



**Australia Senate Inquiry Submission Re: Marriage Equality Amendment Bill**  
**Evan Wolfson, Founder and President, Freedom to Marry**  
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In support of the Marriage Equality Amendment bill now before the Australian Senate, Freedom to Marry, the campaign to win marriage in the United States, submits research that shows:

1. Support for the freedom to marry is now the majority position in the U.S., and in the past couple of years has accelerated rapidly.
2. There is growing understanding that “civil union,” “partnership,” and other such separate legal statuses fall far short of marriage and fail to fully protect families.
3. The exclusion of committed same-sex couples from marriage causes profound tangible and intangible harm to those couples and their families, and has a negative economic impact on communities.
4. Families have been helped, and no one hurt, by ending the exclusion of same-sex couples from marriage. There is enough marriage to share.

**1) A MAJORITY OF AMERICANS NOW SUPPORT THE FREEDOM TO MARRY, WITH MOMENTUM AND SUPPORT ACCELERATING AND DIVERSIFYING OVER THE PAST FEW YEARS.**

**1A. The number of U.S. states providing recognition to same-sex couples continues to grow.**

Nearly half of all U.S. states (21 plus the District of Columbia) now have some form of state-level protection for same-sex relationships – whether marriage, explicit respect for out-of-state marriages, full domestic partnership or civil union, or more limited domestic partnerships. Before 1997 and the battles over the freedom to marry, there was no state-level relationship recognition at all. Over 40% of the U.S. population now lives in a state in which same-sex couples receive some form of legal recognition and accompanying protections:

- **Marriage** for same-sex couples is now legal in six states – Massachusetts (2004), Connecticut (2008), Iowa (2009), Vermont (2009), New Hampshire (2009), New York (2011) – and the District of Columbia (2010), bringing the percentage of the U.S. population living in jurisdictions with full marriage recognition to 11.4%.
- Nine states offer **broad legal protections** to same sex couples through non-marriage marital statuses such as **civil union** (New Jersey since 2007; Illinois since 2010; Delaware, Hawaii, and Rhode Island since 2011) and **domestic partnership** (California since 2006, Washington since 2007, Oregon since 2008, Nevada since 2009) – together, these states constitute 24.4% of the U.S. population.
- Another four states offer **partial relationship protections** (Colorado, Maine, Maryland, Wisconsin), representing another 5.8% of the U.S. population.
- Three state legislatures approved **freedom to marry legislation** earlier this year (Maryland, New Jersey, Washington); the issuance of civil marriage licenses is on hold pending the outcome of potential voter referenda in November in Maryland and Washington and, in New



Jersey, override of the gubernatorial veto (before January 2014). Also in November, Maine voters will consider a state ballot-measure for the freedom to marry.

- In **California**, the most populous state with over 12% of the U.S. population, over 18,000 gay and lesbian couples legally married in 2008 following an equal protection ruling by the state Supreme Court. The freedom to marry was stripped away five months later in the infamous Proposition 8 constitutional amendment. Two federal trial courts and one appellate panel have now declared Prop 8 unconstitutional, with the federal appellate court now considering a review of the appellate order restoring the freedom to marry in California.

By the end of 2012 – assuming a favorable court ruling on California and victories on the November ballot – well over 25% of the U.S. population will reside in states where same-sex couples share in the freedom to marry.

### **1B. The federal government is shifting its position.**

In 2011 the Obama Administration determined that under heightened scrutiny, sexual orientation discrimination must be presumed unconstitutional. Applying the constitutional standard and real review, not a rubberstamp, President Obama and Attorney General Eric Holder concluded that “DOMA,” the so-called Defense of Marriage Act passed by Congress in 1996, could no longer be defended. In the pending challenges to DOMA brought by advocacy groups, the U.S. government has now filed briefs detailing *and repudiating* the history of discrimination and exclusion by the government, and called on the courts to strike down DOMA as unconstitutional.

The Respect for Marriage Act, the bill that would overturn DOMA, was introduced in March, 2011; within a year it had 140 cosponsors in the House and 31 in the Senate, and received approval from the Senate Judiciary Committee, winning votes from Senators who had voted for DOMA in 1996.

Through changes to the national Family and Medical Leave Act made by the Obama Administration, gay partners of federal workers are now permitted to receive long-term health insurance and may take leave to care for a sick child or partner. Importantly, hospitals are now required to allow gays and lesbians to visit their ill partners.

Also in 2011, the U.S. military ended its “Don’t Ask Don’t Tell” policy. The end of military discrimination means that Americans are seeing women and men serving their country as part of couples and families, with powerful stories. Among those stories are the harms imposed on those brave servicemembers and their families because of the federal DOMA. And among those standing up against marriage discrimination is now the military itself, our nation’s largest employer.

### **1C. Public support for the freedom to marry is now consistently over 50%.**

In 2010, CNN and the Associated Press conducted the first polls to show a national majority supporting the freedom to marry. The CNN poll asked, “Do you think gays and lesbians should have a constitutional right to get married and have their marriage recognized by law as valid?” The response: 52% Yes; 46% No; 2% No Opinion. A subsequent poll by AP found 52% of American agreeing that the government should recognize marriages between same-sex couples. FiveThirtyEight, in a survey of marriage polls since 1988, found an accelerating shift in support – a four-point gain in the prior 16 months, compared to one to one-and-a-half points per year previously.



## **1D. Public support for the freedom to marry is diversifying to include accelerating support among Republicans.**

Whereas the freedom to marry in the U.S. was once mostly confined to the Democratic Party, support is building within the Republican Party as well (and already is at majority level among Independents). Freedom to marry legislation was passed in New York in 2011 by a Republican-controlled legislative chamber. A repeal attempt in New Hampshire in 2012 was rejected by a majority of Republican legislators (119-115 among Republicans within an overall 211-116 vote). Former chairman of the Republican National Committee Ken Mehlman has played a central leadership role in solidifying support among Republican lawmakers. A recent NBC/Wall Street Journal poll showed a 9-point rise in nationwide Republican support for marriage, to 31 percent in favor. [NBC/ Wall St Journal, March 2012]

Last year George W. Bush's pollster teamed with a leading Democratic pollster to conduct a new [analysis of polling data](#) spanning fifteen years regarding the shifting public attitudes on the freedom to marry. The results of this analysis showed the freedom to marry gaining more and more support over time, with a significant surge of support in the past two years, including among older Americans and Republicans. There is overwhelming super-majority support for the freedom to marry among younger voters, with all cohorts under 50 favoring the freedom to marry.

## **2) CIVIL UNION IS NO SUBSTITUTE FOR THE FREEDOM TO MARRY.**

People write songs about marriage. No one writes odes to civil union or domestic partnership. No one grows up dreaming of one day entering into a civil union.

There is a growing understanding that "civil union," "partnership," and other such separate legal statuses short of marriage are no substitute for the freedom to marry, and fail to fully protect families relegated to such novel, separate, and unequal regimes. Legislatures in states where civil union/partnership was first enacted – such as Vermont, Connecticut, New Hampshire, New Jersey, Washington, California, and the District of Columbia – have all pushed past the separate mechanism to marriage itself.

Various forms of evidence, including government reports, court decisions, and statements of elected officials, document exactly how civil union falls short of equality and causes harm to gay couples and their families.

### **3A. Evidence from government reports that civil unions are no substitute for marriage:**

A New Jersey state government commission unanimously issued its final report to the Governor and legislature, recommending passage of a freedom to marry law because civil union creates further inequality for same-sex couples and fails to provide the same tangible protections. The Commission wrote:

*"[T]his Commission finds that the separate categorization established by the Civil Union Act invites and encourages unequal treatment of same-sex couples and their children. In a number of*



*cases, the negative effect of the Civil Union Act on the physical and mental health of same-sex couples and their children is striking, largely because a number of employers and hospitals do not recognize the rights and benefits of marriage for civil union couples.*” [The Legal, Medical, Economic & Social Consequences of New Jersey’s Civil Union Law,” New Jersey Civil Union Review Commission; December 2008]

In Vermont, which was the first state to experiment with civil union (beginning in 2000), a State Commission report found civil union does not provide the fairness and equality they were intended to offer same-sex couples and their families. Vermonters with civil unions testified saying that there are *“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.”* [Report of the Vermont Commission on Family Recognition and Protection,” Office of Legislative Council; April 2008]

### **3B. Evidence from court decisions that civil union is no substitute for marriage:**

In *Kerrigan & Mock v. Connecticut Dept. of Public Health*, the Connecticut Supreme Court upheld the freedom to marry for gay couples in Connecticut. The state had created civil union four years prior, but as the court (and subsequently the legislature) affirmed: *“Although marriage and civil unions do embody the same legal rights under our law, they are by no means equal. The former is an institution of transcendent historical, cultural and social significance, whereas the latter is not.”* [Connecticut Supreme Court; October 10, 2008]

The California Supreme Court ruled in *In Re: Marriage Cases*:

*“[R]etaining the designation of marriage exclusively for opposite-sex couples and providing only a separate and distinct designation for same-sex couples may well have the effect of perpetuating a more general premise -- now emphatically rejected by this state -- that gay individuals and same-sex couples are in some respects 'second-class citizens' who may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite-sex couples. Under these circumstances, we cannot find that retention of the traditional definition of marriage constitutes a compelling state interest. Accordingly, we conclude that to the extent the current California statutory provisions limit marriage to opposite-sex couples, these statutes are unconstitutional.”* [California Supreme Court; May 15, 2008]

In *Varnum v. Brien*, the Iowa Supreme Court unanimously ruled to uphold the freedom to marry for gay couples and in doing so explained why a new distinction based on sexual orientation is not needed:

*“Iowa Code section 595.2 is unconstitutional because the County has been unable to identify a constitutionally adequate justification for excluding plaintiffs from the institution of civil marriage. A new distinction based on sexual orientation would be equally suspect and difficult to square with the fundamental principles of equal protection embodied in our constitution.”* [Iowa Supreme Court; April 3, 2009]

### **3C. Evidence from elected officials that civil union is no substitute for marriage:**

**US Senator Chris Dodd of Connecticut:** “While I’ve long been for extending every benefit of marriage to same-sex couples, I have in the past drawn a distinction between a marriage-like status



("civil unions") and full marriage rights....The Connecticut Supreme Court, of course, has ruled that such a distinction holds no merit under the law. And the Court is right." [[Meriden Record Journal](#); June 21, 2009]

**Maine Governor John E. Baldacci Upon Signing a the Freedom to Marry Bill Ending Gay Couples' Exclusion from Marriage:** "In the past, I opposed gay marriage while supporting the idea of civil unions," Governor Baldacci said. "I have come to believe that this is a question of fairness and of equal protection under the law, and that a civil union is not equal to civil marriage." [[Maine Governor's Office](#); May 6, 2009]

**New Hampshire Governor John Lynch's Statement on the Freedom to Marry Bill:** "At its core, HB 436 simply changes the term 'civil union' to 'civil marriage.' Given the cultural, historical and religious significance of the word marriage, this is a meaningful change." [[New Hampshire Governor's Office](#); May 14, 2009]

### **3) THE EXCLUSION OF COMMITTED SAME-SEX COUPLES FROM MARRIAGE CAUSES HARM TO THOSE COUPLES AND THEIR FAMILIES.**

Even anti-gay groups like the so-called "National Organization for Marriage" (NOM) acknowledge the ways in which marriage serves to promote health and well-being:

*"Marriage protects children's physical and mental health. Children whose parents get and stay married are healthier and also much less likely to suffer mental illness, including depression and teen suicide. Both men and women who marry live longer, healthier and happier lives. On virtually every measure of health and well-being, married people are better off than otherwise similar singles." NOM web site*

Denial of access to such unequivocal benefits is truly discrimination – unequal treatment that demands a remedy. Study after study documents the impacts – both large and small – this unequal treatment has on the health and well-being of same-sex couples and their families.

#### **3A. Denial of marriage to same-sex couples harms their children.**

In the U.S., 20% of gay and lesbian couples are raising children. Numerous studies have proven that children are not harmed by having gay parents. In fact, a longitudinal study begun in 1986 found that children raised by lesbian parents develop into psychologically healthy teens and have fewer behavior problems than their peers (*Pediatrics*, 2010).

However, the effect of discriminatory policies aimed at gay parents does harm their children. In the U.S., children being raised by same-sex couples are twice as likely to live in poverty as children in married heterosexual households. The average household income for same-sex couples raising children lags that of heterosexual couples raising children by more than \$15,500, or 20%. Gay and lesbian adults have much lower rates of health insurance coverage, and 10.1% of their children are uninsured (compared to 7.4% of the children of married heterosexual couples). Without full family recognition through marriage, the children of a same-sex couple may be eligible for health



insurance only through their biological parent. If that parent loses her/his job, the children will go uninsured.

### **3B. Denial of marriage to same-sex couples has a negative impact on mental and physical health.**

In June, 2011 the **American Medical Association** joined every other major public health organization in the U.S. in condemning marriage discrimination, recognizing in their policy statement: *“that denying civil marriage based on sexual orientation is discriminatory and imposes harmful stigma on gay and lesbian individuals and couples and their families; [and]... that exclusion from civil marriage contributes to health care disparities affecting same-sex households.”*

A 2007 study entitled ***The Effects of Marriage on Health: A Synthesis of Recent Research Evidence***, prepared for the US Department of Health and Human Services, concluded:

*“The evidence of a positive effect of marriage on specific health outcomes is compelling. In particular, there is strong evidence, based on rigorous research methods, that marriage reduces the prevalence of heavy drinking and marijuana use among young adults. Marriage is also linked to improvements in mental health for both men and women.”*

The HHS study reinforced the **positive long-term impact of marriage** on individuals and their families when it stated:

*“Recent research suggests that marriage may be associated with lower health care costs among older adults, through its effects on the number of doctor visits, the length of hospital stays, and the likelihood of nursing home admissions. There is also substantial evidence that growing up with married parents leads to better long-term physical health, particularly for men.”*

The **positive impact of marriage acceptance on the mental health of gay youth** was documented in a recent study by professors at San Francisco State University and American University that concluded:

*“A spectacular generational change appears to be occurring in U.S. attitudes and political behavior when it comes to homosexuality in general and marriage rights in particular. A culture of hope and positive attitudes, including more open and affirming relationships with peers in school, more accepting parental relations at home, and the presence of positive role models in society at large, media included, has developed over the past two decades and provides a different kind of future for ... ‘the new gay teenager’ ... The focus on marriage rights since the early 1990s has significantly shifted the discourse on identity development among LGBTQ youth.”*

Conversely, two studies published by the ***American Journal of Public Health*** found that institutional discrimination, such as the denial of marriage, has negative consequences on mental health. One examined the relationship between living in states that instituted bans on same-sex marriage during the 2004 and 2005 elections and the prevalence of psychiatric morbidity among lesbian, gay, and bisexual (LGB) populations, including mood disorders, generalized anxiety, alcohol abuse, and psychiatric co-morbidity. The study concluded:



*“Psychiatric disorders increased significantly among LGB respondents living in states that banned gay marriage....These psychiatric disorders did not increase significantly among LGB respondents living in states without constitutional amendments. Living in states with discriminatory policies may have pernicious consequences for the mental health of LGB populations. These findings lend scientific support to recent efforts to overturn these policies.”* (American Journal of Public Health, January 14, 2010)

An earlier study on the effect of state-level policies on lesbian and gay mental health found:

*Compared with living in states with policies extending protections, living in states without these policies predicted a significantly stronger association between lesbian, gay, or bisexual status and psychiatric disorders in the past 12 months, including generalized anxiety disorder, post-traumatic stress disorder, dysthymia [depression] ... and psychiatric comorbidity. State-level protective policies modify the effect of lesbian, gay, or bisexual status on psychiatric disorders. Policies that reduce discrimination against gays and lesbians are urgently needed to protect the health and wellbeing of this population.* (American Journal of Public Health. 2009)

### **3C. Denial of marriage to same-sex couples has a negative impact on families’ economic well-being.**

A 2009 analysis conducted by *The New York Times* calculated the total lifetime cost to a couple from being gay and unmarried to be as much as \$467,000 – with almost half of that (\$211,000) coming from the extra cost of purchasing health care coverage. The next largest component of the worst-case cost scenario was the loss of social security benefits by the surviving spouse equal to \$88,000.

One of the key safety nets that all families rely on is health care coverage – and in the US most individuals receive their health care insurance from their employer, or from their spouse’s or parent’s employer. However, a 2007 Kaiser Family Foundation survey showed that only 53% of Fortune 500 companies provide domestic partner benefits – i.e. health care coverage to the unmarried spouses of their gay or lesbian employees. Worse yet, the same study showed that only 22% of employers nationally provided same-sex domestic partner health care coverage. A 2010 study published in *Health Affairs* produced data that suggest this lack of access has direct impact on the level of actual coverage when it concluded that “partnered lesbians and gay men are more than twice as likely to be uninsured as married heterosexuals.”

Even when an employer offers its employees domestic partner benefits, those benefits are considered taxable to the employee. So even when provided with health coverage for his or her same-sex spouse, the gay or lesbian employee must risk first coming out (and hence risk potential employment discrimination) and then must pay a 20-30% tax for the privilege. And because of the so-called “Defense of Marriage Act,” even legally married couples face federal discrimination that, for now, shuts them out of the federal safety-net marriage ordinarily triggers.

### **4) FAMILIES HAVE BEEN HELPED, AND NO ONE HURT, BY ENDING THE EXCLUSION OF SAME-SEX COUPLES FROM MARRIAGE.**



Families have been helped, and no one hurt, by ending the exclusion of same-sex couples from marriage. There is enough marriage to share.

Since 2001, 13 countries on four continents and a growing number of U.S. states have ended the exclusion of gay couples from marriage. As gay couples get married, it is clear that the freedom to marry has a positive impact on these couples and their families. By marrying, these couples can now access the safety net of protections and responsibilities that countries and states offer married couples and their families. Couples and families are also experiencing the dignity and respect that come with the commitment of marriage.

While gay couples marry, the communities surrounding them show continual growing support for the freedom to marry and the institution of marriage is largely left unchanged, or, indeed, strengthened.

#### **4A. Evidence of the positive impact on same-sex couples and their families:**

**Married Massachusetts same-sex couples say marriage has a positive impact on themselves, their families, and society.** A survey conducted five years after gay couples could start applying for marriage licenses in Massachusetts shows marriage provides same-sex couples various short and long term benefits for themselves, their children, and society as a whole. The study found:

- As a result of marrying, individuals feel more committed to their partners and more accepted by their families and communities. Over 72% felt more committed to their partners and almost 70% felt more accepted by their communities.
- Nearly 9 out of 10 respondents (89%) reported that all or most family members supported their marriage.
- Respondents also reported legal and economic benefits. Nearly half (48%) report that being married means that they worry less about legal problems, and 30% report that one member of the couple receives health benefits from an employer as a result of being married.
- Of those with children, nearly all respondents (93%) agreed or somewhat agreed that their children are happier and better off as a result of their marriage.
- Very few respondents with children (5%) reported that their children were teased as a result of their marriages, while many reported that their children felt more secure and protected, gained a sense of stability, and saw their families validated by society as a result of marriage. [["The Effects of Marriage Equality in Massachusetts: A survey of the experiences and impact of marriage on same-sex couples,"](#) The Williams Institute; May 2009]

**International evidence shows marriage equality improves lives of LGB people.** In her book, *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*, M.V. Lee Badgett writes, "The research on marriage and the experiences of married same-sex couples in the Netherlands and elsewhere all suggest that marriage will improve the lives of LGB people, whether that improvement comes from better health, a more solid financial picture, a sense of inclusion in larger society, or stronger relationships with partners." [*When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*, p.149; 2009]

#### **4B. Evidence of the positive and/or neutral impact on marriage and society:**

**Ending the exclusion of gay couples from marriage produces economic benefits for businesses and governments.** The Williams Institute at the UCLA Law School estimates the impact of allowing





same-sex couples to marry on a state-by-state basis; here are two recent examples:

- In Washington State: The total spending on wedding arrangements and tourism by resident same-sex couples and their guests will add an estimated \$88 million boost to the state and local economy of Washington over the course of three years, with a \$57 million boost in the first year alone. This economic boost is likely to add \$8 million in tax revenue to state and local coffers, with an estimated \$5 million occurring in the first year.
- In New Jersey: Couples alone could generate at least \$48 million to \$119 million for the state economy, including \$3 million to \$8 million in tax revenue.

An article on the *Wall Street Journal's* MarketWatch titled Economic Benefits of Gay Marriage, cited:

- *Forbes* magazine says an immediate windfall of about \$17 billion could be had if gay marriage were made legal nationally. The magazine concluded: "one thing is abundantly clear: Legalizing same-sex marriages would mean a windfall for the wedding industry." Weddings are a \$70 billion-a-year business in the U.S.
- The Congressional Budget Office found that if gay marriage were allowed throughout the United States, it would improve the federal budget's bottom line through savings on Supplemental Security Income, Medicaid, and Medicare.

**European countries who let gay couples marry or register their partnership show mostly majority support for marriage equality.** M.V. Lee Badgett writes, "In 2003, a Gallup Europe poll found that 80% of Dutch participants agreed that marriage should be possible for same-sex couples throughout Europe. The Dutch were second only to the Danes in their support for same-sex marriage. All of the other European countries that now let gay couples marry or register their partnerships also showed majority agreement with the idea on a European level, with the exception of the Czech Republic, which was evenly split at 50% agreement, and the United Kingdom at 47% agreement." [*When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*, p.101; 2009] The current Conservative government in the UK is moving forward with its proposal to push past partnership to the freedom to marry itself.

**A majority of Massachusetts voters say the freedom to marry has been good for the state.** Five years after the first marriage licenses were issued to same-sex couples in Massachusetts, a large majority of the state's voters believe that the freedom to marry has been good for the state. An April 2009 statewide poll of voters in Massachusetts found that support for the freedom to marry has increased 10 percentage points since 2005. The study also found:

- Nearly 70 percent of voters believe that the freedom to marry has contributed to the common good because it has encouraged more people to build families and raise children.
- Voters agree by a margin of 3-to-1 that the children of gay and lesbian couples are more secure, because they have the same legal protections as children in other families.
- By a margin of more than 2-to-1, voters agree that the freedom to marry has brought the state one step closer to fulfilling that promise of equality and fairness for everyone. ["Marriage Equality Works for Massachusetts: 5<sup>th</sup> Anniversary Voter Survey," Lake Research Partners; April 2009]

**The freedom to marry does not affect the institution of marriage: Massachusetts maintains the lowest divorce rate in the U.S.** Of all 50 states, Massachusetts maintains the lowest divorce rate in



the United States even after the state ended the exclusion of gay couples from marriage. [Division of Vital Statistics, National Center for Health Statistics, CDC; 1990, 1995, 1999-2007]

**US Senator Ted Kennedy of Massachusetts following the California supreme court ruling to uphold the freedom to marry:** “I congratulate the California Supreme Court on its recognition that true equality demands that all people have the right to marry and form families. Massachusetts has recognized the right of gay and lesbian couples to marry since 2004 and our experience has refuted the critics. We only strengthen our society when we allow all our citizens to enter into a solemn commitment to share in life's joys and difficulties.” [Senator Kennedy's Office; May 15, 2008]

**Evidence from five countries shows the freedom to marry causes “no adverse changes.”** From the book *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*, M.V. Lee Badgett writes, “[N]o adverse changes have occurred since countries [Denmark, Norway, Sweden, Iceland, and the Netherlands] recognized rights for same-sex couples: marriage rates are up, divorce rates are down, and (mostly) nonmarital birth rates are not rising in comparison to rates for the years before gay couples could register.” [*When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage*, p.76; 2009]