Gay Rights in Congress: Public Opinion and (Mis)Representation

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Abstract

Public majorities have supported several gay rights policies for some time, yet Congress’s response has been limited. We document and analyze this tension through dyadic analysis of the opinion-vote relationship on 23 roll-calls between 1993 and 2010, revealing a nuanced picture of responsiveness and incongruence. While constituent preferences influence white male Democrats, black lawmakers and white female Democratic lawmakers generally support gay rights and Republicans consistently oppose them, regardless of constituent preferences. Moreover, changes in constituent opinion typically fail to engender vote changes. This analysis suggests a mix of member persuasion and replacement may be necessary to achieve LGB rights gains in Congress. Word count: 6423
1 Introduction

Scholars have long argued that public opinion tends to shape government policy (e.g., Page and Shapiro 1983; Stimson, MacKuen, and Erikson 1995; Monroe 1998). The potential for policy change in the realm of lesbian, gay, and bisexual (LGB) rights is thought, therefore, to depend on cultivating public support. Yet, increased support for LGB rights has not translated straightforwardly into policy gains.

National polls as well as our new estimates of sub-national public opinion show that Americans favor a variety of legal protections for LGB individuals (see also Egan and Sherrill 2005; Brewer 2008). In some cases, these protections have not been adopted. For example, despite majority public support in all states and nearly every House district, the Employment Non-Discrimination Act (ENDA) has yet to pass both chambers of Congress (peek ahead to Figure 3). In other cases, Congress has acted, but with a significant lag between opinion and policy change. For example, since the high-profile murder of Matthew Shepard in 1998, large national majorities have favored treating violent acts against gays and lesbians as hate crimes, but Congress did not enact hate crimes legislation until 2009. Even when Congress has passed pro-gay legislation, the margin of support has been much smaller in Congress than among the public (e.g., see the gap between public and Congressional support for the repeal of “Don’t Ask, Don’t Tell” in Figure 3).

In this light, it is difficult to gauge what kind of Congressional action—if any—we should expect to see in response to the continuing liberalization of opinion on LGB rights. To better understand the potential for gains in public support to engender further policy gains, we need to know not only whether, but to what extent public opinion incentivizes support from different types of legislators in roll-call votes on LGB issues. To this end, we study the match and mismatch between opinion and policy on LGB rights, engaging in a deep descriptive case study tied to larger theoretical questions about the role of public opinion in the political process. We develop new tools and approaches to interrogate the relationship between public preferences and congressional action on LGB rights. Specifically, we analyze roll-call votes on all five major gay
rights issues addressed by Congress from the early 1990s to the present: same-sex marriage, adoption, hate crimes, employment non-discrimination, and military service. Using an extension of multilevel regression and poststratification (MRP) developed for this project, we estimate opinion on each of these issues over time by state and congressional district, and then consider the extent to which constituent preferences seem to shape the votes of members of Congress (MCs).

While there are limits to the generalizability of a case study of one issue area, our findings do point to a more nuanced understanding of the power and limits of majority will. Moreover, the MRP extension we present herein expands the range of surveys that can be used to estimate district opinion, facilitating future studies of responsiveness. This case study is also important in its own right. Battles over LGB rights have played a central role in America’s ongoing “culture wars”, and the policy outcomes of these battles affect the lives of millions of Americans. Our analysis also contributes to the longstanding debate over the relative roles of top-down and bottom-up forces in producing civil rights gains, and speaks to the appropriate standard of review for LGB rights in federal courts.

We are not the first to study this policy area or to relate roll-call voting to constituent opinion (cf., Haider-Markel 1999, 2001; Lewis and Edelson 2000). However, the scope and precision of our data enable us to go much further than existing work and to provide a more definitive and nuanced set of conclusions. First, our measures of constituent preferences place public opinion and roll-call votes on the same metric, greatly expanding the inferences we can draw. Second, because our analysis spans two decades, we can compare votes cast by the same MCs on the same issues and bills over time, offering additional causal leverage on the opinion-vote relationship. By examining the extent to which MCs “evolve” on these issues, we can gauge whether member replacement will likely be needed to see additional policy change. Finally, our data enable us to consider the possibility that responsiveness varies across lawmakers, by party, race, and gender.¹ Our methodological approach allows us to estimate not only whether

¹On the one hand, ideological commitment and/or party loyalty could inhibit Republicans’ responsiveness to a liberal opinion change. On the other, MCs who are members of groups that have historically faced discrimination (e.g., African-Americans, women) may be inclined to follow the kind of anti-majoritarian minority rights protection endorsed by James Madison in Federalist 10, supporting LGB rights even if their constituents do not.
favorable constituent opinion increases MCs’ tendency to cast pro-gay votes, but also how much public support is necessary to make a pro-gay vote likely.

At first blush, we find that constituent preferences seem to matter a great deal. There is a positive and robust correlation between constituent support and roll-call votes, even after controlling for other influences. Around two-thirds of the roll-call votes in our data are congruent with majority opinion in the MC’s home state or district. Digging deeper, however, we find this correlation masks significant and systematic gaps in responsiveness. Votes appear to respond strongly to constituent preferences only for a subset of MCs: white male Democrats. While black Democrats and white female Democrats tend to support LGB rights regardless of their constituents’ preferences, the significantly more numerous Republican MCs largely ignore pro-gay opinion majorities, sticking to their party’s national platform positions. The bottom line is a large net conservative bias in LGB policymaking. We also find that MCs’ positions rarely evolve over time, even in the presence of significant changes in constituent preferences. In sum, support in roll-call votes requires a large (and likely unachievable) supermajority of public support for many MCs; and those MCs who are relatively impervious to gains in public support for LGB rights often constitute a pivotal voting bloc in Congress.

2 Theoretical Foundations

Congress scholars have long argued that MCs’ desire for reelection motivates them to consider their constituents’ preferences in formulating policy positions (Mayhew 1974; Arnold 1990). Naturally, many studies have uncovered a positive correlation between measures of such preferences and roll-call votes. These correlations are stronger on salient matters (Burstein 1981; Page and Shapiro 1983) and morality policy (Mooney and Lee 1995; Lax and Phillips 2012). This all suggests strong opinion effects on LGB rights issues, akin to Miller and Stokes’ (1963) “instructed delegate” model of representation in which MCs know the preferences of the median

\[2\text{For seminal work on this issue, see Miller and Stokes 1963. More recently, see, e.g., Clinton 2006; Kousser et al. 2007; Bafumi and Herron 2010; Kastellec, Lax, and Phillips 2010.}\]
constituent in their home state or district and act accordingly.

Of course, scholars have also shown that the median constituent does not always get her way (Bishin 2000, 2009; Hacker and Pierson 2005, *inter alia*). As Fenno (1978) famously articulated, the geographic constituency is only one in a set of increasingly smaller concentric circles. Within an MC’s geographic constituency lie her reelection constituency (electoral supporters), primary constituency (most active and strong supporters), and personal constituency (closest allies and advisors). MCs often face incentives to prioritize the preferences of these groups. For Republican lawmakers, religious conservatives constitute an important segment of their primary constituency, creating pressure to vote against LGB rights, regardless of the preferences of the median voter. Correspondingly, LGB individuals and their allies have become a notable constituency of Democratic lawmakers, creating pressure to support LGB rights (Fetner 2008). MCs are also likely to face pressure from party leaders. Starting in 1992, the national Democratic and Republican parties have staked out increasingly divergent positions on LGB rights, and these positions play a significant role in party branding (Bishin and Smith 2013).

As a result, we anticipate partisan differences in responsiveness. Interest group and party pressures should lead Republican lawmakers to be, in the end, less sensitive than their Democratic counterparts to liberalizing public preferences on gay rights. Correspondingly, Democrats may be particularly responsive to evolving public opinion.

The MC’s own views and background can matter as well. Besides ideological influences, elites who are themselves members of a group that has historically faced discrimination might believe in the need to set aside public opinion that is unfavorable to LGB rights, drawing analogies between the civil rights struggles of their own group and the fight for gay rights. The National Association for the Advancement of Colored People (NAACP) has supported gay rights since the debate over open military service reached the national stage in 1993, even over the

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3The 1992 Republican platform opposed the inclusion of sexual preference in federal civil rights statutes, the legal recognition of same-sex relationships, adoption of children by gay and lesbian couples, and open inclusion of gays and lesbians in the military; the Democratic platform called for civil rights protections for gays and lesbians and an end to discrimination in the Defense Department. Over time, the distance between the parties’ official positions has grown.

4There is a parallel to Brady and Schwartz (1995), finding that concern about primary election constituencies constrained Republicans’ responses to the liberalization of opinion on abortion in the 1970s and 1980s.
objections of many of its members and sometimes black public opinion more broadly (cf., Edsall 1993; Conant 2010; Wallsten 2012) It has explicitly linked the battle for LGB rights to the struggle for African-American civil rights (cf., Robinson 2012). Similarly, the National Organization for Women (NOW) has supported the cause since 1971, when it expanded its mission to include lesbian rights.

Another reason the median constituent may not get her way is stickiness. Besides potential status quo biases, MCs might not wish to publicly switch positions, even if public opinion has changed. Vote flips are easy rhetorical targets in campaigns. Lawmakers could also be unaware of opinion change, though this seems unlikely in this salient issue area.

3 Existing Work

Most existing work on public opinion and government action on LGB rights compares state-level opinion to state policy adoption (e.g., Haider-Markel 2001; Haider-Markel and Kaufman 2006; Lax and Phillips 2009b).\(^5\) We cannot assume Congress will replicate patterns observed at the state level. On the one hand, Congressional votes are generally more visible to the public than votes in state legislatures, so federal lawmakers may be more sensitive to public preferences. On the other, however, party pressures are probably greater in Congress than in most states. Thus, an analysis at the federal level is needed. This also gives us an opportunity to connect opinion to individual lawmakers’ votes, as opposed to system-level outcomes.

The few existing studies of Congressional action on gay rights teach us much but employ coarse measures of constituent preferences and legislative behavior.\(^6\) To capture the former, scholars create indices of pro-gay opinion by averaging constituent preferences across several

\(^5\)Lax and Phillips (2009b) showed that clear supermajority support for some policies failed to spur changes in state law.

\(^6\)A notable exception is a paper by Bishin and Smith (2013), which uses MRP to calculate district level opinion on DOMA. They find that MCs consider opinion generally, and pay particular attention to important subconstituencies, consistent with findings by Bishin (2000, 2009). As TABLE 1 shows, however, public opinion on this set of votes was exceptionally low (on average, 29% of constituents supported same-sex marriage at this time). This still leave us with the question, then, of why MCs have not kept up with the public’s liberalization of support for LGB rights. Their findings are suggestive, but a broader analysis of many issues over time is still needed.
issues; to capture the latter, they create indices averaging roll-call votes and/or cosponsorships (Lewis and Edelson 2000; Haider-Markel 2001; Oldmixon and Calfano 2007). This inhibits precise analysis, since surveys consistently document much greater support for some gay rights policies (e.g., protections against employment discrimination) than others (e.g., same-sex marriage). Further, indices of opinion and policy lack a common metric, severely constraining the inferences one can draw. Researchers can show the degree and direction of the correlation between constituent ideology and roll-call voting, but cannot tell whether MCs follow their median constituent, whether policy is over- or under-responsive to opinion, whether opinion or ideology is the key, how responsiveness varies across policies, or whether opinion change results in policy change. Our dyadic analysis overcomes these limitations.

4 Data and Methods

Roll-Call Votes. We evaluate the opinion-vote relationship on 23 roll-call votes across the five issue areas considered by Congress. Some propose liberal changes to the status quo, others conservative. We use survey questions on the issue being voted upon around the time of (almost always before) the vote (see Supplemental Information for details).7

- **Adoption**: Two House votes on amendments to the Washington D.C. appropriations bill to prohibit unrelated couples in Washington D.C. from adopting a child (passed 1998; failed 1999).
- **Same-Sex Marriage**: Three proposals. (1) Defense of Marriage Act (DOMA), defining marriage as a union between one man and one woman so that the federal government could not recognize same-sex marriages and no state would be required to recognize those from out of state (passed both chambers by wide margins). (2) Federal Marriage Amendment (FMA), seeking to amend the Constitution to define marriage as a union between one man and one woman (failed to receive the requisite supermajority in the House in 2004, failed cloture votes in the Senate in 2006). (3) Amendment to the Health Care and Education Reconciliation Act, suspending the issuance of

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7E.g., if we are considering a 2010 roll-call vote to repeal the military’s ban on service by openly gay men and women, we use survey data on this issue from 2010.
marriage licenses to same-sex couples in D.C. (rejected by the Senate in 2010).

- **Gays in the Military:** Four failed votes in 1993 and three successful votes in 2010. Of the failures, two tried to codify a full ban on military service by gays and lesbians, and two aimed to allow the President to decide the issue.\(^8\) In 2010, the House voted twice and the Senate once to repeal DADT, the policy prohibiting the military from asking recruits about their sexual orientation, but allowing the military to discharge gay service members.

- **Jobs:** ENDA sought to prohibit employment discrimination on the basis of sexual orientation (defeated by one vote in the Senate in 1996, passed the House in 2007). A 1998 effort to defund President Clinton’s executive orders prohibiting discrimination in the federal civilian workforce failed in the House.

- **Hate Crimes:** Votes in both chambers in 2000 and 2009 on a proposal to expand existing hate crimes protections to include sexual orientation. In 2000, the measure passed but died in conference committee. In 2009, the bill was signed into law.

**Opinion Estimation: Mr. P Goes to Washington.** To estimate opinion for each roll-call vote in our analysis, we use multilevel regression and poststratification (MRP). This technique, first presented by Gelman and Little (1997), uses national surveys and advances in Bayesian statistics and multilevel modeling to generate opinion estimates by demographic-geographic subgroups. MRP produces accurate estimates of public opinion by state and congressional district using as few data as in a single national survey and fairly simple demographic-geographic models (Park, Gelman, and Bafumi 2006; Lax and Phillips 2009a, 2013; Warshaw and Rodden 2012).

MRP proceeds in two stages. In the first stage, we estimate a multilevel model of individual survey response, modeling opinion as a function of a respondent’s demographic characteristics as well as her state and (where appropriate and available) her congressional district. Our models use four demographic characteristics: gender, race, age, and education.\(^9\) We also include several

\(^8\)We interpret a “yea” as a vote to allow gays to serve openly in the military, since this was President Clinton’s position.

\(^9\)For gender, there are two categories: male and female. For race, there are three categories: black, Hispanic, and white or other. For age, there are four categories: 18-29, 30-44, 45-64, and 65+. For education, there are five categories: less than high school, high school degree, some college, college degree, and post-graduate degree.
state- and district-level variables that should be correlated with support for gay rights.\textsuperscript{10} We control for slight differences across polls, which accounts for variation in question wording. We find these predictors explain individual survey responses well.

We then use this model to “predict” opinion for each demographic-geographic type of respondent (e.g., the probability that a black female in New York of age 30-44 with a college degree supports same-sex marriage). Then, the opinion estimates for each demographic-geographic respondent type are weighted (poststratified) by the percentages of each type in actual populations (in either the state or congressional district), to form the total population percentage. Population frequencies were obtained from the Public Use Micro Data Samples supplied by the Census Bureau. These are converted to congressional district frequencies using the Missouri Census Data Center’s Geographic Correspondence Engine (geocorr2k).\textsuperscript{11}

\textbf{“Cross-Level MRP”} One challenge in generating estimates by congressional district is that polling data for some issues do not include district identifiers, preventing the direct use of district-level predictors in the modeling stage even if we have them at the poststratification stage. Normally, if we used a variable such as presidential vote measured at the district level, we would estimate the association of district-level presidential vote with response controlling for demographic influences and other geographic influences; then, in predicting response for a given hypothetical respondent type, we would include the product capturing the influence of presidential vote: district-level presidential vote in that hypothetical respondent type’s district \times the estimated coefficient on district-level presidential vote. We always have the former term (by public record), but sometimes lack the latter term. In these cases, one simple way forward would be to use state-level values and correlations for things like presidential vote, with the recognition that the poststratified estimates will vary because the demographic composition of each district varies. Still, only district demographic differences (and not aggregate correlation variables) will

\textsuperscript{10} State effects are modeled as a function of region, percent African-American, percent Mormon or Christian Evangelical, and percent voting Democratic in the prior presidential election. District effects are modeled similarly in terms of district shares thereof (except for religion data, which is not available), and are grouped by state effect.

\textsuperscript{11} We use distinct poststratification files for the periods before and after the 2000 national redistricting, after the 2003 Texas redistricting, and after the court-required 2003 Texas redistricting.
differentiate districts.

Fortunately, there is another way forward, which does not ignore district-level correlations, and outperforms the simpler solution described above. This modification to basic MRP runs the modeling stage at the only possible level of aggregation, the state level, but imputes the needed coefficient on (say) presidential vote to be the coefficient on district-level presidential vote as if we had originally done the analysis at the district level. Here, we use state-level (as opposed to district-level) values for presidential vote share in the first-stage response model. Then, in the prediction stage, we multiply the resulting coefficients on these state-level variables not with the state-level values but with the Congressional district values for presidential vote share. We do the same with percent black. This implicitly assumes that the “effect” of aggregate presidential vote on individual response is the same whether measured at the state level or district level, or at least that an estimate from the former is a good estimate of the latter.\(^{12}\)

**FIGURE 1** shows how this modification improves opinion estimates (see caption for details). Our modified MRP strongly improves the accuracy of estimates, compared to using only state-level information in both the response model and prediction, producing estimates of district-level opinion that are very similar to the estimates we get when district identifiers are available.

**Data Summary.** TABLE 1 displays summary statistics for our 23 roll-call votes and issue-specific opinion around the time they occurred. Across all votes, our estimates are coded in the pro-gay direction, such that higher values always indicate higher support for gay rights.

## 5 Responsiveness and Congruence

If MCs act as instructed delegates on gay rights issues, we should expect their roll-call votes to be both highly responsive to and congruent with constituent preferences. By responsive, we mean there ought to be a strong positive correlation between the level of pro-gay public opinion in an

\(^{12}\)Ardoin and Garand (2003) call this top-down estimation. We thank the editor for drawing our attention to this.
MC’s home district or state and the probability that he or she will cast a pro-gay vote. By congruent, we mean that an MC’s roll-call vote aligns with majority opinion in his or her home district or state.

**Responsiveness.** Each graph in Figure 2 takes one roll-call vote and plots the probability of an individual legislator casting a vote in favor of LGB rights against our estimates of opinion. Responsiveness to public opinion is strong if the logit curve is steep and positively sloped. For each of our 23 roll-call votes, the probability of an MC casting a pro-gay vote is indeed positively correlated to the level of public support for gay rights in the MC’s home district or state. Bivariate regressions show that the slopes of all of the logit curves are statistically significant at the 95% level, and that the slopes vary across policies.

**Congruence.** If we look at congruence with majority opinion, however, the opinion-vote relationship appears weaker, and often biased in one direction or the other. Consider the maps of majority opinion and roll-call votes on DADT and ENDA in Figure 3. There are far more conservative votes than there are conservative constituencies. We can see this in Figure 2 as well. The dotted line extending from the x-axis indicates the 50% opinion level, and the line from the y-axis indicates a 50% pro-gay vote probability. The y-value at which the logit curve intersects the vertical dotted line is the predicted probability of a pro-gay roll-call vote when public support is 50%. The x-value at which the the horizontal dotted line intersects the curve is the needed level of public support for the predicted probability of a pro-gay vote to reach 50%. In a system of perfect majoritarianism, the regression curves would be very steep at 50% opinion and pass through the crosshair in the middle of each graph. This would yield perfect congruence. For some votes (cf. “FMA2006senate”), the curve comes close to this “majoritarian ideal,” but even a cursory glance at Figure 2 shows that we do not always observe perfect majoritarianism.

Of course, some degree of incongruence is expected. An MC may not know or care about the difference between 48% and 52% support. Mismatches between opinion and voting near the majority threshold are not necessarily of academic interest either. When large supermajorities are
needed to bring about a 50% chance of a pro-gay vote (i.e., if the logit curve is shifted far to the right of the crosshair), however, there are significant biases in policymaking that cannot be explained by uncertainty or dismissed as trivial.\textsuperscript{13} For example, in the case of “JOBS2007house,” constituent opinion needs to be 71% before the MC has a 50% probability of casting a liberal vote. This helps to explain the mismatch between opinion and voting displayed in the maps in Figure 3. For “HATE2009house” constituent opinion needs to be 68%. Consequently, congruence for both is relatively low—only 56% for “JOBS2007house” and 59% for “HATE2009house.” In contrast, congruence for the 2006 Senate vote on the Federal Marriage Amendment (with a responsiveness curve that passes through the crosshair) is a whopping 80%.

Overall, we find that 68% of the 6,435 terminal roll-call votes in our analysis are congruent with majority opinion.\textsuperscript{14} By roll-call vote, congruence ranges from 56% to 86%. By issue area, congruence is highest on same-sex marriage (74%) and lowest on hate crimes (61%).\textsuperscript{1}

While incongruence of different types could theoretically cancel out, it does not here. Only 552 of 2,089 (26%) incongruent votes are in the liberal direction. When MCs vote against the preferences of their constituents, they tend to take a more conservative position. The final columns of Table 1 show the net liberal vote bias—the number of liberal incongruent votes minus the number of conservative ones. In the House, the greatest benefit the pro-gay side ever received from incongruence amounted to 79 votes (“DADT1993hunterhouse”), while they lost more than 150 votes four times (e.g., “HATE2009house”). These mismatches between opinion and voting are often consequential. Under constituent opinion majorities, four roll-call votes would have flipped in the pro-gay direction (“FMA2004house,” “FMA2006house,” “FMA2006senate,” and “JOBS1995senate”), and three would have flipped the other way (“DADT1993senate,” “DADT1993hunterhouse,” and “DCMARRIAGE2010senate”).

\textsuperscript{13}On non-civil rights issues, the same concerns would arise about liberal bias (i.e. instances in which the logit curve is shifted far to the left of the crosshair. As Madison articulates in Federalist 10, however, there are legitimate reasons for MCs to ignore majority opinion that would oppress minority rights.

\textsuperscript{14}If we only consider roll-call votes where the size of the opinion majority is greater than 60% or 70%, then congruence rises to 78% and 86%, respectively.
Differences by Party, Race, and Gender. Now consider “raw” voting records by MC, shown in Figure 4. Each graph plots mean pro-gay opinion against the career percentage of pro-gay votes cast by each MC. The top-left panel captures the positive overall relationship between opinion and roll-call voting. However, this aggregate panel masks significant variation by party and race, shown by the other three panels. Democratic non-black (i.e., white, Hispanic, or other race) MCs drive the aggregate relationship between voting and opinion; neither Democratic black MCs nor Republican MCs show much of a relationship between opinion and voting. Black MCs are concentrated at the top of the graph, and, comparing the flat lowess curve in the top right graph to the steep curve in the lower left, there is a much weaker relationship between opinion and voting for black Democrats than for non-black Democrats. Democratic female MCs vote similarly to black MCs (see Supplemental Information).\textsuperscript{15} Party also plays a major role here, as Republican MCs are far less responsive to the liberalization of opinion on LGB rights than Democrats. Two-thirds of Republicans in our sample have never cast a pro-gay roll-call vote, regardless of opinion.\textsuperscript{16} All together, these results suggest that public opinion “matters” for roll-call voting in a broad sense; however, the success of proposals to extend LGB rights will depend in large part on the composition of Congress.

Vote Switching. We can gain even more insight into the role of opinion in the policy process by focusing on MCs who cast multiple votes on the same issues over time, to see if opinion change matters (we might not expect votes to change if opinion has not). There are five issues with roll-call votes in different sessions: adoption (1998, 1999), “Don’t Ask, Don’t Tell” (1993, 2010), the Federal Marriage Amendment (2004, 2006), hate crimes (2000, 2009), and employment non-discrimination (1998, 2007). Since support for gay rights has been steadily increasing over time, we are most interested in studying the extent to which MCs shifted from opposition to support for gay rights. So, we focus on the 687 (of 1,453) pairs in which the first vote was against gay rights.

\textsuperscript{15}Female Republican MCs are between Democratic and Republican male MCs. See Supplemental Information for graph.
\textsuperscript{16}In the Supplemental Information, we show a comparison to MC Nominate score for context.
Figure 5 plots pro-gay constituent opinion at the time of the first vote against pro-gay opinion at the time of the second vote. Each point represents a legislator who voted twice on a particular issue. The key area, from a responsiveness standpoint, is the top left quadrant. Here, we have MCs whose constituents did not support gay rights at the time of the first vote, but did at the time of the second. In a world of perfect majoritarian responsiveness, all of the dots in this quadrant would be black (i.e., every legislator should switch his vote). However, this is far from the case. In reality, only 16 of the 78 MCs (21%) in this quadrant switched their votes (14 of 23 Democrats switched, while only 2 of 55 Republicans did). White male Republicans who started out with an anti-gay vote in an anti-gay district, whose district shifted to being pro-gay, had only a 4% chance of switching to the pro-gay position in the second vote. In contrast, white male Democrats whose districts started out as anti-gay and switched to pro-gay had a 65% chance of switching.

Vote switching is related to opinion, in that switchers saw an 8% increase in pro-gay opinion between votes on average, while non-switchers saw a 1% increase. However, switching is uncommon overall, occurring in only 6.3% of vote pairs (91 switches), and particularly rare amongst Republicans. This striking vote inertia cannot be attributed solely to Republicans, however; almost 40% of the Democrats whose constituents switched from anti-gay to pro-gay failed to follow as well. Uncertainty cannot explain all of this resistance—while some of the points in the graph’s top left quadrant are clustered around the 50% mark, many are not (the same is true for the top right quadrant, in which the MCs’ constituents supported LGB rights at both times). Thus, some degree of turnover in both parties may be necessary for LGB rights measures to succeed in Congress.
6 Models of Roll-Call Votes

The dependent variable is whether the roll-call vote cast was pro-gay (liberal). We include indicator variables for Republican, Female, Latino, Black, and Senate. We also include both dimensions of the Poole and Rosenthal measures of MC ideology, DW Nominate 1 and DW Nominate 2. TABLE 2 displays results from eight model variants, to check robustness across specifications (with further notes in the Supplemental Information) and to facilitate various “all else equal” comparisons (so raw coefficients must be interpreted with caution). We allow varying intercepts and slopes for opinion.

The basic relationship between voting and opinion holds: MCs whose constituents demonstrate higher levels of pro-gay support are more likely to cast pro-gay votes, even after controlling for party and ideology (which are themselves strongly influenced by constituent preferences). The effects of opinion remain when we control for Democratic presidential vote share in the state or district, and other similar predictors. At an average value of opinion (in Model 1), an additional point of support increases the chance of policy adoption by approximately 5 percentage points.

Party also predicts voting (e.g., Models 2, 4, and 7; in Models 6 and 8, the Republican coefficient is the effect of party after controlling for Nominate score, a strange all-else-equal comparison). Model 4 shows that blacks and Latinos tend to vote pro-gay relative to whites, controlling for opinion (and not controlling for Nominate). Models 5 and 6 show almost no difference between blacks and whites once we control for Nominate, but this is only true on average, as explained later.

Regression results confirm that black MCs are more likely to cast pro-gay votes than white...
MCs (see the positive, significant coefficient on \textit{black} in Model 4). These models allow for the effect of opinion to vary by MC type. Additional pro-gay support matters less for black MCs than white MCs, as indicated by the negative and significant coefficient on the interaction with opinion in models 7 and 8. For each additional point of policy-specific opinion (based on Model 7), the probability of a white male Democrat casting a pro-gay vote rises by 5. For white Republicans, the probability only rises by 4, and for black Democrats, it only rises by 3. We also used Model 7 to calculate the level of pro-gay opinion needed for a 50\% probability of casting a pro-gay roll-call vote for six types of MCs, ordered from most pro-gay to least (for the average roll call):

\begin{itemize}
\setlength\itemsep{0em}
\item Black Female Democrats: 31\%
\item Black Male Democrats: 38\%
\item White Female Democrats: 40\%
\item White Male Democrats: 46\%
\item White Female Republicans: 58\%
\item White Male Republicans: 66\%
\end{itemize}

The "Coin Flip" Point

Overall, we find strong evidence for our hypothesis that support for gay rights should be especially high amongst MCs belonging to groups that have historically faced discrimination. Though our findings about Latinos depend on model specification, we consistently find that African-American and female MCs are especially likely to cast pro-gay votes.\textsuperscript{19} Turning to differential responsiveness, however, race seems more influential than gender. While women are not any more or less responsive to growing support for gay rights than men, changes in opinion have less influence on African-American MCs than their white colleagues. This is primarily because black MCs strongly support gay rights, even if their constituents do not.

To further examine the LGB rights-civil rights connection, we coded floor speeches on four of our votes to see what kind of arguments MCs made in favor of LGB rights (see Supplemental

\textsuperscript{19}Interacting party and gender, we find that the effect of gender varies by party. This is also clear in Figure 8 in the Supplemental Information. We do not interact race and party because there is almost no variation in party identification among African-American MCs, and little among Latinos. There does not appear to be a particularly strong interaction between party and race for Latinos. Latino Democrats voted in the pro-gay direction 90\% of the time; Latino Republicans voted in the pro-gay direction 33\% of the time. In comparison, white Democrats voted pro-gay 82\% of the time, and white Republicans voted in the pro-gay direction 11\% of the time. Latino Democrats are congruent 87\% of the time, while Latino Republicans are congruent 57\% of the time. In comparison, white Democrats are congruent 82\% of the time, while white Republicans are congruent 47\% of the time.
Information for details). We found that, for each vote, civil rights arguments played a greater role in speeches by black Democrats, compared to white Democrats or Republicans. And older cohorts of black MCs (i.e. those socialized in the civil rights era) are more likely to cast pro-gay votes, relative to younger cohorts of black MCs, conditioned on opinion. We find no similar relationship for white or Latino MCs. More broadly, we also find that the second dimension of Nominate, which tended to represent racial justice issues for much of the twentieth century, also influences voting on gay rights issues (see Model 8). This is notable, as Poole & Rosenthal show that most conflict occurs on the first ideological dimension today. Overall, MCs’ preferences with regard to civil rights appear to be influencing their willingness to support LGB rights, but this connection is particularly strong for African-American MCs.

### 7 Time Trends

The snapshot provided thus far obscures important differences over time, illuminated in Figure 6. Reading these panels in order tells the following story: [1] Mean pro-gay opinion increased over time, from around 45% to around 60%. [2] The number of pro-gay opinion majorities increased more sharply, from around 35% to 85%. [3] However, the percentage of pro-gay roll-call votes cast increased far less dramatically, from 50% to 60%. [4] Surprisingly—for now—overall congruence stayed nearly constant (around 70%). [5] and [6] But, the nature of incongruence changed drastically. Incongruence, once leaning to the liberal side, now strongly cuts against pro-gay policy, measured either as a percentage of total incongruence (where the degree of incongruence is incorporated) or by the net vote bias (under +15% to -25%). The predicted conservative vote bias from incongruence now averages 109 votes in the House (i.e., 109 votes are “lost” because MCs are not following constituent opinion) and 25 in the Senate.

Breaking this down by party, Figure 7 reveals even more insights. Five of the panels parallel panels in the previous figure, and are labeled [P] to indicate as much. They show: [1P] Support for gay rights has grown in both Democratic and Republican constituencies over time.
While the parties started roughly in the same place, in terms of opinion in their districts/states, Democrat-represented constituencies (DRCs) have grown more liberal at a slightly higher rate than Republican-represented constituencies (RRCs), leading to a small party gap today (roughly 5 percentage points). There is a larger gap in terms of opinion majorities, which has stayed constant over time. DRCs went from a rough split between pro-gay and anti-gay majorities to nearly 100% pro-gay majorities. However, most RRCs have been majority pro-gay since the late 1990s as well (75% as of 2011). Within Congress, we observe a very different pattern. Democrats have steadily voted more pro-gay over time, starting from a relatively high base rate. But, Republicans have remained relatively constant around a much lower rate (less than 15%), despite changes in their constituencies. Consequently, while the gap between Democratic and Republican districts has grown only slightly, in Congress it has grown dramatically. This is consistent with a broader pattern, noted by Hacker and Pierson (2005), of increasingly conservative policymaking that does not reflect public will. The final panel focuses more directly on party polarization.20

Since RRC pro-gay majorities have become far more common, Republican congruence rates have plummeted from 75% to 35%. Democratic congruence has increased. This is partly because DRCs have moved in line with the initial pro-gay voting rates observed, and partly because Democrats have moved to match their increasingly pro-gay DRCs by voting along those lines. The initial liberal vote bias by Democrats disappeared by the early 2000s, and they have stayed in line on average since (that is, the remaining incongruence cancels out). Republicans, who started out with balanced incongruence, now show clear conservative bias relative to their RRCs. Congruence remained constant overall because the increase in Democratic congruence balanced the decrease in Republican congruence.

20The Rice likeness score is the absolute difference between the percentage of yea votes cast by each party, subtracted from 100, revealing the degree of similar pro-gay voting rates between parties. Cohesion is the Rice cohesion score for voting agreement within each party (absolute difference between the yea and nay votes cast within a party) (Rice 1925, 1928). Cohesion has risen and likeness plummeted, a clear display of polarization. Rather than responding to constituent opinion, Republican MCs are sticking with their party’s conservative position.
8 The Limits of Responsiveness

Some say that the gay rights movement has rushed ahead of public opinion, sidestepping elected representatives by using courts and judges to achieve policy goals. In his dissenting opinion in *Lawrence v. Texas*, Justice Scalia accused his fellow Supreme Court justices of being complicit in this subversion of the democratic process: “So imbued is the Court with the law profession’s anti-anti-homosexual culture, that it is seemingly unaware that the attitudes of that culture are not obviously ‘mainstream’.” He invokes the lack of Congressional action on LGB rights as clear evidence that the “homosexual agenda” is counter-majoritarian.

Analyzing the relationship between opinion and policymaking in the U.S. Congress, we find the opposite pathology. Despite a degree of responsiveness to opinion, we find there is a persistent bias against constituent will on LGB rights. This anti-gay bias in Congressional roll-call voting is actually countermajoritarian. Moreover, our analysis underestimates this bias, because it does not account for agenda control. If the majority party is able to block bills from reaching a roll-call vote in the first place, this adds an additional blockage to the democratic process for LGB individuals. Pro-gay legislation, even when supported by large opinion majorities, is almost never brought to a vote in the House when Republicans control the chamber.\(^{21}\)

Our results suggest LGB individuals cannot rely on the political process to further their rights. Not only might they need to turn to courts to protect their rights, but courts would have the grounds to step in to do so—not being able to resolve the problem using normal political processes is one of the reasons that courts raise the standard of review they apply in cases of potential discrimination. Specifically, our findings suggest that LGB individuals would qualify for “suspect class” status; that is, they are a group in need of particular protection on the basis of political vulnerability (a concept introduced by Justice Stone in *United States v. Carolene Products*).\(^{22}\)

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\(^{21}\)To be clear, bills on LGB issues during our time frame were not only brought to a vote when they would receive majority support.

\(^{22}\)When the courts deal with discrimination claims, they can apply different standards of review. These range from the lowest hurdle to declare constitutionality, rational basis; to intermediate scrutiny; to strict scrutiny, the highest hurdle. The rational basis test only requires that there exists some rational basis for the law, with a presumption of
Disaggregating MCs by party, gender, and race illuminates important nuances in the opinion-vote relationship that system-level studies, like those conducted at the state level, cannot capture. While Democrats in Congress have steadily increased their support for gay rights as their constituents have liberalized on these issues, Republicans have maintained the same positions against gay rights that they had in the early 1990s, even when there are pro-gay opinion majorities in their districts or states. In other words, increased polarization at the elite level has inhibited responsiveness to the liberalization of opinion on LGB rights. While black MCs and white female Democratic MC generally cast pro-gay votes regardless of their constituents’ preferences, they cannot compete with Republican MCs in terms of numbers. All together, these patterns have led to a large partisan gap in responsiveness, and a growing conservative bias in policymaking.

Our findings resist an easy categorization into top-down or bottom-up explanations for policy change. There seems to be a top-down process pushing for gay rights for black and female MCs, and bottom-up pressure from the public affecting many white Democratic MCs. However, our analysis of voting patterns amongst MCs serving long enough to vote on the same issue more than once over time shows that Republican MCs are not the only ones who hold their ground against gay rights even when a majority of their constituents grow supportive—many Democratic MCs fail to switch their votes as well. On the whole, it is clear that persuasion has limitations as a tool for achieving civil rights gains. Looking forward, much will depend on the partisan composition of Congress, and even member replacement amongst Democrats.

While our analysis does not speak directly to the literature on descriptive representation, as openly LGB members of Congress are still too few to study systematically, it raises important questions on the subject. Scholars have long argued that it is important for women and minorities

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constitutionality. On the other hand, strict scrutiny begins with a strong presumption of unconstitutionality, which the government can overcome only if it has a compelling interest in the law, which must also be narrowly tailored to that interest. There are two reasons why a Court would apply strict scrutiny: if the state law violates a fundamental right or if the population affected by the law constitutes a suspect class. In the famous footnote in Carolene Products, 304 U.S. 144 (1938), Justice Stone wrote that “prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities,” such that in those kinds of cases, the Court may need to employ a more rigorous standard. At present, suspect classes include race, religion, and national origin. We do not speak here to the “fundamental right” basis for strict scrutiny, but can speak to the second basis.
to hold public office because they should be most willing and able to represent people sharing their demographic characteristics (e.g., Pitkin 1967; Phillips 1995; Sapiro 1981; Mansbridge 1999), and evaluated the extent to which such descriptive representation occurs (e.g., Swers 1998, 2002; Wangnerud 2009; Harris 2012). This paper looks more broadly at the extent to which MCs who are members of historically underrepresented populations represent members of other historically underrepresented populations. Our findings suggest that descriptive representation can operate in this broader sense, at least on LGB rights issues; however, this can come at the expense of classic descriptive representation. Like the NAACP, African-American MCs (many of whom represent majority-minority states and districts) have sometimes supported LGB rights over the objections of African-Americans in the electorate.23 The potential for conflict between narrower and broader views of descriptive representation in Congress is interesting and important, and deserves further study. Given historical tensions between different liberal causes like feminism, organized labor, and African-American civil rights, there should be many other instances in which such conflict has occurred for MCs (see, e.g., Harrison 1989; Kessler-Harris 2007; Frymer 2011).

We also need to know more about the power and limitations of public opinion on Congressional roll-call voting in other issue areas. We would like to see more work on dyadic representation, to put our extended case study into context, and additional analyses of critical stoppages in the democratic process. Methodologically, we have extended the reach of the MRP opinion-estimation technique, facilitating this substantive research agenda.

**References**


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23Surveys at the time of DOMA demonstrated that 25% of African-Americans expressed support for same-sex marriage, while black MCs cast 55% pro-gay votes on DOMA. Around the time of FMA, 58% of African-Americans supported the pro-gay position, while black MCs cast 82% pro-gay votes.


McCarty, Nolan, Keith T. Poole, and Howard Rosenthal. 2006. Polarized America: The Dance
of Ideology and Unequal Riches. Cambridge, MA: The Massachusetts Institute of Technology Press.


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Table 1: Opinion and Congruence by Roll-Call Vote. The first three columns summarize opinion by district or state. The fourth is the percentage of constituencies with pro-gay opinion majorities. The fifth and sixth columns show percentages of pro-gay roll-call votes and congruent votes respectively. The final columns are the net number of pro-gay votes, by chamber, lost due to incongruence. There is a large range in opinion across states and districts.
### Responsiveness Regressions (Did the legislator cast a pro-gay vote?)

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Table 2: *Responsiveness Models.* Standard errors are shown below the coefficients. Continuous variables are standardized (subtracting the mean and dividing by 2 standard deviations, putting them on the same scale as each other and roughly the same scale as the dichotomous variables). Two-tailed tests are used: * < .10, ** < .05.*
Figure 1: Adjusting for Missing Congressional District Identifiers. We take policies that do have congressional district identifiers in the survey data and estimate district opinion using: (1) a standard MRP that makes use of the congressional districts identifiers; (2) an MRP that uses state-level data for presidential vote and percent black in both the response model and in prediction; and (3) an MRP that uses state-level data for presidential vote and percent black in the response model, but district-level values for these variables in the prediction and poststratification phase (our modification). We plot estimates of district-level opinion for three issues using survey data that includes congressional district (cd) identifiers (on the y-axis) against similar estimates that do not make use of these identifiers (on the x-axis). The top panel uses state-level presidential vote and share black in both the response model and prediction phase; the bottom panel uses state-level values of these variables in the response model, but district-level values in the prediction phase. The 45 degree line is shown.
Figure 2: Basic Relationships. Each graph plots the probability of a pro-gay vote from a logistic regression curve (the dark line) given state or district opinion (lighter lines are lowess curves). Each x- and y-axis runs from 0 to 100% for opinion and the probability of a pro-gay vote, respectively. Opinion in states/districts whose MC cast a pro-gay (anti-gay) vote are plotted in a “rug” on the top (bottom) axis. Dotted lines show the 50% marks in opinion and vote probability. Panels are ordered by the position of the curve relative to the 50% crosshair (top to bottom, left to right).
Figure 3: Maps of Opinion and Voting on “DADT2010house” and “JOBS2007house”.
Figure 4: Pro-Gay Voting Record Given Opinion, By Party and Race. The unit is the member of Congress, plotted by mean pro-gay votes and mean pro-gay opinion. The size of the points shows the number of votes represented (from 1 to 14). Republicans are shown with squares, white Democrats with circles, and black Democrats with triangles. Lowess curves are displayed. Note that the overall direct relationship between voting and opinion (in the top left panel) is generally due to non-black Democratic MCs, and that neither black Democratic MCs nor Republicans show any simple relationship between opinion and voting.
Figure 5: Vote Switching. We plot voting behavior for the 687 pairs of votes by the same legislator on the same issue where the initial vote was anti-gay. Each circle is a Republican, each square a white Democrat, each triangle a black Democrat, filled in when the second vote was pro-gay, and hollow when the second vote was anti-gay. The x-axis shows opinion at time 1 and the y-axis at time 2, with the 45 degree line showing where opinion has not changed. We break the votes into quadrants to show whether opinion at each time was above or below the 50% mark. The fraction switching within each quadrant is shown.
Figure 6: *Opinion, Votes, Congruence, and Bias* Over Time. Averages for each stated quantity are shown over districts or states, as appropriate, over time. The dashed line and dotted lines are lowess curves for all policies and policy area subsets, respectively.
Figure 7: Parties Over Time. Panels other than the last are numbered in parallel with Figure 6, but broken down by party. Democrats are shown with solid triangles and a dashed lowess curve; Republicans are shown with open circles and a dotted lowess curve. The bottom right panel contains Rice Likeness Scores (shown with gray open squares and gray solid line) and Rice Cohesions Scores.