# Public Opinion and Gay Rights: Do Members of Congress Follow Their Constituents' Preferences?

Katherine L. Krimmel
Dept. of Political Science, Columbia University
klk2118@columbia.edu

Jeffrey R. Lax
Dept. of Political Science, Columbia University
jrl2124@columbia.edu

Justin H. Phillips
Dept. of Political Science, Columbia University
jhp2121@columbia.edu

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**Abstract**

While gay and lesbian rights have become controversial, high-profile issues in contemporary American politics, scholars know relatively little about what drives federal policymaking in this area. In this paper, we consider a likely determinant of government action—public opinion—by investigating the relationship between the roll call votes of members of Congress on gay rights legislation issues and the policy-specific preferences of their constituents. For each state and congressional district, we use national-level surveys and advances in multi-level modeling to estimate the preferences of constituents on bills relating to same-sex marriage, hate crimes, employment nondiscrimination, and military service. We then use these estimates to examine the effects of policy-specific opinion on the corresponding roll call votes. In addition to constituent opinion, our models of legislator behavior include variables that capture the partisan identification, ideology, and personal characteristics of individual lawmakers. We can, thus, evaluate the effect of constituent opinion relative to other potential and know determinants of roll call votes. Overall, our results will contribute to our understanding of democratic representation, policy responsiveness, and legislative behavior surrounding civil rights issues.

# 1 Introduction

On the same day the nation voted to elect its first African-American president, California voters—who supported Obama over McCain by a wide margin of 61% to 37%—voted to ban gay marriage through Proposition 8. This set off a wave of protests in approximately 300 cities across the nation, including a day of simultaneous protest in all fifty states, "surpassing in size and scope even the 1969 Stonewall riots, which started the modern gay rights movement" (Buchanan 2008). California's state initiative clearly evoked a strong national response. It also encouraged the lesbian, gay, bisexual and transgender (LGBT) movement to transition from a state-by-state strategy, which longtime leader Cleve Jones claimed had "failed," to a national strategy (Thrasher 2010). State-level work perpetuated "endless ping-pong games," Jones told the *Village Voice*. "Even if we defeat Prop 8, the right wing will put it back on the ballot...Even when we win, those victories are incomplete and impermanent. And we've seen how easily an electorate can become inflamed, and can vote away people's rights" (Thrasher 2010).

Of course, what will happen in the national arena is far from clear. Although there have been several high-profile votes on gay rights issues such as the Federal Marriage Amendment, the Defense of Marriage Act and, most recently, the repeal of "Don't Ask, Don't Tell," we actually know very little about what influences legislative behavior on gay rights issues at the federal level. In any vote decision calculus, legislators have several sets of preferences to consider: their own, their party's, those of relevant interest groups and, of course, those of their constituents. How they balance these different—and sometimes diverging—preferences is an important question for our understanding of legislative behavior as well as the future of gay rights policy.

As Lax and Phillips (2009b) demonstrate, there has been a significant trend toward liberalization of public opinion surrounding a variety of gay rights issues across the nation, creating large majorities at the national level in favor of certain gay rights issues. We can also see this growing support in the wave of widespread protests following Proposition 8.

Do these trends portend gains for the LGBT movement through legislative action in the House and Senate? In other words, should we expect legislators to follow their constituents' preferences on these issues?

To address these questions, we will offer a preliminary analysis of public opinion's influence on legislative behavior surrounding four gay rights issues: marriage, hate crimes, employment non-discrimination, and military service. This paper represents a first step in a larger project examining the relationship between constituent opinion and federal roll call voting on gay rights issues. Using multi-level regression and poststratification (MRP), we calculate public opinion estimates for these four issues at the state and congressional district levels, and proceed to compare them to roll call voting records. This will give us a better understanding of legislative behavior surrounding gay rights at the federal level, which has received little attention in political science. It will also constitute a step forward in the study of responsiveness to public opinion, since federal roll call records report the votes of individual legislators. This will allow us to connect individual legislators with policy-specific constituent opinion, enabling a more precise test of responsiveness than we can get at the state level. We will also compare the effect of public opinion to individual legislator characteristics like partisan affiliation, race, gender, and ideology. This will give us a sense of the importance of public opinion in shaping the votes of lawmakers on gay rights issues in comparison to other variables that might go into his or her vote decision calculus.

Approaching the question from another angle, we will also examine congruence between constituent opinion and roll call voting. How often do we see mismatches? In other words, who is ignoring public opinion? In previous work, two of this paper's authors found a conservative bias in voting on gay rights issues at the state level (Lax and Phillips 2009b). This paper will examine the extent to which a similar bias appears at the federal level and what these findings mean for the future of gay rights in America.

## 2 Theoretical Foundations

Before examining empirics, however, it seems worth thinking about what we might want the answers to be. Does following public opinion constitute good representation? Do we want Members of Congress to honor the wishes of their constituents? These are not trivial questions; indeed, they often surfaced in debates surrounding the writing of our Constitution. In *Federalist No. 10*, James Madison advocates representative government over pure democratic government not only because it protects minorities from oppressive majorities, but also because "it may very well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose." Better informed than the average citizen, representatives "refine and enlarge the public views," and their overarching concern for the nation as a whole will make them less likely than their constituents to be unduly swayed by "temporary or partial considerations."

In sum, good representation does not necessarily mean following constituents' wishes. Legislators do not simply represent the people who live within their state or district; they also represent the national public good. Madison expected them to act as a filter against parochial interests, uninformed opinions and destabilizing passions. We might argue that this is even more true today than it was at the time of Madison's writing, since the average American in the modern era knows shockingly little about politics and legislators now have large professional staffs and vast informational resources at their disposal (Delli Carpini and Keeter 1997). In this light, perhaps we should not wish to see a strong relationship between public opinion and roll call voting.

Applying Madison's thinking to the particular circumstances surrounding gay rights issues, however, we confront an important qualification. *Federalist 10*'s famous concern centered on "curing the mischiefs of faction"; but not just any faction—a majority faction. Minority factions are not especially concerning, he argues, because the majority should be able to control them. Republican government was designed, in large part, to protect mi-

norities from oppressive majorities who would not be likely to exercise self-control. We do not necessarily want legislators to follow constituent opinion on minority rights issues if such opinion seeks to oppress these rights. For the health of democratic representation, we would want representatives to ignore opinion that would restrict rights and follow opinion that would enhance them. To the extent that public opinion and roll call voting are incongruent, then, we should hope to see a liberal bias. Madison would probably not be surprised by California voters' decision in Proposition 8, and he would likely expect the national government to correct the "mischiefs" of this local anti-gay majority.

Whether or not we should expect to see responsiveness is a different question altogether. There are a few ways to approach this question. While there has been little work on our specific question, we may turn to a few different literatures to assist us with different parts of our analysis. Specifically, we can look to the literatures on general responsiveness to public opinion, the origin and evolution of civil rights gains, and responsiveness to opinion on gay rights at the state level. An important exception to the scholarly void in this area is Haider-Markel's work on Congressional behavior surrounding gay rights. Adding insight from these other literatures to Haider-Markel's (2001) work will help us to build hypotheses about responsiveness to public opinion on gay rights at the national level.

Previous studies of responsiveness to opinion have been relatively positive. Page and Shapiro (1983) and Stimson, MacKuen, and Erikson (1995) demonstrate a correlation between opinion and policy at the national level. Erikson, Wright and McIver assert an even stronger finding at the state level, arguing "state opinion is virtually the only cause of the net ideological tendency of policy in the states" (1993: 81). Others have received similar, if less dramatic conclusions (e.g., Norrander 2000 and Brace, et al. 2002; see Burstein 2003: 38-9).

As Burstein (2003) points out, the central issues in public opinion research are now the degree to which opinion affects policy and the conditions under which it can. Answering these more nuanced questions has proven quite difficult. For a long time, work focusing on

responsiveness was complicated by the relative paucity of comparable polls across states. Lax and Phillips (2009b) were able to overcome this problem by constructing estimates of state-level policy-specific opinion using MRP, developed by Gelman and Little (1997) and Park, Gelman and Bafumi (2006), and systematically assessed by Lax and Phillips (2009a). The merits of this method will be discussed further in the Data and Methods section.

With this method, Lax and Phillips (2009b) were able to calculate state-level opinion on specific policies, and study its effect on state adoption of policies affecting gays and lesbians, as well as the factors that condition this relationship. They found a high degree of responsiveness, controlling for interest group pressure and the ideology of voters and elected officials. There is, however, a surprising amount of non-congruence—for some policies, even clear super-majority support seems insufficient for adoption. When non-congruent, policy tends to be more conservative than desired by voters.

Examining roll call voting behavior across three gay rights issues at the national level, Haider-Markel (2001) also finds evidence of responsiveness to public opinion. This is consistent with other studies of morality policy, though his work represents a step forward in measurement (Mooney and Lee 1995; Morgan and Meier 1980). Whereas previous studies tended to use religious affiliation as a proxy for citizen preferences, Haider-Markel uses an additive index of three different questions about gay rights to construct a more specific opinion estimate.

Our study will build on this work in a few ways. First, as described above, we will use MRP to calculate more exact estimates of public opinion. Second, we will have a more precise dependent variable. Haider-Markel measured legislative behavior by the percentage of time each legislator cast pro-gay votes in a congressional session. While this provides a general measure of behavior surrounding gay rights issues, it does not allow for variation across issues or over time within a session. In contrast, we will use roll call records to compare policy-specific opinion to individual legislators' vote choices on those particular issues. This also constitutes a step forward from previous work by Lax and Phillips (2009b), since individual

voting records are not generally available at the state level.

To get a sense of the importance of public opinion for gay rights gains, we might also look to the literature on civil rights. Where have such gains come from on other issues, and what has been the role of public opinion in these cases? In their well-known work on issue evolution, Carmines and Stimson (1989) argue that elites lead the way in civil rights, while the masses follow. This would suggest that we should not expect to see responsiveness to public opinion. However, many scholars have since challenged this work (Lee 2002; Karol 1999; Chen 2007; Feinstein and Schickler 2008). Most recently, Feinstein and Schickler (2008) argue that Republicans and Democrats began to diverge on civil rights at the state level much earlier than originally thought, and that this behavior was a response to constituent preferences. They do not compare issue-specific opinion to individual legislative behavior on roll call votes, but their analysis suggests that we should find a positive correlation between the two.

Based on previous work, we hypothesize that constituent opinion will strongly influence roll call voting behavior on gay rights at the federal level. Though the incumbency advantage may allow legislators to vote against citizen preferences on some issues, we expect them to be highly responsive in this case because gay rights issues tend to have high salience. These issues are generally non-technical, meaning legislators' informational advantage over constituents should not be relevant. We also expect to find a conservative bias at the federal level, as we did at the state level in previous work (Lax and Phillips 2009b).

# 3 Data and Methods

To estimate constituent opinion by state and congressional district we rely upon Multilevel Regression and Poststratification (MRP). MRP, a 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 has been

shown to produce accurate estimates of public opinion by state and by congressional district (Park, Gelman, and Bafumi 2006, Lax and Phillips 2009a, Rodden and Warshaw 2010), using as little data as a single national survey and fairly simple demographic-geographic models (Lax and Phillips 2009a). The usefulness of MRP for studying questions of government responsiveness has been demonstrated by Berkman and Plutzer (2005), Lax and Phillips (2009b), and Kastellec et al. (2010).

MRP proceeds in two stages. In the first stage, a multilevel model of individual survey response is estimated, with opinion modeled as a function of a respondent's demographic and geographic characteristics. The results of this model are then used to generate an estimate of opinion for each demographic-geographic type of voter. The second step is poststratification: the opinion estimates for each demographic-geographic respondent type are weighted (poststratified) by the percentages of each type in actual populations of the relevant geography (either the state or congressional district). This allows us estimate the percentage of respondents within each who have a particular issue position or preference. Poststratification is done using state or congressional district population frequencies obtained from either the Public Use Micro Data Samples supplied by the Census Bureau or similar data. For full details of the basic method, see Lax and Phillips (2009a, b) and Rodden and Warshaw (2010). We convert the Census Public Use Microdata Area to congressional districts using the Missouri Census Data Center's Geographic Correspondence Engine (geocorr2k).

We model survey response as a function of race, gender, age, education, state, region, state and congressional district presidential vote share, aggregate state religious conservatism, and poll. These are standard predictors of social attitudes, in general and on gay rights in particular (e.g., Cook 1999). We find that demographic and geographic predictors perform quite well in explaining responses at the individual level. For policies that have polls with congressional district identifiers, we use the coefficient on congressional district presidential vote share from the response model and in the poststratification. For policies/polls without congressional district identifiers, we use the coefficient on state presidential vote share from

the response model and congressional district vote share in the poststratification file. This variation is innocuous as shown in FIGURE 1. Either way, the precise demographic makeup of each congressional district is used in the poststratification. Furthermore, we use distinct poststratification files for the period before the 2000 redistricting, after the 2003 Texas redistricting, and after the court-required change to the Texas 2003 redistricting.

We evaluate the opinion-vote relationship in four issue areas, on a total of 18 separate roll call votes. Some of these roll call votes are on proposals extending gay rights relative to the status quo, while some are on proposals that represent conservative changes to status quo policy. For each roll call vote our estimates of opinion are specific to the issue being considered and rely on survey data collected around the time of the roll call vote. So if we are considering a 2010 roll call vote on repeal of the military's ban on openly gay service men and women, we use survey data from 2010 and 2009. See TABLE 1 for a list of the roll call votes used. TABLE 2 reports the survey data/questions we employ to estimate state and congressional district opinion.

• *Same-Sex Marriage*: There were two proposals in this area. The first is the Defense of Marriage Act (DOMA). This act proposed defining marriage as a legally recognized union between one man and one woman. Under DOMA, the federal government would be prohibited from recognizing same-sex marriages and no state would be required to recognize same-sex marriages performed outside the state. DOMA was voted on in the House and Senate in 1996, passing in both by wide margins. The second is the Federal Marriage Amendment (FMA), which sought to amend the U.S. Constitution to define marriage as a union between one man and one woman. This proposal was voted on in the House and Senate in 2004 and 2006. The FMA did not receive the requisite supermajority in the House and failed cloture votes in the Senate.

• *Gays in the Military*: We have identified seven roll call votes pertaining to gays in the military, five of which occurred in 1993 and two of which occurred in 2010. Of the 1993 votes, one aimed to codify "Don't Ask, Don't Tell" (which prohibited the military from asking about

the sexual orientation of recruits, but allowed the military to discharge gay service members), two attempted to codify a full ban on gays and lesbians in the military, and two aimed to allow the President to decide the issue. Since President Clinton proposed allowing gays and lesbians to serve openly, we interpret a yes vote on these final two amendments as vote to allow gays to serve openly in the military. All of these votes failed, with the exception of the House vote to codify "Don't Ask, Don't Tell." The 2010 votes (one in the Senate and one in the House) were both successful proposals to repeal the ban on gays and lesbians serving openly.

• *Jobs*: We have identified three votes on employment non-discrimination. Two, a 1995 Senate vote and a 2007 House vote, were on the Employment Non-Discrimination Act (ENDA), which would prohibit discrimination in employment on the basis of sexual orientation. In the Senate, ENDA was defeated by a single vote. It passed the House in 2007, but did not reach a vote in the Senate. The third vote was a failed attempt by the House in 1998 to defund President Clinton's executive orders that prohibited discrimination on the basis of sexual orientation in the federal civilian workforce.

• *Hate Crimes*: We have identified a vote in each chamber in 2009, both proposals to extend existing hate crimes protections to include sexual orientation.

Table 3 shows descriptive statistics concerning our estimates of public opinion for each roll call vote. Across all votes, our opinion estimates are coded in the pro-gay direction, such that higher values always indicate more pro-gay opinion. Note, there is variation in pro-gay opinion across issues and within issues over time. The roll call with the highest support for the liberal position, at an average of 74.7%, was the 2007 House vote on ENDA. Note that support for ENDA rose between the first Senate vote in 1995 and the 2007 House vote. Pro-gay opinion was lowest on the Senate and House DOMA votes in 1996, averaging just above 30%. Note, mean pro-gay opinion is over 50% for 14 of the 18 roll calls. For two of the remaining four, opinion is 49.9%. For most roll call votes, however, there is a large range in public opinion across states and congressional districts, with the median voter in

some districts or states preferring pro-gay policy and the median voter in others preferring conservative policy.

# 4 Results: Basic Responsiveness and Congruence

**Responsiveness.** We begin by considering responsiveness at the level of individual roll call votes. Each graph in FIGURE 2 takes a roll call vote on a gay rights issue and plots the probability of an individual legislator casting a pro-gay vote on the y-axis, against our estimates of their state or congressional district's opinion on the x-axis. The small tick marks along the top (bottom) axis show the opinion in states or congressional districts whose representative cast a pro-gay (anti-gay) vote. In each panel, the bold line shows the logit regression curve. A policy is strongly responsive if it has a steep, positively sloped curve. All of the curves indicate a statistically significant responsiveness coefficient (at the 95% level), meaning that the probability of a lawmaker casting a pro-gay vote is positively correlated to policy-specific opinion. The thinner line is a lowess curve, which shows that the vote-opinion relationship does not require assuming a logistic regression relationship.

However, responsiveness does vary across policies. First, the strength of the opinion-vote relationship differs, as indicated by variation in the steepness of the logit curves. For example, the logit curve for the 2006 vote in both the House and Senate on the Federal Marriage Amendment is much steeper then the 1993 Senate votes on "Don't Ask, Don't Tell". Second, policymaking often has a conservative bias. To see this, consider the location of the logit curves, which can be shifted left or right of center, meaning either less or more pro-gay opinion is needed respectively to bring about a pro-gay roll call vote. The dotted lines extending from the x- and y-axes indicate (respectively) where public support and the probability of a pro-gay vote each reach 50%. The point at which the regression curve intersects the vertical dotted line reveals (read on the y-axis) the predicted probability of policy adoption when public support is 50%. The point at which the regression curve intersects

the horizontal dotted line reveals (read on the x-axis) the needed level of support for the predicted probability of adoption to reach 50%. The crosshair at the intersection of the two dotted lines marks the point at which 50% public support corresponds to a 50% chance of policy adoption.

For perfect majoritarian responsiveness, the slope of the estimated logit curve would be very steep at 50% and go through the crosshair within each panel. For 10 of our 18 roll call votes, the logit curve comes close to passing through this crosshair, suggesting a level of responsiveness that is close to the "majoritarian ideal." This indicates a striking degree and consistency of responsiveness, one which has not been observed in many other issue areas (see Lax and Phillips 2010).

**Congruence.** However, even in the presence of responsiveness, one can still observe a fair amount of incongruence. If the responsiveness curve goes through the crosshair, but is insufficiently steep, we have policy bias, but this bias is ideologically balanced (i.e., some is conservative, some is liberal, and they cancel out). However, if the curve is shifted to the right of the crosshair, then a large level (more than a majority) of liberal opinion is needed to bring about a pro-gay vote. This indicates a conservative bias in policymaking (under-responsiveness to liberal opinion). When the curve is to the left of the crosshairs, it indicates the opposite. The farther the logit curve falls from the crosshair, the greater the magnitude of the bias. Even a cursory glance at FIGURE 2 shows that we do not always observe perfect majoritarian responsiveness.

Indeed, our results include clear examples of strong responsiveness (a steep curve) coinciding with frequent mismatches between majority will and policy, due to biased policy curves. The 2007 House vote on employment non-discrimination ("JOBS2007house") and the House 2009 vote on hate crimes ("Hate2009house") both show a significant positive relationship between opinion and a lawmaker's vote and have steep responsiveness curves. When plotted, however, both fall to the right of the crosshair. This shift means that support has to be far

above 50% to have a 50% chance of a pro-gay roll call vote. Indeed, for "JOBS2007house" constituent opinion needs to be 73% before the lawmaker has a 50% probability of casting a liberal vote. For "Hate2009house" constituent opinion needs to be 69%. The consequence is that congruence for both is relatively low—only 56% for "JOBS2007house" and 59% for "Hate2009house". In comparison, congruence for the 2006 Senate vote on the Federal Marriage Amendment (which has a responsiveness curve that passes through the cross hair) is a whopping 80%.

Overall, we find that 64% of the 4,982 roll call votes included in our analysis are congruent with majority opinion. If we only consider roll call votes where the size of the opinion majority is greater than 60%, then congruence rises to 70%. For majorities of size 70% or more, congruence rises to 82%. Of course, congruence varies substantially by roll call vote. The percentages listed in the fourth column of TABLE 3 are the shares of roll call votes that match the district or state opinion majority. Across roll call votes, congruence ranges from 38% ("DADT1993skeltonhouse") to 86% ("DOMA1996senate"). The issue areas in which policy most frequently matches majority opinion are those dealing with same-sex marriage (77%)—votes on the Federal Marriage Amendment and the Defense of Marriage Act. Votes tend to be least congruent in the area of employment non-discrimination (57%).

These findings are similar to those of Lax and Phillips (2009b), who show that state policies toward same-sex marriage are highly congruent with state public opinion, but uncover a great deal of incongruence when it comes to employment law. To put the 64% overall congruence figure for congressional votes into perspective, for state-level gay-rights policies (not votes), Lax and Phillips (2009b) find a similar 62% level of congruence, which is significantly higher than the 48% congruence level Lax and Phillips (2011) find over a much larger set of policy types. Matsusaka (2010) finds a 57% congruence level for a subset of these policies. Finally, Monroe (1998) finds a 55% match between national policies and national opinion majorities over a wide set of issues. Gay rights majoritarianism does not appear to be very different at the state and national levels.

Incongruence can be in the liberal or conservative direction. It is liberal when the opinion majority is anti-gay, but the lawmaker casts a pro-gay vote. Correspondingly, it is conservative when the opinion majority is pro-gay but the legislator casts an anti-gay vote. The overall ideological direction of incongruence for each roll call vote can be seen by looking at the placement of the logit curves in FIGURE 2. When the responsiveness curve goes through the 50-50 crosshair but is insufficiently steep, incongruence will be balanced between the liberal and conservative directions. When the curve fall to the right (left) of the crosshair, incongruence will be in the conservative (liberal) direction. For example, the 2010 House vote on "Don't Ask, Don't Tell" falls to the right of the crosshair, indicating a tendency for conservative incongruence.

In general, we observe very little liberal bias. Of the 1,770 incongruent roll call votes in our data only 303 (17%) are in the liberal direction. That indicates that when lawmakers vote against the preferences of their constituents, they tend to take a more conservative position. Another way of looking at this is that liberal opinion majorities get what they want 59% of the time, while conservative opinion majorities prevail 79% of the time. The ideological tendency of incongruence for each roll call vote is shown in TABLE 3. The fifth column is the share of incongruent votes that are liberal. For only 4 of 18 roll call votes do we see more liberal than conservative bias. Of course, the percentage of liberal incongruence may not matter if few net votes are affected (that is, if total incongruence is small or if incongruence of different types cancels out). So, we can also calculate the net number of pro-gay votes gained or lost due to incongruence. The sixth column shows the net liberal vote bias—the number of liberal incongruent votes minus the number of conservative ones. This measure demonstrates that anti-majoritarian voting behavior amounts to a significant loss of potential support for gay rights in roll call votes. In the House, for example, the greatest benefit the pro-gay side ever gained from incongruence amounted to 68 votes ("DOMA1996house"), while they lost more than 150 votes five times (see, for example, "DADT2010house" where the pro-gay side lost 174 votes). The bottom line is that legislators are highly responsive

to constituent opinion on gay rights issues, but there remains a fair amount of incongruence that overwhelmingly benefits the conservative position.

# 5 Results: Multivariate Analysis

**Responsiveness.** We move now to multivariate regression models, which allow us to account for additional potential determinants of roll call voting behavior. We begin with models of responsiveness in which the dependent variable indicates whether the roll call vote cast was pro-gay (liberal). We combine all roll call votes into a single "mega model," including roll call votes cast in both the House and Senate for all issues listed in TABLE 1. The variables used include the following:

- *Opinion*: the percentage of constituents (with an opinion) who support the the pro-gay position on the roll call vote
- *Republican*: coded one if the lawmaker is a Republican, zero otherwise
- *DW Nominate*: liberalness of the lawmaker based on her roll call voting behavior (flipped such that higher values equal increased liberalness)
- *Male*: coded one if the lawmaker is male, zero otherwise
- *Latino*: coded one if the lawmaker is Latino, zero otherwise
- *White*: coded one if the lawmaker is white or Asian, zero otherwise
- *Senate*: coded one if the lawmaker serves in the Senate, zero otherwise

TABLE 4 shows results from eight model variants, to check robustness across specifications. Model 1 includes only opinion; model 2 adds the party of the lawmaker; model 3 adds race; and models 4 through 8 include all variables. Models differ in terms of the amount and nature of multilevel structure they incorporate. Models 1 through 4 use only issue random effects while the remaining models consider different combinations of state and issue random effects, member of Congress random effects, issue fixed effects, and state fixed effects.

The basic relationship between voting and opinion is very clear: lawmakers whose con-

stituents have higher levels of pro-gay opinion are far more likely to cast pro-gay votes. This effect holds even after controlling for a lawmaker's party and ideology, which are themselves strongly influenced by generalized constituent preferences. All responsive models show that policy-specific opinion has a significant and strong effect on voting. Our findings are unchanged (in all models) if we allow the slope of opinion to vary across roll call votes. At average/zero values (in Model 3), one additional point of policy-specific opinion increases the chance of policy adoption by three percentage points.

Of the remaining variables, only two seem to perform consistently across all models. *DW Nominate* is always a positive and significant determinant of voting behavior—more liberal members of Congress are more likely to cast a pro-gay roll call vote. Male lawmakers, on the other hand, are more likely to cast a conservative vote. Both of these findings are consistent with survey data (men are generally less supportive of gay rights while liberals are generally more supportive).

Race and party seem to perform inconsistently across models. However, it is not that the "effect" of race varies so greatly across specifications. Rather, these models each have a different conception of "holding all else equal." The coefficients on *White* and *Latino* are positive and significant when we do not control for state random or fixed effects. When we account for state, however, they are no longer significant and the sign on *White* becomes negative. The coefficient on *Republican* is positive in models that include both party and *DW Nominate*. Models 2 and 3 show that Republicans are far less likely to cast a pro-gay vote. However, models 4 through 8 show that given their own preferences and other characteristics, they might be slightly more likely to cast a pro-gay vote than one might expect.

Which model one should use to evaluate the impact of being Republican depends on what the substantive questions is—that is, what one wishes to hold constant. (It can be a rather odd thought experiment to hold constant the nominate score of a black Democratic congressman when "changing" him to a white Republican congressman.) For example, Model 3 lets us ask the following question: at what level of pro-gay policy support does a congress-

man, given his race and party, reach a 50% probability of casting a pro-gay vote? In this model, we do not hold *DW nominate* scores constant, so we capture both the effect of the legislator's liberalism and his or her special responsiveness on this issue. White Republicans are pushed to an even chance of a pro-gay vote when constituent support reaches 70%. A white Democrat needs 51% support, and a black Democrat needs only 48% support.

Interestingly, Senators are no more or less likely than their counterparts in the House to cast a pro-gay vote. Allowing the slope of opinion to vary across chambers shows absolutely no difference.

**Congruence.** For congruence models, the dependent variable indicates wether or not the roll call vote matches the opinion majority. These models invoke opinion in terms of the size of the opinion majority and whether it is liberal or conservative. Otherwise these models mirror those for responsiveness, though we find some different results. The new opinion variables are listed below:

- *Size of Majority*: the size of the opinion majority, ranging from 50% to 100%
- *Liberal Opinion Majority*: coded one if the opinion majority is liberal, zero otherwise

All congruence models show the strong impact of majority size. The larger the opinion majority, the stronger the signal sent to political actors, and so the greater the likelihood of congruence. As shown in our baseline congruence analysis above, liberal majorities are less likely to get their way. The coefficient on *Liberal Majority* is always negative and highly significant. Additionally, all else equal, the more liberal the congresswoman, the more likely her votes will be congruent. Surprisingly, members of the House are no more likely than Senators to match their roll call votes to opinion majorities.

We do find some interesting and robust results with respect to race. Latino and white members of Congress are significantly more likely than black members to cast a congruent vote. Substantively, this effect is meaningful. The "effect" of being white increases the probability of a congruent vote by up to 17 percentage points, and the "effect" of being

Latino increases the probability of a congruent vote by up to 27 percentage points. Again, caution is needed given that different models hold difference things constant.

To unpack this result, and to set aside some of the "all else equal" complications, we calculate (using simple cross-tabs of votes and opinion majorities) the ideological direction of incongruence for each racial group. What we uncover is striking. Incongruent votes cast by white lawmakers are only liberal 15% of the time, whereas 60% of the incongruent votes cast by black lawmakers are liberal. This indicates that when black lawmakers ignore the wishes of their constituents, they often do so to cast a pro-gay vote. In general, blacks are twice as likely to cast a pro-gay vote as white lawmakers. However, it is not just that black lawmakers cast pro-gay votes when their constituents want them to. Facing a pro-gay opinion majority, blacks vote pro-gay 93% of the time; facing an anti-gay opinion majority they still do so 63% of the time. Compare this to white lawmakers, who, facing a liberal opinion majority, cast a pro-gay vote 54% of the time. Facing a conservative opinion majority, white lawmakers cast a pro-gay vote 19% of the time. For white Democrats, these numbers are 86% and 41%.

While the number of black members of Congress is not large enough to affect many outcomes (given the vote margin on the roll call votes we study), this finding still presents a puzzle about the relationship between race and representation. Subsequent work will explore this puzzle in more detail. In the meantime, we can offer a preliminary comparison of representatives and the represented. Around the time of the DOMA votes, 25% of blacks (people not legislators) supported same-sex marriage (30% of whites did so). But black legislators cast 55% pro-gay votes on DOMA (whites cast 13%). Around the time of the two FMA votes, 58% of blacks supported the pro-gay position (whites 54%), and black legislators cast 82% pro-gay votes (whites 41%).

# 6 Discussion: Gay Political Power & the Role of Courts

What does all of this mean for the future of gay rights politics in the United States? As the recent repeal of Don't Ask, Don't Tell demonstrates, legislative gains are possible—if slow—at the federal level. However, this study indicates that opinion majorities are not always sufficient to stimulate policy change. Since gay rights issues are likely to appear in the judicial arena in the near future as well, it is worth considering the potential implications of our findings at the level of the Supreme Court.

Justice Antonin Scalia's dissent in *Lawrence v. Texas* (which overturned state bans on sodomy) received a great deal of attention for its blunt language on gay rights. The Court's opinion, he argues, "is the product of a law-professional culture that has largely signed on to the so-called homosexual agenda, by which I mean the agenda promoted by some homosexual activists directed at eliminating the moral opprobrium that has traditionally attached to homosexual conduct." Scalia is concerned about gay activists imposing their policy objectives on the public with the Court's assistance. His dissent uses a lack of Congressional action in support of gay rights as evidence that pro-gay attitudes are not "mainstream," and should not be imposed on the public by the court.

While many people accused Justice Scalia of insensitivity and homophobia, our study challenges his dissent from a different angle, which may ultimately prove even more powerful. His excoriation of the Court's opinion assumes that legislative action and inaction reflect the will of the people. Our paper suggests that courts should not use legislative behavior as a proxy for public will, at least not on gay rights issues. While public opinion does influence legislative behavior on these issues, responsiveness is not only imperfect, but systematically (though not universally) biased in a conservative direction. Our findings challenge Scalia's argument about the imposition of the "homosexual agenda" on an unconsenting public, as well as his assumption that congressional action reflects majority opinion.

For example, there has been a clear national majority in favor of a law protecting gays and lesbians from employment discrimination since the early 1990s, yet Congress has only held

three votes on employment non-discrimination over the past 15 years, one of which was a vote to roll back existing protections for gays and lesbians in the federal workforce. Our analysis shows that all three votes exhibited a strong conservative bias, falling on average 131 votes shy of what we would expect if members of Congress voted in accordance with constituent preferences. Indeed, there remains no national law banning employment discrimination on the basis of sexual orientation. State policymaking does not correct for this bias, as states themselves exhibit a strong conservative bias when it comes to legislating in this arena (Lax and Phillips 2009b).

The only evidence for the elite-anticonstituent-homosexual-agenda hypothesis comes from the small number of black legislators, who are more likely to cast pro-gay votes relative to constituent preferences, in contrast to white legislators who are less likely to support the pro-gay position relative to constituents. From another angle, one could argue that black legislators are the only ones honoring Madison's ambitions for representative government, and its ability to protect minority rights against oppressive majorities. On the whole, this paper shows that legislators have not imposed the "homosexual agenda" on their constituents; in fact, they have done quite the opposite—denying minority rights even in the face of majority support for extension. This is a striking picture of democratic dysfunction.

Looking forward, it seems likely that the Supreme Court will take up the issue of gay marriage sometime in the near future. At this time, they will need to decide upon a standard of review. The three major options, in ascending order of rigorousness, are rational basis, intermediate scrutiny, and strict scrutiny. In order to uphold a discriminatory state law under the first standard, the Court must find only that the state had a rational basis for enacting the law. Under this standard, the Court begins with the presumption of constitutionality. When applying strict scrutiny, in contrast, the Court begins with the presumption of unconstitutionality. Under this standard, it is the state's burden to prove not just a rational basis, but a compelling state interest for the law. Moreover, the law must be narrowly tied to this interest. This is a very difficult standard that some claim is essentially fatal. Just

as the assignment of rules by the Rules Committee can substantially influence the fate of a bill, so can the choice of standard substantially predict the outcome of a case.

There are two reasons why a Court would apply strict scrutiny: (1) if the state law violates a fundamental right; or (2) if the population affected by the law constitutes a "suspect class." In a now famous footnote in *United States v. 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." In these kinds of cases, he noted, the Court may need to employ a more rigorous standard. Though buried in a footnote, this language proved extremely influential in subsequent cases, becoming "[the] great and modern charter for ordering the relations between judges and other agencies of government" (Fiss 1979). To date, race, national origin, religion, alienage, and poverty have all become accepted as suspect classes.

While we cannot speak to the "fundamental right" question, our study provides significant insight into the second. Gays and lesbians are a minority, comprising a small share of the United States population that has historically faced discrimination. One possible interpretation of our result is that gays and lesbians cannot necessarily rely on the political process to further their rights. Intentional or not, this indicates a troubling anti-gay counter-majoritarian bias in lawmaking.

# 7 Conclusion

We have presented a preliminary study of congressional voting on gay rights issues, exploring responsiveness to policy-specific (district- or state-level) public opinion and congruence between opinion majorities and roll call votes. Methodologically we have extended the reach of the MRP opinion estimation technology to substantive district level analysis. Moreover, we have shown that one can generate accurate district level opinion estimates even using polls

that do not include congressional district identifiers for each respondent. Our main finding is that policy-specific opinion is a very strong determinant of voting, even after controlling for legislator characteristics and various diffuse measures of public opinion. However, despite this strong degree of responsiveness, we also show substantial incongruence between votes and opinion majorities. We also show that mismatches between opinion majorities and voting do not usually cancel out. That is, there is sometimes a small counter-majoritarian pro-gay bias, but for many votes there is a much larger counter-majoritarian anti-gay bias. The ideological direction of incongruence varies by legislator characteristics such as race. Black congressman are more likely to vote against their constituents' preferences in favor of gay rights, relative to white (Democratic) congressman. This has important implications not only for congressional politics and democratic representation, but also judicial treatment of gay rights issues.

# References


Arceneaux, Kevin. 2002. "Direct Democracy and the Link between Public Opinion and State Abortion Policy." *State Politics and Policy Quarterly* 2(4):372-88.

Berkman, Michael B., and Eric Plutzer. 2005. *Ten Thousand Democracies: Politics and Public Opinion in America's School Districts*. D.C.: Georgetown University Press.

Brace, Paul, Kellie Sims-Butler, Kevin Arceneaux, and Martin Johnson. 2002. "Public Opinion in the American States: New Perspectives Using National Survey Data." *American Journal of Political Science* 46(1)): 173-89.

Buchanan, Wyatt. "Prop. 8 protests could become national movement." *The San Francisco Chronicle*. November 15, 2008.

Burstein, Paul. 2003. "The Impact of Public Opinion on Policy: A Review of an Agenda." *Political Research Quarterly* 56(1): 29-40.

Carmines, Edward G. and James A. Stimson. 1989. *Issue Evolution: Race and the Transformation of American Politics*. Princeton, NJ: Princeton University Press.

Chen, Anthony. 2007. "The Party of Lincoln and the Politics of State Fair Employment Practices Legislation in the North, 1945-64," *American Journal of Sociology* 112: 1714-74.

Cook, Timothy E. 1999. "The Empirical Study of Lesbian, Gay, and Bisexual Politics: Assessing the First Wave of Research." *American Political Science Review* 93(3): 679-92.

Chen, Anthony. 2007. "The Party of Lincoln and the Politics of State Fair Employment Practices Legislation in the North, 1945-64," *American Journal of Sociology* 112: 1714-74.

Druckman, James N., and Lawrence R. Jacobs. 2006. "Lumpers and Splitters: The Public Opinion Information that Politicians Collect and Use." *Public Opinion Quarterly* 70(4):453-76.

Erikson, Robert S., Gerald C. Wright, and John P. McIver. 1993. *Statehouse Democracy: Public Opinion and Policy in the American States*. Cambridge: Cambridge University Press.

Feinstein, Brian D. and Eric Schickler. 2008. "Platforms and Partners: The Civil Rights Realignment Reconsidered," *Studies in American Political Development* 22: 1-31.

Fiss, Owen. 1979. "The Supreme Court, 1978 Term - Foreword: The Forms of Justice," *Harvard Law Review* 93: 1-58.

Gelman, Andrew, and Jennifer Hill. 2007. *Data Analysis Using Regression and Multilevel-Hierarchical Models*. Cambridge: Cambridge University Press.

Gelman, Andrew, and Thomas C. Little. 1997. "Poststratification into Many Categories Using Hierarchical Logistic Regression." *Survey Methodology* 23(2): 127-35.

Haider-Markel, Donald P. "Morality in Congress? Legislative Voting on Gay Issues" in *The Public Clash of Private Values: The Politics of Morality Policy*, Ed. Christopher Z. Mooney. New York, NY: Chatham House Publishers.

Haider-Markel, Donald P., and Kenneth J. Meier. 2008. "Legislative Victory, Electoral Uncertainty: Explaining Outcomes in the Battles over Lesbian and Civil Rights." *Review of Policy Research* 20(4): 671-90.

Karol, David. 1999. "Realignment without Replacement: Issue Evolution and Ideological Change among Members of Congress" (paper presented at the Annual Meeting of the Midwest Political Science Association, Chicago, IL, April 15-18, 1999).

Kastellec, Jonathan P., Jeffrey R. Lax, and Justin H. Phillips. 2010 "Public Opinion and Senate Confirmation of Supreme Court Nominees." *Journal of Politics* 73(3):767-84.

Lax, Jeffrey R., and Justin H. Phillips. 2009a. "How Should We Estimate Public Opinion in the States?," *American Journal of Political Science* 53(1), January: 107-21.

Lax, Jeffrey R., and Justin H. Phillips. 2009b. "Gay Rights in the States: Public Opinion and Policy Responsiveness," *American Political Science Review* 103(3), August:367-86.

Lax, Jeffrey R., and Justin H. Phillips. 2010. "The Democratic Deficit in the States." Working paper, presented at 2010 Annual Meeting of the Midwest Political Science Association.

*Lawrence v. Texas*, 539 U.S. 558(2003)

Lee, Taeku. 2002. *Mobilizing Public Opinion*. Chicago: University of Chicago Press.

Lupia, Arthur, Yanna Krupnikov, Adam Seth Levine, Spencer Piston, and Alexander Von

Hagen-Jamar. 2010. "Why State Constitutions Differ in their Treatment of Same-Sex Marriage," *Journal of Politics* 72(4): 1222-35.

Matsusaka, John G. 2001. "Problems with a Methodology Used to Evaluate the Voter Initiative," *The Journal of Politics* 63(4): 1250-6.

Matsusaka, John G. 2010. "Popular Control of Public Policy: A Quantitative Approach," *Quarterly Journal of Political Science* 5: 133-67.

Monroe, Alan. 1998. "Public Opinion and Policy, 1980-93." *Public Opinion Quarterly* 62:6-28.

Mooney, Christopher Z., and Mei-Hsein Lee. 1995. "Legislating Morality in the American States: The Case of Pre-Roe Abortion Regulation Reform." *American Journal of Political Science* 39:599-627.

Mayhew, David. 1974. *Congress: The Electoral Connection*. Yale University Press.

Morgan, David R., and Kenneth J. Meier. 1980. "Politics and Morality." *Social Science Quarterly* 61: 144-148.

Norrander, Barbara. 2000."The Multi-Layered Impact of Public Opinion on Capital Punishment Implementation in the American States."*Political Research Quarterly* 53:771-94.

Page, Benjamin I. 1994. "Democratic Responsiveness? Untangling the Links Between Public Opinion and Policy." *P.S.: Political Science and Politics* 27: 25-9.

Page, Benjamin I., and Robert Y. Shapiro. 1983. "The Effects of Public Opinion on Policy." *The American Political Science Review* 77(1): 175-190.

Park, David K., Andrew Gelman, and Joseph Bafumi. 2006. "State Level Opinions from National Surveys: Poststratification using Multilevel Logistic Regression," in *Public Opinion in State Politics* (ed. Jeffrey E. Cohen). Stanford, CA: Stanford University Press.

Rodden, Jonathan and Christopher Warshaw. 2010. "How Should Measure District-Level Public Opinion." Stanford University Working Paper.

Soroka, Stuart N., and Christopher Wlezien. 2010. *Degrees of Democracy: Politics, Public Opinion, and Policy*. Cambridge, MA: Cambridge University Press.

Stimson, James A., Michael B. MacKuen, and Robert S. Erikson. 1995. "Dynamic Representation." *American Political Science Review* 89: 543-65.

Stimson, James A., Michael B. MacKuen, and Robert S. Erikson. 2002. *The Macro Polity*. Cambridge, MA: Cambridge University Press.

Thrasher, Steven. "Harvey Milk's Birthday: Chatting with Cleve Jones." *The Village Voice*. May 21, 2010.

| Label | Chamber | Vote | Purpose | Yes | No |
|---|---|---|---|---|---|
| DADT1993bansenate | Senate (103) | Amendment 19 to the Family and Medical Leave Act | Codify the existing explicit ban on gays and lesbians serving in the military. The vote was on a motion to table the amendment | 62 | 37 |
| DADT1993hunterhouse | House (103) | Amendment 317 to the National Defense Authorization Act for Fiscal Year 1994 | Amendment to reinstate the explicit ban against gays in the military by requiring that recruits be asked about their sexual orientation (A vote for the Hunter Amendment was seen as a vote for a total ban on gays serving in the military). | 144 | 291 |
| DADT1993meehanhouse | House (103) | Amendment 316 to the National Defense Authorization Act for Fiscal Year 1994 | Lift the ban on gays serving in the military (a vote for the Meehan amendment was seen as a vote to allow gays to openly serve in the military) | 169 | 264 |
| DADT2010house | House (111) | HR 2965, Don't Ask, Don't Tell Repeal Act | Repeal of "Don't Ask, Don't Tell" policy prohibiting gays and lesbians from serving openly in the military | 250 | 175 |
| DADT2010senate | Senate (111) | HR 2965, Don't Ask, Don't Tell Repeal Act | Repeal of "Don't Ask, Don't Tell" policy prohibiting gays and lesbians from serving openly in the military | 65 | 31 |
| DADT1993boxersenate | Senate (103) | Senate Amendment 783 to the National Defense Authorization Act for Fiscal Year 1994 | Strip "Don't Ask, Don't Tell" from the defense authorization act and leave the decision about gays serving in the military to the President (A vote for the Boxer Amendment was seen as a vote to allow gays to openly serve in the military) | 33 | 63 |
| DADT1993skeltonhouse | House (103) | Amendment 318 to the National Defense Authorization Act for Fiscal Year 1994 | Affirms the Senate proposal on gays in the military which states: "Don't Ask, Don't Tell, but kicked out if found out" | 295 | 133 |
| DOMA1996house | House (103) | HR 3396, Defense of Marriage Act | Defines marriage as a legally recognized union between one man and one woman. No state is required to recognize a same-sex marriage performed elsewhere. | 342 | 67 |
| DOMA1996senate | Senate (104) | S 1740, Defense of Marriage Act | Defines marriage as a legally recognized union between one man and one woman. No state is required to recognize a same-sex marriage performed elsewhere. | 85 | 14 |
| FMA2004house | House (108) | HJ Res 106, Federal Marriage Amendment | Amend U.S. Constitution to define marriage as a union between one man and one woman | 227 | 186 |
| FMA2004senate | Senate (108) | Cloture vote on SJ Res 30, Federal Marriage Amendment | Amend U.S. Constitution to define marriage as a union between one man and one woman | 48 | 50 |
| FMA2006house | House (109) | HJ Res 88, Federal Marriage Amendment | Amend U.S. Constitution to define marriage as a union between one man and one woman | 236 | 187 |
| FMA2006senate | Senate (109) | Cloture vote on SJ Res 1, "Federal Marriage Amendment" | Amend U.S. Constitution to define marriage as a union between one man and one woman | 49 | 48 |
| Hate2009house | House (111) | HR 1913, Local Law Enforcement Hate Crimes Prevention Act | Extend existing federal hate crime protections to include sexual orientation. | 249 | 175 |
| Hate2009senate | Senate (111) | Cloture vote on S Amendment 1511 to Defense Authorization Act for Fiscal Year 2010 | Extend existing federal hate crime protections to include sexual orientation. | 63 | 28 |
| Jobs1995senate | Senate (104) | S 932, Employment Non-Discrimination Act | Prohibit discrimination against employees on the basis of sexual orientation | 49 | 50 |
| Jobs1998house | House (105) | House Amendment 855 to Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 | Prohibit any funds to be used to implement or enforce Executive Order 13087 of May 28, 1998 or Executive Order 13083 of May 14, 1998. These orders ban discrimination based on sexual orientation in the federal civilian workforce. | 176 | 252 |
| Jobs2007house | House (110) | HR 3685, Employment Non-Discrimination Act | Prohibit discrimination against employees on the basis of sexual orientation | 235 | 183 |

Table 1: *Roll Call Votes Used in Analysis*

| Firm | Year | Issue | Survey Question | Respondents |
|---|---|---|---|---|
| NAES | 2004 | FMA | Would you favor or oppose an amendment to the U.S. Constitution that would allow marriage only between a man and a woman? | 81,068 |
| CCES | 2006 | FMA | President Bush recently spoke out in favor of a Constitutional Amendment defining marriage as strictly between a man and a woman. Do you support or oppose a Constitutional amendment banning gay marriage? | 16,236 |
| Gallup | 2004 | FMA | Would you favor or oppose a constitutional amendment that would define marriage as being between a man and a woman, thus barring marriages between gay or lesbian couples? | 515 |
| Gallup | 2004 | FMA | Would you favor or oppose a constitutional amendment that would define marriage as being between a man and a woman, thus barring marriages between gay or lesbian couples? | 993 |
| Gallup | 2004 | FMA | Would you favor or oppose a constitutional amendment that would define marriage as being between a man and a woman, thus barring marriages between gay or lesbian couples? | 502 |
| Gallup | 2005 | FMA | Would you favor or oppose a constitutional amendment that would define marriage as being between a man and a woman, thus barring marriages between gay or lesbian couples? | 899 |
| Gallup | 2005 | FMA | Would you favor or oppose a constitutional amendment that would define marriage as being between a man and a woman, thus barring marriages between gay or lesbian couples? | 512 |
| Time | 1992 | FMA | Do you think that marriages between homosexual men or between homosexual women should be recognized as legal by the law? | 1,250 |
| Time | 1993 | FMA | Do you think that marriages between homosexual men or between homosexual women should be recognized as legal by the law? | 1,800 |
| Time | 1994 | FMA | Do you think that marriages between homosexual men or between homosexual women should be recognized as legal by the law? | 800 |
| Gallup | 1996 | DOMA | Do you think that marriages between homosexuals should or should not be recognized as valid, with the same rights as traditional marriages? | 1,008 |
| PSRA | 1994 | DOMA | Do think there should or should not be legally-sanctioned gay marriages? | 744 |
| PSRA | 1996 | DOMA | Do think there should or should not be legally-sanctioned gay marriages? | 779 |
| NBC | 1994 | Jobs | Do you favor enacting laws that would give gays and lesbians protection legal protection against discrimination? | 505 |
| Time | 1994 | Jobs | Do you favor or oppose the passage of equal rights to protect homosexuals against job descrimination? | 800 |
| Los Angeles Times | 2000 | Jobs | Do you favor or oppose laws to protect gays against job discrimination? | 2,071 |
| Los Angeles Times | 2004 | Jobs | Do you favor or oppose laws to protect gays against job discrimination? | 1,616 |
| PSRA | 2005 | Jobs | Do you think there should or should not be laws to protect gays and lesbians from prejudice and discrimination in job opportunities? | 2,558 |
| Time | 1998 | Hate | As you may know, some states have laws crimes that are committed against a person because of the victim's race, religion, or ethnic background.mandating stricter sentences for so-called hate crimes–that is, From what you know, do you think that it is a good idea or a bad idea to expand hate crime laws to include crimes committed on the basis of the victim's sexual orientation? | 1,025 |
| Gallup | 2009 | Hate | As you may know, federal law currently allows prosecution of hate crimes committed on the basis of the victims race, color, religion or national origin. There is a proposal to expand federal hate crime laws to include crimes committed against people because they are gay or lesbian. Would you favor or oppose expanding the federal hate crime laws in this way? | 1,015 |
| Los Angeles Times | 1993 | DADT | Do you approve or disapprove of allowing openly homosexual men and women to serve in the armed forces of the United States? | 1,735 |
| Los Angeles Times | 1993 | DADT | Do you approve or disapprove of allowing openly homosexual men and women to serve in the armed forces of the United States? | 1,273 |
| Los Angeles Times | 1993 | DADT | Do you approve or disapprove of allowing openly homosexual men and women to serve in the armed forces of the United States? | 1,474 |
| Gallup | 1994 | DADT: "Skelton Amendment" | In order to deal with the issue of gays in the military, President Clinton has adopted a plan called "Don't Ask, Don't Tell." According to that plan, the military no longer asks personnel whether or not they are homosexual. But if personnel reveal that they are homosexual, and they engage in homosexual activity, they will be discharged from the military. Do you support or oppose that plan? | 1,013 |

| Firm | Year | Issue | Survey Question | Respondents |
|---|---|---|---|---|
| Los Angeles Times | 1992 | DADT | Do you approve or disapprove of allowing openly homosexual men and women to serve in the armed forces of the United States? | 1,833 |
| Gallup | 1993 | DADT: "Skelton Amendment" | In order to deal with the issue of gays in the military, President Clinton has adopted a plan called "Don't Ask, Don't Tell." According to that plan, the military no longer asks personnel whether or not they are homosexual. But if personnel reveal that they are homosexual, and they engage in homosexual activity, they will be discharged from the military. Do you support or oppose that plan? | 1,011 |
| CNN | 2010 | DADT | Do you favor or oppose permitting people who are openly gay or lesbian to serve in the military? | 1,014 |
| CNN | 2010 | DADT | Do you favor or oppose permitting people who are openly gay or lesbian to serve in the military? | 1,010 |
| CNN | 2010 (may) | DADT | Do you favor or oppose permitting people who are openly gay or lesbian to serve in the military? | 1,023 |
| CNN | 2010 (february) | DADT | Do you favor or oppose permitting people who are openly gay or lesbian to serve in the military? | 1,023 |
| PEW | 2010 | DADT | Do you favor or oppose allowing gays and lesbians to serve openly in the military? | 1,383 |
| PEW | 2010 | DADT | Do you favor or oppose allowing gays and lesbians to serve openly in the military? | 3,003 |

Table 2: *Poll Data Used*

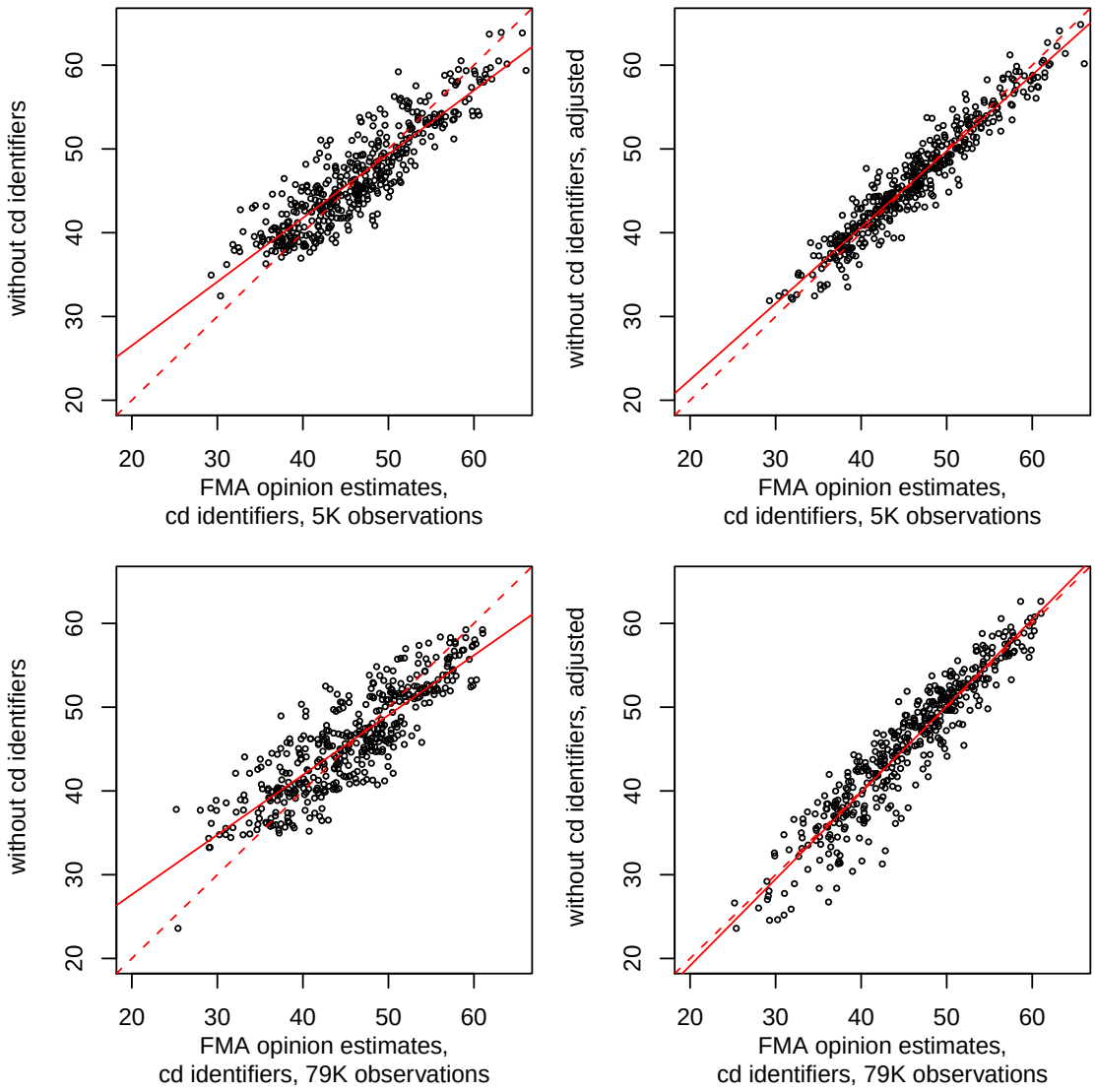


Figure 1: *Benefits of Adjusting for Congressional District Identifiers.* Polls for some issue areas do not have congressional district (CD) identifiers. Even without CD identifiers, one can use MRP and a congressional district level poststratification file to construct estimates of opinion by district. Opinion will still differ (by CD) within a state given that the demographic composition of CDs vary. We generate adjusted estimates using state level presidential vote in the response model and applying the resulting coefficient to actual district level presidential vote share. The top panels contain estimates using one random draw of 5,000 survey responses on the Federal Marriage Amendment. The bottom panels contain estimates of our full set of over 79,000 responses. For these poll data we have CD identifiers. On the x-axes we plot estimates generated using full CD information. On the y-axes we plot estimates generated without CD identifiers (in the left panels) or without CD identifiers but using the CD presidential vote adjustment (in the right panels). The dashed line is the 45 degree line which would capture a perfect match between estimates. The light solid line is the linear regression line (note how making the CD adjustment aligns the two). The correlation is shown in each panel. Making the adjustment on the 5k sample increases the correlation from .83 to .86 (top left to top right)—this is the same gain we would get if we instead added 74,000 additional observations (top left to bottom left). In other words, even when we are missing CD identifiers in the poll data, the correlation to the estimates we would generate with such identifiers is .86 for 5k observations (.94 for the full set of 79k). This demonstrates that our sample sizes when combined with CD adjustment are sufficient for our analytical purposes.

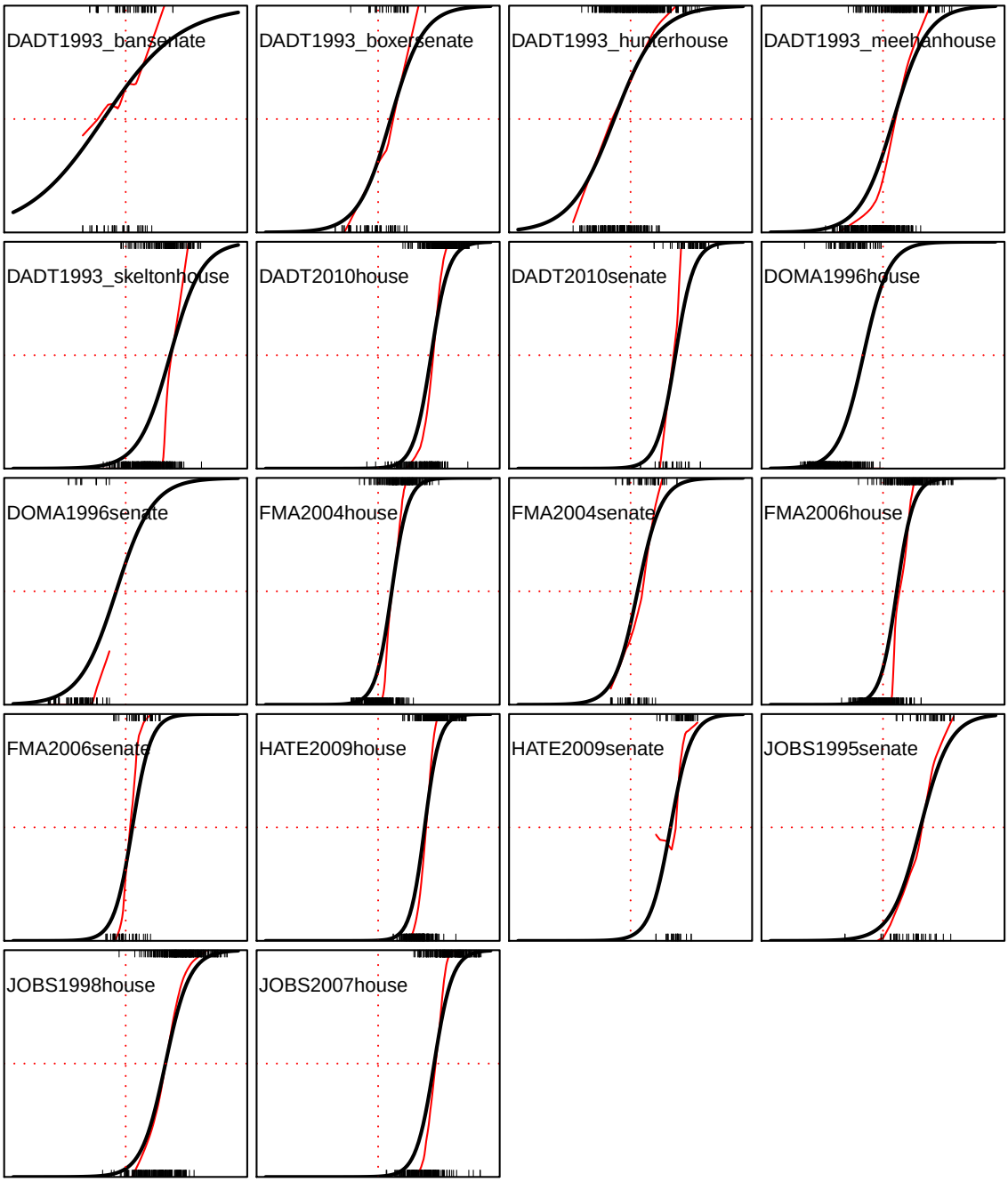


Figure 2: *Basic Relationships.* Each graph plots the probability of policy adoption from a logistic regression curve (the dark line) given state opinion. Each x- and y-axis runs from 0 to 100% for opinion and the probability of policy adoption, respectively. Opinion in states/disticts whose representative cast a pro-gay vote are plotted (in a "rug") on the top axis and opinion in states/disticts whose representative who cast an anti-gay vote are plotted on the bottom. Dotted lines show the 50% marks in opinion support and pro-gay vote probability. Lighter colored lines are lowess curves showing that the vote-opinion relationship does not require assuming a logistic regression relationship.

| Vote | Mean (%) | Min. (%) | Max. (%) | Congruence (%) | Liberal Incongruence (%) | Net Liberal Vote Bias |
|---|---|---|---|---|---|---|
| DADT1993bansenate | 49.9 | 32.3 | 69.4 | 57.1 | 66.7 | +14 |
| DADT1993boxersenate | 49.9 | 32.3 | 69.4 | 68.8 | 30.0 | -12 |
| DADT1993hunterhouse | 50.8 | 26.4 | 78.3 | 66.5 | 72.9 | +66 |
| DADT1993meehanhouse | 50.8 | 26.4 | 78.3 | 71.6 | 32.8 | -42 |
| DADT1993skeltonhouse | 61.2 | 40.8 | 81.2 | 37.9 | 1.5 | -261 |
| DADT2010house | 73.4 | 45.4 | 91.0 | 59.1 | 0.0 | -174 |
| DADT2010senate | 72.4 | 54.1 | 85.9 | 67.7 | 0.0 | -31 |
| DOMA1996house | 30.8 | 16.1 | 49.2 | 83.3 | 100.0 | +68 |
| DOMA1996senate | 30.2 | 16.7 | 43.3 | 86.3 | 100.0 | +13 |
| FMA2004house | 54.4 | 38.8 | 74.9 | 69.0 | 9.4 | -104 |
| FMA2004senate | 53.3 | 41.8 | 69.1 | 70.4 | 37.9 | -7 |
| FMA2006house | 54.4 | 32.9 | 78.8 | 74.9 | 6.6 | -92 |
| FMA2006senate | 52.6 | 41.9 | 64.0 | 80.4 | 26.3 | -9 |
| HATE2009house | 71.0 | 56.2 | 86.2 | 58.5 | 0.0 | -173 |
| HATE2009senate | 70.2 | 60.5 | 77.5 | 68.5 | 0.0 | -28 |
| JOBS1995senate | 64.0 | 34.3 | 79.1 | 54.7 | 0.0 | -43 |
| JOBS1998house | 69.0 | 40.5 | 91.8 | 60.5 | 1.0 | -167 |
| JOBS2007house | 74.7 | 53.3 | 92.3 | 55.9 | 0.0 | -182 |

Table 3: *Opinion and Congruence by Roll Call Vote.* The first three columns show opinion (mean, minimum, and maximum) by congressional district or state. The fourth column is the percent of roll call votes that were congruent with majority opinion. The fifth column is the share of incongruent votes that are in the liberal direction. The final column is the net number of pro-gay votes lost due to incongruence.

| **Responsiveness Regressions** (Did the legislator cast a pro-gay vote?) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Model 1 | Model 2 | Model 3 | Model 4 | Model 5 | Model 6 | Model 7 | Model 8 |
| Opinion | 6.01** | 5.35** | 5.27** | 3.76** | 2.30** | 3.34** | 3.88** | 1.61** |
| | (0.18) | (0.22) | (.22) | (.23) | (.31) | (.49) | (.24) | (.35) |
| Republican | | -3.32** | -3.27** | .88** | .82** | .45 | .84** | .78** |
| | | (.10) | (.10) | (.25) | (.28) | (.52) | (.25) | (.28) |
| DW Nominate | | | | 5.53** | 6.12** | 8.55** | 5.48** | 6.26** |
| | | | | (.33) | (.37) | (.67) | (.33) | (.38) |
| Male | | | | -1.19** | -1.27** | -1.73** | -1.19** | -1.29** |
| | | | | (.15) | (.17) | (.37) | (.16) | (.18) |
| Latino | | | .08 | .70** | .51 | .29 | .70** | .29 |
| | | | (.35) | (.36) | (.40) | (.85) | (.36) | (.41) |
| White | | | -.51** | .50** | -.13 | -.35 | .50** | -.44 |
| | | | (.23) | (.23) | (.50) | (.54) | (.23) | (.27) |
| Senate | | | | .01 | .01 | .16 | .00 | -.01 |
| | | | | (.18) | (.20) | (.37) | (.18) | (.21) |
| Intercept | -0.04 | 1.49 | 1.93 | .04 | .60 | 1.16 | 1.82 | 1.16 |
| | (0.54) | (.46) | (.50) | (.43) | (.50) | (.86) | (.45) | (.91) |
| Issue RE | X | X | X | X | X | X | | |
| State RE | | | | | X | X | | |
| Member of Congress RE | | | | | | X | | |
| Issue FE | | | | | | | X | X |
| State FE | | | | | | | | X |
| N | 4982 | 4982 | 4982 | 4970 | 4970 | 4970 | 4970 | 4970 |
| AIC | 4800 | 3302 | 3296 | 2843 | 2699 | 2463 | | |
| Residual deviance | | | | | | | 2765 | 2462 |

Table 4: *Responsiveness Models.* Models 1-6 are multi-level logistical regressions using some combination of issue, state, and member random effects (RE). Models 7 and 8 are also logistical regressions, but employ fixed effects (FE), either by issue or state. 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: * $< .10$, ** $< .05$.

| **Congruence Regressions** (Was the vote cast congruent with majority opinion?) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Model 9 | Model 10 | Model 11 | Model 12 | Model 13 | Model 14 | Model 15 | Model 16 |
| Size of Opinion Majority | 3.60** | 3.11** | 3.53** | 2.78** | 2.79** | 2.93** | 2.85** | 2.85** |
| | (.13) | (.13) | (.13) | (.14) | (.14) | (.15) | (.14) | (.15) |
| Liberal Opinion Majority | -1.36** | -1.63** | -1.38** | -1.83** | -1.91** | -2.00** | -1.82** | -1.99** |
| | (.11) | (.11) | (.11) | (.11) | (.12) | (.13) | (.11) | (.13) |
| Republican | | -1.57** | -1.58** | .37* | .46** | .55** | .35 | .47** |
| | | (.08) | (.08) | (.19) | (.20) | (.23) | (.19) | (.21) |
| DW Nominate | | | | 2.34** | 2.52** | 2.74** | 2.31** | 2.64** |
| | | | | (.22) | (.23) | (.26) | (.22) | (.24) |
| Male | | | | -.29** | -.23* | -.22 | -.29** | -.19 |
| | | | | (.12) | (.13) | (.15) | (.12) | (.13) |
| Latino | | | .87** | 1.05** | 1.00** | .99** | 1.06** | 1.04** |
| | | | (.29) | (.29) | (.30) | (.35) | (.30) | (.31) |
| White | | | .26 | .66** | .72** | .80** | .67** | .84** |
| | | | (.18) | (.18) | (.19) | (.22) | (.18) | (.20) |
| Senate | | | | .03 | .04 | .02 | .02 | .05 |
| | | | | (.14) | (.14) | (.16) | (.14) | (.15) |
| Intercept | 1.88 | 2.83 | 2.57 | 1.64 | 1.53 | 1.53 | 1.59 | 1.05 |
| | (.35) | (.31) | (.35) | (.35) | (.36) | (.39) | (.37) | (.64) |
| Issue RE | X | X | X | X | X | X | | |
| State RE | | | | | X | X | | |
| Member of Congress RE | | | | | | X | | |
| Issue FE | | | | | | | X | X |
| State FE | | | | | | | | X |
| N | 4982 | 4982 | 4982 | 4970 | 4970 | 4970 | 4970 | 4970 |
| AIC | 5074 | 4637 | 4631 | 4488 | 4478 | 4450 | | |
| Residual deviance | | | | | | | 4407 | 4292 |

Table 5: *Congruence Models.* Models 9-14 are multi-level logistical regressions using some combination of issue, state, and member random effects (RE). Models 15 and 16 are also logistical regressions, but employ fixed effects (FE), either by issue or state. 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: * $< .10$, ** $< .05$.