadvantages for the children of same-sex couples prompted the prestigious American Academy of Pediatrics, in February 2002, to issue a strong call for full legal recognition of same-sex relationships.

**BEYOND LEGAL AND ECONOMIC CONCERNS,
ENDING MARRIAGE DISCRIMINATION IS A MATTER OF CIVIL RIGHTS,
EQUALITY, THE PURSUIT OF HAPPINESS, AND LOVE**

During the lifetime of many Americans, there were major and hotly contested changes in the institution of civil marriage, including the legal declaration of women's equality in marriage, the allowance of married and unmarried people to make their own decisions regarding contraception and reproduction, and divorce reform. Each of these steps toward inclusion and respect was fiercely contested, often with the same arguments we see today against allowing gay people to marry.

More than two-thirds of the American public believes gay people will win the freedom to marry.

During the congressional debate on the federal anti-marriage law, the so-called "Defense of Marriage Act," aimed at shutting down the emerging civil rights discussion around marriage equality, civil rights movement hero John Lewis, now a Congressman from Georgia, decried the right-wing's attacks on gay people's freedom to marry. Congressman Lewis noted that the exclusion from marriage "denies gay men and women the right to liberty and the pursuit of happiness," and declared:

Marriage is a basic human right. You cannot tell people they cannot fall in love.

Dr. Martin Luther King, Jr. used to say when people talked about interracial marriage

and I quote, “Races do not fall in love and get married. Individuals fall in love and get married.”... Mr. Chairman, I have known racism. I have known bigotry. This bill [the proposed federal anti-marriage law of 1996, adding an overlay of federal discrimination against same-sex couples] stinks of the same fear, hatred and intolerance. It should not be called the Defense of Marriage Act. It should be called the defense of mean-spirited bigots act.

Ending **discrimination** in civil marriage would properly hold **America** to its commitment to be a country where everyone has the right to be both **different** and **equal**

Despite this attack measure and the well-organized opposition of right-wing organizations, the landscape has begun to change dramatically. A 2001 Kaiser Family Foundation poll found that more than two-thirds of the American public has come to support extending “marriage-like” inheritance rights (70%) and Social Security benefits (68%) to lesbian and gay couples. More than two-thirds of the American public believes gay people will win the freedom to marry. A June 2002 poll in California showed that opposition to the freedom to marry for same-sex couples had dropped below 50% for the first time ever, and in April 2003, the front-page of the Boston Globe reported that a majority in Massachusetts now supports ending discrimination in civil marriage with huge majority support among young and middle-aged voters.

In June 2002, a landmark lawsuit for marriage equality was filed on behalf of seven gay and lesbian couples in New Jersey — the same state where, in another high-profile lawsuit, the state’s highest court ruled in favor of a gay scout leader’s challenge of the discriminatory policies of the Boy Scouts of America. Meanwhile, the Massachusetts high court has before it now a case involving seven couples denied marriage licenses — and could rule as soon as this summer!

Allowing **same-sex couples to marry** would in **no way destabilize or devalue marriage for other couples.**

A victory in either court will mean same-sex couples can get married, but the United States will still be far behind countries such as the Netherlands and Belgium, and most likely Canada, which seems poised to end marriage discrimination within the next few months.

Marriage, of course, is not the only form of relationship or family deserving respect, and not every same-sex couple should or would choose to marry, just as not every heterosexual does. But lesbians and gay men willing to take on the commitment and responsibilities of civil marriage should not be denied the opportunity to build a life together and pursue happiness with the partner they love. Nor should their children

and families suffer the economic hardships and disadvantages that come with exclusion from marriage.

We all hope to never again experience any semblance of tragedy like September 11th and we cannot alter the damage of what has already occurred. What we can do, however, is change the way families like Juan and Ryan are protected and treated in the future by ending discrimination in civil marriage.

Allowing same-sex couples to marry would in no way destabilize or devalue marriage for other couples, nor would it tell any religion or person what marriages they must themselves celebrate. Rather, ending discrimination in civil marriage would properly hold America to its commitment to be a country where everyone has the right to be both different and equal — and where no one has to give up her or his difference to be treated equally.

This article originally appeared online at <http://www.drummajorinstitute.org>.

FOR MORE INFORMATION on the fight for marriage equality and Freedom to Marry, please visit <http://www.freedomtomarry.org> or call 212-851-8418.

SIGN THE MARRIAGE RESOLUTION: http://www.freedomtomarry.org/marriage_resolution.asp

info

BUY THE BOOK

For more details or to buy a copy of Evan Wolfson's book, *Why Marriage Matters: America, Equality, and Gay People's Right to Marry*, click here.

ABOUT THE AUTHOR

Evan Wolfson is Executive Director of Freedom to Marry, the gay and non-gay partnership working to win marriage equality nationwide. Before founding Freedom to Marry, Evan served as marriage project director for Lambda Legal Defense & Education Fund, was co-counsel in the historic Hawaii marriage case, and participated in numerous gay rights and HIV/AIDS cases.

Evan previously served as Associate Counsel to Lawrence Walsh in the Iran/Contra investigation, and as an Assistant District Attorney in Brooklyn, New York. Between Yale College and Harvard Law School, Evan spent two years with the Peace Corps in West Africa.

Citing his national leadership on marriage equality and his appearance before the U.S. Supreme Court in *Boy Scouts of America v. James Dale*, the *National Law Journal* in 2000 named Evan one of "the 100 most influential lawyers in America." In 2004, Evan was named one of the "Time 100," *Time* magazine's list of "the 100 most influential people in the world."

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