

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

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Abstract

While gay and lesbian rights have become a controversial, high-profile issue in contemporary American politics, scholars know relatively little about what drives federal policymaking in this area. In this paper, we consider a likely influence on 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 each 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 non-discrimination, 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 known 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

Over the past two decades, public support for gay rights has grown. Indeed, opinion polls show that large majorities now favor many legal protections for gays and lesbians. These trends are well documented in the academic literature and have received extensive media coverage—but does growing public support portend national policy change?

Members of Congress have several sets of preferences to consider: their own, their constituents', their party's, and those of relevant interest groups. How they balance these different—and sometimes diverging—preferences is a critical question for our understanding of legislative behavior, representation, and civil rights policy. Of course, not all legislators will necessarily balance competing preferences in the same way, meaning some lawmakers may be more responsive to pro-gay opinion than others.

In this manuscript, we consider the effect of public opinion on roll call voting, and the extent to which this effect varies across types of lawmakers. Specifically, we analyze public opinion's influence on legislative behavior surrounding the major gay rights issues addressed in Congress from the the early 1990s to the present. These include same-sex marriage, adoption, hate crimes, employment non-discrimination, and military service. Using an extension of multi-level regression and poststratification (MRP), we estimate public opinion on each of these issues by both state and congressional district. We connect these estimates to corresponding roll call votes, considering whether higher constituent support for gay rights makes legislators more likely to cast pro-gay votes, and how often legislators vote in accordance with constituent opinion majorities.

Our analysis provides a nuanced answer to the question of whether public opinion shapes federal action on gay rights issues. We find that constituent opinion has a strong and consistent effect on roll-call voting, even when controlling for individual legislator characteristics and other known correlates of legislator behavior. This holds true in both chambers of Congress for final passage as well as procedural votes. However, responsiveness alone tells us only whether lawmakers are more likely to cast a pro-gay roll call vote if constituent support for gay rights rises. It does not tell us whether lawmakers' votes are consistent with the opinion majority in their state or district.

Indeed, despite strong evidence of general responsiveness, we find that 33 percent of all roll call votes are inconsistent with district or state opinion. Overall, these incongruities tend to be in the conservative direction, meaning that members of Congress are voting against legal protections for gays and lesbians that their constituents support. In other words, there appears to be a conservative bias in policymaking on gay rights that cannot be explained simply by the stickiness of status quo policy. This is consistent with state-level findings on policymaking on gay rights (Lax and Phillips 2009) as well as a wider range of issues (Lax and Phillips 2011). Because of this conservative bias, gains in public support will not necessarily translate into policy gains, even if they push opinion across the majority threshold. This bias appears to be growing over time, raising additional doubts about the prospect of imminent policy gains at the federal level.

After demonstrating systematic incongruence, we unpack it further by examining variation across different types of legislators. As we anticipated, different types of legislators respond differently to public opinion. We see the largest divergence across parties, with Republicans requiring (on average) support from large supermajorities before they will cast pro-gay votes, while narrow majorities are usually sufficient for Democrats. The existence of the conservative bias in policymaking on gay rights can be attributed largely to Republican lawmakers.

This paper also adds to our understanding of civil rights. What is the role of public opinion in civil rights gains? What level of public support is needed to advance civil rights? There is a debate in the existing literature about whether top-down or bottom-up forces drive civil rights gains in the United States. We will speak to this debate by examining the influence of public opinion, a bottom-up force, on roll-call votes.

2 Theoretical Foundations

Before examining empirics, however, it seems worth thinking about what we might want and expect the answers to be. Does following public opinion constitute good representation? Should Members of Congress honor the wishes of their constituents when it comes to a minority that has

historically faced discrimination? This is not a trivial question; indeed, it often surfaced in debates surrounding the writing of the American Constitution. In *Federalist No. 10*, James Madison advocates representative government over pure democratic government not only because it protects minorities from potentially tyrannical 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, representation does not always mean following constituents’ wishes. Legislators are not simply tasked with representing the people who live within their state or district; they are also asked to make choices about what is best for the nation. Madison expected lawmakers 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 knows 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 on issues involving small, historically unpopular minorities.

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 “curbing 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 minorities from oppressive majorities who would not be likely to exercise self-control. Legislators should not necessarily follow constituent opinion on minority rights issues if such opinion seeks to oppress these rights.

Should we expect Congress to respond to public opinion on gay rights? The answer to this question is a qualified “yes.” Numerous studies have documented a strong general correlation be-

tween public opinion and government policy (Page and Shapiro 1983; Stimson, MacKuen, and Erikson 1995; Erikson, Wright and McIver 1993). However, few studies have explored the relationship between public opinion and gay rights. Existing literature tends to focus on traditional new deal issues such as welfare or regulatory policy or a narrow set of Burger court social issues, such as abortion and the death penalty (Burstein 2003). Responsiveness in those areas would by no means guarantee responsiveness for minority rights.

Indeed, when it comes to civil rights, Congress has historically responded slowly—if at all—to favorable public opinion. The case of the black civil rights movement is instructive. Examining early Gallup polls, Schickler (2009) finds that approximately 60% of respondents supported anti-lynching legislation as early as 1937. In spite of this support, Congress never passed an anti-lynching bill¹ and was generally slow to respond to public demands for civil rights legislation. Clearly, favorable public opinion is not always sufficient for legislative action.

Nearly all studies of government responsive to public opinion on gay rights issues have been conducted at the state level (e.g. Haider-Markel 2001, Haider-Markel and Kaufman 2006, Lax and Phillips 2009). This research paints a complicated picture of the opinion-policy relationship. While state policy is generally responsive to opinion—states with higher support for gay rights are more likely to enact pro-gay policies—recent work finds a surprising amount of non-congruence between opinion majorities and policy. For some policies, even clear super-majority support seems insufficient for policy adoption. When non-congruent, policy tends to be more conservative than desired by voters. These studies are conducted at a high level of aggregation, comparing state-level opinion estimates to system level outcomes (i.e. whether the state adopted a given policy). These studies do not look at the behavior of individual lawmakers. This makes it difficult, if not impossible, to examine how individual legislator characteristics might shape they way elected officials respond to public opinion. Furthermore, it is unclear how state legislators should respond to state-wide opinion, since they face incentives to care primarily about the opinions of individuals who live in their districts. District opinion may vary considerably from state opinion.

¹In 2005, the Senate eventually supported a nonbinding resolution apologizing for its inaction.

Even putting these concerns aside, we should not necessarily expect the patterns observed at the state level to be replicated in Congress. Congressional votes are generally more visible to the public than votes in state legislatures, potentially leading federal lawmakers to give greater weight to public opinion in their decision making calculus. On the other hand, party pressures in Congress may be greater, as evidenced by the high levels of polarization in congressional roll call voting. This may lead members of Congress to place a higher weight on their partisanship than on voter preferences.

Ours is the first dyadic study of the opinion-vote relationship, matching the roll-call votes of members of Congress to roll call-specific opinion in their state or district. For instance, when analyzing roll-call votes on an employment nondiscrimination bill, we estimate district and state level support for adding sexual orientation to existing nondiscrimination laws. Two previous studies, both conducted at the national level, regress pro-gay roll-call voting behavior on indices of pro-gay opinion (Lewis and Edelson 2001, Haider-Markel 2001). Using indices in this fashion does not allow for the analysis of variation in responsiveness across gay rights issues. It also masks cross-issue variation in opinion. Indeed, public opinion polls consistently demonstrate that there is greater public support for some pro-gay policies (employment nondiscrimination and hate crimes laws) than others (same-sex marriage). Indices of opinion and roll call votes also lack a common metric, without which it is difficult (if not impossible) to determine whether lawmakers are voting in a way that is consistent with majority opinion in their district (Matsusaka 2003).

Our study will build on this work in a few ways. First, we will use a technique called multilevel regression and poststratification (MRP) to calculate more exact estimates of public opinion by state and congressional district for each of the 23 roll call votes we study. Unlike indices used in previous national level research, our estimates of pro-gay opinion vary across issues and over time. Our dependent variable is also more precise, as we use individual roll-call votes instead of indices that combine legislative behavior across multiple issue areas and votes. This allows us to perform a more nuanced analysis of the opinion-vote relationship, evaluating both responsiveness and congruence across different issues, chambers, and vote types (i.e. procedural or final passage).

We can also more easily compare the effect of public opinion to other known determinants of legislative behavior, such as party, lawmaker ideology, gender, and race.

This paper is the first substantive application of district-level MRP. Moreover, we present an extension of the MRP technology that allows one to create accurate district-level estimates even where the survey response data do not include district identifiers (many do not), using other district and state level information. We validate this extension using data where such identifiers are available.

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 Kestellec 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 popula-

tion frequencies obtained from either the Public Use Micro Data Samples supplied by the Census Bureau or similar data. We convert the Census Public Use Microdata Area (PUMAs) to congressional districts using the Missouri Census Data Center's Geographic Correspondence Engine (geocorr2k) for each of the district boundary sets required by our analysis. For full details of the basic method, see Lax and Phillips (2009a, b) and Rodden and Warshaw (2010). The latter Lax and Phillips paper validates the state-level MRP technique, and their validation techniques are applied to congressional-district level estimates in the Rodden-Warshaw paper.

We model survey response as a function of race, gender, age, education, state, region, state and congressional district presidential vote share, state and congressional district level share black, aggregate state religious conservatism, and poll. These include the standard predictors of social attitudes, in general and on gay rights in particular (e.g., Cook 1999), and go further than previous MRP applications (so that we expect our estimates to be even more accurate than earlier validation tests suggested). 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 and share black 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 (in lieu of a district level coefficient) and congressional district vote share in the poststratification file. This variation is innocuous as shown in FIGURE 1. Indeed, this adjustment strongly improves estimate accuracy compared to using only state-level information throughout (details are given in the caption to the figure). Either way, the precise demographic makeup of each congressional district is used in the poststratification (so that estimates would vary even without the adjustment we recommend). We use distinct poststratification files for the period before and after 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 five issue areas, on a total of 23 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 (and almost always before). 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.

- *Adoption*: We have identified two votes in the House of Representatives. These votes occurred in 1998 and 1999 and both were on amendments to the Washington D.C. appropriations bill. These amendments sought to prohibit couples in Washington D.C. who are not related by blood or marriage from adopting a child. The amendment passed in 1998, but was narrowly defeated in 1999.

- *Same-Sex Marriage*: There were three 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. The third proposal was an amendment to the Health Care and Education Reconciliation Act. The amendment sought to suspend the issuance of marriage licenses to same-sex couples in the District of Columbia and require a public referendum and same-sex marriage. The amendment was voted on by the Senate in 2010, and failed.

- *Gays in the Military*: We have identified seven roll call votes pertaining to gays in the military, four of which occurred in 1993 and three of which occurred in 2010. Of the 1993 votes, 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. We interpret a "yes" vote on these final two amendments as vote to

allow gays to serve openly in the military, since this was the preferred position of President Clinton. All of these votes failed. In 2010, the House voted twice and the Senate once on proposals to repeal “Don’t Ask, Don’t Tell” (DADT) the policy which prohibited the military from asking about the sexual orientation of recruits, but allowed the military to discharge gay service members. Each proposal to repeal DADT passed.

- *Jobs*: We have identified three votes on employment non-discrimination. Two, a 1996 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 2000 and 2009 on a proposal to extend existing hate crimes protections to include sexual orientation. These proposals passed each time. In 2000, efforts to extend hate crimes protections died in conference committee.

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 73%, 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 below 30%. Note, mean pro-gay opinion is over 50% for 14 of the 23 roll calls. 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 3 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 functional form.

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 than the 1993 Senate votes to codify the existing ban on gays and lesbians serving in the military ("DADT1993bansenate"). Second, policymaking often has a conservative or liberal 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 a pro-gay roll call vote 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 pro-gay vote to reach 50%.

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 most of our 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 3 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 71% before the lawmaker has a 50% probability of casting a liberal vote. For “Hate2009house” constituent opinion needs to be 68%. 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, congru-

ence 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 56% (“Hate2000house” and “JOB2007house”) to 86% (“DOMA1996senate”). The issue areas in which policy most frequently matches majority opinion are those dealing with same-sex marriage (74%)—votes on the Federal Marriage Amendment, Defense of Marriage Act, and on the proposal to suspend the issuance of marriages licenses to same-sex couples in Washington D.C. Votes tend to be least congruent in the area of hate crimes legislation (61%).

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 67% 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.

In general, we observe very little liberal bias. Of the 2,120 incongruent roll call votes in our data only 526 (25%) 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 63% of the time, while conservative opinion majorities prevail 75% 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 7 of 23 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 79 votes (“DADT19993hunterhouse”), while they lost more than 150 votes four times (see, for example, “HATE2009house” where the pro-gay side lost 172 votes). Without incongruence (if pro-gay voter majorities won out), four roll-call votes would have flipped into pro-gay simple majorities (that is, ignoring the filibuster): “FMA2004house,” “FMA2006house,” “FMA2006senate,” and “JOBS1995senate.” Three roll-call votes had pro-gay legislative majorities but would have had all votes been congruent with opinion majorities: “DADT1993senate,” “DADT1993hunterhouse,” and “DCMARRIAGE2010senate.”

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. The amount of conservative incongruence appears to have grown over time. For example, consider roll call votes related to gays and lesbian serving in the military. In 1993, we observe either a fairly small amount of liberal or conservative incongruence (depending upon the vote). When Congress reconsidered these issues in 2010, we observe a large amount of incongruence. We also see a very dramatic increase in conservative incongruence over time when it comes to votes on employment non-discrimination laws (more due to liberal opinion change than voting changes).

5 Results: Multivariate Analysis

Responsiveness. We move now to multivariate regression models, which allow us to account for additional potential influences on 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 roll-call random effects while the remaining models consider different combinations of state and roll-call random effects, member of Congress random effects, role-call fixed effects, and state fixed effects.

The basic relationship between voting and opinion is very clear: lawmakers whose constituents 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 responsiveness 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 does not seem to have much of an effect on responsiveness, though we will see later that it does influence congruence. We only observe a difference between the House and Senate when we include vote fixed effects. These models indicate that Senators are less likely to cast pro-gay votes than House members.

Party seems to perform inconsistently across models. However, it is not that the “effect” of party varies so greatly across specifications. Rather, these models each have a different conception of “holding all else equal.” Which model one should use to evaluate the impact of being Republican depends on what the substantive question 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 congressman, 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 65%. A white Democrat needs 44% support, and a black Democrat needs only 38% support. For instance, in the recent (2010) vote in the House to end the ban on gays and lesbians serving open in the military, Republican members needed constituent opinion to reach 65% before they had a 50% probability of voting in the pro-gay direction. For white Democrats this number was 48% and for black Democrats it was 44%.

Congruence. For congruence models, the dependent variable indicates whether 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. This means that liberal (i.e., pro-gay majorities) are, on average, significantly less likely to prevail. This is further of a conservative bias in lawmaking in this issue area. 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 12 percentage points, and the “effect” of being Latino increases the probability of a congruent vote by up to 20 percentage points. Again, caution is needed given that different models hold different 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 22% of the time, whereas 82% 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 95% of the time; facing an anti-gay opinion majority they still do so 75% of the time. Compare this to white lawmakers, who, facing a liberal opinion majority, cast a pro-gay vote 58% of the time. Facing a conservative opinion majority, white lawmakers cast a pro-gay vote 22% of the time. For white Democrats, these numbers are 93% and 48%. For Republicans, these numbers are 19% and 7%.

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.

While many people accused Justice Scalia in his *Lawrence* opinion 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 well shy of the number of votes that we would expect if members of Congress acted in accordance with constituent preferences. For example, the most recent House vote on enacting an employment protection received 180 votes fewer votes than we expect, given public opinion. 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 strongest 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. On the whole, this paper shows that, certainly in the last decade, legislators have not imposed a “homosexual agenda” on their constituents; in fact, they have often done the opposite—denying minority rights even in the face of majority support for extension. This is a striking picture of democratic dysfunction.

To be sure, in the early to mid 1990s, there was some vote bias in the liberal direction, but there has now been a longer period of larger conservative bias (see Figure 7). The increased conservative bias of Congress owes to the disconnect between the relatively large increase in constituent opinion majorities for pro-gay bills and the comparatively small increase in the number of votes cast for those bills.

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” basis for strict scrutiny, 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. While there is sometimes a counter-majoritarian pro-gay bias, there is more often a much larger counter-majoritarian anti-gay bias. This anti-gay bias appears to have grown over time. The ideological direction of incongruence varies by legislator characteristics such as race. Black congressmen are more likely to vote against their constituents' preferences in favor of gay rights, relative to white (Democratic) congressmen. This has important implications not only for congressional politics and democratic representation, but also judicial treatment of gay rights issues.

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Label	Chamber	Vote	Purpose	Yes	No
ADOPT1998house	House (105)	Amendment 871 to the District of Columbia Appropriations Bill for Fiscal Year 1999	Prohibit couples in Washington D.C. who are not related by blood or marriage from adopting a child	227	192
ADOPT2000house	House (106)	Amendment 356 to the District of Columbia Appropriations Bill for Fiscal Year 2000	Prohibit couples in Washington D.C. who are not related by blood or marriage from adopting a child	213	215
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
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
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
DADT2010murphy	House (111)	Amendment 672 to the National Defense Authorization Act for Fiscal Year 2011	Repeal of "Don't Ask, Don't Tell" policy prohibiting gays and lesbians from serving openly in the military	234	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
DOMA1996house	House (104)	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 40, 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
DCMarriage2010senate	Senate (111)	Amendment to the Health Care and Education Reconciliation Act	Suspend the issuance of marriage licenses to same-sex couples in the District of Columbia and require a referendum	36	57
Hate2000house	House (106)	Conyers motion to Instruct on HR 4205, the Defense	Motion to instruct House conferees to accept the Senate-passed Kennedy-Smith hate crimes amendment. This amendment would extend existing federal hate crime protections to include sexual orientation.	231	191

Table 1: Roll Call Votes Used in Analysis

Label	Chamber	Vote	Purpose	Yes	No
Senate2000house	House (106)	Kennedy-Smith amendment to S 2549, the Defense Authorization Act for Fiscal Year 2001	Extend existing federal hate crime protections to include sexual orientation.	57	42
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 2056, 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

Roll Call Votes Used in Analysis (continued)

Firm	Year	Issue	Survey Question	Respondents
NES	1992	Adoption	Do you think gay and lesbian couples, in other words, homosexual couples, should be legally permitted to adopt children?	2,485
NES	2000	Adoption	Do you think gay and lesbian couples, in other words, homosexual couples, should be legally permitted to adopt children?	1,807
PSRA	1994	Adoption	Do you think there should or should not be adoption rights for gay spouses?	750
PSRA	1996 (May)	Adoption	Do you think there should or should not be adoption rights for gay spouses?	779
PSRA	1996 (September)	Adoption	Do you think there should or should not be adoption rights for gay spouses?	929
PSRA	1997	Adoption	Do you think there should or should not be adoption rights for gay spouses?	753
PSRA	1998	Adoption	Do you think there should or should not be adoption rights for gay spouses?	602
Time	1992	Adoption	Do you think that homosexual couples should be legally permitted to adopt children?	1,250
Time	1994	Adoption	Do you think that homosexual couples should be legally permitted to adopt children?	800
Time	1998	Adoption	Do you think that homosexual couples should be legally permitted to adopt children?	1,036
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	DOMA	Do you think that marriages between homosexual men or between homosexual women should be recognized as legal by the law?	1,250
Time	1993	DOMA	Do you think that marriages between homosexual men or between homosexual women should be recognized as legal by the law?	1,800
Time	1994	DOMA	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
ABC	2010	DC Marriage	Do you think it should be legal or illegal for gay and lesbian couples to get married?	1,004
PSRA	2010 (July)	DC Marriage	Do you strongly favor, favor, oppose, or strongly oppose allowing gays and lesbians to marry legally?	3,003
PSRA	2010 (August)	DC Marriage	Do you strongly favor, favor, oppose, or strongly oppose allowing gays and lesbians to marry legally?	3,509
NES	1988	Jobs	Do you favor or oppose laws to protect homosexuals against job discrimination?	2,040
NES	1992	Jobs	Do you favor or oppose laws to protect homosexuals against job discrimination?	2,485
NES	1996	Jobs	Do you favor or oppose laws to protect homosexuals against job discrimination?	1,714
NES	2000	Jobs	Do you favor or oppose laws to protect homosexuals against job discrimination?	1,807

Table 2: *Poll Data Used*

Firm	Year	Issue	Survey Question	Respondents
NES	2004	Jobs	Do you favor or oppose laws to protect homosexuals against job discrimination?	1,202
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 discrimination?	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	1999	Hate	If a hate crime law were enacted in your state, which of the following groups do you think should be covered? How about...homosexuals?	1,014
Gallup	2000	Hate	If a hate crime law were enacted in your state, which of the following groups do you think should be covered? How about...homosexuals?	1,008
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	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
Los Angeles Times	1993 (January)	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 (February)	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 (June)	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
CCES	2010	DADT	Do you favor or oppose allowing gays and lesbians to serve openly in the military?	55,400
CNN	2010 (February)	DADT	Do you favor or oppose permitting people who are openly gay or lesbian to serve in the military?	1,023
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 (September)	DADT	Do you favor or oppose permitting people who are openly gay or lesbian to serve in the military?	1,010
CNN	2010 (November)	DADT	Do you favor or oppose permitting people who are openly gay or lesbian to serve in the military?	1,014
PEW	2010 (February)	DADT	Do you favor or oppose allowing gays and lesbians to serve openly in the military?	1,383
PEW	2010 (July)	DADT	Do you favor or oppose allowing gays and lesbians to serve openly in the military?	3,003

Poll Data Used (continued)

Vote	Mean (%)	Min. (%)	Max. (%)	Congruence (%)	Liberal Incongruence (%)	Net Liberal Vote Bias
ADOPTION1998house	44	21	63	69	66.4	43
ADOPTION2000house	45	21	66	69	72.2	59
DADT1993bansenate	46	26	66	61	73.7	18
DADT1993boxersenate	46	26	66	77	31.8	-8
DADT1993hunterhouse	48	21	76	63	75.2	79
DADT1993meehanhouse	48	21	76	71	37.9	-30
DADT2010house	59	39	79	68	3.0	-127
DADT2010murphyhouse	59	39	79	65	1.3	-146
DADT2010senate	58	45	70	74	8.0	-21
DOMA1996house	29	12	47	83	100.0	68
DOMA1996senate	28	13	44	86	100.0	13
FMA2004house	56	38	77	62	2.5	-151
FMA2004senate	55	42	73	59	15.0	-28
FMA2006house	54	31	80	73	8.7	-95
FMA2006senate	53	40	67	80	26.3	-9
DCMARRIAGE2010senate	46	23	64	74	75.0	12
HATE2000house	69	47	90	56	0.0	-187
HATE2000senate	67	51	82	58	0.0	-41
HATE2009house	71	49	92	59	0.0	-172
HATE2009senate	69	51	83	69	0.0	-28
JOBS1995senate	56	29	76	64	14.7	-24
JOBS1998house	62	32	87	71	4.8	-113
JOBS2007house	73	47	92	56	0.0	-180

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. Given this final column, without incongruence (if pro-gay voter majorities won out), four roll-call votes would have flipped into pro-gay simple majorities (that is, ignoring the filibuster): FMA2004house, FMA2006house, FMA2006senate, and JOBS1995senate. Three roll-call votes had pro-gay legislative majorities but would have had all votes been congruent with opinion majorities: DADT1993senate, DADT1993hunterhouse, and DCMARRIAGE2010senate.

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** (0.67)	5.77** (0.52)	5.71** (0.47)	4.33** (0.46)	3.22** (0.48)	3.76** (0.66)	4.18** (0.21)	2.14** (0.31)
Republican		-3.67** (0.10)	-3.60** (0.10)	.63** (0.23)	0.65** (0.26)	-0.13 (0.48)	0.56** (0.24)	0.61** (0.27)
DW Nominate				5.75** (0.31)	6.27** (0.35)	8.20** (0.62)	5.66** (0.31)	6.40** (0.36)
Male				-1.07** (0.15)	-1.17** (0.16)	-1.49** (0.35)	-1.09** (0.15)	-1.21** (0.17)
Latino			-0.39 (0.34)	0.36 (0.35)	0.25 (0.39)	0.16 (0.82)	0.42 (0.34)	0.24 (0.39)
White			-1.01** (0.23)	0.16 (0.24)	-0.24 (0.27)	-0.61 (0.53)	0.20 (0.23)	-0.39 (0.27)
Senate				-.15 (0.36)	-0.15 (0.31)	0.14 (0.47)	-1.64** (0.38)	-0.87** (0.42)
Intercept	0.05 (0.42)	2.06 (0.35)	2.95 (0.36)	0.76 (0.37)	1.08 (0.40)	2.08 (0.72)	1.72 (0.36)	0.64 (0.74)
Roll-Call RE	X	X	X	X	X	X		
State RE					X	X		
Member of Congress RE						X		
Vote FE							X	X
State FE								X
N	6,435	6,435	6,435	6,419	6,419	6,419	6,419	6,419
AIC	6203	3933	3933	3393	3282	2969		
Residual deviance							3323	3069

Table 4: *Responsiveness Models*. Models 1-6 are multi-level logistical regressions using some combination of roll-call, 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	3.00** (0.38)	2.62** (0.34)	2.63** (0.34)	2.43** (0.31)	2.38** (0.33)	2.57** (0.35)	2.31** (0.11)	1.06** (0.49)
Liberal Opinion Majority	-0.60** (0.08)	-0.86** (0.08)	-0.86** (0.08)	-1.03** (0.09)	-1.14** (0.10)	-1.22** (0.11)	-0.93** (0.19)	-1.11** (0.09)
Republican		-1.31** (0.07)	-1.36** (0.07)	0.35** (0.19)	0.31* (0.18)	0.60** (0.24)	0.42** (0.17)	0.37* (0.19)
DW Nominate				2.09** (0.20)	2.09** (0.21)	2.63** (0.27)	2.17** (0.19)	2.17** (0.21)
Male				-0.26** (0.10)	-0.27** (0.11)	-0.24* (0.14)	-0.25** (0.10)	-0.24** (0.11)
Latino			0.82** (0.24)	1.01** (0.24)	1.17** (0.25)	1.20** (0.34)	1.00** (0.24)	1.16** (0.25)
White			0.46** (0.14)	0.84** (0.14)	0.92** (0.15)	1.05** (0.20)	0.85** (0.14)	0.94** (0.15)
Senate				0.22 (0.39)	0.10 (0.41)	0.07 (0.45)	-0.10 (0.27)	-.06 (0.28)
Intercept	1.88 (.35)	2.52 (0.24)	2.10 (0.27)	1.13 (0.33)	1.23 (0.35)	1.11 (0.40)	1.28 (0.22)	1.06 (0.49)
Roll-Call RE	X	X	X	X	X	X		
State RE					X	X		
Member of Congress RE						X		
Roll-Call FE							X	X
State FE								X
N	6,435	6,435	6,435	6,419	6,419	6,419	6,419	6,419
AIC	6741	6348	6337	6195	6128	6022		
Residual deviance							6164	6419

Table 5: *Congruence Models*. Models 9-14 are multi-level logistical regressions using some combination of roll-call, 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.

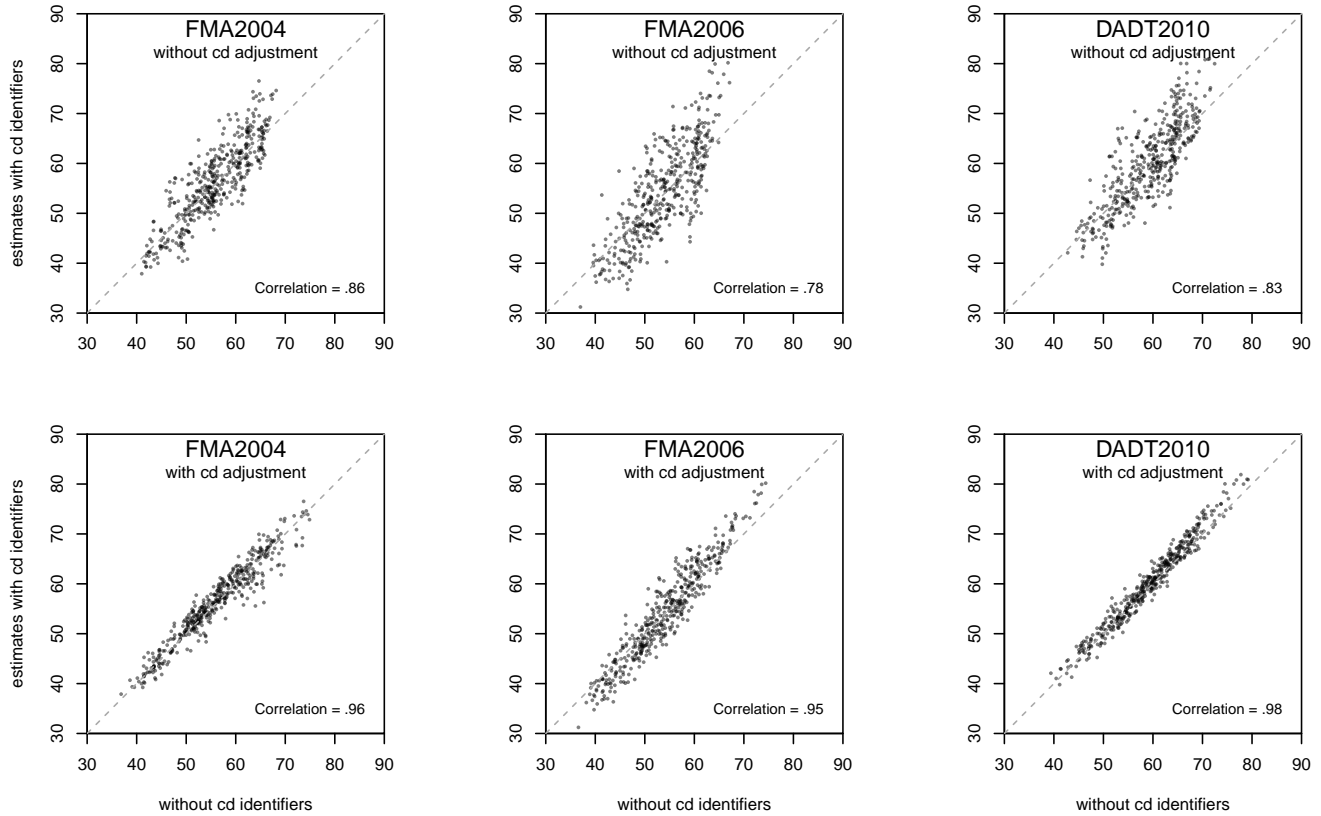


Figure 1: *Benefits of Adjusting for Congressional District Identifiers.* Polls for some issue areas do not have congressional district (cd) identifiers. Even without cd identifiers, one can use MRP and congressional district-level poststratification to construct estimates of opinion by district. Opinion will still differ by cd within a state given that the demographic composition of cds vary. Moreover, we also still have cd-level information to make use of the same way we make use of state-level information in state-level MRP. We generate “cd-adjusted” estimates using state-level presidential vote and share black in the response model and applying the resulting coefficient to the *district* levels of these. While not necessary for achieving estimates highly correlated with those from cd-level MRP where cd identifiers are available, this adjustment improves the correlation, which we show using those issues for which identifiers are actually available. The top panels plot, for three issues, estimates of cd-level pro-gay policy support using survey data that includes cd identifiers (on the y-axis) against similar estimates that do not make use of these identifiers (x-axis). Here, only state level presidential vote and share black are used in both response model and prediction. The correlation is shown in each panel along with a dashed 45 degree line showing perfect matching between the two sets of estimates. The bottom panels show the same relationship where the x-axis (no cd identifier) estimates are now constructed using the cd adjustment (with cd levels of presidential vote and share black). Congruence codings comparing with and without cd adjustment are only different in 4% of votes. If using only presidential vote as an adjuster, this figure is 7%. Estimates using just presidential vote are correlated to those using share black as well at .96 to .99, depending on cd identifier availability.

Histograms of Pro-Gay Opinion by District or State

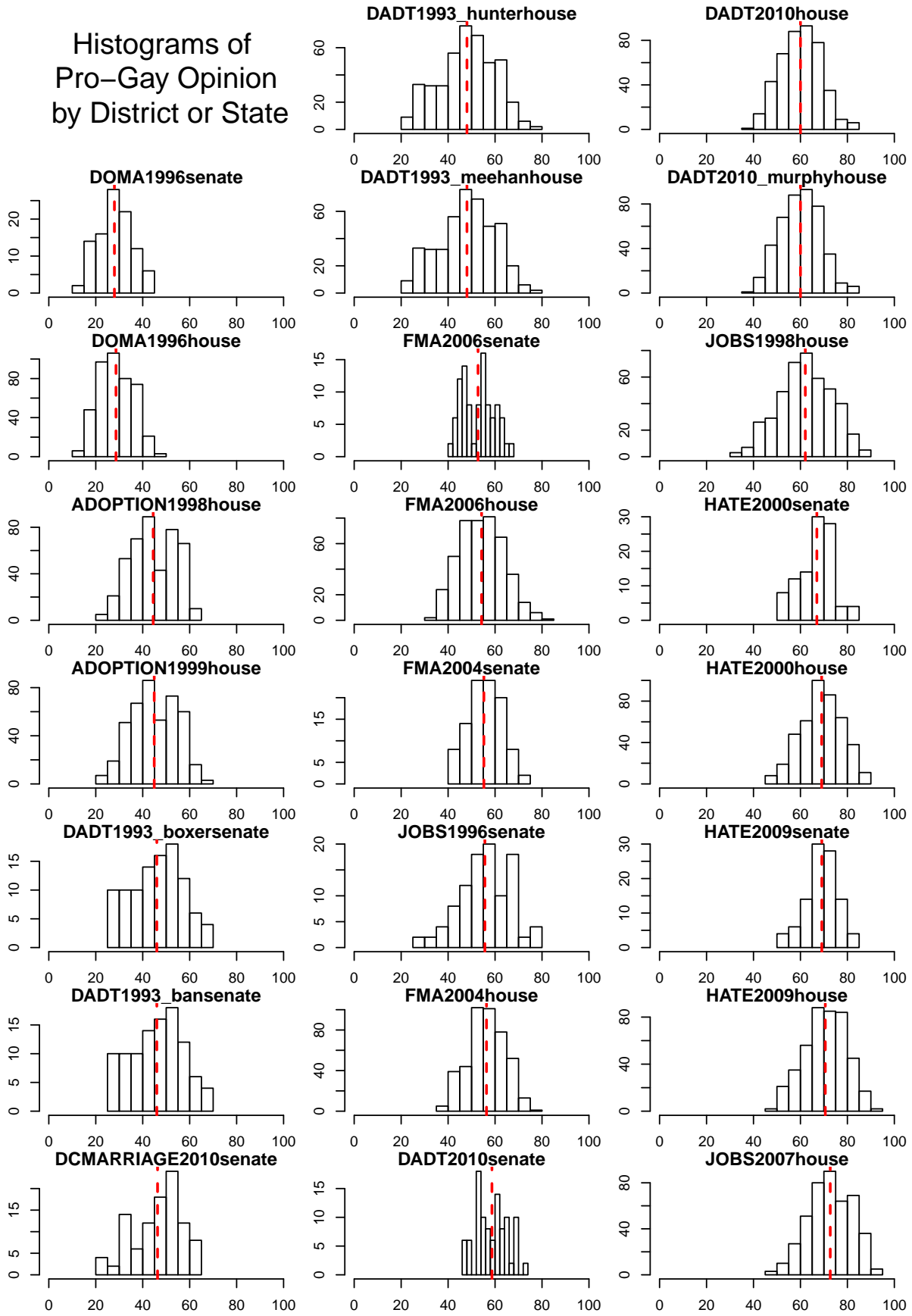


Figure 2: Histograms of Opinion by State or District.

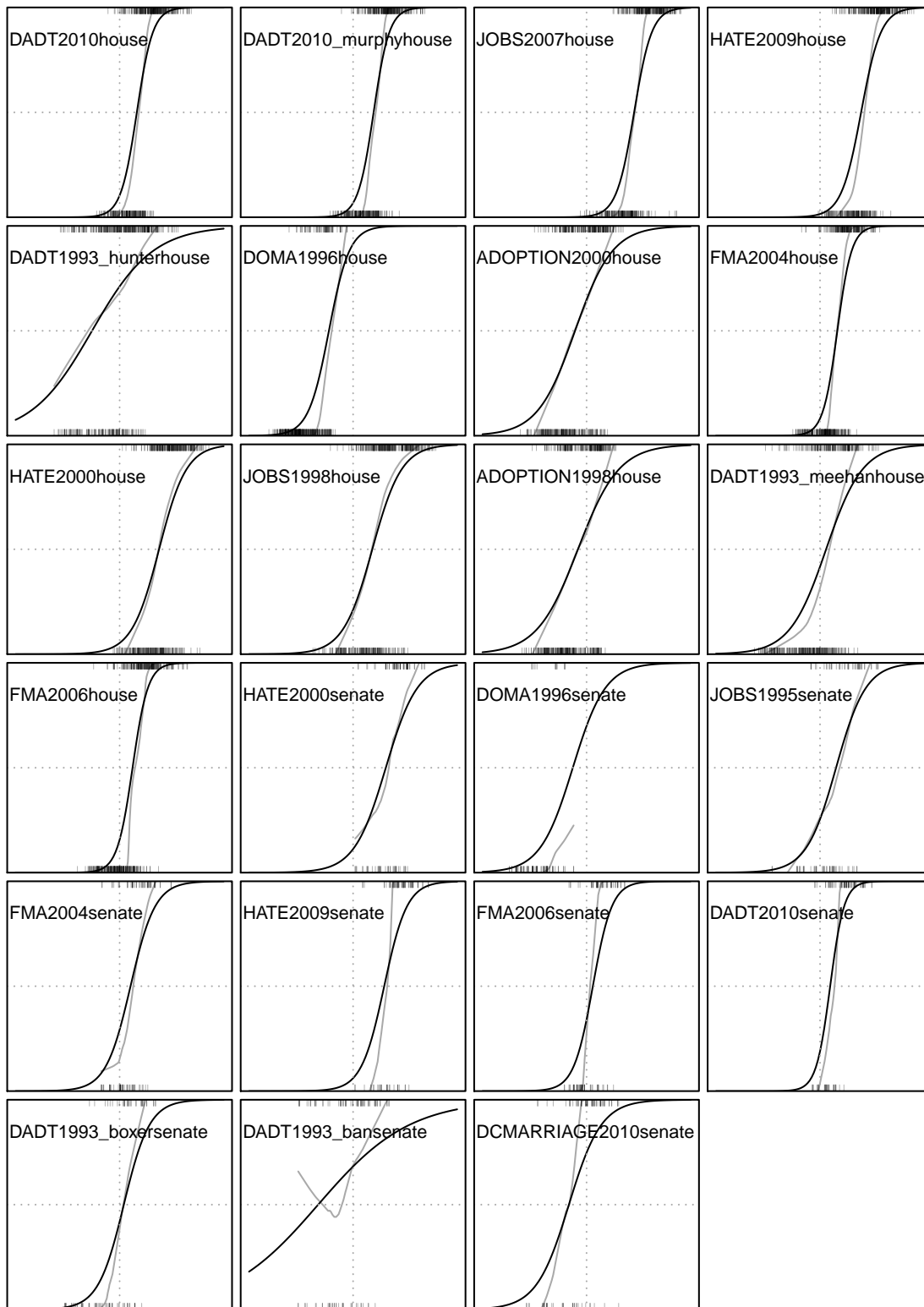


Figure 3: *Basic Relationships*. Each graph plots the probability of pro-gay vote from a logistic regression curve (the dark line) given state opinion. Each x- and y-axis runs from 0 to 100% for opinion and the probability of a pro-gay vote, respectively. Opinion in states/disticts whose representative 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 lower curves showing that the vote-opinion relationship does not require assuming a logistic functional form.

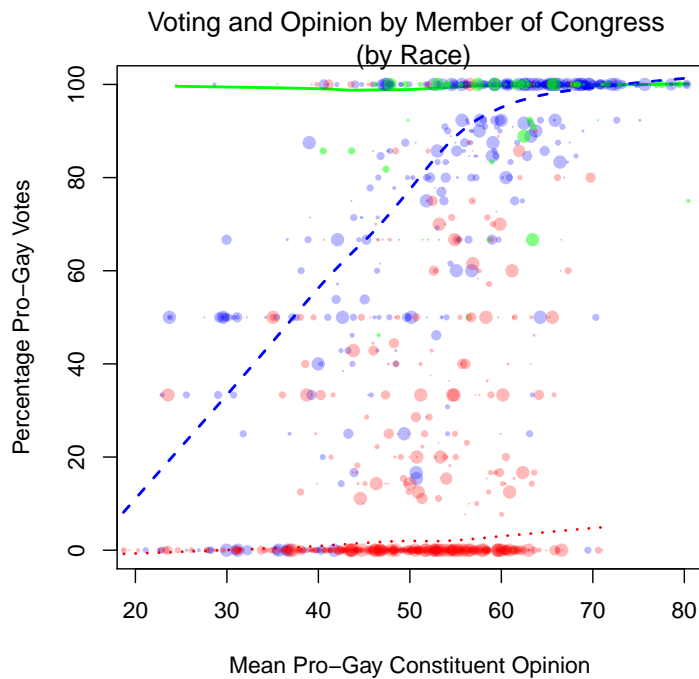


Figure 4: *Pro-Gay Voting Record Given Opinion*. The unit is the member of congress, plotted by mean pro-gay votes and pro-gay opinion. The size of the points shows the number of votes represented (from 1 to 14). Republicans are shown in red; white Democrats in blue; and black Democrats in green. Lowess curves are shown (dotted for Republicans, dashed for white Democrats, and solid for black Democrats).

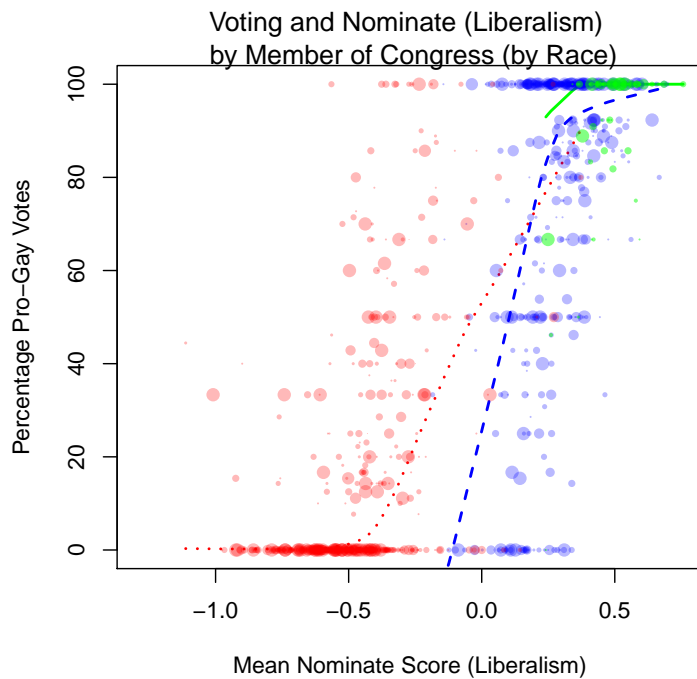


Figure 5: *Pro-Gay Voting Record Given Nominate Score (Liberalism)*. The unit is the member of congress, plotted by mean pro-gay votes and nominate score (measured in the liberal direction). The size of the points shows the number of votes represented (from 1 to 14). Republicans are shown in red; white Democrats in blue; and black Democrats in green. Lowess curves are shown (dotted for Republicans, dashed for white Democrats, and solid for black Democrats).

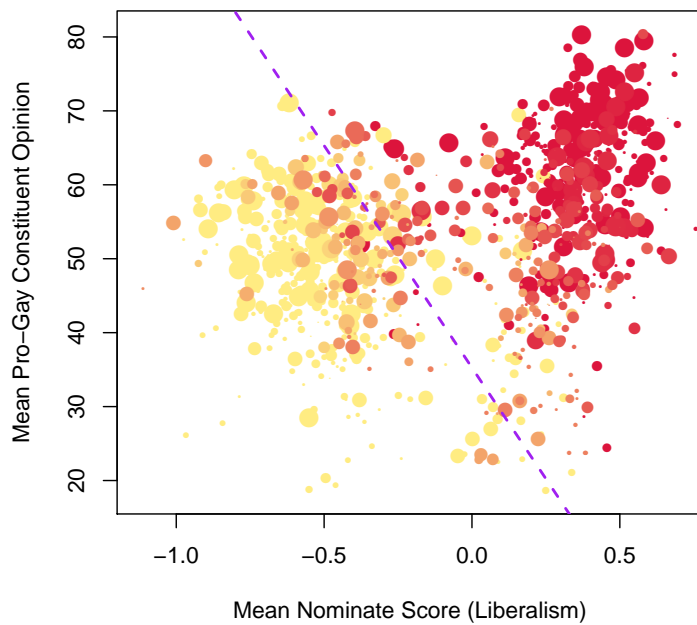


Figure 6: *Pro-Gay Voting Record Given Opinion and Nominate Score (Liberalism)*. The unit is the member of congress, plotted by mean pro-gay opinion and nominate score (measured in the liberal direction). The size of the points shows the number of votes represented (from 1 to 14). The color captures how pro-gay the voting record was, ranging from yellow (0%) to red (100%). The dashed line shows where the voting record is predicted to be 50% pro-gay, based on OLS regression on opinion and nominate score, weighted by the number of votes cast. Note that voting depends on both opinion and legislator liberalism (or else the cut-line would be vertical).

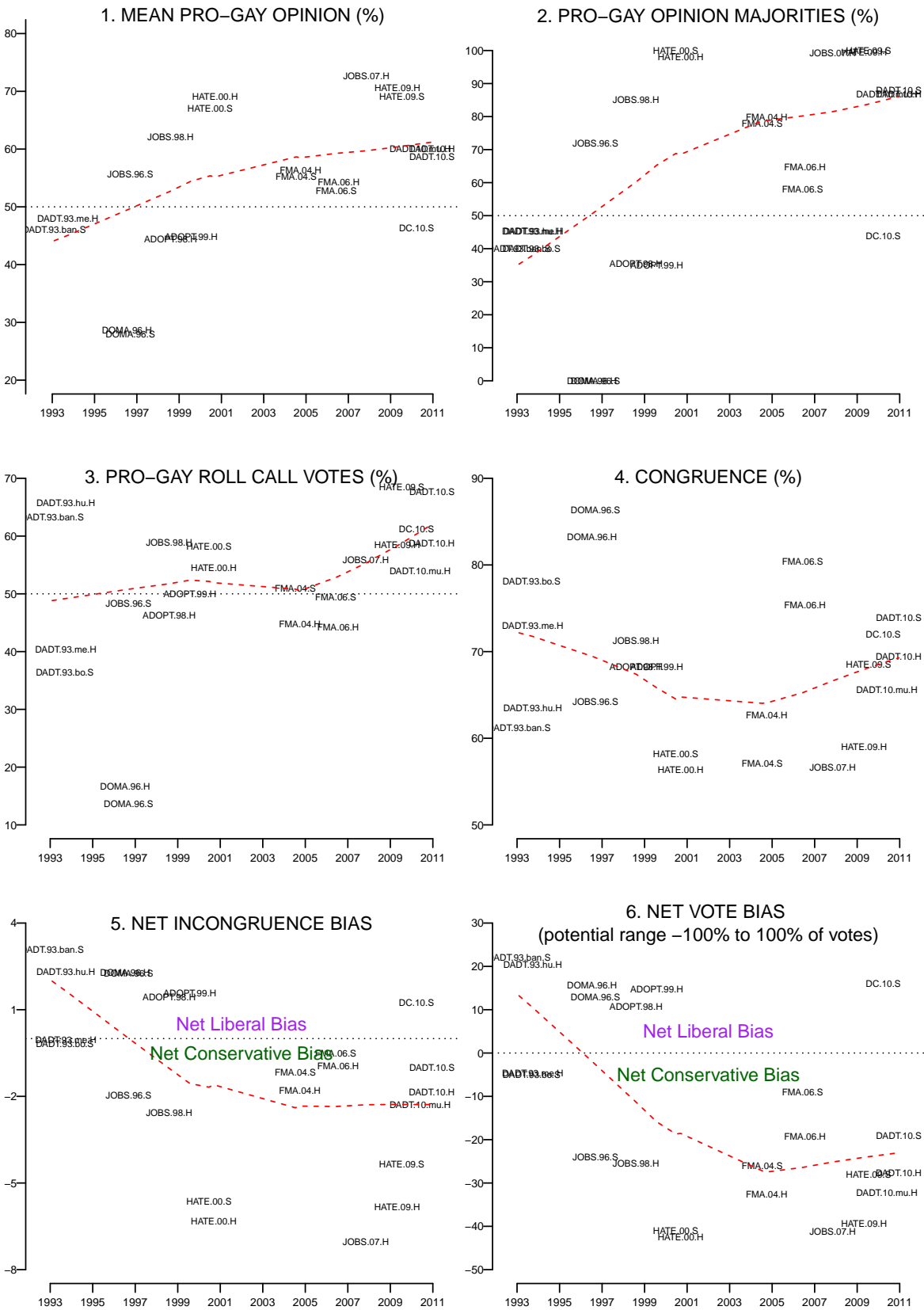
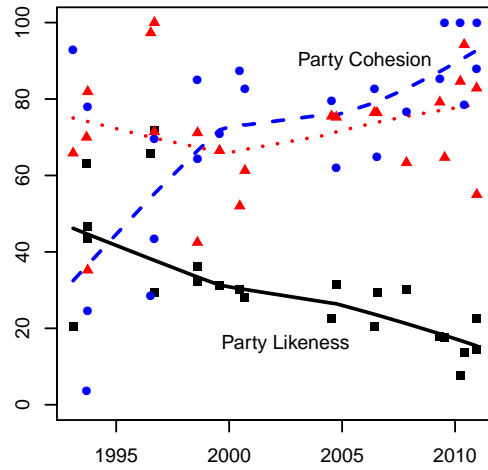
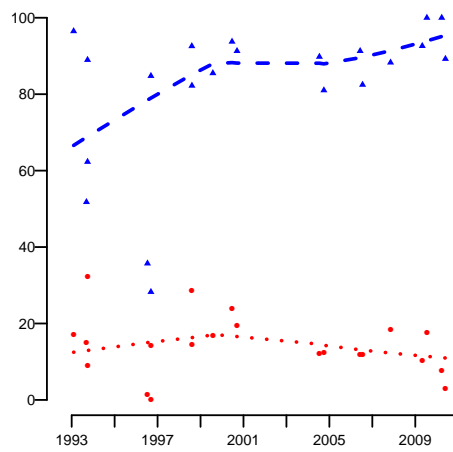


Figure 7: *Pro-Gay Opinion Majorities and Vote Bias Over Time*. While pro-gay opinion has increased over time, and the number of pro-gay opinion majorities has increased even more dramatically (2), the percentage of roll call votes cast on the pro-gay side has increased only slightly (3). Overall congruence (as a percentage of votes) in shown in (4), decreasing and increasing somewhat over time. Given this, incongruence now strongly biases against the pro-gay policy, either as weighted by the degree of incongruence (5) or the net vote bias (6) (bias potentially ranging from a conservative -100% to a liberal +100%).

Rice Scores: Party Likeness & Cohesion



Pro-Gay Voting by Party over Time



Congruence by Party over Time

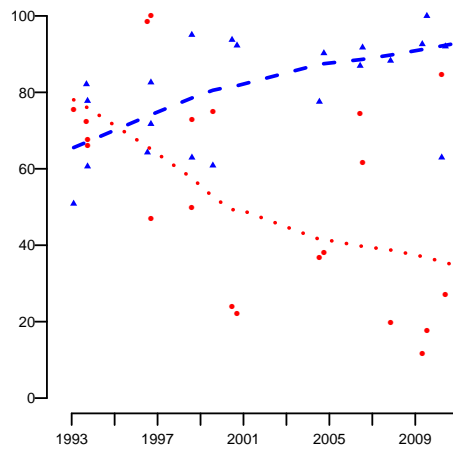


Figure 8: *Rice Scores for Likeness and Cohesion*. Likeness is the degree of similar pro-gay voting rates between parties, shown with black squares and a solid line). Cohesion of voting within the Democrats is shown with blue circles and a dashed line. Cohesion within the Republicans is shown with red triangles and a dotted line. We also show voting and congruence by party over time using the same schema.