

# Denying Access to Marriage Harms Families

Same-sex couples who want to marry do so for the same mix of reasons that other couples do. Civil marriage provides many important things for families, including:

- legal protections, rights and responsibilities;
- benefits from employers, banks, insurers and businesses;
- social respect and support from relatives, friends and neighbors.

At the federal level, civil marriage is a gateway to more than 1049 protections, benefits and obligations, with hundreds more provided by individual state laws. Denial of access to marriage puts many families at risk for emotional and financial harm, and presents them as second class citizens — in their neigh-



**Denise (left) and Vallerie** In love but denied the choice to marry.

borhoods, workplaces, children's schools, and other areas of their everyday lives.

The harms to families from discrimination in marriage have been a significant part of Lambda Legal's caseload over the years. Below is a partial list of the harms that concern families, with examples from Lambda Legal's prior work.

## **A FAMILY WITH A HEALTH CRISIS SHOULD BE ABLE TO FOCUS ON THE CRISIS AND NOT NEED TO LOOK FOR A LAWYER**

Ronnie in New York City developed a grave illness and needed her partner for more than 20 years, Elaine, to assist her in getting to medical appointments. Ronnie would suffer black-outs walking in the street. Elaine requested family medical leave from her employer to cover the periodic appointments, but the employer said no because Ronnie was not a "spouse." Elaine had to turn to friends and neighbors to cover the appointments, and worried about how long the help would last. At a time when health concerns were already a source of stress for their family, Elaine had to seek an attorney (Lambda Legal) to fight for and win the rights she would have had automatically as a spouse.

## **SEPTEMBER 11TH**

The tragedy of September 11th demonstrated how same-sex couples are harmed by discrimination in marriage, as surviving partners struggling with the loss of a loved one faced the denial of benefits because they were not legally recognized as spouses.



**Keith (left) and Jeff** On September 11th, Jeff, an American Airlines flight attendant, died on one of the flights hijacked by terrorists. Despite their 11-year committed relationship and California registered domestic partnership, Keith faced discrimination by the federal victim compensation fund and with regard to other benefits because he was not recognized as Jeff's "spouse."

## THE RISK OF HARM IN HEALTH CARE AND MEDICAL EMERGENCIES

Denial of the right to visit a partner in the hospital and make medical decisions when the partner cannot

Lack of family health insurance from employers and/or private companies

Denial of family medical leave to care for an ill partner



**Robert (left) and Bill** Robert spent his final conscious hours alone in a hospital room and was denied the dignity of saying goodbye to Bill.

## THE RISK OF CHILDREN IN HARM'S WAY

Loss of child custody

Denial/restriction of child visitation

Denial of an adoption by a second parent of a child

## WHEN WE ARE DYING, WE SHOULD HAVE FAMILY BY OUR SIDE

Bill and Robert considered themselves “soulmates.” When Robert became fatally ill, the admitting Maryland hospital knew through his accompanying medical records — and Bill’s statements to hospital staff — that Bill was Robert’s family and legal agent for health care decisions. But the hospital blocked any communication between them, saying that only “family” were allowed access to patients. Bill was forced to watch with mounting anguish and humiliation as families of other patients arrived and quickly were escorted in to see their loved ones. Robert slipped into unconsciousness, alone and without comfort, support and solace during his final hours. He never saw or spoke with Bill before his death. (Lambda Legal represented Bill, and Robert’s estate, in a lawsuit against the hospital.)

## A PARENT SHOULD BE ABLE TO ENSURE A MORE SECURE FUTURE FOR HER CHILD THROUGH ADOPTION

In a New York adoption case, Lambda Legal represented two lesbian parents with a child and won the right to solidify the parent-child relationships by defeating an argument that marriage was necessary for a second parent to adopt. The need for parents to sue to protect their children’s rights demonstrates the hurdles and obstacles for same-sex couples’ families. Plus not all couples can go to court, and some have sued and lost, leaving children less secure because one parent may not be considered a “legal” parent.

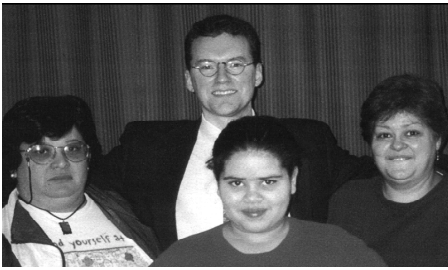
For example, in Nebraska two moms sought a second-parent adoption of their son, who was nearly four years old at the time. The moms had raised him from birth. The non-biological mother who sought to adopt was a full-time homemaker and the primary caretaker for the boy. The required professional home study of the family found that the non-biological mother “demonstrates remarkable parenting skills.” But in March 2002 Nebraska’s high court upheld a denial of the petition to adopt, in a ruling that made clear that the adoption would have been approved had the two women been married. Instead their son has to live with the uncertainty of one mother having no legal relation with him.

## YOUR EMPLOYER SHOULD NOT BE ABLE TO SAY THAT YOUR JOB DEPENDS ON YOUR FAMILY LEAVING YOUR HOME

Dennis, a county campsite manager in Florida, was required to live in a campsite trailer for his job. But his employer told Dennis that his life partner had to move out. The



**Julia (left) and Michele with their two children** A family that had to go through many hurdles and obstacles to secure the children’s adoption.



**Ivonne (left), Jeanette (right), one of their two children and Lambda Legal’s David Buckel** In the two-bedroom apartment the couple was first denied because they were not married.

lease for the trailer only allowed for “family.” Dennis had to ask Lambda Legal to step in before he could win the right to live with his partner.

Ivonne and Jeanette have two children who lived with them in a studio apartment in a subsidized housing project in New York. The landlord denied their application for a larger apartment because the two women were not married and therefore not considered a “family.” Then the landlord turned around and tried to evict them for “overcrowding” because the studio was too small for a couple with two children. They had to call in Lambda Legal to force the landlord to stop the eviction and give them the larger apartments available to “families.” At a time when the strain of raising two children in one room was enough of a challenge for the family, the moms had to find a lawyer to protect them from eviction because they could not get married. “As Latina women, we’ve known different kinds of discrimination,” says Jeanette. “But it hurts all the more when your family is disrespected.”

## THE LAST THING THAT SHOULD HAPPEN WHEN YOU LOSE YOUR LOVED ONE IS TO LOSE EVERYTHING ELSE

For 28 years in rural Washington, Frank and Bob shared their lives and home, and built a business together. When Bob died suddenly without a will, his relatives — the legal heirs — swept in demanding that Frank move out of the house and turn over the business and all the couple’s other assets to them. If they had succeeded in court, Frank would have been left penniless (the case was settled). A similarly tragic course of events occurred in New Jersey for Bruce when his partner of 35 years, Carl, died. Carl’s relatives took steps to sell the home and the business, and evict Bruce (the case also was settled). And the same thing happened in California to Amalia when her longtime partner Margaret died (she lost her home, but settled with Margaret’s cousins for a small portion of what she would have received had they been married). Unlike couples who can marry, same-sex couples must go through the hurdles and obstacles of drawing up extra documents to protect their homes and finances. But many are discouraged by the expense it takes to do so, or the difficulty of painful discussions about death. Thus for same-sex couples the tragedy of losing the person closest to their hearts is often followed by more tragedy as they come under attack by relatives.

## IF YOUR PARTNER DIES, YOU SHOULD NOT HAVE TO GO TO COURT TO CARRY OUT HIS OR HER WISHES

Cindy and Sherry fell in love as teenagers in Philadelphia, and were life partners for 13 years, until Cindy’s death from cancer. As her health began to

## THE RISK OF FINANCIAL AND RELATED EMOTIONAL HARM

Denial of joint rental leases with automatic renewal rights

Denial of right for partner from another country to remain in the home in U.S.

Inability to obtain veterans’ discounts on medical care, education and housing loans

Conditions of employment that require splitting up the family



**Margaret (left) and Amalia** The couple was together nearly 20 years.

## THE RISK OF FINANCIAL/ EMOTIONAL HARM AFTER LOSING A LOVED ONE

Denial of bereavement leave  
to mourn a lost partner

Denial of the choice for a final  
resting place and tombstone  
for a deceased partner

Inability to draw Social Security  
benefits after a partner's death

Inability to automatically in-  
herit the shared home, assets,  
and personal items like fam-  
ily memorabilia, in the absence  
of a will



**Sherry (left) and Cindy** The couple drew up legal documents before Cindy's death from cancer so her wishes would be honored. Nonetheless, Sherry still had to go to court.

decline, Cindy drew up all the necessary documents to make sure Sherry had authority to make the important decisions for Cindy before and after death. One of Cindy's instructions was that her epitaph include the words "life partner." But after she died, the cemetery that buried her refused to honor Sherry's instructions for the epitaph because they said Sherry was not "related" to Cindy. When loved ones gathered at the grave to memorialize Cindy, the grave was unmarked. Lambda Legal had to file a suit in federal court to make sure Cindy's tombstone read as she wanted it to read. This is just one example of how discrimination in marriage forces same-sex couples to draw up all sorts of documents to protect themselves. But even when couples can dedicate the time and money necessary to get those documents in hand, they may still end up in court. Married couples, by contrast, do not need to carry documents around with them and go to court to prove what they mean to each other.

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