

Denying Access to Marriage Harms Families: Social Security

SAME-SEX COUPLES LOSE BENEFITS THEY PAID FOR TO INSURE AGAINST HARD TIMES

Most employees in the United States see a “FICA” deduction — reducing their take-home pay — on every paycheck. FICA stands for the Federal Insurance Contribution Act. Those deductions are what employees pay into the federal Social Security system to fund benefits not only for retirement, but also for when a spouse dies or becomes disabled. The principal goal of these benefits is to provide a safety net, similar to life insurance.

Same-sex Couples Pay in With Involuntary Pay Check Deductions, But Don't Get the Pay Out Other Couples Get

The safety net that Social Security provides takes into consideration the family as a whole. This means the earnings record of an employee can be drawn on by other members of the employee's family.

This makes sense for many reasons. For example, couples often make decisions to have one of them work to support the other while that one completes education or training. Or they may decide to favor one of their careers over another in order to allow one

parent to spend more time with children, or to increase the family's income. The Social Security system recognizes this, allowing the lower wage-earning spouse in certain circumstances to access the higher wage-earner's record for the purpose of computing benefits. But same-sex couples are denied access to marriage, and thus lose those benefits even though they have paid for them.

SAME-SEX COUPLES GET LESS WHEN THEY RETIRE: A TYPICAL COUPLE COULD LOSE OVER \$10,000 PER YEAR

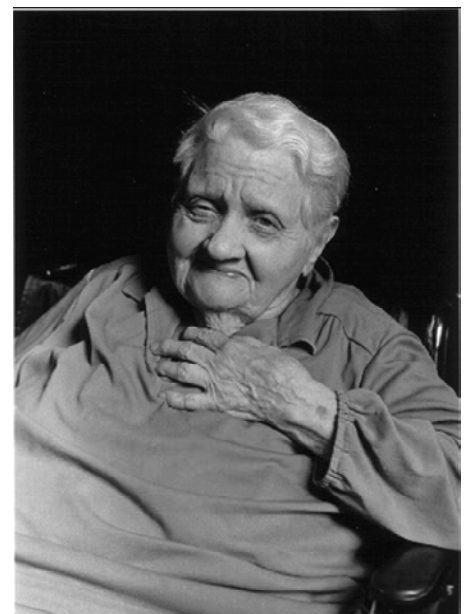
Consider a married couple that retires together:

Imagine Pat and Jean, married for thirty years. Pat often set aside career development and shouldered the household tasks, because that helped promote Jean's more lucrative career, producing more income for the couple. When they retired, Jean was entitled to a monthly Social Security benefit of \$1500 per month, based on Jean's earnings record. Pat was entitled to \$525 per month based on Pat's earnings record. But Pat exercised the option, available to a spouse under Social Security rules, of electing instead to get half of Jean's

“A Nation's strength lies in the well being of its people. The social security program plays an important part in providing for families, children, and older persons in time of stress...”

- President John F. Kennedy

June 30, 1961



Penny Coleman/Courtesy Senior Action in a Gay Environment (SAGE)



Penny Coleman/Courtesy SAGE

LESBIANS ARE AT PARTICULAR RISK OF HARM

In part due to sex discrimination, women often have lower lifetime earnings than men, and reach retirement with smaller pensions and assets. Thus the government's denial of access to marriage can be all the more harmful for lesbian couples, whose lower wage-earner cannot access the other's earnings record and obtain the higher benefits available to married couples.

From *Women and Retirement Security*, A Report Prepared by the National Economic Council Interagency Working Group on Social Security, October 1998.

For this report and general information from the Social Security Administration, see www.ssa.gov.

benefit, or \$750 per month, which meant an extra \$225 per month (\$2700 per year). This is a significant amount for senior citizens on fixed incomes. And if Jean dies, Social Security gives Pat, as a surviving spouse, Jean's entire monthly benefit of \$1500 per month.

Imagine now that Pat and Jean are a same-sex couple, with nothing else changed about the couple:

Because they are a same-sex couple, the government blocks them from marrying. But everything else is the same, including their thirty years of commitment to one another, and their jobs. But when Jean and Pat retire, Pat cannot access Jean's earnings record, and the couple thus loses \$2700 per year. And if Jean dies, Pat's benefits are \$525 per month rather than \$1500 per month, for a loss of \$11,700 per year. This is a loss that most senior citizens on fixed incomes cannot afford.

SAME-SEX COUPLES GET LESS PROTECTION FOR THEIR CHILDREN: A TYPICAL COUPLE COULD LOSE OVER \$200,000

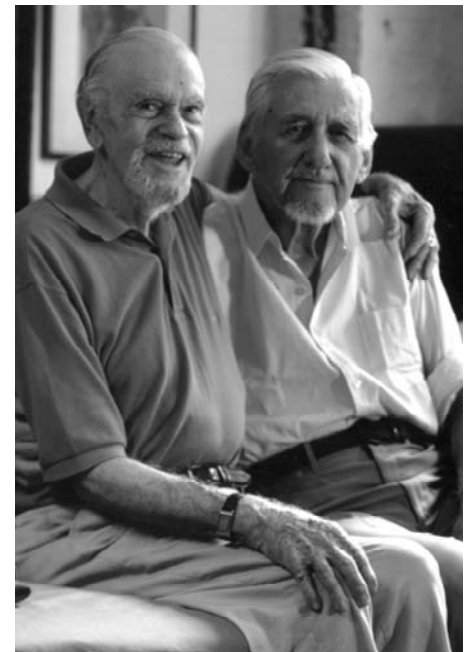
Consider a married couple in which one member dies before retirement:

Imagine a married couple, Terry and Chris. Chris worked and paid for Terry to go to a trade school for several years. After graduation, Terry's earning capacity was far greater than Chris's. After working for five years, the couple adopted a baby. Because Terry could earn more, they decided Chris would be a homemaker until their child was

in elementary school. This meant that Terry could work longer hours because Chris was taking care of all the family's household needs. But two years later, Terry died in a car accident. Because of the FICA deductions to Terry's bi-weekly paycheck, the child received Social Security benefits each month. As the spouse, Chris also received monthly Social Security benefits of \$1200, based on Terry's earnings record. Chris had to go back to work, but the benefits allowed Chris to work part-time, save on child-care, and spend some of the time with the child that the family had originally planned. The benefits to Chris last until the child is sixteen.

Imagine now that Chris and Terry are a same-sex couple, with nothing else changed about the couple:

Again, because they are a same-sex couple, the government blocks them from legally marrying. Everything



Richard Renaldi/Courtesy SAGE

DISCRIMINATION IN MARRIAGE CAN HARM FAMILIES IN MANY WAYS OTHER THAN IN THE AREA OF SOCIAL SECURITY

Denial of an adoption of a child by the second parent

Denial of family health insurance from employers

Denial of family medical leave to care for a partner

Denial of the right to visit a partner in the hospital

Denial of bereavement leave after losing a loved one

For further background, see Lambda Legal's "Denying Access to Marriage Harms Families" at www.lambdalegal.org



Del Martin and Phyllis Lyon
Plaintiffs in Lambda Legal's *In Re Marriage* case in California

else is the same, including Chris and Terry's employment decisions and their adopted child. But when Terry dies in the accident, because Chris and Terry have not been allowed to marry, Chris does not get benefits based on Terry's earnings record. The family loses \$1200 per month, or \$14,400 per year for the fourteen years until the child is sixteen, resulting in a total loss (not reflecting adjustments for inflation) of \$201,600.

Last updated May 21, 2007

Contact Lambda Legal

NATIONAL HEADQUARTERS

120 Wall Street, Suite 1500
New York, NY 10005-3904
tel 212-809-8585
fax 212-809-0055

WESTERN REGIONAL OFFICE

3325 Wilshire Boulevard, Suite 1300
Los Angeles, CA 90010-1779
tel 213-382-7600
fax 213-351-6050

MIDWEST REGIONAL OFFICE

11 East Adams, Suite 1008
Chicago, IL 60603-6303
tel 312-663-4413
fax 312-663-4307

SOUTHERN REGIONAL OFFICE

730 Peachtree Street, NE, Suite 1070
Atlanta, GA 30308-1210
tel 404-897-1880
fax 404-897-1884

SOUTH CENTRAL REGIONAL OFFICE

3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219-6722
tel 214-219-8585
fax 214-219-4455

www.lambdalegal.org

