

HOLDING OUT FOR LOVE: WHY DISABLED PEOPLE CAN'T SAY "I DO"

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Ten years after Obergefell v. Hodges, marriage remains out of reach for millions of people with disabilities. Although explicit bans on interracial and same-sex marriage have fallen, disabled people continue to face a complex web of exclusion operating simultaneously across legal, economic, institutional, and cultural domains. Guardianship laws strip away the right to choose a spouse. Benefit programs impose crushing marriage penalties, forcing impossible choices between love and survival. Institutional policies discourage or prohibit relationship formation. Cultural narratives render disabled people invisible as partners, spouses, and parents. Together, these barriers make marriage practically unattainable, exposing society's ongoing refusal to recognize disabled people's full humanity, autonomy, and citizenship.

This systematic exclusion represents not only a profound social injustice but also a constitutional failure. Commitments to liberty and equality ring hollow when fundamental rights exist only on paper. True marriage equality requires more than the removal of formal prohibitions; it demands the dismantling of the interlocking obstacles that render constitutional protections theoretical for disabled people. This Article argues that piecemeal reforms cannot repair a system designed to exclude. Only a comprehensive strategy, combining constitutional litigation, robust federal and state reforms, and cultural transformation, can achieve the immediate and thorough redress that justice requires.

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INTRODUCTION

Patrice Jetter and Garry Wickham have been in love for over thirty-five years.¹ Both are accomplished Special Olympics athletes who first met decades ago, forming a friendship that grew into romance.² Their commitment is profound, yet they cannot marry without triggering the “marriage penalty,” a loss of critical benefits that would compromise their independence.³ Even cohabitation risks being interpreted as “holding out” as married, which can result in termination of Supplemental Security Income (SSI) and Medicaid.⁴ Like many couples facing similar barriers, they have turned to alternative ways of honoring their relationship, including holding a non-legal commitment ceremony.⁵ Although these symbolic gestures carry deep personal meaning, they cannot provide the legal protections and social recognition that marriage confers.

Paul Forziano and Hava Samuels encountered a different but equally devastating barrier.⁶ After a seven-year relationship and a two-year engagement, they married in 2013, only to have their group homes refuse to allow them to live together as spouses.⁷ Administrators called the request “unprecedented” and “fraught with difficulties.”⁸ When the couple sued under the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Fair Housing Act, the court rejected their claims, reasoning that the denial was based on their marital status, not their disabilities.⁹ Although they eventually found housing with another provider, their case illustrates the fragility of marital rights for people with disabilities.¹⁰

These stories highlight a stark contradiction at the heart of constitutional law. On paper, marriage equality appears triumphant, yet millions of disabled people¹¹ remain effectively excluded from this

1. PATRICE: THE MOVIE (ABC News Studios 2024).

2. *Id.*

3. *Id.*; see also Sean Keane, *Patrice: The Movie’ Explores Disabled Couple’s Highs and Lows*, ABC NEWS (Sep. 30, 2024), <https://perma.cc/6H8X-QSZC>.

4. PATRICE: THE MOVIE, *supra* note 1; Keane, *supra* note 3.

5. PATRICE: THE MOVIE, *supra* note 1.

6. *Mentally Disabled Couple’s Legal Battle Ends with New Home*, ABC NEWS (May 22, 2013), <https://perma.cc/7VB2-XSZ4>.

7. *Forziano v. Indep. Grp. Home Living Program, Inc.*, No. CV 13-0370, 2014 WL 1277912, at *1–3 (E.D.N.Y. Mar. 26, 2014), *aff’d*, 613 F. App’x 15 (2d Cir. 2015).

8. *Id.* at *1.

9. *Id.* at *4, *8.

10. *Mentally Disabled Couple’s Legal Battle Ends with New Home*, *supra* note 6.

11. This Article uses both person-first language (e.g., “people with disabilities”) and identity-first language (e.g., “disabled people”) to reflect diverse preferences within the disability community. See generally Erin E. Andrews, Robyn M. Powell & Kara Ayers, *The Evolution of Disability Language: Choosing*

fundamental right. Not through explicit bans, but through an interlocking system of legal, economic, institutional, and cultural barriers that force a choice between survival and the legal recognition of intimate relationships.¹² As the nation marks the tenth anniversary of *Obergefell v. Hodges*¹³ in 2025, the Supreme Court's declaration that marriage is a fundamental right rings hollow for many disabled Americans. Although *Obergefell* extended marriage equality to same-sex couples and the Respect for Marriage Act of 2022 provided additional federal protections,¹⁴ neither addressed the systematic exclusion of disabled people from marriage. Unlike the explicit prohibitions that once barred interracial and same-sex couples from marrying, disabled people face a complex web of obstacles that strip decision-making authority through guardianship laws, impose severe financial penalties through benefit programs, restrict cohabitation through institutional policies, and perpetuate stigma through cultural narratives that erase them as potential spouses. Together, these forces comprise an architecture of exclusion that renders the constitutional right to marry effectively inaccessible.

This Article advances three primary claims. First, it provides a comprehensive analysis of how marriage exclusion operates through a coordinated system that spans multiple domains. Prior scholarship has addressed individual barriers, such as benefit structures or guardianship,¹⁵ but this Article demonstrates how seemingly neutral policies collectively function to deny marriage rights. These are not isolated hurdles but mutually reinforcing mechanisms that make marriage practically impossible for many. Second, it develops a constitutional theory of systematic marriage denial as an unconstitutional condition, violating both substantive due process and equal protection. Drawing on doctrine prohibiting the conditioning of public benefits on the surrender of fundamental

Terms to Describe Disability, 15 DISABILITY & HEALTH J. 1, 4 (2022) (analyzing evolving language preferences in the disability community).

12. See *infra* Part III (describing the legal, economic, institutional, and cultural barriers to marriage that disabled people encounter).

13. 576 U.S. 644 (2015).

14. Respect for Marriage Act, Pub. L. No. 117-228, 136 Stat. 2305 (2022) (codified as amended at 1 U.S.C. § 7 and 28 U.S.C. § 1738C).

15. See, e.g., Marisa A. Leib-Neri, Note, *Love, Marriage, & Neurodiversity: Using Neuroscience to Equalize Marriage Rights for People with Intellectual & Developmental Disabilities Under Guardianship Arrangements*, 108 IOWA L. REV. 1475, 1476–79 (2023) (exploring how guardianship regimes limit the rights of people with intellectual disabilities to marry); Gabriella Garbero, Comment, *Rights Not Fundamental: Disability and the Right to Marry*, 14 ST. LOUIS U. J. HEALTH L. & POL'Y 587, 592–95 (2021) (analyzing how the so-called SSI “marriage penalty” forces disabled couples into poverty); Sarah Lorr, *The Capacity to Marry*, COLUM. L. REV. (forthcoming 2026) (manuscript at 29–33), <https://perma.cc/ZJ28-6L64> (identifying legal doctrines and guardianship mechanisms that systematically bar people with intellectual disabilities from marriage).

rights, the Article argues that forcing disabled people to choose between marriage and survival constitutes structural coercion that renders constitutional guarantees hollow. Third, it proposes a multi-system reform agenda that addresses marriage barriers across legal, economic, institutional, and cultural domains simultaneously. Rather than relying on piecemeal reforms, it outlines federal and state legislative changes, administrative reforms, litigation strategies, and cultural interventions that are necessary to dismantle systematic marriage denial while preserving essential supports and services.

This Article departs from traditional disability rights frameworks that seek accommodation within existing systems. It contends that the systematic exclusion of people with disabilities from marriage constitutes a distinct form of discrimination that demands constitutional scrutiny and structural transformation. The goal is not merely access to marriage, but the removal of the interlocking barriers that deny meaningful choice and reinforce second-class citizenship. At the same time, this Article acknowledges critiques of marriage equality movements and “marriage exceptionalism,”¹⁶ which elevate marriage as the primary path to legal rights and benefits. Many people—disabled and nondisabled alike—build meaningful relationships outside of marriage that deserve legal and cultural recognition. While situating this work within broader efforts to value diverse relationship structures, the focus here is on the systematic denial of choice to marry, which represents a distinct and urgent form of discrimination.

Marriage in American law functions as more than a private relationship. It is a gateway to fundamental legal protections, economic security, and social recognition. When disabled people are excluded, they are denied access to this entire framework of rights and benefits, reinforcing cultural narratives that devalue their autonomy, intimacy, and family life. This exclusion is not merely about marriage itself, but about the broader denial of autonomy, dignity, and full citizenship.

The Article proceeds in five parts. Part I traces the historical legacy of discrimination against disabled people in marriage law, from explicit eugenic restrictions to modern forms of systematic exclusion. Part II examines the false promise of marriage equality,

16. See, e.g., Linda C. McClain, *The Other Marriage Equality Problem*, 93 B.U. L. REV. 921, 922–29 (2013) (arguing that the marriage equality movement has obscured broader structural inequalities by reinforcing marriage as the privileged conduit for legal and economic benefits); Albertina Antognini, *Against Nonmarital Exceptionalism*, 51 U.C. DAVIS L. REV. 1891, 1895–908 (2018) (critiquing how courts replicate marital norms in adjudicating nonmarital relationships, thereby entrenching marriage’s central legal role); NANCY D. POLIKOFF, BEYOND (STRAIGHT AND GAY) MARRIAGE: VALUING ALL FAMILIES UNDER THE LAW 7–12 (2008) (challenging the privileging of marriage and advocating for legal recognition of diverse family forms).

analyzing how constitutional protections have consistently overlooked disability-based barriers. Part III details the current architecture of exclusion, showing how legal, economic, institutional, and cultural systems interact to deny choice. Part IV explores the legal, economic, and cultural significance of marriage, and the particular harms caused by exclusion. Finally, Part V proposes a comprehensive reform agenda that includes constitutional challenges, legislative reforms, administrative changes, and cultural transformation.

At its core, this Article argues that constitutional promises of liberty and equality cannot be realized without dismantling the systems that deny disabled people the choice to marry. This systematic exclusion is not simply a matter of social policy. It is a profound constitutional failure that demands immediate and comprehensive redress. Nor is it a relic of the past. In 2025, a Trump-nominated federal judicial candidate admitted during his Senate confirmation hearing that he had preached marriage should not be for “our handicapped friends or our persons with physical disabilities.”¹⁷ Months earlier, the Secretary of Health and Human Services declared that autistic people would “never go out on a date.”¹⁸ The exclusion this Article examines is ongoing and coming from the highest levels of government.

I. THE LEGACY OF DISCRIMINATION: “UNFIT” TO WED

The legal exclusion of people with disabilities from marriage represents one of the most enduring and adaptive forms of discrimination in American law, evolving from explicit eugenic prohibitions to subtle contemporary barriers that continue to constrain disabled people’s fundamental rights. This Part examines how eugenics developed into a comprehensive system of marriage restrictions designed to prevent disabled people from forming families, creating legal precedents that normalized state control over disabled people’s intimate lives. It then analyzes how the dismantling of formal eugenic laws did not eliminate discriminatory practices but instead transformed them into indirect barriers that achieve similar exclusionary effects while maintaining constitutional plausibility.

17. Kate Riga, *GOP Senator Grills Trump Nominee on Statement That Marriage Is Not Intended for Disabled People*, TALKING POINTS MEMO (Dec. 17, 2025), <https://perma.cc/4JKD-Q4A2>.

18. Deidre McPhillips, *Many in the Autism Community Say RFK Jr. Pushing Harmful and Regressive Rhetoric About Who They Are*, CNN (Apr. 25, 2025), <https://perma.cc/6ULJ-64CN>.

A. *Eugenics and the Systematic Exclusion of Disabled People from Marriage and Family Life*

Eugenics developed into an influential social and scientific movement in the United States beginning in the late nineteenth and early twentieth centuries, framing disability as a societal danger that demanded government action.¹⁹ Eugenicians developed a comprehensive ideological framework based on preventing reproduction among those deemed “unfit” for parenthood, advocating for a two-pronged approach: promoting reproduction among groups they considered “desirable” while systematically preventing reproduction among those labeled as having “hereditary defects.”²⁰ The scope of eugenic targeting was staggeringly broad—eugenicians sought to restrict reproduction among “the mentally defective, the mentally diseased, [and] the physically defective, such as the blind, the deaf, the crippled and those ailing from heart disease, kidney disease, tuberculosis and cancer.”²¹

Within this framework, marriage became central to eugenic concern because it represented the primary legal pathway to reproduction. Eugenicians viewed marriage licenses as powerful tools for controlling reproduction and preventing “undesirable” traits from being passed down.²² They advocated for laws barring disabled people

19. David L. Braddock & Susan L. Parish, *An Institutional History of Disability*, in HANDBOOK OF DISABILITY STUDIES 34–35 (Gary L. Albrecht, Katherine Seelman & Michael Bury eds., 2001).

20. See ADAM COHEN, IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK 5 (2016); see also Bd. of Trs. of the Univ. of Ala. v. Garrett, 531 U.S. 356, 369 n.6 (2001) (“The record does show that some States, adopting the tenets of the eugenics movement of the early part of this century, required extreme measures such as sterilization of persons suffering from hereditary mental disease.”); Eric M. Jaegers, Note, *Modern Judicial Treatment of Procreative Rights of Developmentally Disabled Persons: Equal Rights to Procreation and Sterilization*, 31 U. LOUISVILLE J. FAM. L. 947, 948 (1992) (explaining that the purpose of eugenics was to prevent “reproduction by those deemed socially or mentally inferior”); Robyn M. Powell, *From Carrie Buck to Britney Spears: Strategies for Disrupting the Ongoing Reproductive Oppression of Disabled People*, 107 VA. L. REV. ONLINE 246, 250–52 (2021); Michael G. Silver, Note, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 GEO. WASH. L. REV. 862, 865 (2004); Paul A. Lombardo, *Medicine, Eugenics, and the Supreme Court: From Coercive Sterilization to Reproductive Freedom*, 13 J. CONTEMP. HEALTH L. & POL’Y 1, 1–2 (1996).

21. J.H. Landman, *The Human Sterilization Movement*, 24 J. AM. INST. CRIM. L. & CRIMINOLOGY 400, 402 (1933); see also COHEN, *supra* note 20, at 6 (noting eugenicians’ “greatest target was the ‘feeble-minded,’ a loose designation that included people who were mentally [disabled], women considered to be excessively interested in sex, and various other categories of individuals who offended the middle-class sensibilities of judges and social workers”).

22. See PAUL A. LOMBARDO, THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT, AND *BUCK V. BELL* 44–46 (updated ed. 2022).

from marrying and requiring medical examinations as conditions for obtaining marriage licenses, while also promoting mandatory sterilization laws.²³ This focus on marriage represented a strategic recognition that controlling access to legal unions would effectively control reproductive outcomes while maintaining an appearance of respectability through existing legal institutions. The marriage license system provided eugenicists with a bureaucratic mechanism to implement their ideology while avoiding the appearance of crude population control.

Connecticut established the crucial legal precedent in 1895 by passing the first marriage restriction law, prohibiting “epileptics, imbeciles, and feeble-minded persons” from marrying before age forty-five, effectively eliminating their reproductive potential.²⁴ The Connecticut Supreme Court’s 1905 decision in *Gould v. Gould*²⁵ upheld the state’s law and gave judicial legitimacy to eugenic marriage restrictions, establishing a legal precedent that normalized them nationwide.²⁶ The Connecticut model spread rapidly. Similar laws were enacted in thirty-four states and the District of Columbia by 1914, reaching forty-one states by the mid-1930s.²⁷ The federal government provided crucial legitimacy when U.S. Public Health Service Surgeon General Rupert Blue publicly endorsed eugenic principles in 1915 by awarding a “eugenic certificate” to a Washington, D.C. couple deemed genetically fit for marriage.²⁸ This high-profile federal action legitimized and accelerated state-level efforts while providing a model for other officials to follow.

States developed sophisticated systems requiring medical examinations, certifications, and sometimes sterilization before granting marriage licenses, with medical boards gaining authority to deny licenses to those who failed these examinations.²⁹ The laws typically targeted people labeled as “imbeciles,” “idiots,” “lunatics,” “feeble-minded,” and those of “unsound mind,” transforming marriage from a personal choice into a privilege granted only to those deemed

23. *See id.*

24. Robert J. Cynkar, *Buck v. Bell: “Felt Necessities” v. Fundamental Values?*, 81 COLUM. L. REV. 1418, 1432 (1981).

25. 61 A. 604 (Conn. 1905).

26. *Id.* at 605.

27. *See* Jessie Spaulding Smith, *Marriage, Sterilization and Commitment Laws Aimed at Decreasing Mental Deficiency*, 5 J. AM. INST. CRIM. L. & CRIMINOLOGY 364, 364–67 (1914); WILLIAM KUBY, *CONJUGAL MISCONDUCT: DEFYING MARRIAGE LAW IN THE TWENTIETH-CENTURY UNITED STATES* 115–16 (2018); Braddock & Parish, *supra* note 19, at 35; Peggy Pascoe, *Miscegenation Law, Court Cases, and Ideologies of “Race” in Twentieth-Century America*, 83 J. AM. HIST. 44, 58 (1996) (explaining that “by the 1930s, 41 states used eugenic categories” to restrict marriage).

28. LOMBARDO, *supra* note 22, at 45.

29. *See id.* at 45–47.

genetically worthy by medical and state authorities.³⁰ Several states embraced what amounted to a “sterilization bargain,” allowing disabled people to marry only if they submitted to sterilization first.³¹ This presented an impossible choice between marriage rights and reproductive freedom.

Institutionalization served as another comprehensive system for preventing disabled people from forming relationships through physical segregation. By 1936, nearly 81,000 Americans classified as “feble-minded” lived in gender-segregated institutions.³² These facilities specifically prevented sexual contact and reproduction, making marriage prohibition merely one aspect of a broader denial of intimacy rights.³³

The Supreme Court’s 1927 decision in *Buck v. Bell*³⁴ provided the ultimate constitutional endorsement of eugenic practices, with Justice Oliver Wendell Holmes Jr. infamously declaring that “[t]hree generations of imbeciles are enough.”³⁵ This ruling legitimized state sterilization programs that ultimately affected nearly 70,000 people and provided constitutional cover for the broader system of eugenic marriage restrictions.³⁶ The decision established that the state’s interest in genetic health could override individual constitutional rights, including fundamental rights to reproduction and marriage.

By the 1920s and 1930s, marriage restrictions, sterilization laws, and institutionalization worked together as a comprehensive system to exclude people with disabilities from participating in society and exercising basic civil rights.³⁷ Although these discriminatory policies gradually lost legitimacy after World War II, a 1978 study revealed

30. Matthew J. Lindsay, *Reproducing a Fit Citizenry: Dependency, Eugenics, and the Law of Marriage in the United States, 1860–1920*, 23 LAW & SOC. INQUIRY 541, 542 (1998).

31. New Hampshire exemplified this approach by barring people labeled as “insane and feeble-minded” from marriage unless they were sterilized first. *See generally* Simon Stone, *Sexual Sterilization in New Hampshire*, 215 NEW ENG. J. MED. 536 (1936).

32. *See* JAMES W. TRENT, JR., INVENTING THE FEEBLE MIND: A HISTORY OF MENTAL RETARDATION IN THE UNITED STATES 199 (1994) (documenting the increase in institutionalized people classified as “feble-minded” between 1926 and 1936).

33. *See id.* at 102 (explaining how institutions segregated residents by gender to prevent sexual activity and reproduction).

34. 274 U.S. 200 (1927).

35. *Id.* at 207.

36. *The Supreme Court Ruling That Led to 70,000 Forced Sterilizations*, NPR: FRESH AIR (Mar. 17, 2016), <https://perma.cc/B9WU-NVFW>.

37. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 463 (1985) (Marshall, J., concurring in the judgment in part and dissenting in part) (“Segregation was accompanied by eugenic marriage and sterilization laws that extinguished for the retarded one of the ‘basic civil rights of man’—the right to marry and procreate.”).

that nearly forty states still maintained marriage restrictions, demonstrating the remarkable persistence of eugenic ideology even as its scientific basis was discredited.³⁸

B. The Persistence of Eugenic Ideology in Contemporary Marriage

Although explicit statutes that once barred disabled people from marrying have largely been repealed, their underlying logic persists. Contemporary policies, practices, and institutional structures continue to constrain disabled people's marital choices, often with effects strikingly similar to the eugenic restrictions of the past.³⁹ Rather than abandoning discriminatory practices, the legal system has transformed them into a complex network of indirect barriers that achieve similar exclusionary effects while maintaining a veneer of neutrality.⁴⁰ This evolution creates a civil rights paradox: marriage is formally recognized as a fundamental right, yet remains substantively inaccessible to many disabled people through mechanisms that appear neutral but functionally perpetuate exclusion.⁴¹ The shift does not mark true progress, but rather an adaptation—an updated system of restrictions that avoids constitutional scrutiny while achieving outcomes that echo eugenic goals.

As Gabriella Garbero observes, “Although openly eugenic laws have fallen out of official favor, the perceptions and opinions that led to, or perhaps arose from, the eugenics movement still have echoes in marriage and family planning policies that dissuade disabled people from approaching legal marriage.”⁴² The law has not fully repudiated eugenic ideology but has instead absorbed and reshaped it into bureaucratic procedures, economic motivations, and professional discretion.⁴³ These mechanisms are justified not by overt claims of preventing “defective” offspring but by paternalistic rationales, such as protecting people with disabilities or preserving limited public

38. Brooke Pietrzak, *Marriage Laws and People with Mental Retardation: A Continuing History of Second Class Treatment*, 17 DEVS. MENTAL HEALTH L. 1, 2 (1997).

39. See *infra* Part III (examining contemporary legal, economic, institutional, and cultural barriers to marriage experienced by disabled people).

40. See, e.g., AYESHA E. LEWIS & PATRICIA DE LA HOYA, DISABILITY RTS. EDUC. & DEF. FUND, ADVANCING MARRIAGE EQUALITY: A TOOLKIT 16–30 (2024), <https://perma.cc/V9BT-WP4K>.

41. See *infra* Section II.D (explaining how marriage equality has not been fulfilled for people with disabilities).

42. Garbero, *supra* note 15, at 601.

43. See LEWIS & DE LA HOYA, *supra* note 40, at 11, 14–24, 27–30 (discussing current barriers to marriage).

resources.⁴⁴ Yet the practical result remains systematic exclusion from marriage.⁴⁵

This persistence of eugenic thinking is most evident in the continued framing of disabled people as dependents rather than full citizens entitled to both public support and autonomous family life.⁴⁶ Jasmine Harris explains how the state continues to regulate the sexual and family lives of disabled people through broad statutory frameworks that deny autonomy while purporting to safeguard it.⁴⁷ In this context, professional discretion functions as a vehicle for imposing normative judgments about who deserves access to fundamental rights.⁴⁸ Discrimination, thus, operates less through explicit prohibitions and more through everyday decisions by administrators, service providers, and benefit systems.

Although contemporary policies no longer explicitly target marriage as a site of population control, they emerge from institutional structures built on decades of eugenic thought. That legacy remains embedded in administrative cultures and social attitudes that question disabled people's capacity for intimacy, marriage, and parenthood.⁴⁹ The persistence of these assumptions ensures that, even without explicit bans, disabled people continue to face systemic obstacles to marriage. This reality stands in sharp contrast to legal and political narratives celebrating the triumph of marriage equality, highlighting the need to interrogate whether formal recognition of rights has truly secured substantive equality for people with disabilities.⁵⁰

44. See *infra* Sections III.A–III.B.

45. See *infra* Part III (exploring the systematic exclusion of disabled people from marriage).

46. See *infra* Part III.

47. Jasmine E. Harris, *Sexual Consent and Disability*, 93 N.Y.U. L. REV. 480, 486–87 (2018) (arguing that courts and legislatures often frame protection of disabled people in ways that ultimately reinforce institutional control and deny sexual agency).

48. See, e.g., Michael L. Perlin, “*Striking for the Guardians and Protectors of the Mind*”: *The Convention on the Rights of Persons with Mental Disabilities and the Future of Guardianship Law*, 117 PENN. ST. L. REV. 1159, 1185–86 (2013) (discussing how professionals in guardianship proceedings impose normative views about capacity and relationships, effectively controlling access to fundamental rights like autonomous decision-making).

49. See *infra* Sections III.C–III.D (describing the ways that institutional policies and cultural attitudes leading to disabled people being denied the right to marry).

50. See *infra* Section II.D (discussing how marriage equality remains hollow for people with disabilities).

II. THE FALSE PROMISE OF MARRIAGE EQUALITY

The story of marriage equality in America is often told as one of constitutional triumph, beginning with the Supreme Court's early recognition of marriage as a fundamental right and culminating in *Obergefell v. Hodges*, which extended that right to same-sex couples. Yet this narrative of steady progress masks a profound contradiction. While explicit legal barriers to marriage have fallen for many groups, millions of disabled people remain effectively excluded. Legal restrictions, economic penalties, institutional policies, and entrenched social attitudes continue to make the constitutional right to marry largely theoretical for this population.

This Part argues that formal equality, understood as the removal of overt legal prohibitions, is constitutionally insufficient when structural barriers persist that deny meaningful access to fundamental rights. It traces the Court's development of marriage as a fundamental constitutional right, presents empirical evidence documenting stark disparities in marriage rates between disabled and nondisabled people, and examines how disability intersects with other forms of marginalization to create compounding barriers. Ultimately, it contends that traditional approaches to marriage equality, which focus narrowly on eliminating formal prohibitions, cannot address the complex and overlapping structural obstacles that prevent people with disabilities from exercising the right to marry.

A. *Constitutional Protection Through the Courts*

The United States Supreme Court has consistently recognized marriage as a fundamental right protected by the Constitution, establishing through more than a century of jurisprudence that the freedom to marry is essential to individual liberty and the pursuit of happiness.⁵¹ These cases define marriage not merely as a social institution subject to regulation, but as a constitutional right entitled to the highest level of judicial protection. Although early cases hinted at this principle, the modern framework emerged through a series of landmark decisions that collectively affirmed marriage as central to human dignity and autonomy.⁵² This robust constitutional protection, reinforced by recent congressional action, provides the foundation for

51. See *14 Supreme Court Cases: Marriage Is a Fundamental Right*, AM. FOUND. FOR EQUAL RTS.: MARRIAGE NEWS BLOG (July 19, 2012), <https://perma.cc/3PZW-VN8K> (listing fourteen Supreme Court cases affirming marriage as a fundamental right). The Court has considered the question two additional times, bringing its total decisions on the issue to sixteen. See *United States v. Windsor*, 570 U.S. 744, 763 (2013); *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015).

52. See *14 Supreme Court Cases: Marriage Is a Fundamental Right*, *supra* note 51.

challenging the systematic barriers that deny disabled people equal access to this fundamental right.

The foundational articulation of marriage as a constitutional right came in *Loving v. Virginia*,⁵³ where the Court struck down laws prohibiting interracial marriage.⁵⁴ Reaffirming that “[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men,” the Court held that restrictions on marriage must survive strict scrutiny under both the Due Process and Equal Protection Clauses.⁵⁵ *Loving* thus established that the state cannot deny the right to marry without compelling justification, and it defined marriage not only as a private relationship but as a civil right at the core of individual liberty and equal citizenship. This framework has provided the foundation for all subsequent marriage equality claims.

The Court reinforced this protection in *Zablocki v. Redhail*,⁵⁶ which struck down a Wisconsin statute barring individuals with unpaid child support obligations from marrying without court approval.⁵⁷ Declaring that “the right to marry is of fundamental importance for all individuals,” the Court made clear that any state law significantly interfering with marriage must serve important governmental objectives and be closely tailored to achieve them.⁵⁸ By distinguishing permissible regulation from unconstitutional interference, *Zablocki* underscored that financial barriers can unconstitutionally burden marriage. This reasoning provides critical precedent for challenges to benefit structures that penalize people with disabilities for marrying, since such penalties create significant obstacles to the exercise of a fundamental right.

Even within prisons, the Court has emphasized the enduring significance of marriage. In *Turner v. Safley*,⁵⁹ the Court invalidated regulations requiring inmates to obtain approval before getting married.⁶⁰ Justice O’Connor explained that although incarceration imposes significant restrictions, many “important attributes of marriage remain,” including emotional support, religious and personal meaning, and legal benefits.⁶¹ *Turner* provides powerful precedent for resisting arguments that disability justifies the denial of marriage rights, confirming that constitutional protections apply even under highly constrained circumstances.

53. 388 U.S. 1 (1967).

54. *Id.* at 12.

55. *Id.*

56. 434 U.S. 374 (1978).

57. *Id.* at 374.

58. *Id.* at 384, 388.

59. 482 U.S. 78 (1987).

60. *Id.* at 95.

61. *Id.* at 95–96.

The Court's marriage jurisprudence culminated in *Obergefell v. Hodges*, which extended the fundamental right to marry to same-sex couples.⁶² The Court explained that the right to marry is fundamental because it encompasses four essential principles: it is "inherent in the concept of individual autonomy," supports "a two-person union unlike any other in its importance to the committed individuals," "safeguards children and families," and represents "a keystone of our social order."⁶³ The Court concluded: "The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses . . . couples of the same sex may not be deprived of that right and that liberty."⁶⁴ *Obergefell's* emphasis on autonomy, dignity, and equal citizenship provides a framework for challenging the systematic exclusion of people with disabilities from marriage, recognizing that denial of marriage rights "serves to disrespect and subordinate" those who are excluded.⁶⁵

The durability of these protections, however, has been cast into doubt. In *Dobbs v. Jackson Women's Health Organization*,⁶⁶ the Court overturned *Roe v. Wade*,⁶⁷ and Justice Thomas's concurring opinion urged reconsideration of other substantive due process precedents.⁶⁸ This call prompted widespread concern about the stability of marriage rights. Congress responded by enacting the Respect for Marriage Act in December 2022, repealing the remaining elements of the Defense of Marriage Act and requiring federal recognition of valid marriages regardless of sex, race, ethnicity, or national origin.⁶⁹ Although the Act provides a statutory backstop by ensuring recognition of existing marriages, it does not require states to issue marriage licenses to same-sex couples should the *Obergefell* decision be overturned.⁷⁰

Taken together, more than a century of Supreme Court decisions has firmly established marriage as a fundamental right under the Constitution. From *Loving* to *Obergefell*, the Court has consistently described marriage as essential to liberty, dignity, and equal citizenship. Yet despite this robust constitutional framework, significant barriers continue to prevent many disabled people from exercising this right. As Justice Kennedy wrote in *Obergefell*, "the

62. 576 U.S. 644, 644 (2015).

63. *Id.* at 665–67, 669.

64. *Id.* at 675.

65. *Id.*

66. 142 S. Ct. 2228 (2022).

67. 410 U.S. 113 (1973).

68. *Dobbs*, 142 S. Ct. at 2301 (Thomas, J., concurring) (urging reconsideration of *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Lawrence v. Texas*, 539 U.S. 558 (2003); and *Obergefell v. Hodges*, 576 U.S. 644 (2015)).

69. Respect for Marriage Act §§ 3–4, Pub. L. No. 117-228, 136 Stat. 2305 (codified as amended at 28 U.S.C. § 1738C).

70. *Id.* § 4.

right to personal choice regarding marriage is inherent in the concept of individual autonomy.”⁷¹ That autonomy, however, remains systematically denied to millions of people with disabilities through legal restrictions, economic penalties, institutional practices, and cultural stigma. The gap between constitutional promises and lived realities underscores how even the most fundamental rights can remain illusory for marginalized communities.

B. The Numbers: Marriage Patterns Among Disabled People

Indeed, statistical evidence reveals stark disparities in marriage rates between people with and without disabilities, confirming that barriers to marriage are not abstract but produce measurable exclusion. These findings highlight persistent structural inequalities that raise serious constitutional and civil rights concerns. The data show that disabled people marry at lower rates, divorce more frequently, and face increasing exclusion from family formation. These patterns cannot be explained by personal preference alone; rather, they reflect systematic barriers that constrain equal access to this fundamental right.

Recent data from the 2023 American Community Survey (ACS) highlights the marriage gap: 50.5 percent of nondisabled people are married, whereas only 36.2 percent of disabled people are married, showing a 14.3 percentage point difference.⁷² This disparity has persisted for decades. For example, ACS data from 2008 to 2012 indicated that adults aged 18–49 in the general population had a first-marriage rate of 71.8 per 1,000.⁷³ In contrast, disabled people in the same age group had a rate of only 41.1 per 1,000, representing a 43 percent gap.⁷⁴ Disparities appear early in adulthood: just 13 percent of disabled people marry within eight years of finishing high school, compared to 19 percent of their nondisabled peers.⁷⁵ Longitudinal studies further confirm these gaps. One national survey found that disabled young adults were 14 percent less likely to marry by their

71. *Obergefell v. Hodges*, 576 U.S. 644, 665 (2015).

72. Email from H. Stephen Kaye, Professor Emeritus, Univ. Cal. S.F., to author (Feb. 6, 2025) (on file with author).

73. Philip Cohen, *Marriage Rates Among People with Disabilities (Save the Data Edition)*, SOC’Y PAGES: COUNCIL ON CONTEMP. FAMS. (Nov. 24, 2014), <https://perma.cc/KUR4-VL6Y>.

74. *Id.*

75. Brian Collisson et al., *Perceived Satisfaction and Inequity: A Survey of Potential Romantic Partners of People with a Disability*, 38 *SEXUALITY & DISABILITY* 405, 406 (2020) (describing a study that found that 35 percent of disabled people between the ages of 18 and 34 have never married, compared to 26 percent of nondisabled people).

early thirties, even after controlling for education, gender, race, and family background.⁷⁶

Marriage patterns also vary significantly by type of disability. People with physical disabilities often marry at rates similar to their nondisabled peers, while those with learning disabilities are 16 percent less likely to marry.⁷⁷ The gap is especially stark for people with multiple disabilities, who are nearly 50 percent less likely to marry.⁷⁸ Autistic adults experience the lowest marriage rates: Most studies find that only 5 to 6 percent have ever married or partnered.⁷⁹ Data from the National Longitudinal Transition Study-2 found that just 0.9 percent of autistic young adults married within eight years of high school, the lowest rate across disability categories.⁸⁰ Marriage rates remain particularly low among autistic adults with intellectual disabilities (about 1 percent), compared to roughly 31 percent among autistic adults without intellectual disabilities.⁸¹ Similarly, 2024 National Core Indicators data show that among people receiving state developmental disability services, marriage rates remain near 1 percent.⁸²

Disabled people not only marry less often, but they also divorce at higher rates. According to the 2023 ACS, 15.8 percent of disabled people are divorced—nearly twice the rate for nondisabled people (8.9 percent)—and separation rates are also elevated (3.2 percent versus 1.7 percent).⁸³ A longitudinal analysis of U.S. Census data from 2009 to 2018 revealed that approximately 1.1 million disabled people divorced during that period, while only 593,000 married.⁸⁴ In contrast, among nondisabled people, marriages outnumbered divorces by more than three to one.⁸⁵ For disabled people, divorce has outpaced marriage, reversing the general population trend and underscoring the unique instability of marriage for this group.

Over time, the marriage gap between disabled and nondisabled people has widened. Between 1997 and 2013, marriage rates for people with childhood-onset disabilities fell from 46 percent to 28 percent, while the rate for nondisabled people declined from 65

76. Maryhelen D. MacInnes, *Altar-Bound? The Effect of Disability on the Hazard of Entry into a First Marriage*, 41 INT'L J. SOCIO. 87, 96–97 (2011).

77. *Id.* at 97.

78. *Id.*

79. Anne V. Kirby et al., *Using State Administrative Data to Examine Aspects of Autistic Adult Life: A Comparative Analysis of Identification, Voting, Marriage, and Parenting*, AUTISM ADULTHOOD 1, 3 (2024).

80. *Id.*

81. Elka Jacobs-Pinson, *15+ Autism Marriage Statistics and Facts*, CROWN COUNSELING (Nov. 7, 2024), <https://perma.cc/4HN3-V8FW>.

82. Email from Dorothy Hiersteiner, Co-Dir. Nat'l Core Indicators, Hum. Servs. Rsch. Inst., to author (Jan. 15, 2025) (on file with author).

83. Email from H. Stephen Kaye, *supra* note 72.

84. LEWIS & DE LA HOYA, *supra* note 40, at 18.

85. *Id.*

percent to 53 percent.⁸⁶ While overall U.S. marriage rates have fallen (a trend often referred to as the “retreat from marriage”), the decline has been even steeper among disabled people, especially those with early-onset disabilities.⁸⁷ These findings suggest that people with disabilities are not catching up to broader social trends but are instead experiencing deepening exclusion from marriage.

Beyond lower marriage rates, disabled people show different patterns across all marital status categories. The 2023 ACS indicates that disabled adults ages 18–64 are more likely never to have married (41.7 percent) than their nondisabled peers (37.7 percent).⁸⁸ They are also more likely to be widowed (3.2 percent compared to 1.3 percent), reflecting both lower marriage rates and heightened health vulnerabilities.⁸⁹

Critically, these statistical disparities cannot be explained solely by personal choice or the inevitable consequences of disability. They reflect systematic barriers that prevent or discourage marriage. Disabled people are disproportionately funneled away from ordinary family-formation pathways, remaining single at higher rates and being less likely to head families or households.⁹⁰ Even when marriage occurs, it is often delayed and more fragile, with higher risks of dissolution.⁹¹ The extremely low marriage rates among people with developmental disabilities, particularly those living in institutional settings, underscore the structural nature of this exclusion and raise serious constitutional concerns under the Due Process and Equal Protection Clauses.

C. *Intersectional Barriers: When Marginalization Compounds*

While disabled people as a group face significant barriers to marriage, these challenges are not experienced uniformly. Disability intersects with gender, race, sexual orientation, and socioeconomic status to create layered disadvantages, making marriage particularly difficult to attain or sustain for some. These intersectional dynamics reveal that marriage inequality is not solely a function of disability status. Instead, it reflects how ableism combines with other systems of oppression to exclude certain people with disabilities from full participation in family life.

Gender is one of the most consequential axes of inequality in marriage patterns among disabled people. Disabled women marry at

86. Dmitry Tumin, *Marriage Trends Among Americans with Childhood-Onset Disabilities, 1997–2013*, 9 DISABILITY & HEALTH J. 713, 715 (2016).

87. *Id.* at 717.

88. Email from H. Stephen Kaye, *supra* note 72.

89. *Id.*

90. Lotta Vikström, Sonali Shah & Angélique Janssens, *Introduction: Disability, Partnership, and Family Across Time and Space*, 25 HIST. FAM. 177, 178 (2020).

91. *Id.* at 191.

significantly lower rates than both disabled men and nondisabled women, a gap that is more pronounced within the disability community than in the general population.⁹² Early 1990s data showed that only 50 percent of women with disabilities were married, compared to 64 percent of nondisabled women.⁹³ Among women with physical disabilities, the rate was even lower: just 33 percent, compared to 38 percent of their nondisabled peers.⁹⁴ Disabled women, especially those with intellectual disabilities, are more likely to remain single, marry later in life, and experience higher rates of separation, divorce, and widowhood.⁹⁵ These trends reflect not personal preference, but gendered expectations surrounding beauty, caregiving, and reproductive capacity that compound the exclusion faced by disabled women.⁹⁶

Cultural perceptions further reinforce these disparities. Nicole Buonocore Porter notes that disabled women are frequently “degendered”—seen mainly through disability rather than gender—which further marginalizes them in both feminist and disability rights circles.⁹⁷ Stereotypes portray women with disabilities as asexual or incapable of fulfilling traditional roles as partners or mothers.⁹⁸ Studies consistently show that disabled women are seen as less likely to date than disabled men, who are often assumed to partner with other disabled people.⁹⁹ Challenging these deeply entrenched stereotypes requires recognizing how gender and disability intersect to create distinct barriers that cannot be addressed through single-axis approaches alone.

92. *Intimate Relationships and Disabilities*, BAYLOR COLL. MED.: CTR. FOR RSCH. ON WOMEN WITH DISABILITIES (2025), <https://perma.cc/K9VR-VK3D>.

93. *Id.*

94. *National Study of Women with Physical Disabilities: Relationships*, BAYLOR COLL. MED.: CTR. FOR RSCH. ON WOMEN WITH DISABILITIES (2025), <https://perma.cc/BR2E-63NC>.

95. Amber Savage & David McConnell, *The Marital Status of Disabled Women in Canada: A Population-Based Analysis*, 18 SCANDINAVIAN J. DISABILITY RSCH. 295, 298 (2016).

96. Vikström, Shah & Janssens, *supra* note 90, at 182–83, 192, 195.

97. Nicole Buonocore Porter, *Mothers with Disabilities*, 33 BERKELEY J. GENDER L. & JUST. 75, 82 (2018); Michelle A. Travis, *Gendering Disability to Enable Disability Rights Law*, 105 CALIF. L. REV. 837, 840–41 (2017).

98. See Anita Silvers, *Reprising Women’s Disability: Feminist Identity Strategy and Disability Rights*, 13 BERKELEY WOMEN’S L.J. 81, 91 (1998); Michael Ashley Stein, *Mommy Has a Blue Wheelchair: Recognizing the Parental Rights of Individuals with Disabilities*, 60 BROOK. L. REV. 1069, 1073 (1994) (reviewing JAY MATTHEWS, *A MOTHER’S TOUCH: THE TIFFANY CALLO STORY* (1992)).

99. Roxanna N. Pebdani & Amanda Tashjian, *An Analysis of the Attitudes of the General Public Towards the Sexuality of Individuals with Disabilities Through a Systematic Literature Review*, 40 SEXUALITY & DISABILITY 21, 44 (2022).

Sexual orientation and gender identity also shape marriage inequality. Heteronormative and gendered assumptions often render LGBTQ+ disabled people invisible within both disability services and broader cultural narratives. People with physical disabilities are frequently perceived as androgynous or “neuter,” which, while reducing gender stereotyping, also undermines perceptions of their romantic and sexual agency.¹⁰⁰ LGBTQ+ disabled people often encounter care and service systems that presume heterosexuality, erasing queer identities.¹⁰¹ Research shows, for example, that lesbian sexual activity is less accepted among women with physical disabilities than among nondisabled women, illustrating the compounding effects of ableism and heteronormativity.¹⁰²

Race and ethnicity further complicate these patterns. Data from the 2008–2012 ACS show that Black disabled Americans had the lowest marriage rates across all disability categories.¹⁰³ For example, only 15.5 per thousand Black people with independent living disabilities were married, while White and White/American Indian people with hearing disabilities had marriage rates above the national average.¹⁰⁴ These disparities mirror broader racial inequalities and demonstrate how ableism intersects with racism to deepen exclusion from intimate life.

Socioeconomic status adds another dimension. Although employment and education moderately impact marriage rates in the general population, they have a particularly strong effect among disabled people.¹⁰⁵ Those with higher education or stable employment are significantly more likely to get married.¹⁰⁶ This economic dimension disproportionately affects disabled women, who are less likely to complete higher education, enter the workforce, or earn stable incomes, further lowering their marriage rates.¹⁰⁷

Taken together, these intersectional disparities confirm that structural barriers, rather than individual preferences, drive the marriage gap. Quantitative data validates what many disabled people already know: The right to marry remains largely theoretical for those facing overlapping forms of marginalization. These inequalities expose the limits of formal marriage equality and show how systems of ableism, sexism, racism, heteronormativity, and economic exclusion operate in tandem to deny disabled people access to family life.

100. *Id.*

101. *Id.*

102. *Id.*

103. Cohen, *supra* note 73.

104. *Id.*

105. Tumin, *supra* note 86, at 715.

106. Savage & McConnell, *supra* note 95, at 298–300.

107. Tumin, *supra* note 86, at 715.

D. *Beyond “Same Rights”: The Persistent Equality Gap*

On paper, people with disabilities possess the same right to marry as anyone else. No law today explicitly prohibits all disabled people from marrying,¹⁰⁸ and since *Obergefell*, the institution of marriage is theoretically open to all couples. Yet in practice, a web of legal, financial, institutional, and cultural obstacles prevents many disabled people from exercising that right on an equal basis. Legal barriers include guardianship laws and state capacity statutes that strip some disabled people of the legal authority to marry.¹⁰⁹ Economic barriers include SSI and Medicaid marriage penalties that force couples to choose between economic security and marriage.¹¹⁰ Institutional barriers arise in group homes and service settings that prohibit or discourage intimate relationships.¹¹¹ Cultural barriers stem from pervasive ableism that stigmatizes disabled people as unfit for partnership.¹¹² Taken together, these barriers constitute an intersecting network of disadvantages that relegate many disabled people to second-class citizenship in the realm of marriage and family life.

Constitutional jurisprudence has long recognized that rights are hollow if the conditions necessary for their exercise are denied. In *Griffin v. Illinois*,¹¹³ the Court held that denying indigent defendants access to trial transcripts effectively deprived them of their right to appeal, declaring that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”¹¹⁴ Similarly, in *Harper v. Virginia Board of Elections*,¹¹⁵ the Court invalidated a poll tax, emphasizing that “the right to vote is too precious, too fundamental to be so burdened or conditioned.”¹¹⁶ These cases establish that meaningful access to constitutional rights requires more than formal recognition. As Laurence Tribe has argued, *Obergefell*’s most enduring legacy lies in its doctrinal turn toward equal dignity, which fuses due process and equal protection into a framework that demands more than formal access.¹¹⁷ From this

108. See discussion *infra* Section III.A. Some states have statutes that implicitly or explicitly ban some people with disabilities (mostly intellectual or psychiatric disabilities) from marriage.

109. See *infra* Section III.A.

110. See *infra* Section III.B.

111. See *infra* Section III.C.

112. See *infra* Section III.D.

113. 351 U.S. 12 (1956).

114. *Id.* at 19.

115. 383 U.S. 663 (1966).

116. *Id.* at 670.

117. Laurence H. Tribe, *Equal Dignity: Speaking Its Name*, 129 HARV. L. REV. F. 16, 20 (2015) (“The core around which Justice Kennedy wound the double helix of Equal Protection and Due Process . . . is what I will call the doctrine of equal dignity.”).

perspective, the fact that disabled people technically “have” the right to marry is constitutionally insufficient if legal and policy structures render marriage inaccessible in practice.¹¹⁸

Traditional marriage equality litigation has focused on removing explicit prohibitions, such as racial restrictions in *Loving* or sexuality-based restrictions in *Obergefell*. By contrast, people with disabilities face more complex barriers that operate through benefits systems, guardianship regimes, institutional policies, and cultural stigma. The right to marry “on the same terms and conditions”¹¹⁹ proves inadequate when those very terms are exclusionary. The state does not act neutrally: It confers substantial legal and economic benefits on married couples while simultaneously denying them to many disabled people through restrictive eligibility rules in programs such as Medicaid and SSI.¹²⁰ These structures not only fail to account for disabled people’s realities but also actively disadvantage them, making marriage a financial liability rather than a protected right.

This dynamic reflects deeper flaws in how equality law conceptualizes rights and autonomy. As Kjersti Skarstad explains, “[t]he dilemma of difference is the notion that inequality can be exacerbated both by treating members of minority groups the same (meaning identical) as members of the majority and by treating them differently.”¹²¹ Formal equality, in other words, can reinforce discrimination by ignoring the conditions that shape real-world outcomes. The Convention on the Rights of Persons with Disabilities (CRPD) offers an alternative through its substantive equality model, which emphasizes equality of outcomes rather than formal similarity.¹²² It calls for restructuring laws and institutions to ensure full inclusion, addressing both direct and indirect discrimination while recognizing how entrenched power dynamics perpetuate exclusion.¹²³

118. *Id.* at 19 (“[A] government practice that limits the options available to members of a particular group need not have been *deliberately* designed to harm the excluded group if its oppressive and unjustified effects have become clear in light of current experience and understanding.”).

119. *Obergefell v. Hodges*, 576 U.S. 644, 676 (2015).

120. Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 *YALE J.L. & FEMINISM* 1, 3, 19 (2016) (arguing that the state is not a neutral actor but rather an active force in creating and reinforcing systems of privilege).

121. Kjersti Skarstad, *Disability and the Dilemma of Difference*, in *DISABILITY LAW AND HUMAN RIGHTS: THEORY AND POLICY* 87, 89 (Franziska Felder, Laura Davy & Rosemary Kayess eds., 2022) (explaining that both identical and differentiated treatment can exacerbate inequality depending on context).

122. *Id.* at 97–98 (explaining that the CRPD adopts a substantive equality model focused on achieving human rights outcomes, not just formal recognition).

123. *Id.* (emphasizing the CRPD’s requirement that structural and indirect discrimination be addressed and that social institutions be reformed to promote inclusion).

A substantive equality framework recognizes that exercising fundamental rights requires dismantling structural barriers.¹²⁴ Achieving equality sometimes means treating alike those who are similarly situated, and at other times, it means treating differently those whose circumstances differ.¹²⁵ Lower marriage rates among disabled people should not be dismissed as mere preference.¹²⁶ What appears as diminished interest in marriage may instead reflect adaptive preferences formed under systemic constraints, internalized stigma that discourages relationship aspirations, and social conditioning that casts disabled people as unfit for partnership.

For people with disabilities, the gap between formal and substantive marriage equality exposes the limits of rights-based frameworks that ignore material conditions. The promise of equal marriage rights remains unfulfilled, not because of explicit prohibitions, but because the conditions necessary to exercise those rights are systematically denied. True equality requires not only the legal right to marry but also the social and economic structures that make marriage a viable choice without disproportionate hardship. The next Part examines the systems that sustain this gap.

III. SYSTEMS OF EXCLUSION: HOW BARRIERS DENY CHOICE TODAY

Despite decades of disability rights advocacy and legal reform, people with disabilities remain systematically excluded from marriage by barriers that extend far beyond formal legal prohibitions. This Part examines four interlocking systems of exclusion that collectively deny millions of disabled people meaningful access to one of society's most fundamental institutions. Legal barriers strip decision-making authority through guardianship laws and restrictive capacity standards. Economic barriers impose punitive marriage penalties, forcing people to choose between essential supports and recognition of their relationships. Institutional barriers curtail privacy and autonomy through residential policies that limit opportunities for intimacy and family formation. Cultural barriers, rooted in stigma and stereotypes, create psychological obstacles that reinforce and normalize structural exclusion. Together, these systems render marriage effectively unattainable for many people with disabilities and demonstrate that marriage inequality cannot be remedied by legal or economic reform alone. Confronting this exclusion requires addressing the broader social architecture that marginalizes disabled people in their pursuit of intimate and family life.

124. *See id.* at 92, 97.

125. Cass R. Sunstein, *The Anticaste Principle*, 92 MICH. L. REV. 2410, 2425 (1994).

126. *Id.* at 2420–21.

A. *Legal Barriers and Their Human Cost*

Although both the disability rights and marriage equality movements have transformed the legal landscape, explicit barriers to marriage persist for disabled people across the United States.¹²⁷ These restrictions operate primarily through three mechanisms: guardianship laws that strip individuals of decision-making authority, marriage statutes with subjective capacity requirements, and judicial interpretations that impose heightened scrutiny on disabled people's intimate choices.¹²⁸ The consequences extend far beyond legal recognition.¹²⁹ They strike at the core of personal freedom, denying people with disabilities the ability to build family lives on their own terms.

At the center of these restrictions lies the guardianship system, a legally sanctioned process that transfers some or all decision-making authority from an individual to a court-appointed guardian or conservator.¹³⁰ Although justified as protective, guardianship frequently functions as a mechanism for depriving disabled people of the right to marry.¹³¹ Once a court determines that an individual is incapable of managing financial or personal affairs, guardianship often endures indefinitely, commonly until death or a successful petition for restoration of rights.¹³² People with intellectual and developmental disabilities, psychiatric disabilities, and older adults face disproportionate risk of guardianship, often based on stereotypes about their capacities rather than individualized assessments.¹³³

127. *See generally* Lorr, *supra* note 15 (documenting persistent legal barriers to marriage for disabled people).

128. *Id.* (manuscript at 28–42) (analyzing guardianship laws, capacity requirements, and judicial interpretations).

129. *See, e.g.*, Elizabeth F. Emens, *Intimate Discrimination: The State's Role in the Accidents of Sex and Love*, 122 HARV. L. REV. 1307, 1311 (2009) (discussing how law sometimes requires intimate discrimination).

130. NAT'L COUNCIL ON DISABILITY, TURNING RIGHTS INTO REALITY: HOW GUARDIANSHIP AND ALTERNATIVES IMPACT THE AUTONOMY OF PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES 10 (2019), <https://perma.cc/L3TD-56JJ> (defining “guardianship” as the transfer of legal rights from an individual to a guardian).

131. Lorr, *supra* note 15 (manuscript at 33–34) (explaining how guardianship laws restrict marriage rights).

132. NAT'L COUNCIL ON DISABILITY, *supra* note 130, at 24.

133. *See id.* at 81 (noting that people with intellectual disabilities face increased risk of guardianship based on stereotypical assumptions); *Legal Capacity Advocacy: Guardianship Law Reform and Supported Decision-Making*, CTR. FOR PUB. REPRESENTATION (2025), <https://perma.cc/8GVQ-DJBC> (“People with psychiatric disabilities, brain injuries, and intellectual or developmental disabilities, as well as seniors with dementia, are often subjects of guardianship petitions.”).

The intersection of guardianship and marriage rights creates a web of restrictions that effectively denies fundamental rights.¹³⁴ Roughly thirty-five states maintain laws that either automatically void marriages entered into by people under guardianship or require judicial approval before marriage.¹³⁵ In practice, this transforms marriage from a fundamental right into a privilege dependent on third-party approval.¹³⁶ Guardians may withhold consent, annul marriages without the individual's knowledge, or use court processes to block intimate relationships.¹³⁷ Clerks also exercise discretionary authority to deny marriage licenses based on perceived incapacity.¹³⁸ In effect, family members, guardians, and state officials can determine whether people with disabilities may form legally recognized unions, regardless of the individuals' own wishes or understanding.

Beyond guardianship, marriage statutes in every state require parties to demonstrate "capacity" to consent.¹³⁹ Though these standards apply to all applicants, they disproportionately burden

134. Lorr, *supra* note 15 (manuscript at 28–42) (examining the intersection of guardianship and marriage rights).

135. *Id.* (manuscript at 33–34) (documenting state laws that void or require approval for marriages by people under guardianship).

136. Robyn M. Powell, *The Impact of Ableism on the Sexual, Reproductive, and Parenting Rights of People with Intellectual Disabilities*, in *INTELLECTUAL DISABILITIES AND AUTISM: ETHICS AND PRACTICE* 255, 259–60 (Andria Bianchi & Janet A. Vogt eds., 2024) (describing how guardians and caregivers serve as gatekeepers, often preventing people with intellectual disabilities from having relationships).

137. See Donna J. Bernert, *Sexuality and Disability in the Lives of Women with Intellectual Disabilities*, 29 *SEXUALITY & DISABILITY* 129, 133 (2011) (reporting a case where a woman's family annulled her marriage without her consent); SUP. CT. OF ALA. COMM'N ON ADULT GUARDIANSHIPS & CONSERVATORSHIPS, *ALABAMA GUIDE FOR GUARDIANS AND CONSERVATORS* 19 (2025), <https://perma.cc/MJ8P-7CDB> ("Unless the court has limited your authority, you have the ability to decide who [the disabled person] socializes with. A guardian may even consent to marriage, divorce, or adoption on behalf of an adult."). Connecticut's laws impose similar control by guardians. See CONN. GEN. STAT. § 46b-20a (2026) (exempting people under conservatorship from the general right to marry); CONN. GEN. STAT. § 46b-29 (2026) (requiring conservator signature to obtain marriage license).

138. See Kristin Booth Glen, *Not Just Guardianship: Uncovering the Invisible Taxonomy of Laws, Regulations and Decisions That Limit or Deny the Right of Legal Capacity for Persons with Intellectual and Developmental Disabilities*, 13 *ALB. GOV'T L. REV.* 25, 55 (2020) (envisioning "a clerk denying a marriage license where one or both of the parties have [an intellectual or developmental disability] that is clearly visible, such as Down syndrome, or cerebral palsy with significant speech impairment").

139. DOUGLAS E. ABRAMS ET AL., *CONTEMPORARY FAMILY LAW* 193 (6th ed. 2023).

people with intellectual or psychiatric disabilities.¹⁴⁰ The traditional test—whether an individual understands the rights and duties of marriage—appears neutral but is often influenced by concerns that reach beyond cognition, including doubts about child-rearing, fears of exploitation, and lingering eugenic attitudes.¹⁴¹ Many states also codify incapacity as grounds for voiding or annulling a marriage, creating a hierarchy of validity where disabled people’s unions are uniquely vulnerable to invalidation.¹⁴² Unlike people without disabilities, who are presumed capable, people with disabilities bear the ongoing burden of proving capacity.

These capacity determinations rarely consider supported decision-making or other accommodations that might enable a person to understand and consent to marriage with appropriate support.¹⁴³ This failure to incorporate accommodation principles effectively imposes a higher standard on disabled people than on nondisabled people, who are presumed capable of marriage regardless of their actual understanding of its implications.¹⁴⁴ The subjective nature of capacity assessments creates opportunities for class-based, racial, religious, and ableist assumptions to influence marriage decisions.¹⁴⁵ Nearly every capacity determination becomes entangled with questions of whether prospective spouses conform to mainstream societal expectations or the particular worldview of the presiding judge regarding marital obligations and purposes.¹⁴⁶

The persistence of eugenic-era language in modern statutes underscores the continuity of prejudice. Mississippi, for example, allows marriage licenses to be denied if a clerk believes applicants are “suffering from a mental illness or an intellectual disability to the extent that [they do] not understand the nature and consequences” of their application—a determination based entirely on subjective judgment.¹⁴⁷ Rhode Island codifies similar restrictions with even broader implications, declaring “absolutely void” any marriage where either party is deemed “mentally incompetent at the time of the marriage.”¹⁴⁸ Tennessee’s law employs particularly archaic terminology, prohibiting marriage licenses when either applicant is

140. See Lorr, *supra* note 15 (manuscript at 29–32); Michael L. Perlin & Alison J. Lynch, “*All His Sexless Patients*”: *Persons with Mental Disabilities and the Competence to Have Sex*, 89 WASH. L. REV. 257, 280–82 (2014).

141. LESLIE JOAN HARRIS, JUNE CARBONE & RACHEL REBOUCHÉ, *FAMILY LAW* 133 (7th ed. 2023).

142. Lorr, *supra* note 15 (manuscript at 30–32).

143. See *id.* (manuscript at 35–42).

144. *Id.* (manuscript at 37–38).

145. *Id.* (manuscript at 29).

146. *Id.* (manuscript at 37–38).

147. MISS. CODE ANN. § 93-1-5(1)(e)(ii) (2026).

148. 15 R.I. GEN. LAWS § 15-1-5(2) (2026).

“drunk, insane or an imbecile.”¹⁴⁹ Pennsylvania requires that marriage licenses be denied to anyone who is “weak minded, insane, of unsound mind or is under guardianship as a person of unsound mind unless the court decides that it is for the best interest of the applicant and the general public to issue the license and authorizes the issuance of the license.”¹⁵⁰ Such provisions not only perpetuate discriminatory terminology but also enshrine outdated assumptions about who is “fit” for marriage.

The devastating real-world impact of these legal barriers is illustrated by the case of Doug Keegan, a retired engineer and Navy reservist with a history of alcoholism but no cognitive or intellectual disability, who married Monica Steele, a Kenyan-American nurse.¹⁵¹ Keegan’s family used the relationship as alleged proof of incapacity and successfully petitioned for plenary guardianship, despite multiple medical experts finding him mentally competent to manage his affairs.¹⁵² The court relied on a contested evaluation and testimony from professionals with financial ties to the guardianship process, while Keegan’s court-appointed lawyer failed to advocate for him.¹⁵³ His guardian used his assets to fund legal efforts to divorce him from Steele without his consent.¹⁵⁴ Keegan was institutionalized, isolated from his wife, and stripped of his autonomy while his savings were depleted by over \$400,000 in guardianship expenses.¹⁵⁵ Though he eventually regained his legal rights after seven years, the system had already dismantled his marriage and erased the stability he had built, illustrating how guardianship can be weaponized to override disabled people’s choices and devastate their most intimate relationships.¹⁵⁶

Jurisdictions across the country have developed varying approaches to balancing protection and autonomy, creating a patchwork of inconsistent standards for fundamental rights. Some states have adopted more rights-respecting frameworks. Minnesota recognizes marriage as a fundamental civil right, requiring only that the person with a disability “understands the meaning, rights, and obligations of marriage” before being permitted to wed, regardless of a guardian’s objections.¹⁵⁷ California adopts a middle ground, treating

149. TENN. CODE ANN. § 36-3-109 (2026).

150. 23 PA. CONS. STAT. § 1304(c) (2026).

151. Heidi Blake & Katie J.M. Baker, *They Both Fought to Break Free from Guardianship. Only One Got Out*, BUZZFEED NEWS (Sep. 19, 2021), <https://perma.cc/57FL-9NZG> (detailing Keegan’s case).

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *In re Guardianship of O’Brien*, 847 N.W.2d 710, 715 (Minn. Ct. App. 2014).

mental capacity issues uniformly whether or not a guardian has been appointed, and allowing disabled people to retain marriage decision-making authority as long as they can express their preference.¹⁵⁸ Other states maintain more paternalistic approaches that effectively transform marriage from a right into a privilege. Illinois mandates that courts find marriage to be in the disabled person's best interest before allowing it to proceed—a standard that differs significantly from the consent analysis applied to adults not under guardianship.¹⁵⁹ This “best interest” standard subjects disabled people's intimate choices to third-party approval in ways that would be unthinkable for nondisabled people.

Underlying these frameworks is what Michael Perlin and Alison Lynch identify as “sanism,” a prejudice against people with psychiatric disabilities.¹⁶⁰ Sanism dehumanizes and infantilizes disabled people, denying their capacity for love, intimacy, and legal autonomy.¹⁶¹ This prejudice operates alongside broader ableism, which systematically devalues disabled people and assumes their inferiority across all aspects of life, including intimate relationships.¹⁶² Together, sanism and ableism create a powerful ideological framework that treats disabled people as inherently less capable of making autonomous decisions about marriage and family formation, often originating from presumptions about incapacity rooted in outdated and discriminatory views of disability.

The persistence of these legal barriers represents a profound violation of dignity and autonomy. Rooted in prejudice and sustained by outdated legal structures, they force people with disabilities to prove their worthiness for a right others exercise freely. Judges, guardians, and clerks wield extraordinary power over their intimate decisions, reducing marriage from a fundamental right to a conditional privilege. The result is not only legal exclusion but also the stigmatization of disabled people as unfit for family life, perpetuating their marginalization within one of society's most fundamental institutions.

B. Economic Traps: When Marriage Means Loss

Economic barriers are among the most pervasive and consequential obstacles to marriage for people with disabilities.¹⁶³ These barriers arise primarily from means-tested benefit programs

158. Conservatorship of Navarrete, 273 Cal. Rptr. 3d 86, 95 (Ct. App. 2020).

159. *In re Estate of McDonald*, 201 N.E.3d 1125, 1139 (Ill. 2022).

160. Perlin & Lynch, *supra* 140, at 259, 272–73 (“Sanism” is defined as “an irrational prejudice of the same quality and character as other irrational prejudices . . . that permeates all aspects of mental disability law and affects all participants.”).

161. *Id.* at 272–73.

162. *Id.* at 259–60.

163. Vikström, Shah & Janssens, *supra* note 90, at 178, 183–84.

that penalize marriage, forcing disabled people to choose between essential supports and legal recognition of their relationships.¹⁶⁴ More than 8 million people receiving federal disability benefits face marriage penalties, with the harshest consequences embedded in three key programs: SSI, Medicaid, and Disabled Adult Child (DAC) benefits. Together, these programs create a web of disincentives that make marriage economically devastating.¹⁶⁵

This structure rests on outdated and ableist assumptions. When Congress created the SSI program in 1972, policymakers envisioned disabled people as dependents who would not marry or form families.¹⁶⁶ More broadly, Social Security laws have long portrayed disabled people as incapable of, or unworthy of, marriage, economic independence, and personal autonomy.¹⁶⁷ As one advocate observed, “When they wrote the Social Security laws, they weren’t thinking that young people with disabilities would ever be marriage material People didn’t think we might have dreams and hopes like everybody else.”¹⁶⁸

The persistence of these assumptions is evident in SSI’s treatment of marriage.¹⁶⁹ If an SSI recipient marries a nondisabled person, the Social Security Administration (SSA) “deems” part of the spouse’s income available to the disabled partner, even when finances are not shared.¹⁷⁰ This can reduce or eliminate benefits. Even when both spouses are disabled and receive SSI, their combined benefit is reduced by 25 percent.¹⁷¹ In 2025, an individual could receive \$967 per month, while a married couple received only \$1,450 per month.¹⁷² Over a year, two unmarried recipients receive \$23,208, but a married couple receives just \$17,400, which is nearly \$3,750 below the federal poverty guideline for a two-person household.¹⁷³ These penalties rest on the flawed assumption that married couples require less support,

164. LEWIS & DE LA HOYA, *supra* note 40, at 4.

165. *See id.* at 16–30.

166. Joseph Shapiro, *Couples Say They Can’t Get Married Because of This Government Program’s Outdated Rules*, NPR (June 20, 2024), <https://perma.cc/KTT5-DL89>.

167. Tammy LaGorce, *Seeking Marriage Equality for People with Disabilities*, N.Y. TIMES (June 21, 2023), <https://www.nytimes.com/2022/08/25/style/marriage-equality-disabled-people.html>.

168. *Id.*

169. Sara Luterman, *Marriage Could Mean Losing Life-Saving Benefits for People with Disabilities. So They’re Protesting.*, 19TH (Sep. 13, 2023), <https://perma.cc/RL9F-MJGQ>.

170. 42 U.S.C. § 1382c(f); 20 C.F.R. §§ 416.1160–.1169 (2025); LEWIS & DE LA HOYA, *supra* note 40, at 9, 21.

171. LEWIS & DE LA HOYA, *supra* note 40, at 14, 17.

172. *How Much You Could Get from SSI*, SOC. SEC. ADMIN. (2025), <https://perma.cc/44AX-D756>.

173. *See Poverty Guidelines*, OFF. ASSISTANT SEC’Y FOR PLAN. & EVALUATION (2026), <https://perma.cc/8LMV-NUAM>.

ignoring the reality that disabled people often face higher living costs due to medical and disability-related expenses.¹⁷⁴

Asset restrictions compound the problem. Since 1989, SSA has maintained asset limits of just \$2,000 for an individual and \$3,000 for a married couple.¹⁷⁵ Marriage thus reduces the combined asset limit by 25 percent—from \$4,000 if single to \$3,000 when married.¹⁷⁶ These caps have not been adjusted for inflation in over thirty-five years,¹⁷⁷ making it virtually impossible for married disabled couples to accumulate even modest savings or achieve basic financial security.

Because Medicaid eligibility in most states is tied to SSI, the loss of SSI benefits through marriage often means losing Medicaid coverage.¹⁷⁸ Medicaid remains the only program that reliably covers disability-specific services, such as personal assistance, home- and community-based supports, long-term care, durable medical equipment, and transportation.¹⁷⁹ Most states include spousal income when calculating Medicaid eligibility, so marriage to a working partner may render a disabled person ineligible.¹⁸⁰ The loss can be catastrophic: personal assistance alone can cost more than \$70,000 per year out-of-pocket.¹⁸¹ For many, marriage means losing access to life-sustaining care—making the decision to remain single a matter of survival rather than choice.

DAC beneficiaries face even harsher penalties. The DAC program provides monthly Social Security benefits, Medicare coverage, and access to related supports for adults with disabilities whose disabilities began before age twenty-two, based on a parent's

174. NANETTE GOODMAN ET AL., NAT'L DISABILITY INST., *THE EXTRA COSTS OF LIVING WITH A DISABILITY IN THE U.S.—RESETTING THE POLICY TABLE 1* (2020), <https://perma.cc/BU27-WU24> (finding that a household that includes an adult with a disability needs 28 percent more income to achieve a similar standard of living as a household without a disabled person).

175. *Understanding Supplemental Security Income (SSI) Resources—2025 Edition*, SOC. SEC. ADMIN. (2025), <https://perma.cc/9PAZ-RYHV>; Garbero, *supra* note 15, at 587; *see also* LEWIS & DE LA HOYA, *supra* note 40, at 16.

176. LEWIS & DE LA HOYA, *supra* note 40, at 17; Carly Stern, *Forced to Divorce: Americans with Disabilities Must Pick Marriage or Health Care*, OZY (Apr. 24, 2019), <https://perma.cc/3Z6V-UQWN>.

177. Garbero, *supra* note 15, at 587.

178. 42 U.S.C. § 1396a(a)(10)(A)(i); LEWIS & DE LA HOYA, *supra* note 40, at 16, 22, 28.

179. LEWIS & DE LA HOYA, *supra* note 40, at 8, 15; *see also* Valarie K. Blake, *Universal Health Care from a Disability Perspective*, 18 U. ST. THOMAS J.L. & PUB. POL'Y 52, 54, 62–63 (2024).

180. Garbero, *supra* note 15, at 590–93.

181. *Cost of Long Term Care by State*, CARESCOUT (2025), <https://perma.cc/U9N4-UF7K> (finding that, in 2024, the monthly cost of an in-home health aide was \$6,483).

work record.¹⁸² While DAC benefits are typically more generous than SSI, marrying a nondisabled person results in permanent loss of all benefits—including income, Medicare, and often Medicaid.¹⁸³ These benefits cannot be reinstated, even if the marriage ends in divorce or death.¹⁸⁴ A narrow exception allows marriage to another Social Security beneficiary, but marriage to anyone else, including another disabled person not receiving benefits, results in permanent loss.¹⁸⁵

The Supreme Court upheld this policy in its 1977 *Califano v. Jobst*¹⁸⁶ decision. John Jobst, a DAC recipient with cerebral palsy, lost his benefits after marrying Sandra Lee, who also had cerebral palsy but was not a Social Security beneficiary.¹⁸⁷ The Court deferred to Congress's authority, reasoning that categorical distinctions between marriages were permissible.¹⁸⁸ Nearly five decades later, the rule remains in place, leaving thousands of disabled people subject to a lifetime marriage ban.

Housing assistance programs create additional economic disincentives. Section 8 vouchers and public housing generally consider household income when determining eligibility and rent.¹⁸⁹ Marriage to a working partner can increase rent obligations or result in a loss of housing assistance.¹⁹⁰ For disabled people living on fixed incomes, even small rent increases can make marriage financially impossible—even when other benefits remain intact.

These policies force disabled people into impossible choices. Many couples maintain separate households to preserve benefits, even while sharing their lives.¹⁹¹ Some remain permanently engaged

182. 42 U.S.C. § 402(d); 20 C.F.R. §§ 404.350–.368 (2025); *see also* LEWIS & DE LA HOYA, *supra* note 40, at 27.

183. 42 U.S.C. § 402(d)(1)(D), (d)(5); 20 C.F.R. § 404.352(b)(4); LEWIS & DE LA HOYA, *supra* note 40, at 27.

184. 42 U.S.C. § 402(d)(1)(D), (d)(5); 20 C.F.R. § 404.352(b)(4). Notably, if the marriage is subsequently annulled or otherwise deemed void, rather than ending in divorce or death of the spouse, the DAC recipient may have their benefits reinstated. *RS 00203.015 Requirements for Re-Entitlement to Child's Benefits*, SOC. SEC. ADMIN. (Jan. 12, 2017), <https://perma.cc/VMX5-YHHJ>.

185. LEWIS & DE LA HOYA, *supra* note 40, at 27.

186. 434 U.S. 47 (1977).

187. *Jobst v. Richardson*, 368 F. Supp. 909, 910 (W.D. Mo. 1974), *rev'd*, *Califano v. Jobst*, 434 U.S. 47 (1977).

188. *Califano*, 434 U.S. at 54.

189. BARBARA SARD & WILL FISCHER, CTR. ON BUDGET & POL'Y PRIORITIES, PRESERVING SAFE, HIGH QUALITY PUBLIC HOUSING SHOULD BE A PRIORITY OF FEDERAL HOUSING POLICY 4 (2008), <https://perma.cc/RK6T-6TSX> (describing income rules for housing programs).

190. *See* Adam Carasso & C. Eugene Steuerle, *The Hefty Penalty on Marriage Facing Many Households with Children*, 15 FUTURE CHILD. 157, 157, 159 (2005).

191. *See* Garbero, *supra* note 15, at 594–95; Stern, *supra* note 176.

rather than getting married legally.¹⁹² Others consider legal divorce as a means of retaining access to vital services.¹⁹³ Since divorced individuals are assessed individually, ending a marriage can restore benefits lost through spousal means-testing.¹⁹⁴ So-called “Medicaid divorces” illustrate how federal policy perversely incentivizes the dissolution of marriage among disabled people while penalizing its formation.¹⁹⁵

The effects are evident in the data. Only 24 percent of adult SSI recipients are married, compared to 57 percent of the general population.¹⁹⁶ Even the SSA has acknowledged that its rules discourage marriage, admitting in a 2003 report that SSI “provide[s] a financial advantage for a man and a woman who live together but are not married.”¹⁹⁷

The personal consequences are profound. Gabriella Garbero, a disabled attorney who relies on Medicaid-funded in-home care, cannot marry her fiancé without losing access to life-sustaining services.¹⁹⁸ Their combined income would exceed Medicaid’s strict eligibility limits, potentially leaving her responsible for hundreds of thousands of dollars in out-of-pocket costs each year.¹⁹⁹ Like many others, she remains in a state of “perpetual engagement,” forced to choose between survival and marriage.²⁰⁰

Ultimately, these economic barriers represent far more than financial hardship. They constrain autonomy, distort intimate decision-making, and undermine equal citizenship. They force disabled people to structure relationships around the preservation of benefits rather than love, commitment, or shared values. As Victoria Barry observes, “in the eyes of the law, two needy, dependent individuals somehow [become] more financially independent simply by virtue of marrying.”²⁰¹ This contradiction underscores the structural injustice at work: marriage, a fundamental right for most,

192. See Barbara Twardowski & Jim Twardowski, *Disability Benefits and the Marriage Penalty*, MUSCULAR DYSTROPHY ASS’N (Feb. 12, 2024), <https://perma.cc/3C59-RYQV>.

193. See Rabia Belt, *Disability: The Last Marriage Equality Frontier* 3 (Stanford Pub. L. Working Paper, Paper No. 2653117, 2015), <https://perma.cc/6W3R-NL2V>.

194. See generally 20 C.F.R. §§ 416.1806(a), .1830, .1832, .1835(b)(2) (2025).

195. Belt, *supra* note 193, at 1–3; see also Erez Aloni, *Deprivative Recognition*, 61 UCLA L. REV. 1276, 1285–90 (2014).

196. Richard Balkus & Susan Wilschke, *Treatment of Married Couples in the SSI Program*, SOC. SEC. ADMIN. 3 (2003), <https://perma.cc/P77V-HRR8>.

197. *Id.* at 1.

198. Twardowski & Twardowski, *supra* note 192.

199. *Id.*

200. *Id.*

201. Victoria Barry, Comment, *Parsing Marriage Penalties: The Irrationality of Tax and Government Benefit Marriage Penalty Jurisprudence*, 17 U. PA. J. CONST. L. 1183, 1200 (2015).

becomes an unaffordable luxury for millions of people with disabilities.

C. *Institutional Impediments and Forced Choices*

Disabled people encounter barriers to marriage that extend beyond legal prohibitions and economic penalties to include the very structure of disability service systems, which routinely obstruct the formation of intimate relationships. These impediments operate through mechanisms that would be unthinkable if applied to nondisabled people but are commonplace in the administration of services for disabled people. Group homes, caregivers, and service providers often regulate dating and intimacy, requiring approval for relationships or imposing restrictive conditions that make it challenging to begin, sustain, or formalize partnerships.²⁰² For people with intellectual and developmental disabilities, these restrictions extend far beyond marriage itself, encompassing every stage of romantic development. Service providers, family members, and residential facilities often determine whether and how individuals can engage in dating.²⁰³

Residential policies frequently formalize these restrictions. Many group homes prohibit sexual activity, ban overnight guests, require approval for romantic relationships, or enforce gender-segregated housing that prevents couples from living together.²⁰⁴ Some programs explicitly forbid “dating or a sexual relationship among any of the residents,” effectively eliminating opportunities for connection among people who already face isolation.²⁰⁵ These policies are often justified as protective, yet they far exceed what would be deemed acceptable interference in the private lives of nondisabled people. The discriminatory nature of these controls becomes particularly evident

202. See Powell, *supra* note 136, at 259–60 (describing how residential facilities and caregivers often impose restrictive policies that limit people with disabilities’ ability to form and maintain intimate relationships).

203. *Id.*; see also Matthew S. Smith, Tara Allison & Michael Ashley Stein, *Sexual Agency as a Rights-Based Imperative for Persons with Intellectual Disabilities*, in *DISABILITY, HEALTH, LAW, AND BIOETHICS* 171, 173 (I. Glenn Cohen et al. eds., 2020) (“State regulations frequently give residential staff free rein to intrude upon residents’ sexual activity; and providers can impose their own rules, with some outright prohibiting sexual activity.”).

204. Kara Charpentier & Erik W. Carter, *Romantic Relationships and Adults with IDD in Inclusive Supported Living: Considerations, Complexities, and Opportunities*, 41 *SEXUALITY & DISABILITY* 307, 325–26 (2023) (describing rules established by group homes concerning relationships and sexuality); see also Mackenzie Saunders, *The Right to Marry: Barriers to Intimacy for Persons with Disabilities*, HARV. L. SCH. PROJECT ON DISABILITY (Mar. 31, 2023), <https://perma.cc/U2JD-NUNG>; *Mentally Disabled Couple Sues to Live Together*, CBS NEWS (May 7, 2013), <https://perma.cc/QUH9-RFW8>.

205. Charpentier & Carter, *supra* note 204, at 325 (documenting institutional policies that restrict romantic relationships).

in the administration of sexual consent capacity assessments, with group homes frequently requiring residents to pass these evaluations before engaging in any intimate behavior.²⁰⁶ These assessments are frequently applied categorically, based on broad assumptions rather than individualized inquiry or supported decision-making.²⁰⁷ Meanwhile, many group homes fail to provide adequate sexual education, despite research demonstrating that such programs can enhance decision-making capacity and reduce risk.²⁰⁸

The physical environments of residential settings reinforce these relational barriers. Shared bedrooms, public common spaces, and constant staff monitoring erode privacy.²⁰⁹ Surveillance, documentation requirements, and rigid staff schedules make the spontaneity and intimacy essential to relationship development nearly impossible.²¹⁰ One court aptly described these conditions as “a terrible invasion of privacy.”²¹¹ These problems are compounded by staffing practices: Direct support staff often lack training in how to support healthy relationships and may discourage romantic

206. Saunders, *supra* note 204 (“[C]apacity-based sex restrictions may be conducted by biased individuals or purposefully designed to generate low pass rates as a hedge against legal liability.”).

207. Natalie M. Chin, *Group Homes as Sex Police and the Role of the Olmstead Integration Mandate*, 42 N.Y.U. REV. L. & SOC. CHANGE 379, 384–85 (2018).

208. Saunders, *supra* note 204 (“[T]oo few group homes proactively facilitate their residents’ access to sexual education programs, though these have been shown to increase adults with intellectual disabilities’ capacity to consent to sexual activity.”).

209. See Eric Goll, *What It Is Like to Live in Group Homes for Adults with Disabilities?*, EMPOWERING ABILITY (Feb. 8, 2024), <https://perma.cc/GW7G-PBBQ> (discussing privacy limitations in group homes); Jared Dabel, *The Ultimate Guide to the Different Types of Group Homes*, PROVIDENT LIFE INC (Jan. 4, 2022), <https://web.archive.org/web/20250327161310/https://www.providentlife.org/post/ultimate-guide-different-types-of-group-homes> (noting that some group homes have shared bedrooms).

210. See Goll, *supra* note 209 (explaining that decisions about rules, schedules, and activities are typically made by staff or management, restricting the autonomy of residents); Denys Brand et al., *A Survey Assessing Privacy Concerns of Smart-Home Services Provided to Individuals with Disabilities*, 13 BEHAV. ANALYSIS PRAC. 11, 12–14, 18 (2019) (reporting that stakeholders expressed significant privacy concerns about surveillance devices, including motion sensors, electronic bracelets, and video cameras, in residential settings); Katherine Dunbar, *The Realities of House Rules*, COUNCIL ON QUALITY & LEADERSHIP (July 30, 2019), <https://perma.cc/AKQ2-73HA> (explaining that group homes often implement “house rules” that restrict “independence, self-determination, [and] privacy” and noting that staff often expect residents to seek permission for basic activities).

211. *K.G. v. Mont. Dep’t of Soc. & Rehab. Servs.*, No. CDV-88-694, 1993 Mont. Dist. LEXIS 468, at *34 (Mar. 11, 1993).

connections due to liability concerns or personal discomfort.²¹² Administrative practices further constrain opportunities, from omitting relationship goals in Individual Service Plans to restricting transportation for social activities.²¹³

Even those living outside of institutions encounter structural impediments embedded in the design of personal assistance programs. These services are tailored to individuals, not households or families, and frequently fail to accommodate the needs of couples.²¹⁴ For example, a personal assistant may be authorized to cook for the disabled person but not their partner.²¹⁵ When a partner moves in, service hours are often reduced on the presumption that the partner will assume caregiving responsibilities, regardless of the couple's preferences.²¹⁶ Medicaid policies also generally prohibit spouses from being paid as caregivers, reinforcing outdated assumptions about dependency and denying people with disabilities the autonomy to define caregiving arrangements within their own relationships.²¹⁷

212. See generally Maria Wickström, Margareta Larsson & Berit Höglund, *How Can Sexual and Reproductive Health and Rights Be Enhanced for Young People with Intellectual Disability?—Focus Group Interviews with Staff in Sweden*, 17 REPROD. HEALTH 86 (2020) (finding that support staff often reported feelings of uncertainty and discomfort when confronted with sexual and reproductive health issues at work).

213. See Earlie Simone Brown-Hall, *Social-Sexual Autonomy, Person-Centered Planning, and Individuals with Intellectual Disabilities* (Nov. 2018) (Ph.D. dissertation, Walden University), <https://perma.cc/E7F6-8NJJ> (finding that Individual Service Plans often omit intimate relationships); Charpentier & Carter, *supra* note 204, at 307 (noting “difficulty meeting people to date,” which suggests transportation is likely a barrier to relationships).

214. See Robyn M. Powell, *Care Reimagined: Transforming Law by Embracing Interdependence*, 122 MICH. L. REV. 1185, 1196 (2024) (exploring the ways “legal and bureaucratic barriers complicate access to unpaid and paid care for people with disabilities and their families”).

215. Likewise, Medicaid-funded personal assistants are prohibited from assisting with parenting tasks, such as meal preparation for nondisabled children. See NAT'L COUNCIL ON DISABILITY, *ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN* 241–42 (2012).

216. Elizabeth Edwards, *Q&A: Relatives as Paid Providers*, NAT'L HEALTH L. PROGRAM (Dec. 5, 2014), <https://perma.cc/Y8GM-C5Y2> (under some Medicaid programs, spouses are considered “legally responsible” for caring for the disabled spouse).

217. Amber Ferguson, *Unpaid Caregivers: How America Treats Women Caring for Paralyzed Partners*, WASH. POST (Aug. 6, 2021), <https://www.washingtonpost.com/business/interactive/2021/caregiver-partner-paralyzed-marriage-pandemic/> (“Only eight state Medicaid programs allow married people to be paid caregivers to their partners. Eight additional states have private programs that allow spouses to be paid as caregivers.”); see also *id.* (noting that some Medicaid waivers exclude spouses from being paid).

This institutional framework reflects a deep contradiction within disability policy. Group homes are supposed to promote “normalization,” helping disabled people lead lives similar to those of their nondisabled peers.²¹⁸ Federal programs like the Home and Community-Based Services (HCBS) Waiver Program aim to replace institutional care with integrated community living.²¹⁹ The Americans with Disabilities Act (ADA) requires that services be delivered in the “most integrated setting appropriate” to people with disabilities.²²⁰ Yet in practice, no group homes in the United States are structured to support married couples with disabilities, and institutional rules routinely make partnership functionally impossible.²²¹

These institutional barriers separate disabled people from potential partners, restrict their mobility, eliminate privacy, and subject intimate relationships to surveillance and external approval. As a result, the institutional conditions necessary for forming and sustaining intimate relationships—privacy, autonomy, and emotional and physical closeness—are absent. While deinstitutionalization created greater possibilities for single people with disabilities, couples continue to face impossible trade-offs between receiving needed services and living together. Under these conditions, marriage is not simply discouraged; it is structurally foreclosed. The very systems designed to support integration reproduce segregation, denying disabled people access to one of the most fundamental dimensions of adult life: the freedom to form and sustain intimate relationships.

D. Attitudinal and Cultural Obstacles: The Psychology of Exclusion

Cultural and attitudinal barriers constitute some of the most powerful obstacles to marriage for disabled people. These barriers function much like formal legal restrictions, operating through entrenched stereotypes and social narratives that portray disabled people as inherently unsuitable for intimacy.²²² Such beliefs not only impede relationship formation but also inflict lasting psychological harm. External stigma is often internalized, producing self-doubt, fear of rejection, and diminished self-worth that deter disabled people

218. Marissa DeBellis, Comment, *A Group Home Exclusively for Married Couples with Developmental Disabilities: A Natural Next-Step*, 28 *TOURO L. REV.* 451, 481 (2012).

219. *Id.* at 473–74.

220. 28 C.F.R. § 35.130(d) (2025).

221. DeBellis, *supra* note 218, at 453.

222. Saunders, *supra* note 204 (discussing “widespread negative social perceptions about [people] with disabilities’ prospects for marriage and intimate relationships”).

from pursuing romantic connections.²²³ The consequences are especially severe for disabled women, who face compounded discrimination based on both gender and disability, and who are frequently perceived as less desirable partners or inadequate in maternal and domestic roles.²²⁴

The roots of these barriers begin in childhood, as many disabled people are socialized to believe that love, intimacy, and marriage are not meant for them.²²⁵ Empirical evidence confirms the pervasiveness of exclusionary attitudes. One study found that 85.5 percent of nondisabled youth were unwilling to form close relationships with disabled peers, with nearly half citing fear of family disapproval.²²⁶ Public opinion surveys show that 46 percent of adults would be “concerned” if their child dated a disabled person, and 34 percent would feel the same if a friend or relative married one.²²⁷ These responses reflect persistent misconceptions: that disabled people are asexual, unfit for marriage or parenthood, or inherently burdensome partners.²²⁸

Such biases extend beyond the general public. Research shows that more than 80 percent of U.S. physicians hold implicit biases against disabled people, even while denying explicit prejudice.²²⁹ Clinicians often assume their disabled patients lack sexual or relational capacity, omit basic reproductive health counseling, and discourage marriage based not on medical evidence but on assumptions about caregiving and parenting ability.²³⁰ The medical system thus reinforces cultural stigma with institutional neglect.

223. *Id.* (noting that “when the disabled person sees that people with disabilities hardly marry, this increases self-stigma and the fear of rejection” (quoting Leena Badran et al., Abstract, *Self-Perspectives on Marriage Among Arabs with Disabilities Living in Israel*, 44 J. FAM. ISSUES 2799, 2799 (2022))).

224. *Id.* (explaining that women with disabilities face greater discrimination and are “seen as inadequate homemakers and mothers compared to nondisabled women”).

225. Savage & McConnell, *supra* note 95, at 295; Vikström, Shah & Janssens, *supra* note 90, at 178.

226. Bewunetu Zewude & Tewodros Habtegiorgis, *Willingness of Youth Without Disabilities to Have Romantic Love and Marital Relationships with Persons with Disabilities*, 17 LIFE SCIS. SOC'Y & POL'Y 1, 1 (2021).

227. Stein, *supra* note 98, at 1074 (citing Louis Harris & Associates, Inc., *Public Attitudes Toward People with Disabilities*, for the National Organization on Disability, at 13 (1991)).

228. Savage & McConnell, *supra* note 95, at 295.

229. Lisa I. Iezzoni et al., *Physicians' Perceptions of People with Disability and Their Health Care*, 40 HEALTH AFFS. 297, 299–301 (2021) (finding that 82.4 percent of physicians had an implicit preference for nondisabled people).

230. Champamunny Ven et al., *Factors Influencing the Capacity of Healthcare Providers to Deliver Disability-Inclusive Maternity Care Services: A Scoping Review*, 143 MIDWIFERY 1, 4 (2025) (reviewing studies that document how healthcare providers frequently counsel disabled people against pregnancy based on presumptions about their parenting abilities rather than medical necessity).

Three dominant stereotypes drive this cultural exclusion. First is desexualization: disabled people are often perceived as asexual or incapable of romance and sexuality.²³¹ They are “viewed as disabled, not as men or women, straight or gay.”²³² Studies confirm this perception: when asked to free associate with the terms “woman” and “disabled woman,” college students associated the former with sexuality and mothering, and the latter with loneliness and lifelessness.²³³ Second is infantilization, which casts disabled people as perpetual children incapable of adult autonomy.²³⁴ In institutional settings, expressions of sexuality are often pathologized as behavioral problems rather than recognized as appropriate desires, reinforcing the belief that disabled people cannot sustain mature relationships.²³⁵ Third is the burden narrative, which portrays disabled people as fundamentally dependent and therefore undesirable.²³⁶ This narrative is reinforced by public benefit programs that penalize marriage, framing disabled people as financial liabilities.²³⁷ These structural disincentives are echoed in personal relationships, where family members, social workers, and even healthcare providers discourage marriage out of concern that a disabled partner would be “too much to handle.”²³⁸ In turn, public policy codifies the assumption that disabled people should not form legally recognized families, thereby reinforcing exclusion from normative romantic life.²³⁹

Media representations amplify these stereotypes. Romantic storylines overwhelmingly feature nondisabled characters, while disabled characters, when present, are cast as tragic, childlike, or burdensome.²⁴⁰ When romance is depicted, it is often framed as exceptional, with the nondisabled partner portrayed as a selfless hero who “looks past” the disability.²⁴¹ Films like *Me Before You* exemplify this trope by portraying a disabled protagonist whose life is deemed unlivable, reinforcing the notion that disability is incompatible with love or fulfillment.²⁴² These portrayals shape how disabled people view themselves and are perceived by others, encouraging self-

231. Emens, *supra* note 129, at 1325, 1351.

232. Tom Shakespeare, *Disability, Identity and Difference*, in *EXPLORING THE DIVIDE: ILLNESS AND DISABILITY* 94, 109 (Colin Barnes & Geof Mercer eds., 1996).

233. Silvers, *supra* note 98, at 90.

234. Emens, *supra* note 129, at 1329 n.93.

235. Chin, *supra* note 207, at 395–96.

236. Savage & McConnell, *supra* note 95, at 295.

237. Emens, *supra* note 129, at 1390.

238. *See id.* at 1371.

239. *See id.* at 1386, 1390.

240. *See* Braden Ross, *Sex, Love and Disability*, *MODA MAG.* (Dec. 4, 2021), <https://perma.cc/PMK6-CKCG> (describing how disabled people are often seen as lacking romantic or sexual desires and how relationships with nondisabled partners are viewed as acts of sacrifice).

241. *See id.*

242. *Id.*; *see also* *ME BEFORE YOU* (Warner Bros. Pictures 2016).

concealment and reinforcing the belief that they are not worthy of love.²⁴³

The consequences of these messages are profound and widespread. Studies of dating app behavior show that profiles disclosing a disability receive significantly fewer matches than otherwise identical profiles.²⁴⁴ Disabled people often report being explicitly rejected because of their disability or told to “stick to dating someone like themselves.”²⁴⁵ Even when relationships form, they are subject to intrusive scrutiny. Nondisabled partners are often questioned about their motives or assumed to be acting out of pity rather than mutual affection.²⁴⁶

These stereotypes have deep historical roots in eugenic ideology that deemed people with disabilities “unfit” for marriage and family life.²⁴⁷ While explicit eugenics has waned, its logic persists in more subtle forms. As researchers note, contemporary beliefs still portray disabled people as “childlike and asexual,” limiting opportunities for intimacy, parenthood, and sexual self-determination.²⁴⁸ Because marriage and parenting are central milestones in the normative life

243. See *id.*; Elisa Shaholli, *Why Does Disability Representation in Romance Matter?*, DISABILITY & ACCESS COLLECTIVE (Feb. 21, 2025), <https://perma.cc/Y87V-JP6C>.

244. See Julia Métraux, *Navigating Dating Apps While Disabled*, JSTOR DAILY (Mar. 4, 2022), <https://perma.cc/KVB8-DV5X> (discussing technological and social barriers for disabled users in online dating environments).

245. See Frances Ryan, *Disabled Dating on Tinder: ‘People Ask If I Can Have Sex,’* GUARDIAN (Feb. 21, 2016), <https://perma.cc/UN2H-L8VW> (recounting experiences of explicit rejection and assumptions that disabled people can only date each other); see also Esme Mazzeo, *To Convince Dates My Disability Isn’t a Burden, I First Had to Convince Myself*, GLAMOUR (May 16, 2019), <https://www.glamour.com/story/to-convince-dates-my-disability-isnt-a-burden-i-first-had-to-convince-myself> (describing internalized stigma and repeated rejection in dating contexts).

246. See Jordan Reed, *Interabled Couples Share How They Make Their Relationships Work*, BRAIN & LIFE, <https://perma.cc/9T7A-K48H> (quoting psychologist Cristina Dorazio); Connie Bowker, *Disability and Dating*, SWLONDONER, <https://perma.cc/ZEL2-LHLQ> (reporting that disabled people and their partners are frequently asked invasive questions about sex and motivation); Melissa Blake, *Here’s What Dr. Phil Got Wrong in His Episode on Interabled Relationships*, ROOTED RTS. (Mar. 26, 2019), <https://perma.cc/R2R9-ZFVP>.

247. Robyn M. Powell, *Confronting Eugenics Means Finally Confronting Its Ableist Roots*, 27 WM. & MARY J. RACE GENDER & SOC. JUST. 607, 607, 623–24 (2021) (noting that “forced sterilizations . . . weaponiz[ed] reproduction to subjugate socially marginalized communities” and that eugenic ideologies remain “deeply entrenched in ableism”).

248. Nicole Ditchman et al., *The Impact of Culture on Attitudes Toward the Sexuality of People with Intellectual Disabilities*, 35 SEXUALITY & DISABILITY 245, 246 (2017).

course, excluding disabled people from these roles signals their broader exclusion from full adulthood and citizenship.²⁴⁹

These cultural barriers are not mere inconveniences; they shape concrete outcomes. Lower marriage rates and higher divorce rates among disabled people are not simply the product of individual choice, but of lifelong exclusion reinforced by stigma.²⁵⁰ From early socialization to systemic bias in healthcare, media, and policy, disabled people are discouraged from seeing themselves—and from being seen by others—as viable partners and spouses. Until these narratives are dismantled, legal reforms alone cannot secure marriage equality.²⁵¹ True equality requires not only eliminating structural and economic barriers but also confronting the cultural assumptions that deny people with disabilities full participation in intimate and family life.

IV. THE STAKES: WHY CHOICE MATTERS IN AN UNEQUAL SYSTEM

The right to marry is not merely symbolic but transformative. In American law and society, marriage functions as a gateway to legal protections, economic stability, and social legitimacy. For most people, this gateway opens when they find a willing partner and meet basic eligibility requirements. But for disabled people, it is often blocked by laws and policies that force impossible choices between essential benefits and fundamental rights. This Part examines the significance of those barriers by analyzing the central role of marriage in American life. When disabled people are excluded (whether by direct prohibitions or punitive benefit structures), they are denied access to this broader framework of protection and recognition. This exclusion reinforces their marginalization and perpetuates narratives that question their autonomy, intimacy, and capacity for family life.

A. *Marriage as Legal Gateway: How Our System Creates Dependency*

Marriage functions as far more than a personal relationship in American law. It operates as a comprehensive legal status that unlocks access to fundamental protections and rights. As the Supreme Court has recognized, states have “made marriage the basis for an expanding list of governmental rights, benefits, and responsibilities,” including taxation, inheritance, property rights, spousal evidentiary privilege, hospital access, medical decision-making, and much more.²⁵² A valid marriage under state law also

249. Vikström, Shah & Janssens, *supra* note 90, at 181.

250. *Id.* at 181, 191.

251. *See id.* at 181.

252. Obergefell v. Hodges, 576 U.S. 644, 670 (2015).

triggers more than a thousand provisions of federal law.²⁵³ This legal infrastructure transforms marriage from a private commitment into a gateway to vital benefits. Those who remain unmarried, particularly disabled people who face systemic exclusion, are left without essential safeguards and must rely on alternative mechanisms that often fail to respect their autonomy or wishes.

Perhaps nowhere is the legal significance of marriage more consequential than in healthcare decision-making. Most spouses naturally discuss major medical choices with each other and, in emergencies, may be called upon to decide on one another's behalf.²⁵⁴ These decisions reflect shared beliefs and values, shaping both the lived experience of care and the legacy of the relationship.²⁵⁵ Nearly every state has enacted surrogate consent laws that place spouses at the top of the statutory hierarchy, above adult children, parents, and other relatives, based on the presumption that a spouse best understands the incapacitated person's wishes.²⁵⁶ Spousal surrogates are also entitled to the same information the patient would have received.²⁵⁷ For people with disabilities who may experience frequent hospitalizations or medical crises, these protections provide critical security that cannot be easily replicated through other arrangements.²⁵⁸

Marriage also provides significant financial and property rights. Upon marriage, spouses become subject to legal regimes governing marital property, equitable distribution upon divorce, and elective share statutes that prevent total disinheritance.²⁵⁹ These protections are particularly significant for disabled people, who may have lower earnings or interrupted work histories due to discrimination or disability-related needs.²⁶⁰ Marital property laws acknowledge non-financial contributions and ensure a fair division of assets accumulated during the marriage.²⁶¹ Marriage also brings automatic

253. *Id.*; see also U.S. GOV'T ACCOUNTABILITY OFF., GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT (2004), <https://www.gao.gov/assets/gao-04-353r.pdf> (cataloging 1,138 federal statutory provisions contingent on marital status).

254. ABRAMS ET AL., *supra* note 139, at 281.

255. *Id.*

256. *See id.* at 283.

257. *Id.* at 282.

258. *See* Maddie Crowley, *Why Disabled People Still Don't Have Marriage Equality This Valentine's Day*, DISABILITY RTS. FLA. BLOG (Feb. 8, 2023), <https://perma.cc/QK8F-G3XT>.

259. *See* ABRAMS ET AL., *supra* note 139, at 267–68.

260. *See* Robyn M. Powell, *Beyond Disability Rights: A Way Forward After the 2020 Election*, 15 ST. LOUIS U. J. HEALTH L. & POL'Y 391, 413, 415 (2022) (noting systemic economic insecurity among disabled people due to employment discrimination and restrictive benefit policies); ABRAMS ET AL., *supra* note 139, at 267, 270, 273 (explaining property rights and spousal support obligations).

261. *See* ABRAMS ET AL., *supra* note 139, at 267–74.

inheritance rights (even in the absence of a will), priority to serve as estate administrator, and the right to remain in the marital home.²⁶² In addition, spouses may take family medical leave to provide care, bring wrongful death actions, claim immigration preferences, and invoke spousal testimonial privileges in court.²⁶³

Despite efforts to replicate these rights through private ordering (such as powers of attorney, healthcare proxies, wills, and cohabitation agreements), no combination of documents offers the automatic, universal recognition that marriage provides.²⁶⁴ These alternatives must be created piecemeal, often involve legal costs, and remain vulnerable to legal challenge.²⁶⁵ The legal inadequacy of alternatives to marriage becomes apparent in moments of crisis—hospital staff may question a healthcare proxy but rarely challenge a spouse’s authority, families may contest a will but are less likely to challenge marital property rights, and government agencies recognize marriages without additional documentation but may require extensive proof for alternative arrangements.²⁶⁶ For disabled

262. See, e.g., N.C. GEN. STAT. §§ 30-3.1–3.6 (2025) (North Carolina elective share statute); MD. CODE ANN., EST. & TRUSTS §§ 3-402 to 3-403 (2020) (Maryland elective share providing one-third to one-half of augmented estate); N.J. STAT. ANN. §§ 3B:8-1 to 8-19 (2024) (New Jersey elective share of one-third of augmented estate); see also ABRAMS ET AL., *supra* note 139, at 268–70.

263. See, e.g., CAL. CIV. PROC. CODE § 377.60 (2026) (surviving spouse among those entitled to bring wrongful death claims); TEX. CIV. PRAC. & REM. CODE ANN. § 71.004 (2025) (wrongful death claims may be brought by surviving spouse, children, or parents); GA. CODE ANN. § 51-4-2 (2025) (surviving spouse holds authority to bring wrongful death claim); 29 U.S.C. § 2612(a)(1)(C) (Family and Medical Leave Act providing job-protected leave to care for spouse with serious health condition); 8 U.S.C. § 1151(b)(2)(A)(i) (spouses of U.S. citizens classified as immediate relatives for immigration purposes); ABRAMS ET AL., *supra* note 139, at 290–94 (explaining marital testimonial and communications privileges); FED. R. EVID. 501 (recognizing spousal privileges in federal courts).

264. See *Obergefell v. Hodges*, 576 U.S. 644, 669 (2015) (holding that “the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals”); see also *id.* at 668–70 (reasoning that assuming the right to marry is simply about procreation or inheritance ignores the broader “constellation of benefits that the States have linked to marriage”). See generally POLIKOFF, *supra* note 16, at 46–62 (discussing limitations of contractual alternatives to marriage); 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, 1580–85 (2004) (analyzing inadequacies of piecemeal legal protections compared to marriage).

265. See Blumberg, *supra* note 264.

266. Thaddeus Mason Pope, *Default Surrogate Decision Making*, MERCK MANUAL CONSUMER VERSION (Aug. 2025), <https://perma.cc/U6T8-PEXN> (“In most states, the default surrogate decision maker for adults is normally the next of kin, specified in a priority order by state statute, typically starting with the

people already navigating complex healthcare, legal, and bureaucratic systems, these added hurdles can make private substitutes for marriage functionally inadequate.²⁶⁷

The Supreme Court has repeatedly acknowledged the unique legal significance of marriage. In *United States v. Windsor*,²⁶⁸ the Court observed that marriage “confer[s] upon [couples] a dignity and status of immense import,” securing rights and responsibilities unavailable through other means.²⁶⁹ This recognition underscores that marriage is not just one form of relationship among many, but a legal institution that offers uniquely comprehensive protection. When disabled people are excluded from marriage, they are denied access to a critical framework that can mean the difference between security and precarity at life’s most vulnerable moments.

B. The Economic Reality: Benefits Tied to Marital Status

Marriage is not only a legal status but also the default economic unit in American society. Both government policies and private systems incentivize marital relationships with significant financial benefits that often determine whether individuals face security or poverty, which is particularly important for people with disabilities, who already deal with higher healthcare costs, employment discrimination, and reduced earning potential. These marriage-based advantages (ranging from Social Security spousal and survivor benefits to joint tax filing, spousal IRAs, and access to employer-sponsored health insurance) are not optional perks. They form the foundation of an economic support structure from which many disabled people are systematically excluded.

The financial benefits of marriage are wide-ranging and significant. Joint tax filing can lower a couple’s overall tax burden, particularly when one partner earns significantly more than the other.²⁷⁰ Married couples also receive higher standard deductions, tax-free asset transfers, and estate tax exemptions that protect surviving spouses.²⁷¹ For disabled people with limited income or assets, these mechanisms can be essential tools for achieving even modest financial security. Yet when marriage triggers loss of public benefits or disqualifies individuals from vital programs, these

person’s spouse or domestic partner, then an adult child, a parent, a sibling, and then possibly other relatives.”).

267. Crowley, *supra* note 258.

268. 570 U.S. 744 (2013).

269. *Id.* at 768.

270. James Alm & Leslie A. Whittington, *For Love or Money? The Impact of Income Taxes on Marriage*, 66 *ECONOMICA* 297, 311 (1999) (“[E]vidence abounds that individuals consider taxes when weighing the marriage decision, and our estimation results are consistent with this evidence.”).

271. ABRAMS ET AL., *supra* note 139, at 302–11 (describing the tax implications associated with marriage).

advantages remain out of reach, reinforcing marginalization and constraining economic independence.

Social Security illustrates this economic role most clearly through spousal and survivor benefits. Individuals may claim up to 50 percent of a spouse's benefit, even without a work history of their own, a crucial protection for disabled people excluded from traditional employment.²⁷² Surviving spouses may receive up to 100 percent of a deceased partner's benefit.²⁷³ These provisions can be life-sustaining for individuals denied equitable labor market access. Federal programs deepen this reliance: Spouses of federal employees, military personnel, and veterans receive pensions, healthcare, and other benefits tailored to family well-being.²⁷⁴ In the private sector, employer-sponsored health insurance often extends to spouses, typically offering broader coverage at a lower cost than individual plans.²⁷⁵

Marriage also carries a legal presumption of financial interdependence. This presumption simplifies resource-sharing and protects couples from penalties related to gifting, taxation, and eligibility determinations.²⁷⁶ For people with disabilities who rely on shared financial arrangements, this presumption provides vital security. Yet when marriage leads to the termination of benefits,

272. *Benefits for Spouses Quick Calculator*, SOC. SEC. ADMIN. (2025), <https://perma.cc/B7ES-B8ZC>.

273. SOC. SEC. ADMIN., PUB. NO. 05-10084, SURVIVORS BENEFITS 2 (2025), <https://www.ssa.gov/pubs/EN-05-10084.pdf>.

274. *See generally* Thomas Lee, *A Federal Employee's Guide to Survivor Benefits*, SERVING THOSE WHO SERVE (Sep. 18, 2024), <https://perma.cc/2R68-VTFY> (explaining Federal Employees Retirement System (FERS) and Civil Service Retirement System (CSRS) survivor benefits providing 25-50 percent of pension to spouses); John Grobe, *Ensuring Your Spouse Remains Covered Under FEHB After Your Death*, FEDSMITH (Mar. 14, 2018), <https://perma.cc/5NJW-6FPT> (detailing requirement that spouses receive survivor benefits to maintain Federal Employees Health Benefits (FEHB) coverage); *Your Guide to Federal Employee Survivor Benefits*, FED. RET. SERVS. (Sep. 9, 2025), <https://perma.cc/94L9-R6BS> (describing 50 percent maximum survivor annuity and FEHB eligibility); *CHAMPVA Benefits*, U.S. DEP'T VETERANS AFFS. (2025), <https://perma.cc/H98U-PRD3> (providing healthcare coverage for spouses of permanently disabled veterans); *New Spouses, TRICARE* (2026), <https://tricare.mil/Plans/New/NewSpouses> (explaining automatic TRICARE enrollment for military spouses); *Support for Military Personnel & Families*, MIL. ONESOURCE (2025), <https://perma.cc/P3LZ-D2VW> (offering 24/7 support services for military families); *Welcome to Blue Star Families*, BLUE STAR FAMS. (2026), <https://perma.cc/PKG9-PB5V> (providing support to 280,000+ military family members); *Dependency Indemnity Compensation for Survivors of Veterans*, NAT'L VETERANS FOUND. (2025), <https://perma.cc/CS2T-8CQJ> (describing tax-free monthly benefits for surviving spouses of service-connected disabled veterans).

275. *See* M.V. Lee Badgett, *The Economic Value of Marriage for Same-Sex Couples*, 58 DRAKE L. REV. 1081, 1084–88 (2010).

276. *Id.* at 1083–100 (describing the economic benefits of marriage).

disabled people are forced to choose between critical supports and the right to marry.²⁷⁷ That choice mirrors what constitutional doctrine identifies as an unconstitutional condition: requiring individuals to surrender a fundamental right to retain government benefits.²⁷⁸

The stakes of these economic barriers are especially high given the disproportionate hardship already faced by people with disabilities. They are twice as likely to live in poverty, experience higher unemployment rates, and endure greater food insecurity than their nondisabled peers.²⁷⁹ Conditioning access to healthcare, housing, or income support on remaining unmarried not only entrenches these inequities but also structurally excludes disabled people from the economic safety net that marriage provides to others. In place of marriage-based protections, they must depend on fragile, means-tested programs with strict asset limits and intrusive oversight. The result is not abstract. It is material, enduring, and devastating, producing a two-tiered system in which disabled people are penalized for seeking the same legal and financial partnership that others may pursue freely.

C. *Cultural Significance, Personal Autonomy, and the Right to Choose*

Finally, marriage functions as a powerful cultural institution in American society, signaling adult status, affirming personal autonomy, and conferring social legitimacy. Since the country's founding, Americans have viewed marriage as the "bedrock of healthy

277. *Id.* at 1092.

278. *See, e.g.,* *Mem'l Hosp. v. Maricopa County*, 415 U.S. 250, 269 (1974) ("The Arizona durational residence requirement for eligibility for nonemergency free medical care creates an 'invidious classification' that impinges on the right of interstate travel by denying newcomers 'basic necessities of life.'"); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) ("It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege."); *Speiser v. Randall*, 357 U.S. 513, 528–29 (1958) (invalidating a loyalty oath requirement for a tax exemption as an unconstitutional condition).

279. *See generally* NANETTE GOODMAN ET AL., *NAT'L DISABILITY INST., DISABILITY, RACE AND POVERTY IN AMERICA* (2019), <https://perma.cc/A4VE-LZWT> (analyzing the intersection of disability, race, and economic disparities, including higher poverty rates among disabled people); *Persons with a Disability: Labor Force Characteristics—2024*, U.S. BUREAU LABOR STAT. (Feb. 25, 2025), <https://perma.cc/7VJY-SWK4> (reporting that the unemployment rate for people with disabilities is approximately double that of people without disabilities); Rebecca Vallas, Kimberly Knackstedt & Vilissa Thompson, *7 Facts About the Economic Crisis Facing People with Disabilities in the United States*, CENTURY FOUND. (Apr. 21, 2022), <https://tcf.org/content/commentary/7-facts-about-the-economic-crisis-facing-people-with-disabilities-in-the-united-states> (discussing the financial insecurity of disabled people, including poverty, unemployment, and food insecurity).

families and communities,” an institution “vital to the functioning of democracy” itself.²⁸⁰ The Supreme Court has echoed these sentiments, describing marriage as a “keystone of our social order” that embodies “the highest ideals of love, fidelity, devotion, sacrifice, and family.”²⁸¹ For disabled people, this cultural significance carries particular weight in a society that often denies them recognition as autonomous adults capable of intimacy, caregiving, and family life.

Marriage is one of the most widely recognized rites of passage in American life, marking the transition from dependent youth to independent adulthood.²⁸² For people with disabilities, who are frequently treated as “perpetual children,” this symbolism takes on heightened meaning.²⁸³ The freedom to marry becomes not only a personal choice but also a public assertion of adult identity and a direct challenge to entrenched ableist norms.²⁸⁴ The Supreme Court’s marriage jurisprudence reflects this autonomy-centered understanding, recognizing in *Loving* that “[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness.”²⁸⁵ This choice-centered framework builds on the Court’s broader recognition that the right to marry is intertwined with the right “to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”²⁸⁶

Yet disabled people are routinely denied access to marriage not only through law and policy but also through cultural practices that erase their sexuality and autonomy.²⁸⁷ Natalie Chin describes this phenomenon as “structural desexualization,” a system of norms that renders disabled people invisible as sexual beings and unworthy of romantic partnership.²⁸⁸ These beliefs reinforce broader patterns of infantilization, casting disabled people as objects of care rather than

280. Kathleen E. Hull, Ann Meier & Timothy Ortyl, *The Changing Landscape of Love and Marriage*, 9 CONTEXTS 32, 33 (2010).

281. *Obergefell v. Hodges*, 576 U.S. 644, 669, 681 (2015).

282. ANDREW J. CHERLIN, *THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY* 142 (2010) (describing marriage as an “ultimate merit badge”—a marker of personal achievement and social legitimacy).

283. MICHAEL GILL, *ALREADY DOING IT: INTELLECTUAL DISABILITY AND SEXUAL AGENCY* 3 (2015). See generally Carlyn O. Mueller, “*I Didn’t Know People with Disabilities Could Grow Up to Be Adults*”: *Disability History, Curriculum, and Identity in Special Education*, 44 TEACHER ED. & SPECIAL ED. 189 (2021) (exploring the concept of disability identity development in school-aged children).

284. See *Emens*, *supra* note 129, at 1309.

285. *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

286. *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992).

287. See *supra* Section III.D (exploring cultural barriers to marriage for people with disabilities).

288. Natalie M. Chin, *The Structural Desexualization of Disability*, 124 COLUM. L. REV. 1595, 1612 (2024).

individuals entitled to love, intimacy, and family formation. Within this cultural framework, restrictions on marriage are often framed as protective when in fact they constitute discriminatory denials of autonomy and relational equality.

Marriage also provides crucial social recognition of a person's capacity for reciprocal love, responsibility, and care.²⁸⁹ Being publicly acknowledged as someone's spouse affirms personal worth and challenges stigmatizing assumptions about disability. It also strengthens a sense of belonging by connecting individuals to extended families, religious communities, and civic institutions in ways that purely private relationships cannot.²⁹⁰ Cultural rituals (from engagement announcements to wedding ceremonies, spousal titles, and family introductions) serve to normalize and affirm a person's relational status.²⁹¹ When disabled people are excluded from marriage, they are denied not only legal protections but also these cultural affirmations and the broader networks of support that marriage can generate.

Recognizing the cultural meaning of marriage underscores that meaningful marital choice is essential to full personhood. When disabled people are denied this choice, they are denied dignity, agency, and belonging. As the Supreme Court has warned, exclusion from marriage "serves to disrespect and subordinate," marking some relationships, and some people, as less worthy.²⁹² Article 23 of the Convention on the Rights of Persons with Disabilities affirms this understanding internationally, requiring states to eliminate discrimination in all aspects of marriage and family life.²⁹³ Yet people with disabilities continue to confront a system of exclusion that spans law, policy, and culture. Dismantling this system requires more than formal legal recognition; it demands structural and cultural transformation.

V. DISMANTLING EXCLUSION: A PATH FORWARD

Dismantling the barriers to marriage for disabled people requires a coordinated and comprehensive agenda. Legal, economic, institutional, and cultural exclusions do not operate in isolation; they intersect and reinforce one another to deny meaningful access to marriage. Reform must therefore engage multiple domains at once, addressing not only individual obstacles but also the broader system that sustains exclusion. The proposals advanced here focus on

289. See *Obergefell v. Hodges*, 576 U.S. 644, 666 (2015) ("The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality.").

290. See *id.* at 669.

291. See *id.*

292. *Id.* at 675.

293. Convention on the Rights of Persons with Disabilities art. 23, Dec. 13, 2006, 2515 U.N.T.S. 3, 15.

removing barriers for people with disabilities who seek marriage as a pathway to family formation and legal recognition.

At the same time, a fuller vision of family justice must also include reforms that respect and support nonmarital families, chosen families, and other alternative relationship structures. These changes would benefit both disabled and nondisabled communities alike. Although this broader restructuring of family law is beyond the scope of this Article, it remains an essential goal for future scholarship and advocacy. The analysis here concentrates on the specific legal, policy, and cultural barriers that deny marriage equality to disabled people and charts a path forward grounded in constitutional principles, disability justice, and human dignity.

A. *Litigation Strategies*

Legal challenges represent a crucial component of the comprehensive reform agenda needed to secure marriage equality for disabled people. Although constitutional litigation faces significant doctrinal obstacles created by restrictive federal precedent, multiple legal avenues remain open to challenge the penalties and restrictions that deny disabled people equal access to marriage. Federal constitutional claims can leverage fundamental rights jurisprudence and due process protections, while statutory claims under the Religious Freedom Restoration Act (RFRA)²⁹⁴ may offer more immediate prospects for success. State constitutional challenges provide further opportunities to bypass federal limitations and build momentum for broader change. Coordinated litigation across these multiple frameworks can generate a systemic impact that isolated cases cannot achieve, establishing precedents that strengthen the broader claims of people with disabilities to constitutional equality and full citizenship.

1. *Federal Constitutional Claims*

Federal constitutional doctrine provides a powerful, though underutilized, set of tools for challenging marriage penalties embedded in public benefits programs. Although these penalties are rarely framed as constitutional issues, they strike at the heart of protected liberties: the right to marry, the right to maintain access to life-sustaining public benefits, and the right to be free from arbitrary and stigmatizing classifications. Together, these doctrinal touchstones create a compelling basis for rethinking how courts should evaluate the constitutionality of these policies.

The Supreme Court has long recognized marriage as a fundamental constitutional right that cannot be restricted without

294. Religious Freedom Restoration Act of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (codified as amended at 42 U.S.C. §§ 2000bb–2000bb-4).

compelling justification.²⁹⁵ In *Loving*, the Court declared marriage “one of the vital personal rights essential to the orderly pursuit of happiness by free men.”²⁹⁶ That holding was reaffirmed in *Turner v. Safley*,²⁹⁷ which struck down restrictions on the rights of incarcerated people to marry,²⁹⁸ and most recently, in *Obergefell*, which emphasized marriage as a liberty that “offers unique fulfillment to those who find meaning in the secular realm.”²⁹⁹ These cases make clear that marriage is a constitutionally protected liberty interest, not merely a private commitment.

Yet for many disabled people who rely on SSI, DAC benefits, or Medicaid, this right is heavily constrained. These programs reduce or terminate benefits upon marriage, even when both spouses are disabled and remain below the poverty line.³⁰⁰ In practice, disabled people are forced to choose between essential supports and legal recognition of their relationships. That choice implicates core guarantees of due process and equal protection.

The foundation for such lies in *Zablocki*, in which the Court invalidated a Wisconsin statute that prohibited people with unpaid child support obligations from marrying without court approval.³⁰¹ The Court distinguished between ordinary regulation of marriage and substantial interference with the right itself, holding that laws that “significantly interfere” with the freedom to marry must be supported by important state interests and narrowly tailored.³⁰² Marriage penalties embedded in disability-related benefits programs deter marriage itself by threatening the loss of life-sustaining support, falling squarely within *Zablocki*’s mandate.

Courts have been reluctant to apply *Zablocki* robustly, in part because of *Califano v. Jobst*. There, the Court upheld termination of DAC benefits when the recipient married someone who was not receiving Social Security.³⁰³ But *Jobst* predated modern dignity-based marriage jurisprudence and involved relatively modest consequences compared to today’s penalties,³⁰⁴ which can result in the complete loss of income, services, and healthcare. Government policies that create such extreme deterrents to marriage demand renewed constitutional scrutiny.

295. See *supra* Section II.A.

296. *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

297. 482 U.S. 78 (1987).

298. *Id.* at 95–96.

299. *Obergefell v. Hodges*, 576 U.S. 644, 656–57 (2015).

300. See BJ Jarrett, *Will Remarrying Affect My Social Security Benefits?*, SOC. SEC. MATTERS (Aug. 22, 2024), <https://perma.cc/J22C-G5BS>; *How Does Someone Become Eligible?*, SOC. SEC. ADMIN. (2025), <https://perma.cc/JM3S-VQBB>.

301. *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978).

302. *Id.*

303. *Califano v. Jobst*, 434 U.S. 47, 49, 58 (1977).

304. Balkus & Wilschke, *supra* note 196.

Beyond fundamental rights, due process doctrines strengthen these claims. The unconstitutional conditions doctrine prohibits conditioning access to benefits on the surrender of constitutional rights.³⁰⁵ In *Shapiro v. Thompson*,³⁰⁶ the Court struck down a residency requirement for welfare benefits, rejecting cost savings as a justification for burdening the right to travel.³⁰⁷ The same reasoning applies here: Disabled people cannot be forced to forgo the right to marry in order to retain subsistence benefits. Similarly, in *Cleveland Board of Education v. LaFleur*,³⁰⁸ the Court rejected irrebuttable presumptions in maternity leave policies, reasoning that blanket rules disregarded individual circumstances.³⁰⁹ Marriage penalties operate in the same way, presuming without inquiry that marriage eliminates financial need.

Procedural due process concerns further strengthen this claim. In *Goldberg v. Kelly*,³¹⁰ the Court held that individuals must receive adequate notice and a meaningful opportunity to be heard before public benefits are terminated.³¹¹ Yet the automatic nature of marriage-based benefit losses often short-circuits this process. A disabled person may receive no individualized review, no opportunity to present evidence of continuing need, and no chance to argue for equitable adjustment. This lack of procedural protection is especially troubling given the stakes involved: the loss of food, shelter, medical care, and economic autonomy.

Equal protection arguments further reinforce these claims. In *Eisenstadt v. Baird*,³¹² the Court held that marital classifications must be reasonably related to the achievement of legitimate state objectives.³¹³ Applying this reasoning, it is difficult to justify stripping married disabled people of benefits while allowing unmarried disabled people in identical circumstances to retain them. Although *City of Cleburne v. Cleburne Living Center*³¹⁴ applied rational basis review to disability classifications, the Court nonetheless invalidated the challenged ordinance after rejecting justifications rooted in prejudice.³¹⁵ As scholars such as Michael Waterstone argue, *Cleburne*

305. See Kathleen Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413 (1989) (analyzing how government leverage over benefits can amount to coercive rights-denial); see also Cass R. Sunstein, *Why the Unconstitutional Conditions Doctrine Is an Anachronism (With Particular Reference to Religion, Speech, and Abortion)*, 70 B.U. L. REV. 593 (1990).

306. 394 U.S. 618 (1969).

307. *Id.* at 627–28, 633.

308. 414 U.S. 632 (1974).

309. *Id.* at 644–46.

310. 397 U.S. 254 (1970).

311. *Id.* at 266.

312. 405 U.S. 438 (1972).

313. *Id.* at 447 (quoting *Reed v. Reed*, 404 U.S. 71, 75–76 (1971)).

314. 473 U.S. 432 (1985).

315. *Id.* at 450.

supports a more probing review of disability-based policies that rely on stereotypes rather than evidence.³¹⁶

Framing marriage penalties as violations of fundamental rights rather than as disability classifications provides a more effective path for litigation. Under substantive due process, strict scrutiny is triggered by the nature of the right at stake, not the identity of the claimant. Courts can therefore recognize that laws deterring marriage—regardless of whom they burden—deprive disabled people of a core civil liberty. *Tennessee v. Lane*³¹⁷ illustrates how courts have connected structural barriers to deprivations of fundamental rights. There, the Court upheld Title II of the ADA as applied to courtroom access, holding that physical barriers that prevent participation in judicial proceedings violate the fundamental right of access to the courts.³¹⁸ Benefit rules that force disabled people to choose between financial survival and marriage impose the same kind of structural exclusion from a foundational institution.

Constitutional litigation, therefore, remains an important, if challenging, avenue. It reframes marriage penalties as constitutional harms rather than administrative details, asserting the dignity and autonomy of disabled people. Even if such claims face doctrinal headwinds, they force courts and society to confront the injustice of compelling people with disabilities to choose between survival and love.

2. *Federal Statutory Claims*

While constitutional claims provide a vital framework for contesting marriage penalties, the RFRA offers a statutory pathway that may prove more immediately successful.³¹⁹ The RFRA requires that when a federal law substantially burdens a person's exercise of religion, the government must show that the law serves a compelling interest and is the least restrictive means of achieving it.³²⁰ This strict scrutiny framework imposes a significantly higher burden on the government than the rational basis review typically applied to disability classifications.³²¹

The groundbreaking administrative complaint filed by Lori Long against the Social Security Administration in 2022 illustrates RFRA's potential.³²² Long, a DAC beneficiary and devout Christian, argued

316. Michael E. Waterstone, *Disability Constitutional Law*, 63 EMORY L.J. 527, 540–43 (2014).

317. 541 U.S. 509 (2004).

318. *Id.* at 533–34.

319. *See* 42 U.S.C. § 2000bb.

320. *Id.* § 2000bb-1(b).

321. R. Randall Kelso, *Justifying the Supreme Court's Standards of Review*, 52 ST. MARY'S L.J. 973, 977–80 (2021).

322. *See* Administrative Complaint and Request for Relief Under the Religious Freedom Restoration Act (RFRA) and the U.S. Constitution, Disability

that marriage restrictions substantially burdened her religious practice.³²³ She explained that she “feels that her religious practice is incomplete because she is not able to engage in the sacrament of marriage” with her long-term partner, since doing so would automatically terminate her benefits.³²⁴ Her complaint draws upon Supreme Court precedents recognizing marriage as an expression of both personal liberty and religious faith, most notably *Obergefell*.³²⁵

RFRA claims offer several advantages. First, the statute applies directly to federal programs like SSI, DAC, and Medicaid, making it a natural tool for challenging marriage penalties.³²⁶ Unlike constitutional claims that must navigate the narrow confines of *Cleburne*, RFRA shifts the focus to burdens on religious exercise, bypassing many of those doctrinal hurdles.³²⁷ Second, courts have interpreted “substantial burden” broadly to include indirect pressures that force individuals to choose between religious obligations and government benefits.³²⁸ For disabled people whose faith compels them to marry, penalties that condition survival benefits on remaining single clearly qualify.

The government would face difficulty meeting RFRA’s demanding requirements. Even if the government can demonstrate a compelling interest in means-testing benefits, it would likely fail to prove that marriage penalties represent the “least restrictive means” of achieving that interest.³²⁹ Alternative approaches to determining benefit eligibility exist, including individualized assessments of actual financial circumstances, graduated benefit reductions based on combined income, or modified asset limits that account for disability-related expenses.³³⁰ The current system’s blanket prohibition on marriage while maintaining benefits represents an unnecessarily broad restriction that fails RFRA’s narrow tailoring requirement.

Moreover, the empirical evidence undermines any claim that marriage penalties effectively serve their stated purposes. For example, married couples receiving SSI have higher poverty rates than unmarried recipients, suggesting these penalties increase rather than reduce economic need.³³¹ The government’s reliance on

Rts. Educ. & Def. Fund (Nov. 17, 2022) [hereinafter DREDF Complaint], <https://perma.cc/WC5D-95PM>.

323. *Id.* at 2.

324. *Id.* at 4.

325. *Id.* at 7–9.

326. 42 U.S.C. § 2000bb-3(a).

327. See Riley Palmer, Comment, *Trojan Unicorn: Exploiting Religious Exemptions to Advance LGBTQIA+ Law*, 2021 WIS. L. REV. 1541, 1567.

328. *Emp. Div. v. Smith*, 494 U.S. 872, 895 (1990).

329. *Murphy v. Collier*, 139 S. Ct. 1475, 1484 (2019) (Alito, J. dissenting).

330. Balkus & Wilschke, *supra* note 196.

331. *Id.* (finding that couples receiving SSI experience poverty at rates exceeding 45 percent, compared to less than 10 percent for unmarried recipients).

administrative convenience cannot justify substantial burdens on religious exercise under RFRA's framework, particularly when less restrictive alternatives are readily available.³³² RFRA challenges also benefit from the statute's explicit congressional finding that "laws 'neutral' toward religion may burden religious exercise as surely as laws intended to interfere with religious exercise."³³³ This recognition directly applies to marriage penalties, which are facially neutral but create substantial barriers to religious practice for disabled people whose faith traditions emphasize marriage as a religious duty.

Strategic RFRA litigation should focus on plaintiffs whose religious convictions compel marriage, building detailed records of how benefit penalties force impossible choices between faith and survival. These cases should emphasize the availability of less restrictive alternatives to current marriage penalties, demonstrating that the government's interests can be served through means that do not substantially burden religious exercise. Success in even a limited number of RFRA cases could create pressure for broader administrative and legislative reforms, while establishing important precedents for challenging benefit structures that interfere with the religious liberty of people with disabilities. The combination of RFRA's strict scrutiny standard, its explicit protection for religious exercise, and the compelling facts presented by disabled people forced to choose between faith and benefits creates a robust framework for challenging marriage penalties that may prove more immediately successful than constitutional challenges alone.

3. *State Constitutional Claims*

State constitutional challenges offer critical advantages that make them essential components of any comprehensive strategy to secure marriage equality for disabled people. Although federal constitutional doctrine remains constrained by *Cleburne's* restrictive framework, state courts interpreting their own constitutional provisions possess greater latitude to develop protective doctrine, unconstrained by the Supreme Court's interpretation of federal equal protection principles.³³⁴ Many state constitutions contain explicit anti-discrimination provisions that provide stronger textual foundations for disability rights claims than the federal Equal Protection Clause, creating opportunities for more robust constitutional protection that current federal doctrine fails to provide.³³⁵

The Nevada Constitution exemplifies this potential through an amendment that explicitly prohibits discrimination based on "race,

332. DREDF Complaint, *supra* note 322.

333. 42 U.S.C. § 2000bb(a)(2).

334. *See* Waterstone, *supra* note 316, at 575.

335. *Id.*

color, creed, sex, sexual orientation, gender identity or expression, age, *disability*, ancestry or national origin.”³³⁶ This explicit inclusion of disability as a protected classification potentially provides a basis for heightened scrutiny of disability-based marriage restrictions, a level of protection unavailable under federal constitutional interpretation. Waterstone notes that “some state courts have been willing to move beyond *Cleburne* and hold that people with disabilities are entitled to heightened scrutiny under their state’s equal protection clause,” suggesting that state constitutional litigation can achieve protections that federal courts are unwilling to provide.³³⁷

State constitutional litigation also serves as a vital laboratory for developing legal theories and factual records that can eventually influence federal doctrine, following the established pattern where state court innovations create momentum for broader constitutional change.³³⁸ This dynamic proved crucial in the marriage equality movement for LGBTQ+ people.³³⁹ After experiencing a significant loss in the Supreme Court in *Bowers v. Hardwick*,³⁴⁰ which upheld Georgia’s sodomy law,³⁴¹ the LGBTQ+ rights movement “engaged in a deliberate campaign to challenge state sodomy and discriminatory marriage laws.”³⁴² These state-level victories ultimately helped pave the way for the Court’s overruling of *Bowers* in *Lawrence v. Texas*,³⁴³ with Justice Kennedy explicitly recognizing the evolution of state law in reaching that decision.³⁴⁴

State courts in Alaska, Montana, California, and eight other states have recognized greater privacy and autonomy rights under their state constitutions than the U.S. Supreme Court has recognized under the federal Constitution.³⁴⁵ These expanded privacy rights could provide a powerful basis for challenging guardianship provisions or institutional policies that restrict the relationships of disabled people. State constitutional protections for privacy and autonomy can extend to marriage restrictions that federal doctrine

336. NEV. CONST. art. 1, § 24 (emphasis added).

337. See Waterstone, *supra* note 316, at 575.

338. *Id.* at 559 n.199.

339. *Id.* at 560.

340. 478 U.S. 186 (1986), *overruled by* Lawrence v. Texas, 539 U.S. 558 (2003).

341. *Id.* at 196.

342. Waterstone, *supra* note 319, at 560.

343. 539 U.S. 558 (2003).

344. *Id.* at 573 (“In our own constitutional system the deficiencies in *Bowers* became even more apparent in the years following its announcement. The 25 States with laws prohibiting the relevant conduct referenced in the *Bowers* decision are reduced now to 13, of which 4 enforce their laws only against homosexual conduct.”).

345. Tiffany C. Li, *State Constitutional Rights to Privacy*, 59 GA. L. REV. 1307, 1314 (2025).

may not adequately address, particularly when those restrictions involve intimate decision-making and family formation.

The strategic advantages of state constitutional challenges extend beyond doctrinal flexibility to include more favorable procedural and institutional contexts. State courts may be more receptive to novel legal theories or more willing to depart from restrictive federal precedent than federal courts.³⁴⁶ Moreover, state constitutional victories provide immediate, concrete protection for disabled people in those jurisdictions while laying the precedential foundation necessary to challenge restrictive federal approaches.³⁴⁷ Even in states where courts have not yet established greater protections for disability rights, state constitutional challenges can sometimes succeed because they avoid the negative federal precedents that might hamper federal constitutional claims.³⁴⁸

The development of state constitutional doctrine protecting disabled people's marriage rights could also influence federal constitutional interpretation over time. Federal courts often look to state constitutional developments when considering the scope of federal protections, particularly in areas involving fundamental rights and evolving social understanding.³⁴⁹ As state courts develop more sophisticated analyses of how marriage restrictions burden disabled people's constitutional rights, these decisions can provide persuasive authority for federal courts willing to reconsider restrictive precedents.

Strategic state constitutional litigation should focus on jurisdictions with the most favorable constitutional texts, precedents, and judicial compositions. Cases should emphasize the ways marriage restrictions violate state constitutional principles of equality, privacy, and human dignity, building detailed records of how these policies harm disabled people and their families. Success in even a few states could create powerful momentum for broader change, demonstrating that constitutional principles demand marriage equality for disabled people and providing models for reform in other jurisdictions. Rather than viewing state constitutional advocacy as secondary to federal efforts, disability rights advocates should recognize it as an independent and equally important avenue for securing constitutional protection.

4. *Litigation Strategy and Movement Building*

Strategic litigation challenging marriage barriers facing disabled people—whether through federal constitutional claims, RFRA challenges, or state constitutional cases—requires sophisticated

346. Waterstone, *supra* note 316, at 560, 561 n.206.

347. *Id.* at 560.

348. *Id.* at 560–61.

349. *Id.* at 559 n.199.

coordination to overcome doctrinal obstacles and maximize systemic impact. Success depends on three critical elements: building compelling factual records, selecting ideal plaintiffs, and coordinating litigation across jurisdictions.

Factual records must document the real-world impact of marriage penalties while undermining the government's claimed justifications. Records should demonstrate less restrictive alternatives, such as individualized assessments, that can achieve legitimate government interests without burdening fundamental rights. Historical evidence of discrimination and stereotypical assumptions can support "rational basis with bite" analysis even under *Cleburne's* constraints.³⁵⁰

Plaintiff selection requires balancing legal strength with compelling narratives. Ideal cases include couples where both partners have disabilities, highlighting the absurdity of presuming mutual support, and religious plaintiffs like Lori Long, whose faith compels marriage.³⁵¹ Long-term couples who have delayed marriage solely due to benefit penalties demonstrate the coercive nature of current policies. Initial challenges should focus on plaintiffs whose circumstances most clearly expose the arbitrary nature of marriage restrictions while avoiding cases that might trigger judicial concerns about capacity.

Coordinating state and federal litigation creates opportunities for systemic change that isolated cases cannot achieve. State constitutional victories can establish precedents influencing federal courts while providing immediate protection in those jurisdictions. RFRA challenges may offer the most immediate prospects for success, creating administrative pressure for policy changes while building momentum for constitutional claims. The sequencing matters—early victories in favorable jurisdictions can establish precedents supporting challenges in more difficult areas.

This litigation strategy must align with broader movement goals, complementing rather than competing with legislative advocacy and regulatory reform efforts. As Waterstone emphasizes, constitutional litigation serves an expressive function that statutory advocacy cannot replicate, forcing courts and society to grapple with fundamental questions about disabled people's dignity and autonomy.³⁵² Success in marriage equality cases can create precedents supporting disabled people's constitutional claims more broadly, advancing the larger project of establishing equal citizenship that extends far beyond marriage rights alone.

350. Raphael Holoszyc-Pimentel, Note, *Reconciling Rational-Basis Review: When Does Rational Basis Bite?*, 90 N.Y.U. L. REV. 2070, 2080, 2104 n.196 (2015).

351. DREDF Complaint, *supra* note 322, at 4.

352. Waterstone, *supra* note 316, at 556–57.

B. Federal Legislative and Administrative Reforms

Federal policy creates many of the most significant barriers to marriage for disabled people through benefit structures, healthcare eligibility rules, and housing programs that systematically penalize family formation. Outdated assumptions across programs like SSI, DAC, Medicaid, and subsidized housing force disabled people into impossible choices between love and survival. Accordingly, reforms must eliminate marriage penalties and establish systems that foster both independence and family life.

1. Social Security Program Changes

The Social Security system creates some of the most pervasive and financially devastating barriers to marriage for disabled people.³⁵³ Accordingly, reform of these programs represents the most urgent priority for federal legislative action, as these benefits often provide the foundation for basic survival and independence for millions of people with disabilities. However, pursuing these reforms requires navigating a complex political landscape where the current administration simultaneously claims to champion traditional family values while actively targeting the very benefit programs that disabled people depend upon for survival.³⁵⁴

SSI reform stands as the most critical component of any comprehensive federal strategy to eliminate marriage barriers. The contradiction between conservative rhetoric about supporting marriage and family formation and the reality of policies that systematically punish disabled people for marrying creates a strategic opening for reform advocates.³⁵⁵ This tension has gained increased visibility in recent years; during the Biden administration, Social Security Commissioner Martin O'Malley publicly called for eliminating the SSI marriage penalty and backed legislation to

353. See *supra* Section II.B.

354. See, e.g., Michelle Diament, *What Social Security Shake-Up Could Mean for People with Disabilities*, DISABILITY SCOOP (Mar. 3, 2025), <https://perma.cc/4HTR-QLEH> (reporting on proposals to restrict Social Security benefits for disabled people); *2025 Budget Stakes: People with Disabilities Could Lose Vital Health, Food, and Other Assistance*, CTR. ON BUDGET & POLY PRIORITIES (Apr. 24, 2025), <https://www.cbpp.org/research/poverty-and-inequality/2025-budget-stakes-people-with-disabilities-could-lose-vital-health> (detailing proposed cuts to Medicaid and SSI); Faith Hill, *The Pro-Family Policy the Nation Actually Needs*, ATLANTIC (May 5, 2025), <https://perma.cc/XQ2M-SK3S> (critiquing the administration's pro-natalist agenda as exclusionary and punitive); Haley Strack, *'America Is a Pro-Family Country': JD Vance Reaffirms Trump Administration's Commitment to Life*, NAT'L REV. (Jan. 24, 2025), <https://www.nationalreview.com/news/america-is-a-pro-family-country-jd-vance-reaffirms-trump-administrations-commitment-to-life/> (highlighting the administration's self-characterization as pro-family).

355. See McClain, *supra* note 16, at 968–70.

update asset limits for inflation—a shift that, hopefully, signals continued momentum for reform.³⁵⁶

Legislative efforts during the 118th Congress signaled growing momentum for SSI reform, with four major bills introduced to address marriage penalties and outdated asset limits. In 2023, lawmakers introduced the Marriage Equality for Disabled Adults Act³⁵⁷ and the Supplemental Security Income Savings Penalty Elimination Act.³⁵⁸ Building on that progress, 2024 saw the introduction of the Supplemental Security Income Restoration Act³⁵⁹ and the Eliminating Marriage Penalty in SSI Act.³⁶⁰ Notably, the growing legislative attention includes bipartisan bills such as the SSI Savings Penalty Elimination Act,³⁶¹ suggesting an increasing recognition that these policies lack rational justification in contemporary society.

The most essential reform is the complete elimination of marriage penalties in SSI, achieved through the individualization of asset limits and the abolition of the spousal deeming rule.³⁶² While recent legislative proposals represent important steps—raising asset limits to \$10,000 for individuals and \$20,000 for couples and eliminating the 25 percent marriage penalty—these measures stop short of addressing the program’s foundational flaw: the presumption that marriage inherently provides sufficient economic support to obviate the need for public benefits.³⁶³ This outdated assumption continues to penalize disabled people for forming families and must be directly challenged.

Congress should establish fully individualized asset limits that reflect each person’s disability-related expenses and support needs, regardless of marital status. Rather than merely doubling asset thresholds for married couples, reform must preserve each spouse’s full individual eligibility. Household resources should be considered only to the extent that they demonstrably reduce disability-related costs. This approach recognizes the lived reality that marriage often

356. Joseph Shapiro, *Social Security Commissioner Martin O’Malley Agrees SSI Program Is Outdated*, NPR (June 26, 2024), <https://www.npr.org/2024/06/26/nx-s1-5013951/social-security-commissioner-martin-omalley-agrees-ssi-program-is-outdated>.

357. Marriage Equality for Disabled Adults Act, H.R. 6640, 118th Cong. (2023).

358. SSI Savings Penalty Elimination Act, H.R. 5408, 118th Cong. (2023).

359. Supplemental Security Income Restoration Act of 2024, H.R. 7138, 118th Cong. (2024).

360. Eliminating Marriage Penalty in SSI Act, H.R. 7055, 118th Cong. (2024).

361. SSI Savings Penalty Elimination Act, H.R. 5408, 118th Cong. (2023).

362. Eliminating Marriage Penalty in SSI Act, H.R. 7055, 118th Cong. § 1(c)(5) (2024); Supplemental Security Income Restoration Act of 2024, H.R. 7138, 118th Cong. § 1(c) (2024).

363. SSI Savings Penalty Elimination Act, H.R. 5408, 118th Cong. § 2(a) (2023); Marriage Equality for Disabled Adults Act, H.R. 6640, 118th Cong. § 4 (2023).

increases, rather than decreases, expenses for disabled people—especially when both spouses are disabled or when marriage results in the loss of essential services and supports.

The complete elimination of spousal deeming is equally critical. Current deeming rules assume that nondisabled spouses will financially support their disabled partners, effectively requiring nondisabled spouses to impoverish themselves before benefits become available.³⁶⁴ This creates economic hardship and frames disabled people as burdens rather than equal partners. Reform should make clear that marriage creates no automatic presumption of support and that SSI eligibility must be determined based on each individual's circumstances and needs.

The DAC program presents a particularly striking example of marriage-based discrimination in disability benefits law. Under current rules, DAC benefits—earned through a parent's work history—are terminated solely because the beneficiary marries someone who does not themselves receive Social Security benefits.³⁶⁵ This outcome contradicts the foundational principle that Social Security benefits are earned entitlements, not means-tested welfare.³⁶⁶ It creates arbitrary distinctions that serve no legitimate programmatic purpose and effectively penalizes disabled people for choosing partners who do not meet narrow eligibility criteria.

Congress should eliminate marriage-based disqualification from DAC benefits entirely. These benefits derive from a parent's work record and reflect a lifetime of contributions to the Social Security system.³⁶⁷ They are not means-tested, nor should they be subject to eligibility reductions based on the employment or benefit status of a spouse. The current system rests on the flawed assumption that marriage to someone outside the Social Security system automatically ensures financial security, disregarding the economic realities of modern partnerships and the individualized, often lifelong, nature of disability-related expenses.³⁶⁸

Advancing these reforms requires strategic framing that appeals to core values. The bipartisan support for recent SSI legislation demonstrates that targeted reforms can gain traction across party lines when advocates appeal to principles of limited government, personal freedom, and family autonomy. By forcing disabled people to choose between marrying the person they love and maintaining basic economic security, current policies violate these fundamental values while imposing practical burdens on public administration through increased enforcement costs and bureaucratic complexity. Eliminating these provisions would simplify administration, reduce

364. See 42 U.S.C. § 1382(g).

365. See 42 U.S.C. § 402(d)(1)(D); *Califano v. Jobst*, 434 U.S. 47, 49 (1977).

366. See *Flemming v. Nestor*, 363 U.S. 603, 610 (1960).

367. 42 U.S.C. § 402(d)(1).

368. *Califano*, 434 U.S. at 99.

overhead, and better align with the stated goals of supporting families and promoting marriage—arguments that may resonate with policymakers across the ideological spectrum.

2. *Medicaid Policy Redesign*

Like SSI and DAC, Medicaid reinforces marriage penalties through spousal deeming and individual-based service models. These policies force disabled people to choose between healthcare and intimate relationships, contradicting federal disability law's commitment to community integration and family autonomy. Reform must decouple Medicaid eligibility from marital status and redesign services to support—not penalize—family life.

The most urgent Medicaid reform needed to advance marriage equality for disabled people is the complete decoupling of eligibility from spousal income and assets for married couples where one partner has a disability. Medicaid's spousal deeming rules create the same barriers as SSI, forcing couples into financial impossibilities as disability-related expenses persist regardless of marital status.³⁶⁹ These expenses—including personal assistance services, adaptive equipment, accessible housing, and transportation—are highly individualized and typically not reduced by marriage.³⁷⁰ A spouse's income cannot replace Medicaid-funded supports like in-home care or wheelchair maintenance.³⁷¹ As a result, many disabled people face impossible choices: remain unmarried to retain access to healthcare, divorce to maintain eligibility, or marry and lose life-sustaining services.³⁷²

To address this inequity, Congress should eliminate all spousal income and asset deeming requirements for Medicaid eligibility. Long-term services and supports should be determined solely by an individual's disability-related needs and personal financial circumstances, regardless of marital status. This reform would align Medicaid policy with the principles of autonomy, equality, and family integrity—ensuring that disabled people can marry without sacrificing their basic survival needs.

Beyond eligibility reform, Medicaid-funded Home and Community-Based Services (HCBS) must be transformed to better support marriage and family life. Although HCBS programs offer states considerable flexibility to design services that accommodate diverse family structures, this potential remains largely unrealized.³⁷³ Most HCBS programs narrowly define eligibility and

369. *See supra* Section III.B.; *see also* Garbero, *supra* note 15, at 590.

370. *Id.* at 591.

371. *Id.*

372. *Id.* at 593–94.

373. *See* 42 U.S.C. § 1396n(c)(1) (authorizing state flexibility in HCBS waiver programs); *see also* CTRS. FOR MEDICARE & MEDICAID SERVS., INSTRUCTIONS,

scope of services based on activities of daily living (ADLs), such as bathing, dressing, and toileting, which limits support for disabled people seeking to fully participate in family and community life.³⁷⁴ These definitions reflect outdated institutional logics focused on individual functioning rather than a human rights framework that affirms disabled people's roles as family members, partners, and caregivers.

The Centers for Medicare & Medicaid Services (CMS) should expand the definition of ADLs to include tasks essential to maintaining intimate relationships and stable households, such as parenting, shared household management, and caregiving responsibilities. Personal assistance services should be available to support disabled people in preparing meals for family members, performing household tasks, and fulfilling parenting duties. The current system's focus on basic self-care ignores the reality that disabled people are not only care recipients, but also spouses, parents, and contributors to family life. Expanding ADL definitions would affirm that true independence includes the ability to participate fully in relationships and family structures, not just perform isolated tasks of personal care.

Equally important is allowing Medicaid to fund payments to spouses who provide caregiving services to their disabled partners. The current prohibition on paying family members for care creates artificial barriers that force couples to choose between professional services and family-based support.³⁷⁵ Many disabled people prefer receiving care from their spouses, yet the system penalizes this choice by refusing to provide compensation for essential services.³⁷⁶ Allowing spousal caregiver compensation would serve multiple policy goals: It would provide economic support to families where one partner has significant care needs, recognize the value and skills involved in disability-related caregiving, and support the preference of many people with disabilities to receive care from trusted family members.

These individual reforms must be complemented by broader systemic changes that integrate family-centered service models into HCBS waivers. Current programs treat each person as an isolated individual, but they should be redesigned to accommodate married couples and recognize the realities of shared living arrangements and mutual support networks. This includes developing housing supports

TECHNICAL GUIDE AND REVIEW CRITERIA FOR 1915(C) WAIVER APPLICATIONS 1 (2019), <https://perma.cc/5QQL-UBGH>.

374. *See supra* Section III.B.

375. Ferguson, *supra* note 217 (noting that most Medicaid-funded personal assistant services do not pay spouses).

376. *See* Teresa McMinn, *Wife or Caregiver? Quadriplegic Faces Decision*, CUMBERLAND TIMES-NEWS (Oct. 22, 2019), https://www.times-news.com/news/local_news/wife-or-caregiver-quadriplegic-faces-decision/article_58e8e8b6-f462-11e9-b855-cbe4ddb01ea7.html.

specifically designed for couples where one or both partners have disabilities and ensuring that service delivery models can adapt when family circumstances change.³⁷⁷

To test and refine these approaches, states should pilot demonstration projects supporting couple-based care delivery, moving beyond the false dichotomy between institutional care and independent living to recognize the reality of interdependent family relationships. CMS should create demonstration projects focused on delivering long-term services and supports to married couples, with the goal of identifying best practices and policy reforms needed to better support families that include disabled members. These models would provide crucial evidence for broader policy reform while improving services for participating couples and establishing quality metrics that measure success in terms of relationship satisfaction and family stability, rather than just individual health outcomes.

The integration of these reforms would fundamentally transform Medicaid from a system that penalizes marriage into one that supports family formation and stability. By recognizing that disabled people deserve the same opportunities for marriage and family life as nondisabled people, these policy changes would create a more equitable system that supports full inclusion in all aspects of community life.

3. *Housing Access and Affordability*

Housing represents a significant practical barrier to marriage for disabled people, as current federal housing programs are primarily designed for individuals rather than couples.³⁷⁸ The shortage of accessible, affordable housing that accommodates married couples with disabilities forces many disabled people to choose between stable housing and romantic relationships. Comprehensive housing reforms must address both the design of federal programs and the development of new models that support disabled couples in community settings.

The section 811 Supportive Housing Program for Persons with Disabilities requires fundamental restructuring to accommodate the housing needs of married couples with disabilities.³⁷⁹ Currently, most section 811 units are designed as studio or one-bedroom apartments for individual occupancy, reflecting outdated assumptions that disabled people primarily live alone.³⁸⁰ This design limitation creates immediate barriers for disabled couples who cannot find accessible units suitable for shared living, effectively forcing them to choose

377. *See supra* Section III.C.

378. *See supra* Section III.C.

379. *Section 811 Supportive Housing for Persons with Disabilities*, U.S. DEP'T HOUS. & URB. DEV. (2025), <https://perma.cc/4X3E-6A6N>.

380. NAT'L COUNCIL ON DISABILITY, *supra* note 215, at 197 (describing the lack of accessible and affordable housing for families that include disabled people).

between housing stability and relationship formation. Housing authorities should mandate that a significant percentage of new section 811 developments include units specifically designed for couples, with accessible features that accommodate two people with potentially different disability-related needs. These units should include accessible bathrooms with space for multiple mobility devices, kitchens designed for shared use by people with different physical needs, and bedroom configurations that accommodate various assistive technologies and personal care equipment.

Housing authorities should also develop specialized applications and matching processes for disabled couples seeking section 811 housing. These processes should accommodate the complex timing issues that arise when two people with disabilities want to move in together, including situations where partners currently live in different subsidized housing programs or institutional settings. Coordinated transition planning would ensure that couples can access appropriate housing without either partner losing existing supports during the transition period.

Beyond programmatic reforms, federal agencies possess significant authority to address housing barriers through regulatory guidance and enforcement priorities. The Department of Justice should issue comprehensive guidance clarifying that unnecessary restrictions on the relationships of people in residential settings may violate the integration mandate of the ADA, building on the precedent established in *Olmstead v. L.C. ex rel. Zimring*.³⁸¹ This guidance should develop clear standards for when housing restrictions constitute impermissible segregation or discrimination, requiring housing providers to demonstrate compelling safety or operational justifications for any policies that limit the relationship choices of disabled residents. The guidance should also address the intersection between housing discrimination and disability discrimination, recognizing that policies preventing disabled people from living with chosen partners may violate both the Fair Housing Act and the ADA.

Similarly, the Department of Health and Human Services (HHS) should make relationship support and family formation explicit priorities in its oversight of programs serving people with disabilities. HHS should require providers of residential services to demonstrate how they accommodate married couples and support relationship development rather than treating such arrangements as exceptional circumstances requiring special permission. This shift would move from a default assumption that disabled people live alone to recognition that many disabled people want to live with romantic

381. 527 U.S. 581, 597 (1999) (establishing the integration mandate requiring states to provide services in the most integrated setting appropriate); *see also* U.S. Dep't of Justice, Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* (2011), <https://perma.cc/3CVN-KCN5>.

partners, spouses, or chosen families. HHS should also develop training requirements for housing providers that receive federal funding, ensuring staff understand their obligations to support rather than restrict the relationship choices of disabled residents.

Implementation of these housing reforms should include robust monitoring and evaluation components to assess their effectiveness in reducing barriers to marriage and relationship formation. Federal agencies should collect data on the housing outcomes of disabled couples, including their ability to find appropriate housing, maintain stable relationships in community settings, and access necessary supports while living together. Coordination among federal agencies will be essential for successful implementation, as housing, healthcare, and disability services are often administered by different departments but must work together to effectively support disabled couples.

These housing reforms recognize that access to appropriate, affordable housing is fundamental to the exercise of relationship rights for disabled people. By restructuring federal housing programs to accommodate couples and requiring housing providers to support rather than restrict relationship formation, these interventions would remove some of the most significant practical barriers to marriage for disabled people while creating models for more inclusive and responsive housing policy.

4. *Toward Universal Healthcare*

One critical but often overlooked solution to marriage inequality for disabled people is the adoption of universal healthcare. Under current Medicaid rules, many disabled individuals face an impossible choice between love and survival, as access to essential services—particularly HCBS—is often conditioned on remaining single.³⁸² Spousal deeming provisions treat a partner's income as disqualifying, effectively punishing marriage and reinforcing economic dependency.³⁸³ These policies function as de facto marriage bans for those who need ongoing support to live independently. By decoupling healthcare access from marital status and income, a universal system would remove this coercive tradeoff, allowing disabled people to make intimate decisions freely and affirming marriage as a right rather than an economic liability.

Universal healthcare would fundamentally transform the landscape of marriage equality by ensuring continued access to medical care, assistive technologies, and long-term supports regardless of family composition or income.³⁸⁴ Models like Medicare

382. Garbero, *supra* note 15, at 592.

383. See 42 U.S.C. § 402(d)(1)(D).

384. Adam Beaudry, Student Article, *Universal Healthcare: What Are We Waiting For?*, 15 FAULKNER L. REV. 291, 294 (2024).

for All would eliminate a central structural barrier to legal recognition of relationships, fostering greater autonomy within intimate partnerships.³⁸⁵ Crucially, implementation must include comprehensive coverage of disability-specific services—such as personal assistance, home modifications, and durable medical equipment—to truly support community living and independence. In doing so, universal healthcare would not simply mitigate the symptoms of discrimination but strike at its roots, eliminating the coercive dynamics that pressure disabled people to remain in relationships for benefits or avoid relationships altogether. It would affirm disabled people’s full citizenship and autonomy, creating conditions where relationships can be formed and sustained based on love, not economic necessity.

C. *State-Level Structural Transformation*

State-level reforms offer critical opportunities to advance marriage rights for disabled people through direct intervention in the legal and service systems that most immediately affect their daily lives. While federal advocacy and litigation establish critical constitutional principles, states control the guardianship laws, marriage statutes, and disability service systems that create practical barriers to intimate relationships and family formation.³⁸⁶ Through comprehensive reforms to these interconnected systems, states can translate broader disability rights principles into concrete protections and supports that enable disabled people to exercise their fundamental right to marry. The following reforms represent essential components of a multi-level advocacy strategy that addresses structural barriers at their source while complementing federal and community-based efforts.

1. *Abolishing Guardianship and Advancing Supported Autonomy*

Dismantling guardianship represents an urgent and actionable opportunity for state intervention in advancing marriage rights for disabled people. The current system of guardianship strips away fundamental rights—including the right to marry—based on disability labels rather than individualized assessments of decision-making capacity.³⁸⁷ This outdated approach violates both the letter and spirit of modern disability rights law while perpetuating harmful stereotypes about disabled people’s capacity for intimate relationships. States must fundamentally restructure their

385. Julian J.Z. Polaris, *Personal Networks: Health Coverage Status and the Invisible Burden on Family and Friends*, 39 HARV. J.L. & GENDER 115, 179–80 (2016).

386. Garbero, *supra* note 15, at 608.

387. *See supra* Section III.A.

guardianship systems to prioritize autonomy, supported decision-making, and the preservation of relationship rights.

The foundation for this transformation already exists through the pioneering work of twenty-one states and the District of Columbia that have implemented supported decision-making.³⁸⁸ These jurisdictions have demonstrated that supported decision-making not only dismantles explicit legal barriers to marriage but fundamentally shifts the paradigm away from substituted decision-making models that wrongly presume disabled people are incapable of managing their personal lives.³⁸⁹ This established precedent provides both practical models and political momentum for other states to implement similar reforms that respect the dignity, autonomy, and relationship rights of people with disabilities.

Supported decision-making represents a paradigm shift that empowers people with disabilities to retain ultimate authority over their life choices while receiving assistance from trusted supporters.³⁹⁰ Under this model, the person with a disability selects individuals they trust to help navigate complex decisions regarding healthcare, living arrangements, and intimate relationships, while maintaining their role as the primary decision-maker.³⁹¹ This approach recognizes that people with disabilities can make their own choices when provided appropriate assistance, rather than having decisions imposed upon them by court-appointed guardians who may have little understanding of their preferences, values, or relationship goals. Building on these successful models, states should establish supported decision-making as the default legal framework, requiring courts to consider and exhaust less restrictive alternatives before imposing any form of guardianship.

This presumption in favor of supported decision-making would align state law with the principles of the ADA and international human rights standards that recognize the right of all people to make

388. *U.S. Supported Decision-Making Laws*, CTR. FOR PUB. REPRESENTATION (2025), <https://perma.cc/TB86-73JM> (listing states that have implemented supported decision-making).

389. Kristin Booth Glen, *Changing Paradigms: Mental Capacity, Legal Capacity, Guardianship, and Beyond*, 44 COLUM. HUM. RTS. L. REV. 93, 98 (2012) (“The idea of incapacity as an illness or defect that renders the person suffering it to an object of charity and protection, subject to plenary guardianship based on best interests which constrains her personal life and the control of her property has been re-examined and largely rejected.”).

390. Nina A. Kohn, Jeremy A. Blumenthal & Amy T. Campbell, *Supported Decision-Making: A Viable Alternative to Guardianship?*, 117 PENN. ST. L. REV. 1111, 1120 (2013).

391. Megan S. Wright, *More Choosers, Fewer Choices? Supported and Medical Decision-Making Law Post-Dobbs*, 45 PACE L. REV. 139, 144 (2024); J. Matt Jameson et al., *Guardianship and the Potential of Supported Decision Making with Individuals with Disabilities*, 40 RSCH. & PRAC. FOR PERS. WITH SEVERE DISABILITIES 36, 38 (2015).

decisions about their own lives.³⁹² Courts should be required to make specific findings about why supported decision-making is insufficient before ordering any guardianship arrangement, with particular scrutiny applied to guardianship petitions that would restrict marriage rights. Effective implementation requires robust statutory recognition of supported decision-making agreements, enabling people with disabilities to formalize support relationships without the need for court involvement. These agreements should be legally binding and portable across service systems, ensuring that healthcare providers, financial institutions, and government agencies recognize and honor the decision-making arrangements that disabled people choose for themselves.

The transformation to supported decision-making must be accompanied by specific protections for marriage rights within guardianship statutes. Current laws often include marriage among the rights that can be automatically stripped through plenary guardianship orders, treating the right to marry as equivalent to financial decision-making or other areas where substituted judgment might be appropriate.³⁹³ This approach fundamentally misunderstands the nature of intimate relationships and violates the constitutional principles established in cases like *Loving* and *Obergefell* that recognize marriage as a fundamental right central to human dignity and autonomy. States should prohibit the automatic removal of marriage rights in guardianship orders, requiring instead that any restriction on marriage be specifically justified and narrowly tailored to documented concerns about the individual's decision-making capacity.

Courts should apply the least restrictive alternative principle, exploring whether concerns about a proposed marriage can be addressed through supported decision-making, prenuptial agreements, or other protective measures that preserve the person's right to marry while addressing legitimate concerns about their welfare.³⁹⁴ This protection of marriage rights requires corresponding reforms to capacity assessments that reflect modern understandings of relational autonomy and contextual decision-making. Rather than applying rigid cognitive tests or focusing on past behavior, courts should conduct individualized assessments to determine whether a person can meaningfully participate in decisions about marriage

392. Robert D. Dinerstein, *Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road from Guardianship to Supported Decision-Making*, 19 HUM. RTS. BRIEF 8, 11 (2012); see also Jameson, *supra* note 391, at 40 (noting that guardianship is inconsistent with the ADA's mandate of integration and least restrictive alternatives).

393. See *supra* Section III.A.

394. Lorr, *supra* note 15 (manuscript at 46).

when provided with information, time, and support tailored to their communication style and needs.³⁹⁵

The integration of supported decision-making into marital capacity assessments offers transformative potential for expanding marriage access while reforming the institution itself. Courts should evaluate not only an individual's cognitive abilities but also what they can understand and accomplish with appropriate support networks, recognizing that supporters can help individuals consider the implications of marriage and continue providing guidance within the relationship.³⁹⁶ This approach acknowledges that all relationships exist within broader communities of support and that the myth of marital independence fails to reflect the reality of how most people make important life decisions. The integration of these reforms should establish a strong presumption of capacity in marriage-related decisions, placing the burden on those challenging a marriage to demonstrate clear and convincing evidence that the person lacks the ability to understand the nature of the marital relationship, even with support.

These comprehensive guardianship reforms would create immediate, concrete protections for disabled people's marriage rights while establishing legal frameworks that support autonomy and self-determination. By prioritizing supported decision-making and protecting fundamental rights, states can dismantle one of the most significant legal barriers to marriage equality for disabled people while creating models that other jurisdictions can adopt and that may eventually influence federal policy development.

2. *Dismantling Discriminatory Marriage Laws*

The dismantling of guardianship systems must be accompanied by a comprehensive modernization of marriage laws that eliminate disability-based restrictions and embed principles of accommodation and support into capacity determinations. Many states retain outdated statutes reflecting nineteenth-century assumptions about disability, creating legal barriers that prevent disabled people from exercising their fundamental right to marry through categorical restrictions, discriminatory capacity standards, and failure to recognize the role of support systems in decision-making.³⁹⁷

State marriage laws require comprehensive reform to remove automatic disqualifications based on disability status and replace them with individualized assessments. Current statutes that categorically exclude people with certain disabilities (especially intellectual or psychiatric) treat disability as an inherent barrier to capacity rather than recognizing that with proper support, most

395. *Id.* (manuscript at 48).

396. *Id.* (manuscript at 49).

397. *See supra* Section III.A.

people can make informed decisions about intimate relationships.³⁹⁸ These blanket exclusions violate constitutional equal protection principles and contemporary disability rights frameworks that emphasize individual assessment over classification-based restrictions. Moving beyond categorical exclusions, reform efforts should abandon statutory standards that rely on outdated medical models equating specific diagnoses with incapacity. Since capacity fluctuates over time and varies across decision-making domains, blanket determinations about marriage capacity are inappropriate and discriminatory.

Courts should instead adopt Alexander Boni-Saenz's "cognition plus" model,³⁹⁹ which evaluates what individuals can understand and accomplish with appropriate support, assessing whether they can meaningfully participate in decisions about intimate relations when provided with information, time, and tailored assistance.⁴⁰⁰ This individualized approach requires a corresponding shift in the burden of proof. Marriage capacity cases should place the burden on those seeking to restrict the right to marry, establishing a strong presumption in favor of capacity that can only be overcome by clear and convincing evidence of inability to understand the nature and consequences of marriage, even with appropriate support.⁴⁰¹ This approach aligns marriage law with the fundamental nature of the right to marry while ensuring disabled people are not required to prove their worthiness for intimate relationships in ways that nondisabled people are not.

Central to this reformed framework is the recognition that support systems enable meaningful decision-making about intimate relationships.⁴⁰² Rather than viewing the need for support as evidence of incapacity, courts should recognize that most people rely on advice, guidance, and assistance when making important life decisions, including marriage. The presence of disabilities should trigger an assessment of what supports might enable informed choice, not an automatic presumption of incapacity.⁴⁰³ This accommodation approach naturally extends to addressing concerns raised by families or interested parties about proposed marriages. Courts should explore whether these concerns can be addressed through protective measures that support rather than restrict autonomy.⁴⁰⁴ Financial concerns might be addressed through prenuptial agreements that

398. *Id.*

399. Alexander A. Boni-Saenz, *Sexuality and Incapacity*, 76 OHIO ST. L.J. 1201, 1230 (2015); *see also* Lorr, *supra* note 15 (manuscript at 48).

400. Boni-Saenz, *supra* note 399, at 1234.

401. Lorr, *supra* note 15 (manuscript at 14) ("Under the law, capacity should always be presumed.").

402. *Id.* (manuscript at 48).

403. *Id.* (manuscript at 16).

404. *Id.* (manuscript at 46).

protect assets while allowing the marriage to proceed, or through powers of attorney that ensure trusted individuals can assist with financial decisions within the marriage.⁴⁰⁵

These modernized marriage laws, working in conjunction with guardianship reforms, create a comprehensive framework that protects and promotes the marriage rights of disabled people. By eliminating categorical exclusions, embedding accommodation principles, and adopting contemporary understandings of capacity and support, states can ensure their marriage laws reflect both constitutional requirements and contemporary disability rights principles. The reformed legal framework would treat marriage capacity as presumptively present, require individualized assessment when concerns arise, and recognize that appropriate support can enable informed decision-making about intimate relationships. This transformation moves beyond the historical exclusion of disabled people from marriage toward a system that respects their autonomy while providing appropriate safeguards against exploitation or coercion.

3. *Mandating Professional Training*

The legal and policy reforms outlined above cannot succeed without corresponding changes in professional practice and institutional culture that currently perpetuate barriers to marriage and intimate relationships for disabled people. Judges, attorneys, and service providers—including group home staff, residential support workers, case managers, and day program personnel—often lack adequate training in disability rights principles, supported decision-making frameworks, and the fundamental importance of relational autonomy. This knowledge gap leads to decisions and practices that unnecessarily restrict disabled people's relationship choices, even when legal frameworks would support greater autonomy.⁴⁰⁶

The judiciary plays a particularly critical role in protecting marriage rights for disabled people. Yet, many judges receive little training in disability rights law, contemporary understandings of capacity, or supported decision-making principles.⁴⁰⁷ This

405. *Id.*

406. *See supra* Section III.C.

407. *See* Fourth National Guardianship Summit: Maximizing Autonomy and Ensuring Accountability May 2021, *Recommendations Adopted by Summit Delegates*, 72 SYRACUSE L. REV. 29, 32 (2022) (“States, the federal government, and the National Guardianship Network organizations should provide education, training, and outreach programs about supported decision-making” to stakeholders “including state courts, guardians, the education system, families, anyone at risk of or subject to guardianship, health care providers, and other third parties, including government officials, financial institutions, advocates and protective entities, lawyers, Working Interdisciplinary Networks of Guardianship Stakeholders, and the general public.”).

educational deficit contributes to judicial decisions that reflexively favor restrictive guardianship arrangements or apply outdated capacity standards without considering less restrictive alternatives. States should mandate comprehensive disability rights education for all judges handling guardianship or family law cases. This training must address the historical exclusion of disabled people from intimate relationships, the role of ableist assumptions in legal decision-making, and the importance of centering human dignity and family formation rights in judicial determinations. Judges require practical education on implementing supported decision-making, including case studies and interaction with individuals who successfully use these arrangements.

The legal profession more broadly requires intentional educational reform to address the systematic barriers that disabled people face in exercising their right to marry. State bar associations should mandate continuing legal education in disability rights for attorneys practicing in areas that directly impact marriage and family formation, including family law, public benefits, probate, and healthcare. This training should include specific emphasis on the relationship rights of disabled people, supported decision-making as an alternative to guardianship, and the constitutional principles that protect marriage equality. Too often, attorneys—due to a lack of familiarity with disability rights frameworks—advise clients in ways that reinforce marriage penalties, discourage intimate relationships, or promote unnecessarily restrictive legal arrangements.

Service providers require the most immediate and comprehensive training interventions, as they exercise daily control over disabled people's social interactions and relationship opportunities.⁴⁰⁸ Group home staff, residential workers, and day program personnel often receive minimal education about disabled people's sexuality or relationship rights, leading to informal policies that discourage intimate relationships through restrictions on visitors, overnight guests, or private time with romantic partners.⁴⁰⁹ These frontline workers frequently act as unofficial gatekeepers of intimacy, deciding whether residents can attend social events, receive dating support, or maintain intimate relationships within residential settings.

Professional training programs for all disability service providers should include comprehensive modules on sexuality and relationships as normal aspects of human experience for disabled people. This education must provide practical skills for supporting relationship development, including how to facilitate meaningful social connections, communicate respectfully about sexuality and intimacy, and accommodate intimate relationships within residential and

408. *See supra* Section III.C.

409. *See supra* Section III.C.

community settings. Training should specifically address the role of direct support staff in either supporting or restricting relationship formation, emphasizing their obligation to promote rather than police disabled people's intimate lives. State licensing and certification requirements should be updated to include competency standards related to supporting relationship rights and sexual autonomy, with particular emphasis on residential staff who have the most direct impact on disabled people's daily relationship opportunities.

These comprehensive professional development initiatives would create the cultural and institutional changes necessary to support legal and policy reforms. By ensuring that professionals—particularly direct service staff who shape the daily experiences of people with disabilities—understand and actively support relationship rights, states can transform service systems from barriers to facilitators of marriage and family formation.

4. *Redesigning Services to Support Relationships*

The transformation of professional training and legal frameworks must be accompanied by a fundamental redesign of disability services that supports rather than impedes relationship formation and marriage. Current service delivery models operate on institutional logics that treat disabled people as isolated individuals requiring care rather than as human beings with desires for intimacy, partnership, and family life.⁴¹⁰ Medicaid-funded HCBS, residential programs, and day services must be restructured to recognize relationships as essential to community integration and human flourishing, moving beyond narrow definitions of independence to embrace models of interdependence that support meaningful social connections.

HCBS waivers offer states significant flexibility to design innovative services that better support marriage and family life, yet this potential remains largely unrealized.⁴¹¹ States should expand HCBS waiver service definitions to include relationship support as an explicit covered service category, recognizing that maintaining intimate relationships is essential to community integration and quality of life. This could include counseling services specifically designed for disabled people navigating relationships, relationship education programs that address the unique challenges disabled couples may face, and practical supports that help people develop dating skills, maintain long-distance relationships, or navigate the transition to marriage. The development of couple-based housing and living supports represents another critical innovation needed within

410. Griet Roets et al., *A Critical Exploration of Institutional Logics of De-Institutionalisation in the Field of Disability Policy and Practice: Towards a Socio-Spatial Professional Orientation*, 20 *SOC. WORK & SOC'Y* 1, 10 (2022).

411. See 42 U.S.C. § 1396n(c)(3) (authorizing state flexibility in HCBS waiver programs); see also *CTRS. FOR MEDICARE & MEDICAID SERVS.*, *supra* note 373.

HCBS waivers. Current programs typically serve individuals in isolation, but they should be redesigned to accommodate married couples and recognize the realities of shared living arrangements and mutual support networks.⁴¹²

Person-centered planning processes must be fundamentally restructured to center family and relational models rather than treating disabled people as isolated service recipients. Current planning approaches often focus exclusively on individual goals and needs, ignoring the reality that most people's lives are shaped by their relationships with family members, romantic partners, and chosen communities.⁴¹³ Planning processes should explicitly address relationship goals, explore how services can support rather than interfere with intimate partnerships, and recognize that true independence may include choosing to be interdependent with romantic partners or spouses. This shift requires moving beyond individual service delivery to accommodate couples and families, ensuring that personal assistant services can be delivered effectively in shared living situations and creating service models that recognize when one partner provides informal support to the other while also receiving formal services.

Residential programs and congregate living settings require comprehensive policy reforms to protect privacy, intimacy, and relationship rights while actively supporting relationship development among residents. Many group homes maintain policies that severely restrict intimate relationships, treating sexuality as a risk to be managed rather than a normal aspect of adult life.⁴¹⁴ These restrictions often operate through informal practices—such as prohibiting closed doors, restricting overnight visitors, or discouraging romantic relationships between residents—that effectively prevent disabled people from developing the intimate connections that could lead to marriage.⁴¹⁵ Providers operating residential facilities should be required to develop affirmative policies that recognize sexuality and intimate relationships as normal and valuable aspects of adult life. These policies must address practical issues such as privacy accommodations for intimate activities, visitor policies that allow romantic partners reasonable access, and staff training to support rather than police residents' relationship choices.

Facilities should be required to provide private spaces where residents can spend time with romantic partners, accommodate overnight visits when requested, and support residents who wish to move in together or transition to more independent living

412. *See supra* Section III.C.

413. Brown-Hall, *supra* note 213.

414. *See supra* Section III.C.

415. Andrea Hollomotz, 'May We Please Have Sex Tonight?'—People With Learning Difficulties Pursuing Privacy in Residential Group Settings, 37 *BRIT. J. LEARNING DISABILITIES* 91, 94 (2008).

arrangements to pursue romantic relationships. Implementing these service redesign initiatives requires coordination across multiple funding streams and service systems, as disabled people often receive support from programs with conflicting policies on relationships and family formation. States should develop protocols to coordinate services across program boundaries, ensuring that disabled people can pursue relationship goals without losing essential supports or navigating contradictory requirements from different funding sources.

These service innovations should be piloted through demonstration projects that test new models of relationship-supportive services while building evidence about their effectiveness and cost implications. Successful demonstrations could provide models for broader policy reform while offering immediate benefits to participating individuals and couples. The goal is to transform disability services from systems that isolate disabled people to frameworks that support their full participation in community life, including the formation of intimate relationships and families that reflect their own choices and values. This transformation requires moving beyond the medical model of disability services toward a social model that recognizes disabled people's full humanity and their right to love, intimacy, and family formation on equal terms with nondisabled people.

D. Cultural Transformation

Among the four interlocking systems of exclusion that prevent disabled people from marrying—legal, economic, institutional, and cultural—cultural and attitudinal barriers are often the most insidious. Legal rules can be amended and programs redesigned, but cultural narratives are deeply embedded in social norms and reinforced through media, education, religion, and everyday interactions.⁴¹⁶ These narratives depict disabled people as asexual, dependent, or unfit for intimacy and parenthood.⁴¹⁷ More troubling, they are foundational—justifying restrictive laws, sustaining discriminatory practices, and enabling political inaction. Achieving marriage equality requires dismantling the narratives that have long deemed disabled people undeserving of romantic and family life.

Socio-legal scholars emphasize that law and public opinion operate in a feedback loop.⁴¹⁸ The trajectory of same-sex marriage illustrates this dynamic: Legal recognition followed decades of

416. See *supra* Section III.D.

417. See *supra* Section III.D.

418. Marina Kurkchyan, *Perceptions of Law and Social Order: A Cross-National Comparison of Collective Legal Consciousness*, 29 WIS. INT'L L.J. 366, 366–67 (2011).

shifting cultural attitudes.⁴¹⁹ Yet influence flows both ways. Legal change can also reshape norms by signaling social values and affirming marginalized identities.⁴²⁰ This dialectic underscores the need for a dual strategy: Cultural transformation and legal reform must proceed together. Without cultural change, legal gains risk being underenforced, hollow, or reversed.

Narrative intervention is essential. As Elizabeth Emens argues, antidiscrimination laws like the ADA can mandate access but not guarantee belonging.⁴²¹ Similarly, Adrienne Asch observed that real inclusion requires judges, jurors, and the public to see disabled people as full, autonomous individuals.⁴²² Unfortunately, dominant media representations continue to reinforce harmful stereotypes, portraying disability as either a tragedy to be pitied or a burden to be borne, which perpetuates the assumption that disabled people are unsuitable for love, sex, or marriage.⁴²³

Cultural reform must elevate disabled people's own narratives of desire, romance, and family. Media should prioritize stories written and performed by disabled creators, challenging asexuality myths and the notion that marriage is a reward for "overcoming" disability. Inclusive relationship and sexuality education can disrupt harmful stereotypes from an early age. Religious and community organizations—key sites of relationship formation—must affirmatively include disabled people in marriage teachings and programming.

Empirical research is also vital. Studies should document how cultural stigma interacts with structural barriers like SSI marriage penalties or guardianship laws to limit disabled people's relational choices. Participatory methods that center disabled voices can reveal overlooked dynamics and guide reform.⁴²⁴ Importantly, these findings must reach beyond academia—into media, policymaking, and

419. Dawn Michelle Baunach, *Changing Same-Sex Marriage Attitudes in America from 1988 Through 2010*, 76 PUB. OP. Q. 364, 364–66 (2012); Riley Erin Fredrick, Note, *Marriage Equality: The Paralleled Progress Between Public Approval and Supreme Court Decisionmaking*, 44 FLA. ST. U. L. REV. 819, 821 (2017).

420. Jonathan E. Cook et al., *Intervening Within and Across Levels: A Multilevel Approach to Stigma and Public Health*, 103 SOC. SCI. & MED. 101, 106 (2014).

421. Elizabeth F. Emens, *Getting It: The ADA After Thirty Years*, 71 SYRACUSE L. REV. 637, 661–62 (2021).

422. Adrienne Asch, *Critical Race Theory, Feminism, and Disability: Reflections on Social Justice and Personal Identity*, 62 OHIO ST. L.J. 391, 396–97 (2001).

423. See *supra* Section III.D.

424. See Emily M.S. Houh & Kristin Kalsem, *It's Critical: Legal Participatory Action Research*, 19 MICH. J. RACE & L. 287, 311, 342 (2014) (describing the importance of participatory action research for policy change).

advocacy spaces—to offer evidence-based counter-narratives that shift public understanding.

Social norms strongly influence policy preferences.⁴²⁵ By amplifying stories that normalize disabled people's relationships, advocates can reshape expectations and build momentum for reform. In turn, inclusive laws can help erode the very attitudes that once justified exclusion. Only by engaging both law and culture—transforming narratives alongside policies—can we dismantle the attitudinal barriers to marriage equality.

CONCLUSION

The systematic exclusion of disabled people from marriage represents more than a civil rights failure; it reveals the fragility of constitutional promises when formal equality coexists with structural barriers that make fundamental rights unattainable in practice. Ten years after *Obergefell*, while the nation celebrates marriage equality as a constitutional triumph, millions of disabled people remain subject to systems that force untenable choices between love and survival, intimacy and basic subsistence. This exclusion does not take the form of explicit prohibitions but instead arises from an integrated architecture of guardianship laws, benefit penalties, institutional policies, and cultural erasure. The result is a sophisticated regime of discrimination that produces eugenic outcomes while appearing consistent with constitutional doctrine.

The path forward requires a recognition that constitutional rights must be more than abstract guarantees available only to those privileged enough to exercise them without penalty. True equality demands dismantling the structural barriers that transform marriage from a fundamental right into an unaffordable luxury for disabled people. At a moment when both marriage rights and disability benefits face renewed political and legal threats, the intersection of these systems provides a critical lens for understanding how constitutional promises can be simultaneously proclaimed and denied. The reforms outlined in this Article—spanning constitutional litigation, restructuring federal benefits, abolishing guardianship restrictions, and cultural transformation—offer a blueprint for making the right to marry a lived reality. Only when people with disabilities are free to enter marriage on equal terms will the Constitution's guarantees of liberty and equality be fully realized. And only by addressing this exclusion alongside broader struggles for recognition of nonmarital families, chosen kin, and diverse forms of intimacy can we move toward a more expansive vision of family justice that honors the dignity of all people.

425. Meirav Furth-Matzkin & Cass R. Sunstein, *Social Influences on Policy Preferences: Conformity and Reactance*, 102 MINN. L. REV. 1339, 1376 (2018).