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Holning S. Lau

*University of North Carolina School of Law*, [hslau@email.unc.edu](mailto:hslau@email.unc.edu)

Charles Q. Strohm

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# The Effects of Legally Recognizing Same-Sex Unions on Health and Well-Being

Holning Lau† & Charles Q. Strohm‡

## Introduction

A long-standing body of social science research suggests that marriage generally affects different-sex couples in ways that benefit both the couples and the community at large.<sup>1</sup> Compared to their unmarried counterparts, married people tend to fare better on measures of health and psychological well-being.<sup>2</sup>

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†. Associate Professor of Law, University of North Carolina School of Law; J.D., University of Chicago.

‡. Non-Resident Faculty Affiliate, California Center for Population Research, University of California, Los Angeles; Ph.D., Department of Sociology, University of California, Los Angeles; M.A. (Sociology), M.S. (Epidemiology), University of California, Los Angeles.

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1. See *infra* notes 2–6 and accompanying text.

2. See, e.g., Allan V. Horwitz et al., *Becoming Married and Mental Health: A Longitudinal Study of a Cohort of Young Adults*, 58 J. MARRIAGE & FAM. 895, 900 (1996) (finding that getting and staying married is significantly associated with lower levels of depression); Yuanreng Hu & Noreen Goldman, *Mortality Differentials by Marital Status: An International Comparison*, 27 DEMOGRAPHY 233, 246 (1990) (finding that married persons have lower mortality rates than unmarried or divorced persons); Norman J. Johnson et al., *Marital Status and Mortality: The National Longitudinal Mortality Study*, 10 ANNALS EPIDEMIOLOGY 224, 227 (2000) (finding that non-married groups generally have higher mortality rates than their married counterparts); Hyoun Kim & Patrick C. McKenry, *The Relationship Between Marriage and Psychological Well-Being*, 23 J. FAM. ISSUES 885, 900 (2002) (finding an increase in depressive symptoms after transitioning from marriage to divorce); Sunmin Lee et al., *Effects of Marital Transitions on Changes in Dietary and Other Health Behaviours in US Women*, 34 INT’L J. EPIDEMIOLOGY 69, 69 (2005) (finding both health-damaging and health-promoting changes accompanying divorce and widowhood); Robin W. Simon, *Revisiting the Relationships Among Gender, Marital Status, and Mental Health*, 107 AM. J. SOC. 1065, 1079 (2002) (finding that unmarried persons report more symptoms of depression than married people); Steven Stack & J. Ross Eshleman, *Marital Status and Happiness: A 17-Nation Study*, 60 J. MARRIAGE & FAM. 527, 528 (1998) (finding that marriage may affect happiness through the promotion of financial satisfaction).

Researchers believe that self-selection alone does not account for this difference.<sup>3</sup> That is to say, married couples are not healthier simply because healthier people are more likely to enter and remain in marriages.<sup>4</sup> Rather, marriage enhances people's health and well-being<sup>5</sup> by promoting care within the couple and enhancing support for the couple from third parties such as family and friends.<sup>6</sup> Some commentators argue that these salutary effects on individuals and couples also benefit the broader community by improving public health.<sup>7</sup>

In legal literature, proponents of same-sex marriage have drawn from research on married, different-sex couples to infer that legal marriage would similarly improve the health and well-being

and improvements in health); Lisa Strohschein et al., *Marital Transitions and Mental Health: Are There Gender Differences in the Short-Term Effects of Marital Status Change?*, 61 SOC. SCI. & MED. 2293, 2298 (2005) (finding that married individuals report significantly lower levels of psychological distress); Kristi Williams, *Has the Future of Marriage Arrived? A Contemporary Examination of Gender, Marriage, and Psychological Well-Being*, 44 J. HEALTH & SOC. BEHAV. 470, 475 (2003) [hereinafter Williams, *Future of Marriage*] (finding a correlation between entering marriage and an increase in psychological well-being); Kristi Williams et al., *For Better or for Worse? The Consequences of Marriage and Cohabitation for Single Mothers*, 86 SOC. FORCES 1481, 1494 (2008) [hereinafter Williams et al., *For Better or Worse*] (finding that entering marriage is associated with a decline in psychological distress).

3. Researchers believe that self-selection alone does not explain the difference between married different-sex couples and their unmarried counterparts because some studies on these groups have controlled for their initial health and well-being. Examples of these studies are Horowitz, *supra* note 2, at 904; David R. Johnson & Jian Wu, *An Empirical Test of Crisis, Social Selection, and Role Explanations of the Relationship Between Marital Disruption and Psychological Distress: A Pooled Time-Series Analysis of Four-Wave Panel Data*, 64 J. MARRIAGE & FAM. 211, 222 (2002); Kim & McKenry, *supra* note 2, at 908.

4. *See supra* note 3.

5. For the purposes of this Article, the term "health" will refer to the presence or absence of physical or mental diseases. The term "well-being" will refer to broader measures such as happiness and life satisfaction. *See* Richard M. Ryan & Edward L. Deci, *On Happiness and Human Potential: A Review of Research on Hedonic and Eudaimonic Well-Being*, 52 ANN. REV. PSYCHOL. 141, 146–47 (2001) (noting different concepts of "well-being" that include measures such as "personal growth [and] self-acceptance," and "life satisfaction and psychological health").

6. For an elaboration on these dynamics of care and support, see *infra* notes 39–51 and accompanying text. For a review of arguments critiquing these dynamics, see *infra* Part III.B.

7. *See, e.g.*, LINDA J. WAITE & MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY* 186 (2000) (contending that the positive effects of marriage on different-sex couples' health and well-being amount to a public health consideration); John Culhane, *Beyond Rights & Morality: The Overlooked Public Health Argument for Same-Sex Marriage*, 17 LAW & SEXUALITY 7, 24–27 (2008) (arguing that there are public health reasons for legally recognizing both different-sex and same-sex marriage). *But see infra* Part III.B (discussing critiques of marriage).

of same-sex couples.<sup>8</sup> This Article introduces to legal literature an emerging body of social science research that studies same-sex couples directly by investigating the extent to which same-sex relationships, and legal recognition of those relationships, might influence the health and well-being of the couples involved. This new research is consistent with prior inferences that legal recognition of same-sex relationships enhances the relationships in ways that ultimately benefit the public.<sup>9</sup>

This Article proceeds in three steps. Part I provides background on how legal commentators have increasingly drawn from empirical research to make claims in the debate on same-sex marriage. It also summarizes research based on different-sex couples concerning marriage's benefits to health and well-being. Part II turns to research that focuses specifically on same-sex couples. It reviews recent social science studies concerning the effects of same-sex relationships, and the effects of legally recognizing such relationships, on individuals' health and well-being. Part II also highlights the methodological and conceptual limitations of these studies and suggests directions for future research. Part III discusses how this literature should inform the debate surrounding marriage law reform. The research suggests that extending legal marriage to same-sex couples is supported not only by notions of civil rights, but also by public policy considerations regarding health and well-being. With that said, lawmakers should be mindful that same-sex marriage is not a

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8. See, e.g., Grace Ganz Blumberg, *Legal Recognition of Same-Sex Conjugal Relationships: The 2003 California Domestic Partner Rights and Responsibilities Act in Comparative Civil Rights and Family Law Perspective*, 51 UCLA L. REV. 1555, 1613 (2004) (citing Waite and Gallagher's book on different-sex couples to infer that legally recognizing same-sex couples would enhance those couples' well-being); Dale Carpenter, *Bad Arguments Against Gay Marriage*, 7 FLA. COASTAL L. REV. 181, 216 (2005) (noting "evidence that married [different-sex couples] are healthier, happier, and wealthier than those who are single" to support the contention that same-sex marriage benefits both same-sex couples and the broader community); Culhane, *supra* note 7, at 24–31 (drawing from Waite and Gallagher's book on different-sex marriages to build inferences on same-sex marriage's effects on same-sex couples); Michael S. Wald, *Same-Sex Couple Marriage: A Family Policy Perspective*, 9 VA. J. SOC. POL'Y & L. 291, 298–99, 314–19 (2001) (drawing from research on the effects of different-sex marriage, as well as research on dynamics of same-sex relationships and of gay and lesbian communities, to infer that marriage would strengthen long-term mutual support within same-sex couples). Health scientists have also inferred that legal recognition will have implications for the health and well-being of gays and lesbians. See Michael King & Annie Bartlett, *What Same Sex Civil Partnerships May Mean for Health*, 60 J. EPIDEMIOLOGY & COMMUNITY HEALTH, 188, 189–90 (2006) (arguing that civil partnerships in Britain, which confer nearly all the rights and responsibilities of marriage, will provide health benefits to gays and lesbians).

9. See *infra* Part III.A.

panacea. As such, Part III also highlights some of same-sex marriage's limitations as a matter of public policy.

## I. The Effects of Marriage: Background on Empirical Research

Legal literature on same-sex marriage is increasingly informed by empirical research.<sup>10</sup> This Part begins by providing background information on the different types of research that have had such influence. It then provides additional background on research pertaining to marriage's effects on people's health and well-being.

### A. *The Growing Influence of Empirical Research*

The social science research that has informed legal literature on same-sex marriage can be organized roughly into four main categories. First, commentators have employed research on same-sex parenting to examine what effects legally recognizing same-sex marriage might have on children.<sup>11</sup> Second, empirical research has been used to explore how same-sex marriage might influence different-sex couples.<sup>12</sup> Third, commentators have studied the

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10. See, e.g., *infra* notes 18 & 24 and accompanying text (discussing the number of articles on Westlaw that cite empirical research relevant to same-sex marriage). In addition to academic literature, courts have sometimes considered empirical research while deliberating on same-sex marriage. As this manuscript was being finalized for publication, the District Court for the Northern District of California issued a decision containing the most thorough judicial treatment, to date, of social science research relevant to same-sex marriage. See *Perry v. Schwarzenegger*, No. C 09-2292 VRW, 2010 U.S. Dist. LEXIS 78817, at \*84–181 (N.D. Cal. Aug. 4, 2010) (presenting factual findings). Among the court's findings were factual determinations, based largely on expert testimony, that comport with this Article's review of research regarding marriage's effects on health and well-being. For example, the court stated:

Marriage benefits both spouses by promoting physical and psychological health. Married individuals are less likely to engage in behaviors detrimental to health, like smoking or drinking heavily. Married individuals live longer on average than unmarried individuals. . . . Material benefits, legal protections and social support resulting from marriage can increase wealth and improve psychological well-being for married spouses. . . . Same-sex couples receive the same tangible and intangible benefits from marriage that opposite-sex couples receive.

*Id.* at \*107–10, \*125. This Article provides a detailed account of research that supports these judicial findings.

11. See *infra* notes 16–19 and accompanying text.

12. See M.V. LEE BADGETT, WHEN GAY PEOPLE GET MARRIED 65–80 (2009) (using data from Europe to assess whether legal recognition of same-sex couples is associated with changes in overall marriage, divorce, and birth rates); WILLIAM N. ESKRIDGE, JR. & DARREN R. SPEDALE, GAY MARRIAGE: FOR BETTER OR FOR WORSE?: WHAT WE'VE LEARNED FROM THE EVIDENCE 91–129 (2006) (same).

economic consequences of legally recognizing same-sex marriage.<sup>13</sup> And fourth, research on different-sex marriages has been used to build inferences concerning the effects of same-sex marriage on same-sex couples' health and well-being.<sup>14</sup> While it is not feasible to discuss the literature on these topics comprehensively or in nuanced detail, this section highlights some of these works to contextualize empirical research on how legal recognition affects health and well-being.

Legal literature has considered social science research on how children of gays, lesbians, and bisexuals fare along traditional measures of well-being.<sup>15</sup> Empirical studies comparing children raised by gays, lesbians, and bisexuals with children raised by heterosexuals have found generally no significant disparities between the two groups in mental health and social adjustment.<sup>16</sup> Social scientists such as Judith Stacey, Timothy Biblarz, Charlotte Patterson, and Gregory Herek have provided helpful reviews of this body of research, discussing the studies' findings and limitations.<sup>17</sup> These reviews have been well-cited in law review articles.<sup>18</sup> Legal scholars such as Richard Redding have also

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13. See, e.g., M.V. Lee Badgett et al., *The Impact on Maryland's Budget of Allowing Same-Sex Couples to Marry*, 7 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 295, 297 (2007) [hereinafter Badgett et al., *Maryland*] (arguing that extending marriage to same-sex couples in Maryland would have a positive impact on Maryland's budget); M.V. Lee Badgett et al., *Supporting Families, Saving Funds: An Economic Analysis of Equality for Same-Sex Couples in New Jersey*, 4 RUTGERS J.L. & PUB. POL'Y 8, 12 (2006) [hereinafter Badgett et al., *New Jersey*] (arguing that extending marriage to same-sex couples would create a net financial gain for New Jersey).

14. See *supra* note 8 and accompanying text.

15. See *infra* note 16.

16. See, e.g., Gregory M. Herek, *Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective*, 61 AM. PSYCHOL. 607, 611–14 (2006) (reviewing existing research and finding that “[e]mpirical studies comparing children raised by sexual minority parents with those raised by otherwise comparable heterosexual parents have not found reliable disparities in mental health or social adjustment”); Judith Stacey & Timothy J. Biblarz, (*How*) *Does the Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159, 171–72 (2001) (surveying social science research and finding that children of gay and lesbian parents suffer no psychological or cognitive disabilities compared to children of heterosexual parents); Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 CHILD DEV. 1025, 1036 (1992) (determining, based on a literature review, that the psychological development of children of gay or lesbian parents is not compromised on the basis of their parents' sexuality).

17. *Supra* note 16.

18. Searches in Westlaw's “Journals and Law Reviews” database showed that the reviews cited in note 16 have been cited frequently. In April 2010, a search for articles citing the Stacey and Biblarz review yielded ninety-five returns. Similar searches for the Patterson and Herek pieces yielded twenty and fifteen returns, respectively.

added to this literature by providing in-depth commentary on the available empirical evidence.<sup>19</sup>

Legal literature, including interdisciplinary legal literature, has also addressed the effects that same-sex marriage in the United States might have on different-sex couples. Some commentators have hypothesized that legally recognizing same-sex couples would somehow lead to changed decision-making patterns among different-sex partners by, for example, prompting different-sex partners to forego marriage.<sup>20</sup>

Because some European jurisdictions have legally recognized same-sex relationships for well over a decade now, researchers have data to assess the empirical soundness of such concerns.<sup>21</sup> Two books have been published recently based on data from European countries that recognize same-sex couples through marriage or marriage-like institutions.<sup>22</sup> In the first book, law professor William Eskridge and lawyer Darren Spedale analyze demographic data from Scandinavian countries.<sup>23</sup> Since Eskridge and Spedale published their book in 2007, numerous law review articles have cited it.<sup>24</sup> In a more recent book, M.V. Lee Badgett, a social scientist who is also the Research Director at the Williams Institute at the UCLA School of Law, analyzes data from a variety of European countries with an emphasis on the Netherlands.<sup>25</sup> In these two books, the researchers found that there were generally no associations between recognition of same-sex partnerships and fluctuations in marital rates, divorce rates, or rates of non-marital

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19. See, e.g., Richard E. Redding, *It's Really About Sex: Same-Sex Marriage, Lesbian Parenting, and the Psychology of Disgust*, 15 DUKE J. GENDER L. & POL'Y 127, 132–46 (2008) (reviewing and critiquing social science research on the possible negative effects of lesbian and gay parenting on children).

20. See, e.g., Stanley Kurtz, *The End of Marriage in Scandinavia: The "Conservative Case" for Same-Sex Marriage Collapses*, WEEKLY STANDARD, Feb. 2, 2004, at 26 (arguing that legal recognition of same-sex unions in Scandinavia contributed to a decline in Scandinavian marital rates). For a persuasive point-by-point rejection of Kurtz's arguments, see BADGETT, *supra* note 12, at 65–80.

21. Prior to 2000, five European countries began legally recognizing same-sex couples through registration schemes that offered almost all the rights and responsibilities of marriage (Denmark (1989), Norway (1993), Sweden (1994), Iceland (1996), Netherlands (1998)), and two additional countries began legally recognizing same-sex couples for more limited bundles of rights and responsibilities (France (1999), Belgium (1999)). See BADGETT, *supra* note 12, at 9 (summarizing the history of same-sex partnership recognition). The Netherlands began recognizing same-sex marriages in 2001 and Belgium did so in 2003. *Id.*

22. BADGETT, *supra* note 12; ESKRIDGE & SPEDALE, *supra* note 12.

23. ESKRIDGE & SPEDALE, *supra* note 12, at 91–129.

24. In April 2010, a search in Westlaw's "Journals and Law Reviews" database for the book's title yielded 26 returns.

25. BADGETT, *supra* note 12.

births.<sup>26</sup> Based on European data, recognizing same-sex relationships seems to have little to no effect on different-sex couples' behaviors.<sup>27</sup>

Legal literature has also begun to use data to study the economic consequences of legally recognizing same-sex unions. Studies have suggested that states would experience an economic boost from recognizing same-sex marriages.<sup>28</sup> This economic advantage stems primarily from reduced public assistance payments to same-sex couples and from stimuli to the states' marriage industries, which generate sales tax revenue.<sup>29</sup> These economic benefits offset the economic costs of same-sex marriage, such as the reduction of tax dollars caused by spousal tax benefits to same-sex couples, resulting in a positive economic impact overall.<sup>30</sup>

Finally, as noted earlier, legal scholars have drawn from social science research on different-sex couples to infer how same-sex marriage might impact same-sex couples.<sup>31</sup> These scholars, however, generally have not yet fully engaged the emerging research on the effects of same-sex relationships, and of legally recognizing such relationships, on same-sex couples' health and well-being.<sup>32</sup> This Article begins to fill that gap. With this

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26. See BADGETT, *supra* note 12, at 65–77 (finding that same-sex partnership laws did not reduce marriage rates, raise divorce rates, or contribute to higher rates of non-marital births); ESKRIDGE & SPEDALE, *supra* note 12, at 173 (same).

27. BADGETT, *supra* note 12; ESKRIDGE & SPEDALE, *supra* note 12.

28. These studies generally seek to predict the economic consequences that would result if particular jurisdictions were to legalize same-sex marriage. See *infra* notes 29–30 and accompanying text.

29. See Badgett et al., *Maryland*, *supra* note 13, at 336 (forecasting that if Maryland were to recognize same-sex marriages, it would “likely save over \$1.5 million in avoided public assistance expenditures . . . [and t]aking added health insurance costs for businesses into account, the net gain to Maryland’s businesses is eighty-eight million dollars per year.”); Badgett et al., *New Jersey*, *supra* note 13, at 89 (concluding that New Jersey would save “almost \$1 to \$5.2 million from extending marriage to same-sex couples” and that “New Jersey’s wedding and tourism-related business sectors will see a little over \$100 million per year in spending by in-state and out-of-state same-sex couples.”).

30. See Badgett et al., *Maryland*, *supra* note 13, at 336 (“[The] analysis projects that giving equal marriage rights to same-sex couples will have a positive impact on the state budget of \$3.2 million per year and a net gain to state businesses of over eighty-eight million dollars per year during the first three years that marriage is extended to same-sex couples.”); Badgett et al., *New Jersey*, *supra* note 13, at 89–90 (“[G]iving equal marriage rights to same-sex couples will have a positive net impact on [New Jersey’s] state budget of \$3.9 to \$8.1 million per year and a net gain to state businesses of over \$90 million per year during the first three years that marriage is extended to same-sex couples.”).

31. See *supra* note 8 and accompanying text.

32. One of the articles in this new body of literature, which we review in Part II, was, however, cited in Culhane, *supra* note 7, at 30 (citing Jim Young et al.,



emerging body of research, legal scholars can supplement their discussions on same-sex marriage with insights from studies that focus directly on same-sex couples' health and well-being.

*B. Background on Marriage's Effects on Couples*

Before reviewing the available research on same-sex couples' health and well-being in Part II, this section examines the literature regarding marriage's effects on different-sex couples because it provides guidance on how to understand the research on same-sex couples. Social scientists have studied the effects of marriage on different-sex couples by comparing individuals who are married, cohabiting (but unmarried), and single. This body of research finds that married couples, on average, enjoy better mental and physical health, exercise better health behaviors, and report greater life satisfaction than their unmarried counterparts.<sup>33</sup> Although some studies find that men benefit from marriage more than women do,<sup>34</sup> most recent studies find that the positive effects of marriage accrue to both men and women.<sup>35</sup>

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*Stable Partnership and Progression to AIDS or Death in HIV Infected Patients Receiving Highly Active Antiretroviral Therapy: Swiss HIV Cohort Study*, 328 BRIT. MED. J. 15 (2004)).

33. See *supra* note 2. It is worth emphasizing that these benefits accrue to married couples on average, but not to all married couples. Whether a married couple experiences such benefits may depend on numerous factors ranging from the personalities of the spouses to the macro-economic conditions surrounding the marriage. See Ted Huston & Heidi Melz, *The Case for (Promoting) Marriage: The Devil Is in the Details*, 66 J. MARRIAGE & FAM. 943, 949–55 (2004). Nascent research also suggests that getting remarried may not affect people's health and well-being the same way that first marriages do. See Mary Elizabeth Hughes & Linda Waite, *Marital Biography and Health at Mid-Life*, 50 J. HEALTH & SOC. BEHAV. 344, 353 (2009) (comparing the health of continuously married individuals with that of remarried individuals). Part III.B *infra* considers the public policy implications of marriages that do not improve health and well-being.

34. See, e.g., Eugene Litwak et al., *Organizational Theory, Social Supports, and Mortality Rates: A Theoretical Convergence*, 54 AM. SOC. REV. 49, 61 (1989) (finding that the negative association between marriage and mortality rates is stronger for men than for women); Debra Umberson, *Gender, Marital Status, and the Social Control of Health Behavior*, 34 SOC. SCI. & MED., 907, 914 (1992) (finding that men benefit from marriage more than do women).

35. See, e.g., Kim & McKenry, *supra* note 2, at 902 (finding that the association between marriage and psychological health is similar for women and men); Strohschein et al., *supra* note 2, at 2299 (finding that marriage is beneficial for mental health, regardless of gender); Williams, *Future of Marriage*, *supra* note 2, at 484 (“[W]omen and men receive similar psychological benefits from being and remaining married.”). There is some evidence that men and women tend to benefit from marriage in different ways. See Linda Waite, *Does Marriage Matter?*, 32 DEMOGRAPHY 483, 489 (1995) (finding that men are more likely than women to benefit from social support provided by a spouse, whereas gaining access to material resources that affect health and well-being is particularly beneficial for women).

Researchers have questioned whether the observed associations between marriage on one hand, and health and well-being on the other, are the result of self-selection. That is to say, individuals who are healthier and happier may be more likely to enter and remain in marriages. Although several studies suggest that self-selection is a factor,<sup>36</sup> other research suggests that self-selection only provides a partial explanation.<sup>37</sup> This latter body of research controlled for initial indicators of health and well-being and still found that married individuals fared better than their unmarried counterparts, suggesting that marriage somehow contributed to the couples' health and well-being.<sup>38</sup>

Why might marriage have this transformative effect on couples? The most prominent explanations developed by scholars can be organized into three main parts. First, the legal rights and responsibilities of marriage improve health and well-being.<sup>39</sup> Legal rights can promote care between the couple,<sup>40</sup> thereby contributing to health and well-being.<sup>41</sup> For example, spouses have rights to medical leave to attend to each other's needs.<sup>42</sup> The legal responsibility of spousal support also enforces caregiving.<sup>43</sup> Some rights associated with marriage may improve health and

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36. See Lee A. Lillard & Constantijn W.A. Panis, *Marital Status and Mortality: The Role of Health*, 33 DEMOGRAPHY 313, 324 (1996) (finding that other factors not typically observed in surveys contribute to the association between marriage and mortality); Arne Mastekaasa, *Marriage and Psychological Well-Being: Some Evidence on Selection into Marriage*, 54 J. MARRIAGE & FAM. 901, 910 (1992) (“[T]he results reported here give reason to conclude that selection processes may play an important part in producing the observed association between marital status and psychological well-being.”); Ingrid Waldron et al., *Marriage Protection and Marriage Selection—Prospective Evidence for Reciprocal Effects of Marital Status and Health*, 43 SOC. SCI. & MED. 113, 121 (1996) (finding that, among women who were not employed or employed part-time, health was positively associated with entering marriage).

37. See *supra* note 3.

38. *Id.*

39. See *infra* notes 40–45 and accompanying text.

40. Care between members of a couple can take a variety of forms, for example, instrumental support, emotional support, and social controls about health behaviors such as exercise, diet, and use of tobacco and alcohol. Social scientists use the term “social control” to refer to “the deliberate efforts of others to control one’s health and health behaviors.” Hui Liu & Debra J. Umberson, *The Times They Are a Changin’: Marital Status and Health Differentials from 1972 to 2003*, 49 J. HEALTH & SOC. BEHAV. 239, 241 (2008).

41. See *infra* note 42 and accompanying text.

42. See Family and Medical Leave Act, 29 U.S.C. § 2612(a)(1)(C) (2006) (establishing an employee’s entitlement to leave in order to care for a spouse).

43. See Elizabeth Cooper, *Who Needs Marriage?: Equality and the Role of the State*, 8 J.L. & FAM. STUD. 325, 333 n.40 (2006) (listing cases holding that spouses have a legal obligation to financially support each other).

well-being even if they do not foster caregiving.<sup>44</sup> For example, the federal government offers health care benefits to spouses of federal employees, which may improve their health regardless of the nature of their marriages.<sup>45</sup> Second, the social meaning of marriage promotes commitment between the couple, which in turn fosters care.<sup>46</sup> For example, the widely-held understanding of marriage as a long-term relationship of mutual dependence motivates partners to encourage each other's healthy behaviors and provide sanctions for unhealthy behaviors.<sup>47</sup> Third, marriage can legitimize a relationship in the eyes of third parties such as family, friends, and other private actors.<sup>48</sup> As a result, family and friends may offer greater social support to married couples than to unmarried partners,<sup>49</sup> and such social support can enhance health and well-being.<sup>50</sup> Similarly, private employers might limit their

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44. See *infra* note 45 and accompanying text.

45. See U.S. GEN. ACCOUNTING OFFICE, GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT (2004), available at <http://www.gao.gov/new.items/d04353r.pdf> (updating U.S. GEN. ACCOUNTING OFFICE, GAO/OGC-97-16, DEFENSE OF MARRIAGE ACT (1997), available at <http://www.gao.gov/archive/1997/og97016.pdf> (listing employee benefits as one of over 1000 areas of federal law for which marital status is relevant)).

46. See STEVEN L. NOCK, MARRIAGE IN MEN'S LIVES 3-42 (1998) (describing how marriage is a social institution governed by norms of care and permanence); WAITE & GALLAGHER, *supra* note 7, at 25 (arguing that marriage is understood as a "promise of permanence" and, therefore, enhances commitment and changes the behavior of married couples).

47. See Liu & Umberson, *supra* note 40, at 241 (describing social control and social support as key mechanisms through which marriage improves health and well-being).

48. See, e.g., Steven L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 J. FAM. ISSUES 53, 74 (1995) (asserting that parents view non-marital cohabiting relationships as "incomplete" compared to marriages because of the different laws and norms governing the two types of relationships).

49. See *id.* at 67-68 (finding a correlation between marriage and a positive relationship between couples and their parents).

50. See BERT N. UCHINO, SOCIAL SUPPORT AND PHYSICAL HEALTH: UNDERSTANDING THE HEALTH CONSEQUENCES OF RELATIONSHIPS 109-44 (2004) (reviewing the associations between various types of support and physical health); Karen L. Blair & Diane Holmberg, *Perceived Social Network Support and Well-Being in Same-Sex and Mixed-Sex Romantic Relationships*, 25 J. SOC. & PERS. RELATIONSHIPS 769, 782-84 (2008) (describing how support for a relationship improves relationship well-being, which in turn promotes mental and physical health); Tarja Heponiemi et al., *The Longitudinal Effects of Social Support and Hostility on Depressive Tendencies*, 63 SOC. SCI. & MED. 1374, 1379 (2006) (demonstrating a negative association between social support and depressive tendencies); Nan Lin et al., *Social Support and Depressed Mood: A Structural Analysis*, 40 J. HEALTH & SOC. BEHAV. 344, 353 (1999) (showing the negative association between perceived expressive support and depressed mood). In addition to receiving support, married couples might derive life satisfaction from knowing that other people, including family and friends, view marriage as a respected social status. See Andrew J. Cherlin, *The Deinstitutionalization of*

support, in the form of health care coverage, to legally recognized partners of employees.<sup>51</sup> Note that we highlight these claims here as descriptive arguments, as opposed to normative arguments. In Part III, we explore literature that questions the normativity of some of these claims.

## II. Research on Same-Sex Couples' Health and Well-Being

This Part reviews the small, but growing, body of social science research that examines how being in a same-sex relationship, particularly a legally recognized same-sex relationship, affects a person's health and well-being.<sup>52</sup> Although this body of research is nascent because data have been limited,<sup>53</sup> it provides insights for policymakers to consider.

We divide this body of research into four main categories: research that compares legally recognized same-sex couples with unrecognized same-sex couples, research that compares health and well-being outcomes in jurisdictions that legally recognize same-sex couples with outcomes in jurisdictions lacking recognition policies, studies that compare sexual orientation minorities who are in same-sex relationships with their single counterparts, and studies that directly ask individuals in same-sex unions about the effects of legal recognition. For each category, we discuss the studies' methodology, findings, and limitations.

### A. Comparing Recognized and Unrecognized Same-Sex Couples

As an increasing number of jurisdictions legally recognize same-sex unions,<sup>54</sup> social scientists can collect more data

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*American Marriage*, 66 J. MARRIAGE & FAM. 848, 855 (2004) (explaining that marriage is a "marker of prestige").

51. In 2010, the Human Rights Campaign conducted a study of 590 of the largest corporate employers in the United States. They found that, among the ninety-four percent that offered partner health coverage, thirty percent offered health coverage to employees' different-sex partners, but not to employees' same-sex partners. HUMAN RIGHTS CAMPAIGN FOUND., CORPORATE EQUALITY INDEX: 2010, at 16 (2010), available at [http://www.hrc.org/documents/HRC\\_Corporate\\_Equality\\_Index\\_2010.pdf](http://www.hrc.org/documents/HRC_Corporate_Equality_Index_2010.pdf).

52. For some examples of this research, see Carpenter, *supra* note 8; Culhane, *supra* note 7; Herek, *supra* note 16; Wald, *supra* note 8.

53. Data have been limited because of the recent nature of legal recognition of same-sex unions and the scarcity of data on lesbians, gay men, and bisexuals more generally.

54. For a summary of the legal landscape regarding recognition of same-sex couples in the United States, see *Same-Sex Marriage, Civil Unions and Domestic Partnerships*, NAT'L. CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=16430> (last updated Sept. 2010).

comparing same-sex couples in legally recognized unions with same-sex couples who have chosen not to seek legal recognition. Three studies have already explored data on these two types of couples. The first study examines registered domestic partnerships in California,<sup>55</sup> the second draws from a national sample,<sup>56</sup> and the third study focuses on civil unions from Vermont.<sup>57</sup>

### 1. California

In their study of relationships in California, Adam Fingerhut and Natalya Maisel compared self-reported well-being and relationship dynamics of same-sex couples who have obtained recognition of their relationships with those who have not obtained recognition.<sup>58</sup> The authors studied two types of recognition: legal recognition through domestic partnership registration, and social recognition through a public ceremony or wedding.<sup>59</sup> The authors also conducted an exploratory analysis of whether legal recognition and social recognition protect couples from the harmful effects of sexual orientation–related stress.<sup>60</sup>

This study used data from an online survey of 263 California residents in same-sex relationships.<sup>61</sup> To collect information, Fingerhut and Maisel recruited respondents from two sources.<sup>62</sup> The authors selected a random sample of 500 couples from California's domestic partnership registry and invited members of those couples by mail to participate in the study.<sup>63</sup> In addition, Fingerhut and Maisel recruited participants through lesbian, gay, bisexual, and transgender community organizations.<sup>64</sup> All respondents completed an online survey that collected information

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55. See Adam W. Fingerhut & Natalya C. Maisel, *Association of Relationship Formalization to Individual and Relationship Well-Being Among Same-Sex Couples*, 27 J. SOC. & PERS. RELATIONSHIPS (forthcoming 2010).

56. See Ellen D.B. Riggle et al., *Psychological Distress, Well-Being, and Legal Recognition in Same-Sex Couple Relationships*, 24 J. FAM. PSYCHOL. 82 (2010).

57. See Kimberly F. Balsam et al., *Three-Year Follow-Up of Same-Sex Couples Who Had Civil Unions in Vermont, Same-Sex Couples Not in Civil Unions, and Heterosexual Married Couples*, 44 DEVELOPMENTAL PSYCHOL. 102 (2008).

58. Fingerhut & Maisel, *supra* note 55.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* Individuals who entered into a domestic partnership in 2005 or 2006 were eligible to participate in the study. *Id.*

64. *Id.*

about life satisfaction, relationship investment and satisfaction,<sup>65</sup> and sexual orientation–related stress, such as experiences with discrimination or feelings of shame.<sup>66</sup> The survey also asked respondents whether they were in a domestic partnership (legal recognition) and whether they had a public ceremony or wedding (social recognition).<sup>67</sup> Among all respondents, sixty-three percent were in a domestic partnership, and thirty-two percent had a public ceremony or wedding.<sup>68</sup> The vast majority of respondents (eighty-five percent) lived with their partner, the median relationship duration was just under seven years, and thirty-one percent were parents.<sup>69</sup>

Using these data, Fingerhut and Maisel estimated a series of regression models to examine the associations between the two types of recognition (legal and social) and three outcomes: life satisfaction, relationship satisfaction, and relationship investment.<sup>70</sup> These outcomes are relevant to our review because

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65. Relationship investment is defined as “magnitude and importance of the resources that are attached to a relationship—resources that would decline in value or be lost if the relationship were to end.” Caryl E. Rusbult et al., *The Investment Model Scale: Measuring Commitment Level, Satisfaction Level, Quality of Alternatives, and Investment Size*, 5 PERS. RELATIONSHIPS 357, 359 (1998).

66. Fingerhut & Maisel, *supra* note 55. Fingerhut and Maisel studied both external and internal sexual orientation stress using the “Measure of Gay-Related Stress,” a measure that has been employed by other researchers studying sexual orientation–related stress. *Id.*; see also Lewis et al., *An Empirical Analysis of Stressors for Gay Men and Lesbians*, 42 J. HOMOSEXUALITY 63, 81–82 (2001) (providing background information on the Measure of Gay-Related Stress scale). Examples of external sexual orientation–related stress include violence and harassment, employment discrimination, and negative familial reactions due to sexual orientation. Fingerhut & Maisel, *supra* note 55. An example of internal sexual orientation–related stress is a feeling of guilt or shame about being lesbian or gay. *Id.*

67. Fingerhut & Maisel, *supra* note 55.

68. *Id.* Of course, individuals may have a ceremony or wedding without having a domestic partnership, and vice versa. Of all respondents, twenty-six percent had both legal and social recognition, thirty-seven percent had legal but not social recognition, just over five percent had social recognition but not legal recognition, and thirty-one percent had neither legal nor social recognition. *Id.* Note that these percentages are not representative of all same-sex couples in California due to the study’s mixed sampling design that combined recruitment from the California domestic partnership registry with recruitment from community organizations. *Id.*

69. *Id.*

70. *Id.* Fingerhut and Maisel controlled for the respondent’s age, gender, and relationship duration; these factors might confound the results because they are known correlates of relationship recognition for same-sex couples. *Id.*; see also M.V. Lee Badgett et al., *Registered Domestic Partnerships Among Gay Men and Lesbians: The Role of Economic Factors*, 6 REV. ECON. HOUSEHOLD 327, 342 (2008) [hereinafter Badgett et al., *Registered Domestic Partnerships*] (showing that age, gender, and relationship duration are associated with the obtaining of relationship recognition among same-sex couples); Christopher Carpenter & Gary G. Gates, *Gay and Lesbian Partnership: Evidence from California*, 45 DEMOGRAPHY

the first two directly gauge well-being;<sup>71</sup> the third outcome, relationship investment, matters because social scientists consider it to be a determinant of commitment,<sup>72</sup> which enhances care between members of a couple.<sup>73</sup>

The results indicated that there was a statistically significant, positive association between legal recognition and investment in the relationship.<sup>74</sup> That is to say, individuals in domestic partnerships reported greater investment in their relationship than did individuals not in domestic partnerships.<sup>75</sup> There was no association, however, between legal recognition and life satisfaction or relationship satisfaction.<sup>76</sup> Meanwhile, there was a statistically significant, positive association between social recognition and life satisfaction, as well as between social recognition and relationship satisfaction.<sup>77</sup> Social recognition, however, had no association with investment in the relationship.<sup>78</sup> In sum, legal recognition and social recognition were associated with greater well-being, albeit in different ways.<sup>79</sup>

The study also examined whether legal recognition and social recognition protect individuals from the negative psychological effects of sexual orientation-related stress.<sup>80</sup> To investigate this question, Fingerhut and Maisel asked whether the association between sexual orientation-related stress and well-being was the same for individuals in recognized relationships as it was for those not in recognized relationships.<sup>81</sup> In other words, the authors compared whether sexual orientation-related stress is as

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573, 583–86 (2008) (same). Fingerhut and Maisel used information in the survey to ensure that data from only one member of a couple was used in the analysis. Fingerhut & Maisel, *supra* note 55. Including data from both members of a couple in the analysis without appropriate statistical adjustments would over-represent the experiences of those couples. *Id.*

71. See *supra* note 5 and accompanying text (defining “well-being” to include life satisfaction and happiness).

72. See Rusbult et al., *supra* note 65, at 358–60 (asserting that “[relationship] investment size” is a determinant of “commitment level” within a couple).

73. See *supra* note 46 and accompanying text (describing the relationship between commitment and care).

74. Fingerhut & Maisel, *supra* note 55.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. Fingerhut and Maisel also investigated whether being in a relationship that is both legally and socially recognized provides benefits above and beyond the individual effects of legal and social recognition. *Id.* The results suggested that this is not the case. *Id.*

80. *Id.*

81. *Id.*

detrimental for individuals in legally recognized unions as it is for those not in legally recognized unions.<sup>82</sup> The results suggest that, for individuals not in a domestic partnership, greater internalized stress was related to lower life satisfaction.<sup>83</sup> For those in a domestic partnership, however, there was no association between internalized stress and life satisfaction.<sup>84</sup> The authors interpreted this pattern as evidence that legal recognition may protect individuals from the negative effects of social stressors, possibly because legal recognition brings partners closer together, encouraging them to work through stressful situations as a couple.<sup>85</sup>

Overall, these results are consistent with the belief that legal recognition and social recognition have causal effects on some aspects of well-being. Because the data were collected at one point in time, however, the observed associations could be due to self-selection into legally and socially recognized relationships.<sup>86</sup> As a result, this study does not conclusively establish a causal effect of relationship recognition on well-being. However, studies like Fingerhut and Maisel's strengthen commentators' inferences on the effect of legally recognizing same-sex unions because they provide data on same-sex couples that is at least consistent with the causal inferences. One should be mindful that the research on different-sex couples began with cross-sectional studies that only demonstrated marriage's positive correlations with health and well-being in a manner similar to that of Fingerhut and Maisel's study.<sup>87</sup> Later studies on different-sex unions used more sophisticated, longitudinal designs and enhanced statistical techniques; they were therefore able to support stronger causal inferences.<sup>88</sup> Similarly, as more population-based, longitudinal

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82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* For example, couples who feel invested in their relationship may be more likely to formalize their union through a domestic partnership than couples who are less invested. Alternatively, there may be unobserved differences between recognized and unrecognized couples that bias the association between recognition status and well-being. For example, individuals whose personalities are more relationship-oriented may be more likely to invest in their current relationship as well as enter a domestic partnership. If this proposition is true, and if relationship orientation is not taken into account, the association between legal recognition and relationship investment might be upwardly biased.

87. For an example of one such early study on different-sex couples, see Walter R. Gove et al., *Does Marriage Have Positive Effects on the Psychological Well-Being of the Individual?*, 24 J. HEALTH & SOC. BEHAV. 122 (1983).

88. For examples of such later studies, see Kim & McKenry, *supra* note 2;



data on same-sex relationships become available, future research will be able to address more conclusively the potential causal effects of legal recognition on same-sex relationships.

## 2. National Study

Ellen Riggle and her colleagues analyzed data from 2480 sexual orientation minorities who participated in an online survey about relationships, legal recognition, and psychological well-being.<sup>89</sup> Individuals who were living in the United States were eligible for the study and were recruited through advertisements on email listservs and websites.<sup>90</sup> The survey collected information about several indicators of psychological well-being, including perceived stress, depressive symptoms, internalized homophobia,<sup>91</sup> and meaning in life.<sup>92</sup> In addition, the survey categorized respondents' relationship status into one of four categories: (1) single, (2) "dating but not committed," (3) in a same-sex, committed relationship that was not legally recognized, or (4) in a same-sex, committed relationship that was legally recognized.<sup>93</sup> The survey defined legal recognition as marriage, civil union, or domestic partnership.<sup>94</sup>

To illuminate the potential effects of legal recognition, Riggle et al. compared psychological distress and well-being between

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Strohschein et al., *supra* note 2. Social scientists view longitudinal designs as providing better evidence about a causal inference than studies using cross-sectional designs. See, e.g., Paul D. Allison, *Change Scores as Dependent Variables in Regression Analysis*, 20 SOC. METHODOLOGY 93, 93–94 ("The measurement of a dependent variable at two or more points in time is widely regarded as a powerful tool for making causal inferences with nonexperimental data."). But see Huston & Melz, *supra* note 33, at 945 (acknowledging that even longitudinal studies have limitations, in terms of supporting causal inferences).

89. Riggle et al., *supra* note 56, at 83.

90. *Id.*

91. Riggle et al. used the "Internalized Homophobia Scale" developed by Eric Wright and Brea Perry to measure internalized homophobia. *Id.* at 83. Examples of internalized homophobia are feelings of shame about being gay/lesbian/bisexual, not having a positive attitude about a gay/lesbian/bisexual identity, and wishing that one was not attracted to members of the same sex. See Eric R. Wright & Brea L. Perry, *Sexual Identity Distress, Social Support, and the Health of Gay, Lesbian, and Bisexual Youth*, 51 J. HOMOSEXUALITY 81, 96 (2006) (describing the Internalized Homophobia Scale).

92. Riggle et al., *supra* note 56, at 83.

93. *Id.* The single category included only those who were single and had never married; respondents who were divorced, separated, or widowed were excluded from the analysis. *Id.* Of the 2480 participants in the study, 542 were single, 179 were in a dating but non-committed relationship, 1353 were in a non-legally recognized committed relationship, and 406 were in a legally recognized committed relationship. *Id.*

94. *Id.*

individuals in legal relationships and individuals in committed relationships.<sup>95</sup> The results of multivariate statistical models suggest that individuals in legal relationships perceive less stress, fewer depressive symptoms, and less internalized homophobia compared to those in committed relationships.<sup>96</sup> In addition, those in legal relationships also reported greater meaning in life relative to their peers in committed relationships.<sup>97</sup> These statistical models adjusted for differences between the two groups in gender, education, parental status, and relationship duration, to ensure that these variables do not confound the analysis.<sup>98</sup>

Like Fingerhut and Maisel's California study, the study by Riggle et al. demonstrates statistically significant, positive associations between legal recognition and some aspects of well-being, but cannot provide evidence of a causal effect due to the study's cross-sectional design.<sup>99</sup> It is possible that other confounding factors that were not taken into account in this study may explain the positive association between recognition and well-being.<sup>100</sup> In addition, the positive associations between legal recognition and well-being may have been produced by individuals with low stress, few depressive symptoms, and less internalized homophobia (or high meaning in life) choosing to enter and remain in legally recognized relationships.

### 3. Vermont

Several years before Fingerhut and Maisel conducted their study in California and before Riggle and her colleagues began their national study, a team of researchers conducted a study comparing same-sex couples who entered civil unions in Vermont, same-sex couples not in civil unions, and different-sex married couples (the "Vermont Civil Union Study").<sup>101</sup> The couples were

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95. *Id.* at 83–84. For economy of language, this Article refers to same-sex committed relationships that are not legally recognized as "committed relationships" and same-sex committed relationships that are legally recognized as "legal relationships."

96. *Id.* at 84.

97. *Id.*

98. *Id.* at 83.

99. *See supra* Part II.A.1 (discussing the study by Fingerhut and Maisel).

100. The only variables that the researchers controlled for were gender, education, relationship duration, and parental status. Riggle et al., *supra* note 56, at 83.

101. Several articles have analyzed data from this study. *See, e.g.*, Balsam et al., *supra* note 57; Sondra E. Solomon et al., *Money, Housework, Sex, and Conflict: Same-Sex Couples in Civil Unions, Those Not in Civil Unions, and Heterosexual Married Siblings*, 52 *SEX ROLES* 561 (2005) [hereinafter Solomon et al., *Money, Housework, Sex, and Conflict*]; Sondra E. Solomon et al., *Pioneers in Partnership:*

surveyed in 2002 and again in 2005.<sup>102</sup> Although the surveys did not address health and well-being in explicit terms, the study examined respondents' perceived family support and family integration as well as respondents' openness about their sexual orientation.<sup>103</sup> Because these factors are key determinants of health,<sup>104</sup> the Vermont Civil Union Study sheds light on the connection between legal recognition of relationships and health and well-being.

It is worth emphasizing at the outset that the Vermont Civil Union Study only provides tentative insights into the effects of recognizing same-sex unions. About four-fifths of the couples who obtained civil unions returned home to states that did not legally recognize Vermont civil unions.<sup>105</sup> This phenomenon potentially limited the civil unions' effects on health and well-being because respondents who left Vermont did not experience the full legal consequences of registering their unions.<sup>106</sup> To the extent that the social significance of civil unions derives from their legal significance, the effects of civil unions might be further limited for the couples who left Vermont.<sup>107</sup> Despite these circumstances, the Vermont Civil Union Study still found some statistically significant associations between having a civil union and determinants of health and well-being.<sup>108</sup>

Before turning to the study's results, it is worth pausing to note the study's design. In 2002, the authors surveyed a subset of same-sex couples who obtained civil unions in Vermont between July 1, 2000 and July 1, 2001 (the first year after Vermont's civil union law went into effect).<sup>109</sup> These couples were asked to

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*Lesbian and Gay Male Couples in Civil Unions Compared with Those Not in Civil Unions and Married Heterosexual Siblings*, 18 J. FAM. PSYCHOL. 275 (2004) [hereinafter Solomon et al., *Pioneers in Partnership*].

102. Balsam et al., *supra* note 57, at 103–05.

103. *Id.* at 105. “Outness” and “open[ness]” refer to the degree to which respondents had disclosed their sexual orientation. *Id.*

104. See Jessica Morris et al., *A Model of Predictors and Outcomes of Outness Among Lesbian and Bisexual Women*, 71 AM. J. ORTHOPSYCHIATRY 61, 69 (2001) (discussing “outness”); *supra* note 50 and accompanying text (discussing social support and integration).

105. Solomon et al., *Money, Housework, Sex, and Conflict*, *supra* note 101, at 564.

106. See *supra* notes 41–43 and accompanying text (discussing how legal rights and responsibilities are believed to affect couples' health and well-being).

107. See *supra* note 46 and accompanying text (discussing how social meanings of relationship recognition are believed to affect couples' health and well-being).

108. See *infra* notes 113–115 and accompanying text (discussing associations between being in a civil union and experiencing enhanced family support and integration).

109. Solomon et al., *Pioneers in Partnership*, *supra* note 101, at 276–77.

provide contact information for a same-sex couple in their friendship network that was *not* in a civil union, as well as for a heterosexual married sibling, who were then recruited to participate in the study.<sup>110</sup> All individuals who agreed to participate completed a mail-back questionnaire.<sup>111</sup> In total, the researchers collected information from 659 individuals in same-sex civil unions, 466 individuals in same-sex couples without civil unions, and 413 members of different-sex married couples.<sup>112</sup> Because this Article focuses on the effects of legally recognizing same-sex unions, it concentrates on comparisons between same-sex couples in civil unions and same-sex couples not in civil unions.

The 2002 survey found that, in some regards, individuals in civil unions were significantly more likely to report strong family ties than those not in civil unions.<sup>113</sup> For example, when compared to men in unrecognized same-sex relationships, men in same-sex civil unions were more likely to initiate contact with their partner's mother and more likely to report that their father made them feel like part of the family.<sup>114</sup> Among women, being in a civil union was positively associated with contact with their mothers.<sup>115</sup> It is worth noting that the findings on family support and integration differed between men and women and there were some dimensions of family ties that were not associated with civil union status.<sup>116</sup> Findings on openness about sexual orientation also varied by sex; women in civil unions were more likely to be open about their sexual orientation than women not in civil unions, but there was no difference among men.<sup>117</sup>

It is unclear whether the differences between recognized and unrecognized same-sex partnerships were caused by legal recognition or by a selection effect.<sup>118</sup> To provide a more rigorous test of legal recognition's effects over time, the Vermont Civil Union Study attempted to survey all respondents three years after

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110. *Id.*

111. *Id.* at 277.

112. *Id.*

113. *Id.*

114. *Id.* at 282–83.

115. *Id.* at 282.

116. For example, perceived social support from family was not associated with civil union status for either men or women. *Id.* Future research should explore explanations for these differences, but such an inquiry is beyond this Article's scope.

117. *Id.* at 282–83.

118. *Id.* at 283.

the initial survey.<sup>119</sup> The follow-up survey allowed the researchers to examine whether changes in family ties over the three-year period were similar between same-sex couples in civil unions and those not in civil unions.<sup>120</sup> Using this longitudinal data permitted the authors to move closer to a causal inference about the effects of civil unions.<sup>121</sup>

Multi-level statistical models suggest that, over the three years, there were no meaningful differences in changes to family ties between individuals in civil unions and those not in civil unions.<sup>122</sup> There were also no statistically significant differences in changes in respondents' openness about their sexual orientation.<sup>123</sup> The lack of statistically significant differences may suggest that legal recognition does not transform same-sex couples' family ties and openness about sexual orientation.

A number of compelling factors, however, may better explain the lack of significant differences. First, as discussed above, for the overwhelming majority of the couples who registered their unions in Vermont, doing so did not amount to legal recognition of their relationships.<sup>124</sup> The social significance of their registration might have been compromised as a result. Seventy-nine percent of all couples who obtained civil unions in the first year were not Vermont residents.<sup>125</sup> For these respondents, any transformative change that they experienced initially may have waned and eventually ceased after leaving Vermont. Second, the study's method for recruiting respondents may have resulted in fewer detected differences between couples in civil unions and couples not in civil unions. This is because the study recruited couples not in civil unions through their friends who were in civil unions.<sup>126</sup> These respondents who were not in civil unions may have been more similar to their friends than to the true population of same-sex couples not in civil unions. Third, the authors may not have

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119. Balsam et al., *supra* note 57, at 104–05.

120. *Id.* at 109.

121. *Id.* at 110–12; see *supra* note 88 and accompanying text (discussing the utility of longitudinal data).

122. That is to say, the trajectories in family support, contact with family and partner's family, and perceptions of feeling part of one's family were similar, regardless of whether lesbian women and gay men were in a civil union or not. See *id.* at 109–10.

123. Changes in respondents' openness about sexual orientation were not associated with civil union status. *Id.*

124. See *supra* note 105 and accompanying text.

125. Solomon et al., *Money, Housework, Sex, and Conflict*, *supra* note 101, at 563 (“21% of the couples were from Vermont”).

126. See Solomon et al., *Pioneers in Partnership*, *supra* note 101, at 276–77.

detected differences between the groups because long-term effects of civil unions could not be captured by the study's short observation period.<sup>127</sup>

The researchers also reported dissolution rates between 2002 and 2005 for the couples in the study.<sup>128</sup> They reported a statistically significant difference by civil union status: 9.3% of same-sex couples not in civil unions broke up during the three-year period, compared to 3.8% of same-sex couples in civil unions.<sup>129</sup> The fact that couples in civil unions were more likely to stay together is consistent with the belief that legal recognition enhances commitment between couples. Commentators believe that such commitment influences behaviors that improve health and well-being.<sup>130</sup> Note, however, that an alternative explanation is that couples who chose to enter a civil union were more committed at the outset than those who did not enter a civil union.

### B. Comparing Outcomes by Jurisdiction

The studies discussed in the preceding section focused on variation between individuals in legally recognized unions and individuals not in legally recognized unions. In this section, we review two studies that take a different approach, comparing outcomes by jurisdiction.<sup>131</sup> These studies compare health and well-being in jurisdictions that legally recognize same-sex couples with health and well-being in jurisdictions that do not.<sup>132</sup>

#### 1. Rates of Sexually Transmitted Infections

Commentators have argued that legal recognition of relationships increases the sense of commitment between partners.<sup>133</sup> Some also argue that this heightened sense of commitment deters couples from endangering their partners

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127. See Charlotte J. Patterson, *What Difference Does a Civil Union Make? Changing Public Policies and the Experiences of Same-Sex Couples: Comment on Solomon, Rothblum, and Balsam (2004)*, 18 J. FAM. PSYCHOL. 287, 288 (2004) (suggesting that the Vermont study period may have been too short to demonstrate the full scope of benefits that accrue from marriage).

128. Balsam et al., *supra* note 57, at 108–09.

129. *Id.*

130. See *supra* notes 46–50 and accompanying text (discussing the relationships among commitment, care, and health and well-being).

131. See Thomas S. Dee, *Forsaking All Others? The Effects of Same-Sex Partnership Laws on Risky Sex*, 118 ECON. J. 1055 (2008); Brian de Vries et al., *State Recognition of Same-Sex Relationships and Preparations for End of Life Among Lesbian and Gay Boomers*, 6 SEXUALITY RES. & SOC. POL'Y 90 (2009).

132. See Dee, *supra* note 131; de Vries, *supra* note 131.

133. See *supra* note 46 and accompanying text.

through unprotected sex with additional partners.<sup>134</sup> To test this claim, Thomas Dee compared the incidence of sexually transmitted infections (STIs) in European countries that legally recognize same-sex partnerships with the incidence of STIs in countries that do not legally recognize same-sex partnerships.<sup>135</sup>

Dee used World Health Organization (WHO) data from 1980–2003 on twenty-eight European countries, of which eight legally recognized same-sex couples during the observation period.<sup>136</sup> These data allowed Dee to estimate “difference-in-difference” statistical models that compare year-to-year changes in STI rates in countries that legally recognized same-sex couples to the year-to-year changes in countries with no legal recognition.<sup>137</sup> For example, Dee was able to compare how the change in STI rates from 2001 to 2002 differed between Denmark (which recognized same-sex unions in both 2001 and 2002) and Italy (which did not recognize same-sex unions in either 2001 or 2002).<sup>138</sup> The advantage of these statistical models is that they effectively control for prior trends in disease rates; therefore, it did not matter if Denmark had lower or higher STI rates than Italy because the models examined the annual *change* in STI rates within a particular country.<sup>139</sup> Further, the models controlled for all time-invariant country-level characteristics, meaning that differences between Denmark and Italy with respect to their health systems, population compositions, and other stable characteristics, were taken into account.<sup>140</sup>

The data did not distinguish STI rates among gays, lesbians, bisexuals, and heterosexuals.<sup>141</sup> Dee hypothesized, however, that changes in overall STI rates could be attributed primarily to changed behaviors among men who have sex with men (MSM), a group that comprises a significant proportion of STI cases.<sup>142</sup> As

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134. Dee, *supra* note 131, at 1055–56 (citing WILLIAM N. ESKRIDGE, *THE CASE FOR SAME-SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT* 170–74 (1996); JONATHAN RAUCH, *GAY MARRIAGE: WHY IT IS GOOD FOR GAYS, GOOD FOR STRAIGHTS, AND GOOD FOR AMERICA* 79 (2004)). This claim comports with the view that greater commitment between partners strengthens partners’ care for each other. *See also supra* notes 46–47 and accompanying text.

135. Dee, *supra* note 131, at 1056.

136. *Id.* at 1061, 1076.

137. *Id.* at 1056.

138. *Id.* at 1076.

139. *Id.* at 1071.

140. *See id.* at 1064–65.

141. *See id.* at 1061. The WHO data were collected in collaboration with national health authorities. *Id.*

142. *Id.* at 1056.

noted above, male couples who obtain legal recognition of their relationships may change their behaviors due to heightened feelings of commitment.<sup>143</sup> Other MSM may also change their behavior if the introduction of same-sex marriage, or similar forms of legal recognition, alters sexual norms within their communities.<sup>144</sup>

Dee studied the effects of relationship recognition policies on rates of syphilis, gonorrhea, and HIV.<sup>145</sup> He hypothesized, however, that the effects of same-sex partnership laws would be most readily apparent for syphilis.<sup>146</sup> This is because new HIV cases often take a long time to be identified and, therefore, changes in HIV rates may not be observed within the time period that Dee studied.<sup>147</sup> In addition, a substantial proportion of syphilis cases occur among MSM, whereas only a minority of gonorrhea cases do.<sup>148</sup>

Dee's statistical models suggest that the introduction of legal recognition of same-sex unions is associated with a statistically significant decrease in syphilis rates of between thirty-two and forty-three percent.<sup>149</sup> These percentages may seem large at first blush, but Dee noted that a forty-three percent reduction in syphilis cases corresponded to approximately 169 fewer cases of syphilis a year for each country that introduced legal recognition, which is a relatively modest number in absolute terms.<sup>150</sup> There were no statistically significant associations between the recognition of same-sex partnerships and rates of HIV or gonorrhea.<sup>151</sup> Recall that the relatively long time period between HIV infection and case identification may have led to a lack of observed association for HIV.<sup>152</sup> Further, any behavioral changes among MSM may not have affected the gonorrhea rate because MSM comprise a small proportion of gonorrhea cases.<sup>153</sup>

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143. See *supra* notes 133–134 and accompanying text.

144. See Dee, *supra* note 131, at 1059–60 (noting that partnership recognition laws may alter the aspirations and, therefore, behaviors of single MSMs); see also King & Bartlett, *supra* note 8, at 189–90.

145. Dee, *supra* note 131, at 1056.

146. *Id.* at 1062.

147. *Id.* Many countries that implemented same-sex partnership laws did so recently; therefore, the time period that Dee could study was limited. *Id.* at 1056–57.

148. *Id.* at 1062.

149. *Id.* at 1070.

150. *Id.*

151. *Id.* at 1068.

152. *Id.* at 1062.

153. *Id.*



These results are consistent with the idea that legal recognition of same-sex unions may encourage individuals to enter and remain in committed relationships characterized by monogamy or other safer-sex practices.<sup>154</sup> Same-sex partnership laws might also discourage risky sexual behavior among single people.<sup>155</sup>

Dee's analysis was unable to identify conclusively the mechanisms underlying the reduction of syphilis rates following legal recognition of same-sex relationships.<sup>156</sup> He did, however, provide evidence rejecting a variety of alternative explanations for the reduction in syphilis rates.<sup>157</sup> For example, healthy same-sex couples from countries with no legal recognition may have migrated to countries with legal recognition in order to take advantage of partnership laws.<sup>158</sup> This migration would have artificially decreased STI rates in the countries with legal recognition and would have biased the estimated association between STI rates and same-sex partnership laws.<sup>159</sup> Dee found, however, that the introduction of same-sex partnership laws was not correlated with changes in population size.<sup>160</sup> In addition, through additional statistical controls and analysis, Dee ruled out several other possible explanations including shifts in the age distribution of the population, changes in GDP, and historical events such as the fall of Communism in some Central European countries and a 2001–03 syphilis outbreak in countries that did not legally recognize same-sex unions.<sup>161</sup>

A more serious concern that Dee investigated was the possibility that countries introduced public health initiatives that reduced syphilis rates in the same years that same-sex partnerships were introduced.<sup>162</sup> If this were true, then the observed association between same-sex partnership laws and decreases in syphilis rates could be a statistical artifact.<sup>163</sup> Dee explored this possibility in two ways. First, he controlled for per-capita health expenditures and found that the association between

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154. See *infra* note 247 and accompanying text.

155. Dee, *supra* note 131, at 1059–61.

156. *Id.* at 1059–60, 1069.

157. *Id.* at 1058–59.

158. *Id.* at 1058.

159. *Id.*

160. *Id.* at 1072–73.

161. *Id.* at 1067–68, 1073–74.

162. *Id.* at 1061.

163. *Id.* at 1061–62.

partnership laws and syphilis remained relatively unchanged.<sup>164</sup> Second, Dee predicted the incidence of two diseases that should not be correlated with the recognition of same-sex unions, but are likely correlated with public health expenditures: tuberculosis and malaria.<sup>165</sup> He found no association between the same-sex partnership laws and rates of these two diseases.<sup>166</sup> These two analyses cast doubt on the possibility that general public health initiatives introduced at the same time as same-sex partnership laws were responsible for the reductions in syphilis. Dee still could not rule out the possibility that public campaigns targeting syphilis *in particular* were introduced at the same time as same-sex partnership laws. However, there is no evidence that any of the countries studied by Dee introduced anti-syphilis campaigns and same-sex partnership laws concurrently.<sup>167</sup>

In sum, Dee's analysis provided reasonable, though not conclusive, evidence of the salutary effects of same-sex partnership laws. Sophisticated statistical models and high-quality panel data allowed Dee to observe a notable drop in syphilis rates after the introduction of same-sex partnership laws.<sup>168</sup> Dee was also able to eliminate many of the alternative explanations for the associations he observes.<sup>169</sup> As Dee noted, when individual-level data from more countries over a longer time span become available, researchers will be able to explore these issues in greater detail.<sup>170</sup> Such research may also identify the specific behavioral mechanisms through which same-sex partnership laws may affect health outcomes.<sup>171</sup> For example, legally recognizing same-sex unions may lead to health benefits by encouraging single people to enter relationships, enhancing the stability of couples, and reducing risky sexual behavior among single or coupled individuals.<sup>172</sup> In addition, future research can distinguish the effects of same-sex marriages from the effects of alternative forms of recognition such as civil unions.

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164. *Id.* at 1068, 1071–72.

165. *Id.* at 1062.

166. *Id.* at 1059, 1066–67.

167. *See id.* at 1065 (citing “available anecdotes” suggesting that new public health efforts aimed at reducing STIs were not introduced around the same time as the passing of laws to recognize same-sex partnerships).

168. *Id.* at 1059, 1070.

169. *Id.* at 1070–74.

170. *See id.* at 1061.

171. *See id.* at 1059–61.

172. *See id.* at 1059–60.

## 2. Overall Well-Being Among Middle-Aged Adults

Brian de Vries and his co-authors studied the associations between living in a U.S. state that legally recognizes same-sex unions and lesbian, gay, and bisexual (LGB) residents' current quality of life and end-of-life preparations.<sup>173</sup> This Article focuses on their quality-of-life findings because this Article is concerned with measures of well-being. The work of de Vries and his colleagues suggests that offering legal recognition to same-sex couples may improve well-being in ways beyond those typically discussed in the literature on different-sex marriage.<sup>174</sup> That is to say, in addition to fostering care and enhancing support from third parties, extending legal recognition to same-sex couples may provide benefits specific to sexual orientation minorities, such as signaling social acceptance of sexual diversity and reducing fears of discrimination among gays, lesbians, and bisexuals.<sup>175</sup> This improvement to well-being may accrue to same-sex couples who obtain legal recognition as well as to other gays, lesbians, and bisexuals who live in jurisdictions that legally recognize same-sex couples.

De Vries et al. analyzed data from a 2006 online survey of 793 lesbians, gay men, and bisexuals aged forty to sixty-one.<sup>176</sup> The sample consisted of 189 individuals living in states offering legal recognition for same-sex couples (e.g., domestic partnership, civil union, or marriage) and 604 individuals living in states without any form of legal recognition.<sup>177</sup> Both single and partnered individuals participated in the study; approximately fifty-seven percent of respondents reported being partnered.<sup>178</sup> The survey collected information about end-of-life fears (e.g., fears about dying in pain), perceived discrimination, disclosure of sexual orientation, and end-of-life preparations (e.g., completing a will or power of attorney).<sup>179</sup>

The data suggested that living in a state that legally recognizes same-sex unions is associated with having fewer fears

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173. de Vries et al., *supra* note 131, at 90.

174. For background on the literature regarding different-sex marriages, see *supra* Part I.B.

175. See de Vries et al., *supra* note 131, at 98 (“[A]ppraisals [of sexual orientation–based discrimination] may well be more pronounced in states that have not instituted some protection and recognition of same-sex partnerships.”).

176. *Id.* at 92.

177. *Id.*

178. *Id.*

179. *Id.* at 92–93.

about sexual orientation-based discrimination<sup>180</sup> and with being more open about sexual orientation.<sup>181</sup> In addition, individuals living in states with legal recognition reported fewer fears about dying in pain.<sup>182</sup> The authors speculated that fears about dying in pain may derive from fears of sexual orientation-based discrimination in health care settings.<sup>183</sup> All these statistically significant associations existed for both partnered and single respondents.<sup>184</sup> The associations also persisted in multivariate statistical models that controlled for gender and race.<sup>185</sup>

These results are consistent with the view that offering legal recognition to same-sex couples improves the well-being of the same-sex couples who obtain recognition as well as other sexual orientation minorities. It is also possible that respondents developed perceptions of social acceptance based on generally welcoming normative climates that existed independent of the existence of same-sex partnership laws. To explore this alternative explanation, it would be instructive for future studies to compare the well-being of individuals living in states that have similar normative climates but different laws on same-sex partnerships (e.g., Connecticut and Rhode Island).<sup>186</sup>

Regardless of these issues of causality, it is worth emphasizing that the associations that de Vries et al. found between relationship recognition and quality of life applied to both partnered and single gays, lesbians, and bisexuals.<sup>187</sup> This finding suggests that extending legal recognition to same-sex relationships might alter the normative climate in ways that benefit both single and partnered individuals. Conversely, the

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180. *Id.* at 96. Among coupled respondents, individuals living in non-recognition states were more likely than individuals living in recognition states to report fears about sexual orientation-based discrimination (34.8% versus 25.5%); similarly, single respondents living in non-recognition states were more likely than single respondents living in recognition states to report fears about sexual orientation-based discrimination (26.9% versus 14.9%). *Id.*

181. *Id.* at 94 tbl.2.

182. *Id.* at 96. There were no reported differences, however, in fears about becoming confused or fears about dying alone. *Id.*

183. *Id.* at 98.

184. *Id.*

185. *Id.* at 95. The statistical models for fears about dying in pain and fears about sexual orientation-based discrimination also controlled for openness about sexual orientation. *Id.* at 97.

186. See Jeffrey R. Lax & Justin H. Phillips, *Gay Rights in the States: Public Opinion and Policy Responsiveness*, 103 AM. POL. SCI. REV. 367, 373 tbl.1 (2009) (comparing public attitudes toward sexual orientation-related policies across states in the United States).

187. See de Vries et al., *supra* note 131, at 96–97.

lack of relationship recognition or an unfavorable normative climate may negatively impact single gays, lesbians, and bisexuals, as other commentators have suggested.<sup>188</sup>

### C. Comparing Partnered and Single Sexual Orientation Minorities

Several studies have investigated differences between sexual orientation minorities who are in relationships (whether they are legally recognized or not) and those who are single.<sup>189</sup> Although these studies do not examine the effect of legal recognition itself, they contribute to the understanding of how legal recognition might affect health and well-being.<sup>190</sup> According to commentators, legal recognition increases the longevity of both same-sex and different-sex relationships.<sup>191</sup> As such, it is helpful to understand if being in a same-sex relationship has benefits over being single; if it does, one can deductively hypothesize that same-sex marriage prolongs those benefits.<sup>192</sup>

In this review, we focus on studies that use population-based samples of sexual orientation minorities to examine differences between those who are partnered and those who are not.<sup>193</sup> In one

188. See Gilbert Herdt & Robert Kertzner, *I Do, but I Can't: The Impact of Marriage Denial on the Mental Health and Sexual Citizenship of Lesbians and Gay Men in the United States*, 3 SEXUALITY RES. & SOC. POL'Y 33, 40–44 (2006); see also Ellen D.B. Riggle, Sharon S. Rostosky & Sharon G. Horne, *Marriage Amendments and Lesbian, Gay, and Bisexual Individuals in the 2006 Election*, 6 SEXUALITY RES. & SOC. POL'Y 80, 86 (2009).

189. See *infra* notes 192–219 and accompanying text.

190. *Id.*

191. See, e.g., Balsam et al., *supra* note 57, at 108–09 (providing data showing that same-sex couples who legally registered their unions were less likely to dissolve their relationships than same-sex couples who did not register their unions); Fingerhut & Maisel, *supra* note 55 (summarizing literature on how marriage gives incentives for couples to stay together).

192. Of course, some commentators and studies discussed above have suggested that same-sex marriage not only prolongs the benefits of being in a relationship, but provides additional benefits that result from legal recognition. See *supra* Part II.A (reviewing studies that compared same-sex couples who legally registered their unions with those who did not).

193. Other studies that use convenience samples reach conclusions that are generally similar to conclusions from studies using population-based samples. The studies based on convenience samples show that sexual orientation minorities in relationships, on average, fare better in outcomes of health and well-being compared to their single counterparts. See, e.g., Heidi A. Wayment & Letitia Anne Peplau, *Social Support and Well-Being Among Lesbian and Heterosexual Women: A Structural Modeling Approach*, 21 PERSONALITY & SOC. PSYCHOL. BULL. 1189, 1194 tbl.1 (1995) (using a convenience sample and finding greater psychological well-being for coupled versus single lesbians).

Note that, in this literature review, we focus on studies that compare differences in health and well-being between partnered sexual orientation

such study, Chris Wienke and Gretchen Hill analyzed data from three comparable cross-sectional surveys: the 1989–2002 General Social Surveys (GSS), the 1992 National Health and Social Life Survey (NHLS), and the 1995–97 Chicago Health and Social Life Survey (CHSL).<sup>194</sup> The GSS and NHLS were based on national probability samples and the CHSL used a probability sample of Chicago and some of its suburban areas.<sup>195</sup> The surveys collected comparable information about self-reported happiness and health, relationship status (married, unmarried cohabiting, non-cohabiting partner, and single), and measures of sexual orientation.<sup>196</sup> Using these data, the authors investigated the associations between relationship status and self-reported happiness and health, and then asked whether these associations differed by sexual orientation.<sup>197</sup>

Sexual orientation minorities who had a partner (cohabiting or non-cohabiting) reported higher levels of happiness than those who were single.<sup>198</sup> This statistically significant association between partnership and happiness applied to both men and women in the sample.<sup>199</sup> In addition, among men, there was also a statistically significant difference between partnered and single individuals with respect to self-reported health.<sup>200</sup> It is unclear, however, why there was no significant difference in self-reported health among women.<sup>201</sup> The associations are consistent with the perspective that, for many sexual orientation minorities, being in a

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minorities and their single counterparts. In addition to these comparative studies, there are non-comparative studies on health and well-being that draw exclusively from interviews with partnered sexual orientation minorities, for example, KATHLEEN E. HULL, *SAME-SEX MARRIAGE: THE CULTURAL POLITICS OF LOVE AND LAW* (2006), and GRETCHEN A. STIERS, *FROM THIS DAY FORWARD: COMMITMENT, MARRIAGE, AND FAMILY IN LESBIAN AND GAY RELATIONSHIPS* (1999).

194. Chris Wienke & Gretchen J. Hill, *Does the "Marriage Benefit" Extend to Partners in Gay and Lesbian Relationships?*, 30 J. FAM. ISSUES 259, 266 (2009). See also NAT'L OPINION RESEARCH CTR., *GENERAL SOCIAL SURVEY*, available at <http://www.norc.org/projects/General+Social+Survey.htm>; INTER-UNIV. CONSORTIUM FOR POLITICAL & SOC. RESEARCH, *NATIONAL HEALTH AND SOCIAL LIFE SURVEY, 1992: [UNITED STATES]* (1992), available at <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/06647>; UNIV. OF CHI. POPULATION RESEARCH CTR., *CHICAGO HEALTH AND SOCIAL LIFE SURVEY* (1997), available at <http://popcenter.uchicago.edu/data/chsls.shtml>.

195. Wienke & Hill, *supra* note 194, at 266.

196. *Id.* at 268–71.

197. *Id.* at 273–80.

198. *Id.* at 278, 279 tbl.6.

199. *Id.*

200. *Id.* (finding that partnered gay men reported better health than did single gay men and single straight men).

201. See *id.* at 278, 279 tbl.6 (providing findings on women).

relationship increases overall health and happiness.<sup>202</sup> An alternative explanation for the associations is the self-selection of happy or healthy individuals into relationships.<sup>203</sup> Research based on longitudinal data may be able to distinguish between these two explanations, though these explanations are not mutually exclusive. As was the case with research on different-sex couples, the number of such longitudinal studies on same-sex partnering will grow as more sophisticated data become available.<sup>204</sup> Recall also that studies based on different-sex marriage find that self-selection does not explain all of the association between marriage on the one hand, and health and well-being on the other hand.<sup>205</sup>

One article already used longitudinal data on same-sex partners, providing a more rigorous test of the causal effect of partnership.<sup>206</sup> Jim Young et al. analyzed data from the Swiss HIV Cohort Study, a longitudinal study of HIV-positive individuals that collected information on health and relationship status approximately every six months.<sup>207</sup> Multivariate statistical models suggested that stable partnerships had a statistically significant, positive association with health: being in a stable partnership was associated with twenty-one percent slower rates of disease progression.<sup>208</sup> Although Young et al. did not conduct separate analyses for same-sex and different-sex partners in the cohort, sexual orientation minorities comprised almost half of the cohort.<sup>209</sup> By using longitudinal data to analyze changes over time, this study reduced the possibility that self-selection alone explains the health benefits.<sup>210</sup>

Two other studies used data from the Urban Men's Health Study (UMHS) to investigate differences in mental health<sup>211</sup> and

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202. *Id.* at 280–81.

203. *Id.* at 264–65.

204. *See supra* notes 87–88 and accompanying text.

205. *See supra* note 3 and accompanying text.

206. Jim Young et al., *Stable Partnership and Progression to AIDS or Death in HIV Infected Patients Receiving Highly Active Antiretroviral Therapy: Swiss HIV Cohort Study*, 328 BRIT. MED. J. 1 (2004), available at <http://www.bmj.com/content/328/7430/15.full.pdf+html>.

207. *Id.* The authors used data from 3736 cohort members receiving highly active antiretroviral therapy (HAART) who provided complete data on at least two occasions since beginning HAART. *Id.* at 2.

208. *Id.* at 3, 4 tbl.3.

209. *See* SWISS HIV COHORT STUDY, STATE OF THE COHORT: FIGURE 4 (2010), available at [http://www.shcs.ch/html/figures/shcs\\_fig4.htm](http://www.shcs.ch/html/figures/shcs_fig4.htm) (providing information on the distribution of participants in the Swiss HIV Cohort Study).

210. Young et al., *supra* note 206, at 2.

211. Thomas C. Mills et al., *Distress and Depression in Men Who Have Sex with Men: The Urban Men's Health Study*, 161 AM. J. PSYCHOL. 278, 279 (2004) (citing

use of alcohol and drugs<sup>212</sup> between partnered and single MSM. The UMHS was a cross-sectional telephone survey of a probability sample of 2881 MSM in San Francisco, New York, Los Angeles, and Chicago.<sup>213</sup> Thomas Mills and his colleagues reported that living with a same-sex partner was negatively associated with psychological distress and depression.<sup>214</sup> In another study, Ron Stall and his colleagues found that having a steady partner was associated with twenty-nine percent lower odds of engaging in multiple drug use.<sup>215</sup> There was not a statistically significant association between relationship status and frequent drug use.<sup>216</sup> The cross-sectional design of the UMHS prevented the authors of these two studies from distinguishing the causal effects of being in a relationship from the selection of less distressed/depressed or non-drug-using individuals into same-sex relationships.

The study by Riggle et al. also compared the psychological well-being of LGB individuals who were single with that of LGB individuals in relationships.<sup>217</sup> The results suggested that, compared to those who are single, LGB individuals in relationships (whether legally recognized or not) experienced statistically significant lower levels of stress, fewer depressive symptoms, and less internalized homophobia, as well as higher levels of meaning in life.<sup>218</sup>

In sum, studies reviewed in this section show that, on average, sexual orientation minorities in relationships fare better in terms of health and well-being than their single counterparts. By using longitudinal data, the study by Young et al. suggested that self-selection alone does not account for this difference. These results are consistent with the belief that, by prolonging the duration of same-sex relationships, marriage prolongs benefits to health and well-being that derive from being in a same-sex relationship.<sup>219</sup>

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CTR. FOR AIDS PREVENTION STUDIES, UNIV. OF CAL., S. F., 1997–1998 URBAN MEN'S HEALTH STUDY (1998)).

212. Ron Stall et al., *Alcohol Use, Drug Use, and Alcohol-Related Problems Among Men Who Have Sex with Men: The Urban Men's Health Study*, 96 ADDICTION 1589 (2001) (citing CTR. FOR AIDS PREVENTION STUDIES, UNIV. OF CAL., S. F., 1997–1998 URBAN MEN'S HEALTH STUDY (1998)).

213. CTR. FOR AIDS PREVENTION STUDIES, UNIV. OF CAL., S. F., 1997–1998 URBAN MEN'S HEALTH STUDY (1998).

214. Mills et al., *supra* note 211, at 281.

215. Stall et al., *supra* note 212, at 1596 tbl.3, 1598.

216. *Id.* at 1596 tbl.3.

217. Riggle et al., *supra* note 56, at 83.

218. *Id.*

219. *See supra* notes 191–193 and accompanying text.



*D. Studying the Effects of Legal Recognition According to Same-Sex Couples Themselves*

Finally, a number of studies directly asked same-sex couples, either through surveys or in-depth interviews, about the effects of legal recognition on their relationships.<sup>220</sup> Two main themes emerged from these studies: couples who have acquired legal recognition of their relationships reported feeling increased commitment to their partners and developing greater ties to their families of origin as a result of the legal recognition.<sup>221</sup> Recall that commitment and family ties are both regarded by social scientists as determinants of health and well-being.<sup>222</sup> Couples in one study also reported that, after obtaining legal recognition, they found themselves altering their behaviors to better attend to the health and well-being of their partners.<sup>223</sup>

Christopher Ramos and his colleagues reported the results of an online survey of 558 individuals in Massachusetts who married a same-sex partner.<sup>224</sup> Seventy-two percent of those in same-sex marriages reported feeling more committed to their partners because of their marriage.<sup>225</sup> Another common effect of marriage cited by respondents was an improvement in relationships with their families.<sup>226</sup> For example, sixty-two percent reported that their families were more accepting of their same-sex partner as a result of their marriage, and forty-two percent of respondents said their families were more accepting of their sexual orientation because of their marriage.<sup>227</sup>

Like Ramos and his colleagues, Pamela Lannutti focused her research on Massachusetts.<sup>228</sup> She conducted an online survey of 288 lesbian, gay, bisexual, and transgender individuals shortly after the Supreme Judicial Court of Massachusetts ruled in favor

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220. See *infra* notes 224–251 and accompanying text.

221. See *infra* notes 224–251 and accompanying text.

222. See *supra* note 47 and accompanying text.

223. See *infra* notes 247–249 and accompanying text.

224. CHRISTOPHER RAMOS ET AL., THE WILLIAMS INST., UNIV. OF CAL., L.A. SCH. OF LAW, THE EFFECTS OF MARRIAGE EQUALITY IN MASSACHUSETTS: A SURVEY OF THE EXPERIENCES AND IMPACT OF MARRIAGE ON SAME-SEX COUPLES 1–2 (2009), available at [http://www.law.ucla.edu/williamsinstitute/publications/Effects\\_FINAL.pdf](http://www.law.ucla.edu/williamsinstitute/publications/Effects_FINAL.pdf).

225. *Id.* at 1, 5 tbl.3.

226. *Id.* at 5 tbl.3.

227. *Id.*

228. Pamela J. Lannutti, *The Influence of Same-Sex Marriage on the Understanding of Same-Sex Relationships*, 53 J. HOMOSEXUALITY 135, 138–39 (2007).

of same-sex marriage.<sup>229</sup> Lannutti found that people in same-sex relationships felt that the Massachusetts ruling would motivate their families to treat their relationships as more “real” and “serious.”<sup>230</sup> In addition, some individuals in same-sex unions said that, in light of the ruling, they expected greater social recognition and acceptance from straight people generally.<sup>231</sup>

Similar to the research on Massachusetts, the Vermont Civil Union Study asked individuals in same-sex civil unions to rank the top three effects of their civil union.<sup>232</sup> Fifty-four percent of respondents indicated that they experienced “changes in love and commitment for each other” due to their civil union.<sup>233</sup> Even individuals whose civil union had no legal effect because they lived outside of Vermont reported that the civil union enhanced the commitment they felt in the relationship.<sup>234</sup>

Studies based on data from different countries have produced comparable findings. Claire Goodwin and Catherine Butler’s interviews with individuals in same-sex civil partnerships in the United Kingdom highlight the role of legal recognition in increasing same-sex couples’ visibility and legitimacy.<sup>235</sup> Interviewees suggested that civil partnerships helped their family members and other third parties to understand the seriousness and authenticity of their relationship.<sup>236</sup> The increased visibility and perceived legitimacy led some individuals in civil partnerships to feel more integrated in their families of origin.<sup>237</sup> Some interviewees also reported that civil partnerships improved the general position of LGB people in the United Kingdom, leading the interviewees to be more open about their sexual orientation.<sup>238</sup> While acknowledging the benefits of civil partnerships, some respondents also felt that the separate legal status of civil

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229. *Id.*

230. *Id.* at 140–41.

231. *Id.* at 141.

232. Solomon et al., *Money, Housework, Sex, and Conflict*, *supra* note 101, at 565; *see supra* Part II.A.3.

233. Solomon et al., *Money, Housework, Sex, and Conflict*, *supra* note 101, at 565.

234. *Id.* at 564.

235. Claire Goodwin & Catherine Butler, *Legitimate Love: The Meaning of Civil Partnership for the Positioning of Lesbian and Gay People in Society*, 24 *SEXUAL & RELATIONSHIP THERAPY* 235, 238–39 (2009).

236. *Id.* at 239.

237. *Id.* at 241.

238. *Id.* at 243. Recall that social scientists regard openness about one’s sexual orientation to be a determinant of health and well-being. *See supra* note 104 and accompanying text.

partnership excluded them from the symbolic nature of marriage.<sup>239</sup>

Kevin Alderson interviewed twenty-two married or soon-to-be-married same-sex couples living in Canada, the United States, the Netherlands, and Hong Kong about their experiences in same-sex partnerships.<sup>240</sup> Most individuals reported being committed to their partner before marriage.<sup>241</sup> However, a common theme was that legal recognition enhanced a couple's commitment by binding the individuals together and "forc[ing] a deeper reflection regarding the sincerity and depth of their commitment."<sup>242</sup> Marriage may also reduce conflicts. For example, one respondent suggested that marriage reduced conflict in her relationship because the lifelong nature of marriage encouraged her to accept her partner's flaws and work constructively toward resolving conflicts.<sup>243</sup>

In M.V. Lee Badgett's qualitative research on same-sex couples in the Netherlands, same-sex married individuals reported that marriage increased the commitment they felt to their partners.<sup>244</sup> Badgett found that most of the same-sex married couples she interviewed believed that their marriage led their families of origin to view their relationships as more legitimate.<sup>245</sup> They also believed that getting married improved their relations with their families.<sup>246</sup>

Finally, in their interviews with legally recognized same-sex partners in Scandinavia, Eskridge and Spedale found that being in a registered same-sex partnership encouraged most individuals to deepen their commitment to monogamy; for those who chose not to be monogamous, relationship registration motivated the couples to adopt safer sex practices outside their relationship.<sup>247</sup> Like respondents in Alderson's study,<sup>248</sup> respondents in Eskridge and Spedale's study also reported that registering their partnership created legal barriers to dissolution that encouraged couples to

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239. Goodwin & Butler, *supra* note 235, at 240.

240. Kevin G. Alderson, *A Phenomenological Investigation of Same-Sex Marriage*, 13 CAN. J. HUM. SEXUALITY 107, 109 (2004). Specifically, Alderson interviewed twenty-one couples and one man whose partner was not available. *Id.*

241. *Id.* at 115.

242. *Id.*

243. *Id.*

244. BADGETT, *supra* note 12, at 124.

245. *Id.* at 103.

246. *Id.*

247. ESKRIDGE & SPEDALE, *supra* note 12, at 146-47.

248. *See supra* note 243 and accompanying text.

work through difficult times in the relationship.<sup>249</sup>

These studies are useful for providing greater detail about the pathways through which legal recognition may affect health and well-being. It is possible that these studies generally overstate the positive effects of legal recognition because most of the studies only observed individuals who self-selected into legally recognized same-sex unions.<sup>250</sup> Note, however, that Lannutti interviewed sexual orientation minorities without regard to partnership status and still found that respondents believed legalization of same-sex marriage in Massachusetts positively impacted same-sex relationships.<sup>251</sup>

### III. Informing Policy Debates

This Part turns to the question of how the studies we reviewed above can inform public policy. It discusses the reviewed research in light of ongoing debates concerning same-sex marriage and its alternatives.

#### A. Informing the Debate on Marriage

Legal scholars have articulated numerous arguments for legally recognizing couples and some commentators have argued that those reasons apply to same-sex unions.<sup>252</sup> This Article

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249. See ESKRIDGE & SPEDALE, *supra* note 12, at 143.

250. See *id.* at 133; RAMOS ET AL., *supra* note 224, at 2; Alderson, *supra* note 240, at 109; Goodwin & Butler, *supra* note 235, at 237.

251. Lannutti, *supra* note 228, at 138.

252. For reference purposes, it is worth highlighting some of the reasons that fall outside the scope of this Article. First, some commentators have argued that marriage is important for stabilizing households for childrearing. See, e.g., Maxine Eichner, *Marriage and the Elephant: The Liberal Democratic State's Regulation of Intimate Relationships Between Adults*, 30 HARV. J.L. & GENDER 25, 44 (2007) (“[M]any same-sex couples, like many heterosexual couples, have children. And the children of these same-sex parents, like the children of opposite-sex parents, benefit from the stability of their parents’ relationships”); Linda C. McClain, *Intimate Affiliation and Democracy: Beyond Marriage?*, 32 HOFSTRA L. REV. 379, 390–92, 420 (2003) (noting marriage’s effects on children as one reason to support same-sex marriage); Wald, *supra* note 8, at 300–01, 319–29 (noting that “marriage law is intended to encourage people to enter into long-term, stable units if they have children” and a significant number of same-sex couples rear children).

Some commentators have also argued that marriage is an important tool for fostering legal efficiency; the idea is that, while couples can formalize their commitments to one another through private contracts and states can seek to enforce commitments even if they are not formalized under law, marriage functions as a default rule that achieves the same ends more efficiently. See Mary Anne Case, *Marriage Licenses*, 89 MINN. L. REV. 1758, 1781–84 (2005) (suggesting that marriage—same-sex and different-sex—promotes efficiency because it functions as an “off-the-rack rule”); see also Marsha Garrison, *The Decline of Formal Marriage: Inevitable or Reversible?*, 41 FAM. L.Q. 491, 493 (2007) (arguing that informal

focuses only on one of those reasons: the idea that marriage, on average, improves the health and well-being of the parties involved.<sup>253</sup> To the extent that one of marriage's goals is to enhance the health and well-being of couples, commentators are divided on whether marriage should be extended to same-sex couples. Some are skeptical, doubting that same-sex couples would experience improved health and well-being as a result of marriage.<sup>254</sup> Others have argued that same-sex couples, just like different-sex couples, would accrue such benefits.<sup>255</sup> These commentators who support same-sex marriage often infer this conclusion from research on different-sex marriages.<sup>256</sup> The new research that studies same-sex couples directly, which we reviewed in Part II, lends support to these commentators' inferences.

To be clear, the evidence does not conclusively demonstrate that legally recognizing same-sex couples would improve their health and well-being. The literature reviewed in Part II is nascent<sup>257</sup> and its limitations parallel those of early research concerning the effect of different-sex marriage on health and well-

marriages are inefficient because they lack clarity).

Commentators have also argued that marriage, in its modern form, helps to protect the more vulnerable party in coupled relationships because marriage laws seek to ensure that, upon a couple's dissolution, the economically vulnerable party is protected. See, e.g., Eichner, *supra*, at 49–50 (stating that, when couples without legal recognition separate, the caregiver in the relationship—typically a woman—is often left in a financially vulnerable position). The American Law Institute has suggested that the state should intervene in the dissolution of unmarried cohabiting relationships to ensure equitable dissolution; such intervention should supplement rather than supplant equitable dissolutions of formally recognized marital relationships. *Id.* at 51.

253. See *supra* notes 33–38 and accompanying text.

254. Skeptics of marriage's effects on same-sex couples often hypothesize that gender-complementarity between different-sex couples is a main reason why marriages between different-sex couples generate benefits to health and well-being. For example, the Family Research Council has stated that “[t]he benefits of marriage do not flow simply from the presence of two people and government recognition of their relationship. Instead, they flow from the inherent complementarity of the sexes and the power of lifelong commitment.” *InFocus: What's Wrong with Letting Same-Sex Couples Legally “Marry?”*, FAMILY RESEARCH COUNCIL, <http://www.frc.org/get.cfm?i=if03h01> (last visited Oct. 2, 2010); see also WAITE & GALLAGHER, *supra* note 7, at 200–01 (stating Gallagher's skepticism of marriage's potential benefits to same-sex couples because of gender dynamics). But see Rory McVeigh & Mary-Elena D. Diaz, *Voting to Ban Same-Sex Marriage: Interests, Values, and Communities*, 74 AM. SOC. REV. 891, 895 (2009) (quoting and rejecting the Family Research Council's position).

255. See *supra* notes 31–32 and accompanying text.

256. See *supra* notes 31–32 and accompanying text.

257. This research is nascent due to at least two overlapping factors: the limited availability of data on legally recognized same-sex couples and the relatively short time period in which same-sex relationships have been recognized.

being.<sup>258</sup> Because conclusive research is unavailable, policymakers must consider what inferences can be drawn from the empirical evidence that does exist.<sup>259</sup> The emerging body of research that we reviewed in Part II demonstrates generally positive associations between legal recognition on one hand, and health and well-being on the other.<sup>260</sup> These findings are consistent with inferences that same-sex marriage generally enhances the health and well-being of same-sex couples.

If one accepts that legally recognizing same-sex couples is beneficial to the couple, questions still remain regarding the type of recognition that should be offered. Should same-sex couples be legally recognized through marriage, or through some alternative regime such as civil unions or domestic partnerships? There are reasons to believe that alternative forms of recognition may not produce the same impact on health and well-being that marriage does. Recall that the benefits to health and well-being develop in three ways. First, the legal rights and responsibilities tethered to marriage produce improved health and well-being.<sup>261</sup> Second, the social understanding of marriage as a committed, mutually supportive, long-term relationship promotes care between members of a couple.<sup>262</sup> Third, the social understanding of

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258. See *supra* note 87 and accompanying text.

259. Wald, *supra* note 8, at 299 ("Due to the limitations in available data, it is necessary to draw inferences from various types of research studies that have looked at same-sex couples. In drawing inferences, policy-makers must decide which position to prefer when the evidence is unclear or incomplete . . . . Given the fundamental importance of marriage in our society, I believe that the burden of proof should be on those who would deny recognition to same-sex couple marriages.").

260. These observed associations are consistent with a causal effect of legal recognition on health and well-being, but do not provide conclusive evidence for such a causal effect. This is because most of the studies' cross-sectional design prevents researchers from disentangling the causal effect of legal recognition from the self-selection of individuals who are healthy or enjoy high well-being into legal recognition. See, e.g., *supra* notes 86, 203 and accompanying text. Some studies have been able to account for self-selection by using longitudinal data or more sophisticated statistical analyses, and they still observe positive association between legal recognition and health and well-being. These studies include the ones by Dee and by Young et al. See *supra* Part II.B.1 (on Dee); *supra* notes 206–210 and accompanying text (on Young et al.). The Vermont Civil Union Study also used longitudinal data to control for self-selection, but it had numerous limitations that undermined its ability to investigate the causal effect of civil unions on family ties; ultimately, the Vermont Civil Union Study's longitudinal data did not yield evidence of a causal effect. See *supra* notes 122–127 and accompanying text. Most of the research that we reviewed used direct measures of health and well-being; some of the studies focused on determinants of health and well-being. See generally Part II.

261. See *supra* notes 39–45 and accompanying text.

262. See *supra* notes 46–47 and accompanying text.

marriage often motivates the couple's family and friends, and other third parties, to provide instrumental and emotional support to the couple.<sup>263</sup> Based on the second and third factors, one can hypothesize that, to the extent that marriage and its alternatives have different social meanings, their effects on health and well-being would also be different.<sup>264</sup>

### B. *Situating Same-Sex Marriage*

For the purposes of this Article, we accept that the immediate policy question is whether to extend marriage and other forms of legal recognition to same-sex couples. The research from Part II bolsters arguments for same-sex marriage because it supports inferences that marriage will, on average, contribute to the health and well-being of same-sex couples, and these salutary effects ultimately benefit the community at large. It is important, however, not to overstate the benefits of marriage. While research on health and well-being supports same-sex marriage, legalizing same-sex marriage ought to be viewed as part of larger family law reforms that aim to improve people's health and well-being. This section provides an exploratory discussion of the law reforms that should accompany legalization of same-sex marriage.

Understanding two major criticisms lodged against legal marriage helps to shed light on law reforms that ought to accompany the legalization of same-sex marriage. The first criticism contends that marriage is under-inclusive; the second contends that marriage is over-privileged.<sup>265</sup> Consider, for example, a hypothetical situation in which two widowed sisters live with and care for each other in a manner that improves their health and well-being. The sisters' relationship does not fall within the fold of marriage.<sup>266</sup> Commentators have argued that the law should be reformed to nurture non-marital caregiving

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263. See *supra* notes 48–50 and accompanying text.

264. Cf. Elizabeth S. Scott, *A World Without Marriage*, 41 *FAM. L.Q.* 537, 551, 562–66 (2007) (discussing the difference in social meaning of marriage and civil unions).

265. For the under-inclusiveness argument, see *infra* notes 266–267 and accompanying text. For the over-privileging argument, see *infra* notes 268–273 and accompanying text.

266. In a limited number of jurisdictions, two sisters can register their relationship in registries that confer some of, but not all, the rights and responsibilities of marriage. See, e.g., HAW. REV. STAT. § 572C-4 (2010) (listing requirements for registering as “reciprocal beneficiaries” under Hawaii law); Jane S. Schacter, *The Other Same-Sex Marriage*, 84 *CHI.-KENT L. REV.* 379, 395 (2009) (discussing the Hawaii provision).

relationships such as that of the hypothetical sisters.<sup>267</sup> In other words, marriage law is an under-inclusive means for achieving the intended goal of improving health and well-being. Just as many marital relationships are caregiving relationships that confer benefits related to health and well-being, there are other types of caregiving relationships that similarly contribute to health and well-being.

In addition to criticizing the under-inclusiveness of marriage, commentators have criticized the law for over-privileging relationships that fall within the scope of legal marriage.<sup>268</sup> Consider, for example, the fact that the federal government currently extends health care coverage to spouses of its employees, but does not offer universal health care.<sup>269</sup> Commentators have argued that, as the government aims to foster caregiving relationships, it should also aim to protect the basic human rights and welfare of individuals who are not in legally recognized caregiving relationships.<sup>270</sup> Reducing the privileged status of marriage by delinking health care coverage from marriage and instituting universal health care coverage would achieve that end. Note that marriage is also privileged by the social meaning of marriage.<sup>271</sup> To the extent that society idealizes marriage, it risks unduly stigmatizing individuals who cannot, or do not wish to,

267. See, e.g., Eichner, *supra* note 252, at 55 (using this example of two elderly sisters); Thomas P. Gallanis, *The Flexible Family in Three Dimensions*, 28 LAW & INEQ. 291, 298–99 (2010) (same). For additional arguments that marriage law fails to adequately promote and protect caregiving relationships because of its focus on particular conjugal relationships, see generally MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 226–36 (1995); NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW* 123–45 (2008).

268. See *infra* note 273 and accompanying text.

269. See *supra* notes 44–45 and accompanying text (discussing benefits conferred by the federal government such as health care coverage for spouses of employees).

270. For example, Maxine Eichner argues:

[T]he state's seeking to aid caretaking relationships between adults cannot undercut the state's responsibility to ensure that all its citizens have the means and opportunity to pursue dignified lives. This means, at a minimum, as Martha Fineman argues, that a just society should seek to deliver basic social goods such as health care to everyone in society, regardless of family membership. Insofar as the state distributes these goods based on marital status, it neglects its most basic responsibilities.

Eichner, *supra* note 252, at 55 (citing MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH* 284–85 (2004)).

271. See Cherlin, *supra* note 50, at 855 (describing the social understanding of marriage as a “marker of prestige”). Critics such as Michael Warner have characterized the same-sex marriage movement as a misguided quest for such prestige and respectability. See generally MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (1999) (criticizing politics of normalization and asserting that same-sex marriage embodies such politics).



marry.<sup>272</sup> Legislation that reduces the legal privileges of marriage might also influence social norms, thereby promoting equal respect for individuals regardless of one's marital status.

As supporters of same-sex marriage have remarked, advocates can work towards same-sex marriage while also working to address the two major criticisms outlined above.<sup>273</sup> Long-term law reform should entail recognizing an increased variety of family forms beyond households led by conjugal couples. Reform should also reduce the legal and social privileging of marriage.<sup>274</sup> Although it is unfeasible to address in these pages comprehensively how legalizing same-sex marriage can be coupled with a broader agenda beyond marriage, it is worth highlighting some examples. While the state facilitates caregiving relationships between same-sex couples, it can address the under-inclusiveness of marriage by working to create laws that nurture other caregiving relationships. For example, the law can afford official recognition to the previously mentioned hypothetical pair of sisters.<sup>275</sup> Similarly, the state can address the over-privileging of marital relations by, for example, implementing universal health care instead of perpetuating a legal system that tethers

272. See Warner, *supra* note 271, at 109–11 (arguing that marriage is an institution that stigmatizes unmarried people).

273. See, e.g., Eichner, *supra* note 252, at 55–56 (arguing that, although both different-sex and same-sex marriage should be promoted, privileges associated with marriage should be limited); Suzanne Kim, *Toward Skeptical Marriage Equality*, 34 HARV. J.L. & GENDER (forthcoming 2011) (discussing how skepticism of marriage as a legal institution can be reconciled with support for same-sex marriage); McClain, *supra* note 252, at 420 (“Th[e] challenge is to work toward a family law and policy that, on the one hand, supports and recognizes marriage, because of the personal and social goods it fosters . . . but, on the other, does not use marriage as the exclusive proxy for those forms of family capable of fostering such goods, and thus also warranting support and recognition.”); Edward Stein, *Marriage or Liberation?: Reflections on Two Strategies in the Struggle for Lesbian and Gay Rights and Relationship Recognition*, 61 RUTGERS L. REV. 567, 592 (2009) (“The LGBT [rights] movement should . . . work for full marriage equality, but—to achieve justice and to improve society—the LGBT movement should also strive to change marriage and the way that the benefits currently associated with marriage are distributed.”).

274. Discussing exactly how much such privileging should be reduced is beyond the scope of this Article. Some privileges may be worth retaining because they enhance caregiving between spouses. For example, Maxine Eichner has suggested that caregiving-related employment leaves and immigration privileges are worth keeping. Eichner, *supra* note 252, at 56. To address marriage's under-inclusiveness problem, Eichner suggests extending these privileges to other caregiving relationships beyond marriage. *Id.* at 54–56. Policymakers ought to limit the privileging of marriage so as to minimize the over-privileging problems discussed above and also to avoid encouraging people to enter unhealthy marriages. See *infra* note 281 and accompanying text.

275. See *supra* notes 266–267 and accompanying text.

health care benefits to relationship status.<sup>276</sup> Recent reform signed into law by President Barack Obama begins to take the country in that direction by extending coverage to many individuals who are currently uninsured, regardless of their marital status.<sup>277</sup>

In addition to understanding law reforms that ought to accompany the legalization of same-sex marriage, it is helpful to understand law reforms that ought not to be pursued. While research on health and well-being supports making same-sex marriage a legal option, the research does not necessarily support marriage promotion policies that incentivize marriage or make marriages more difficult to dissolve. Because marriage is a healthy choice for many different-sex and same-sex couples, it ought to be a legal option for both same-sex and different-sex couples. With that said, some marriages, for example relationships involving domestic violence, undermine health and well-being.<sup>278</sup> As such, the state should be wary of aggressive reforms that pressure people to enter and remain in marriages.<sup>279</sup> For example, reforming laws to make divorce less accessible arguably promotes marriage by making dissolution more difficult; lawmakers, however, should be skeptical of such reforms because they may prolong high-conflict relationships that compromise health and well-being of adults as well as children.<sup>280</sup> Likewise, lawmakers should be skeptical of policies that encourage couples to marry prematurely, before they are ready for the changes that marriage might introduce into their lives.<sup>281</sup> While it is beyond the scope of this Article to fully analyze when, if ever, marriage promotion is a good idea, this discussion underscores the

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276. See, e.g., 5 U.S.C. § 8903 (2006) (extending health care benefits for government employees to family members and former spouses). Family members are defined as the employee's "spouse" and "unmarried dependent child[ren] under 22 years of age." *Id.* § 8901.

277. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_public\\_laws&docid=f:publ148.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ148.pdf); see *What Will the Overhaul Do, and When?*, L.A. TIMES, Mar. 24, 2010, at A13 (noting that, under the Obama administration's health care reform, thirty-two million more people will have health care coverage by 2019).

278. Marriages can also fail to improve health and well-being due to other reasons, such as personality incompatibility, ecological conditions, and financial stress. See Huston & Melz, *supra* note 33, at 949–55 (discussing marriages that do not improve health and well-being).

279. See *id.* at 953–56; Garrison, *supra* note 252, at 516.

280. See Garrison, *supra* note 252, at 497–98.

281. See Huston & Melz, *supra* note 33, at 949–50 (presenting data on individuals who "plunge into ill-fated marriages").

importance of distinguishing between legalizing same-sex marriage because it is a healthy choice for many same-sex couples and implementing more assertive marriage promotion policies, which warrants greater scrutiny.

### **Conclusion**

This Article has reviewed the most recent social science literature on how committed same-sex relationships, and legally recognized same-sex relationships in particular, affect individuals' health and well-being.<sup>282</sup> This body of social science research is consistent with existing arguments that legally recognizing same-sex couples will, on average, enhance the couples' health and well-being.<sup>283</sup> As such, the social science research reinforces public policy arguments for same-sex marriage. One should remain mindful, however, that legalizing same-sex marriage across the country would not complete legal reform. The movement for marriage equality should be viewed as a component of larger family law reforms.

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282. *See supra* Part II.

283. *See supra* Part III.A.