

SAME-SEX MARRIAGE AND THE STATES: POLICY AND ITS DETERMINANTS

By

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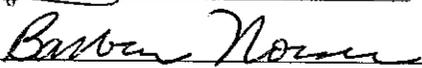
  
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## **ABSTRACT**

Same-sex marriage has become one of the most discussed and most quickly evolving political issues of the past two decades, partly due to rapid changes in public opinion and increasing gay rights-related action on both sides of the political aisle. Though national interest is substantial, marriage has traditionally been regulated by the states, resulting in unequal rights and privileges for homosexual couples across states. The short amount of time in which allowances of same-sex marriage have been adopted makes it difficult to determine which factors contribute most heavily to state marriage policy preferences, but institutional attributes may help explain this process. Types of courts, partisanship configurations within state legislatures, and the availability of direct democracy mechanisms impact state marriage policy to varying degrees, especially when regional and ideological trends are taken into account. In tracking similarities between states that have adopted same-sex marriage policy, it may be possible to predict the future preferences of other states.

# Same-Sex Marriage and the States: Policy and its Determinants

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“Throughout our history each and every generation has expanded upon the freedoms won by their parents and grandparents. Each and every generation has removed some of the barriers to full participation in the American dream. And the next great barrier standing before our generation is the prohibition on marriage for same-sex couples.”

—NYC Mayor Michael Bloomberg

## **BACKGROUND**

Since being initially introduced by activists in the early 1990s, the issue of same-sex marriage (SSM) has quickly risen in status from being a minor political item to becoming a prominent platform fixture on both sides of the political aisle. Beyond the sheer amount of legislative activity that has taken place in the past decade, individual support for SSM and gay rights in general has increased at a rate that is uncharacteristically quick for most social/moral issue models. A Hawaii Supreme Court ruling in 1993 has been historically credited for initiating the public debate around SSM rights by equating prohibitions on SSM to equal protection violations (NCSL 2013). Vermont followed in 2000 with legislation requiring the creation of a civil union system, distinct from that for legal heterosexual marriage, to ensure the provision of equal benefits and privileges for same-sex partners (NCSL 2013). The Massachusetts Senate began to pursue a similar system in 2003 until a state Supreme Court advisory ruling determined that segregated marriage systems would be contrary to the governmental aim of recognizing “stable adult relationships,” (NCSL). Since October 2006, SSM rights have been extended in nine states and the District of Columbia through both legislative and court action. While the rapid reversal of previous statutory and constitutional bans on SSM is notable as a trend in itself, the relatively inconsistent method by which SSM rights have been accomplished across states offers a point for substantial research.

While court rulings dominate the early history of the same-sex marriage cause, the role of the public in determining state policy via direct democracy mechanisms has become more important. California serves as one of the most prominent examples of this due to the passage of ballot initiative Proposition 8 in 2008, which reversed a California Supreme Court ruling from months earlier in favor of SSM, and a string of subsequent appeal cases that received widespread

media coverage (NCSL). A final court ruling by the U.S. Supreme Court is expected in June or July of 2013, but the California case raises important questions about the relationship between state policy, the courts, and the public. Similarly, voters in Maine passed a referendum in November 2009 that repealed a law signed six months previous that had extended marriage rights to homosexual couples. On the other side of the direct democracy picture, a 2012 referendum in Washington aiming to reverse the allowance of SSM marriages was defeated with 51.8 percent of the vote (NCSL). Maine approved SSM in late 2012 in an unprecedented fashion by being the first state to put SSM legalization on the ballot as opposed to prohibition (NCSL).

### ***Public Opinion and State Policy***

If it were to be assumed that legislative activity occurs as a response to constituent pressure or significant changes in the political culture, it would make sense to predict that the new state interest in same-sex marriage stems from fluctuations in the issue positions of the electorate. The perceived importance of same-sex marriage as a political issue has been difficult to assess, however, as both major national parties avoided taking a stance until the 2012 presidential election, and survey data has been moderately dependent on language. Fiorina, for example, characterizes gay marriage as a minor political issue, characterizing the exaggerated perception of gay marriage as a fundamental, polarizing factor in modern American politics as a consequence of poorly worded survey questions and careless analysis (2011). Voter turnout records for the 2004 presidential election show moderate differences in participation between states with antigay marriage initiatives on the ballot and those without, but studies by Abramowitz and Burden refute the notion that gay marriage initiatives (GMIs) had an independent effect on turnout (Fiorina 2011). At the time, election returns were analyzed in

terms of how demographic and social characteristics affected support for Bush with the expectation that GMIs would play a swing role. Contrary to predictions, gay marriage did not substantially affect voting within any of the identified subgroups. It is important to note, however, that public opinion changes slightly when marriage is distinguished from civil unions and when a constitutional amendment is discussed.

One problem with trying to identify a linkage between action in state legislatures and public interest regarding same-sex marriage is that preferences differ somewhat among demographic groups. Ellison, Acevedo, and Ramos-Wada describe the ideal LGBT rights supporter as a younger, well-educated, liberal, secular person while the typical opponent is highly religious and conservative (2011). While this characterization is initially helpful, larger societal changes such as the introduction of more younger voters and Latinos into the electorate are not reflected, necessitating the examination of the social attitudes for these demographics and further complicating the search for a mandate. When race was isolated in exit polls following the passage of Proposition 8 in California, researchers found that the attitudes of Hispanic voters matched those of the overall population (Ellison, Acevedo, and Ramos-Wada 2011). This similarity was attributed to diversity of the Hispanic population, although historical identification with the Catholic Church was seen as a possible unifying factor.

Among African American populations, attitudes towards same-sex marriage become easier to generalize along religious cleavages. Generally speaking, high rates of African American affiliation with Baptist and Protestant denominations as well as high levels of religious participation correlate to more conservative views on homosexuality (Sherkat, de Vries, and Creek 2010). Framing becomes important, however, for when same-sex marriage is portrayed as a civil rights issue, African Americans are more likely to support it than whites (Sherkat, de

Vries, and Creek 2010). Sherkat, de Vries, and Creek make the point that though African Americans are nearly split in opinion when rights are concerned, strong undercurrents of hostility towards homosexuals within the culture have a secular basis (2010). Additionally, lower education, higher population concentration in the South, and larger family size contribute to negative attitudes of homosexuality among African Americans (Sherkat, de Vries, and Creek 2010.) Since concentrations of African Americans and Latinos vary significantly between states, this type of demographic analysis is not uniformly applicable to all examinations of state policies on SSM, but it is useful for understanding regional and partisan trends.

As is the case with most social issues, younger age cohorts are more likely to support gay marriage and civil unions. These generational differences are consistent between races, which is not surprising considering the expectation that older generations will hold more traditional views toward homosexuality and marriage (Gaines and Garand 2010). Becker and Scheufele note that public support for gay marriage as opposed to support for gay military service and adoption changes dramatically between age groups with staunch opposition coming from those above age 65 (2011). A moderate gender gap also exists with women being more supportive of gay marriage than men. This difference has been attributed to fact that women are more likely to have a close friend who identifies as gay or lesbian.

Though news reports and political arguments have frequently characterized the rate of attitude changes in favor of same-sex marriage as rapidly increasing, consensus on long-term polls seems to suggest that support has improved at a relatively steady rate since 2004 (Silver 2013). According to eight national polls analyzed by statistician Nate Silver, national support for gay marriage currently ranges from about 51 to 58 percent, but support consistently outnumbers opposition for the first time since such polling has been conducted (Silver 2013). While pro-

SSM activists tout these statistics as being indicative of a more promising political environment, it can be unclear how these numbers correlate with pro-SSM action and concrete political outcomes. Comprehensive analysis of polling dating on SSM ballot measures and general attitudes about SSM by Silver suggests that despite steadily increasing support, models of current state trends and demographic characteristics project that a national referendum granting SSM would have narrowly failed last year (2013). Additionally, close to 20 states would have passed gay marriage referendums if those referendums had been on the ballot in states that do not already have marriage equality (2013). If these trends held constant, same-sex marriage referendums could find success in 32 states by 2016 and in 44 states by 2020. Silver claims that the rate of increase in support for SSM could escalate depending on reactions to the Supreme Court's rulings on Proposition 8 and DOMA but is likely to at least remain constant due to generational turnover (Silver 2013).

### ***Approach to Analyzing Same-Sex Marriage***

Current conditions and constituent attitudes considered, this study will attempt to answer the question of why states allow or prohibit same-sex marriages. More specifically it will examine the conditions that bring about preferences for particular alternatives to heterosexual marriage over others. In order to ensure uniformity in the handling of state policies, the alternative provisions that will be explored are state laws and/or constitutional provisions limiting marriage to a man and a woman, marriage licenses for same-sex couples, and civil unions providing spousal rights to same-sex couples. Some cases will allow for the inclusion of data for domestic partnerships in the civil union category, but the guidelines for domestic partnerships are less regular across states. Analysis will primarily focus on the determinants of

amendment processes, direct democracy mechanisms, types of courts, state legislature structures, and the partisan composition of state legislatures at the time of policy adoption. Regional trends and socioeconomic considerations will also be explored.

## **SAME-SEX MARRIAGE AS A STATE ISSUE**

### ***Defense of Marriage Act***

Though legal prohibitions and allowances of same-sex marriage are a relatively new phenomena, state sodomy laws restricting the sexual practices of homosexual individuals existed in fourteen states up until the 2003 *Lawrence V. Texas* Supreme Court case ruling that deemed them unconstitutional (Haque 2007). While not explicitly referencing marriage, these statutes laid the groundwork for subsequent anti-homosexual laws by restricting gay sexual rights. In 1962, Illinois became the first state to recede on the criminalization of homosexual behavior by striking down an existing ban on sexual acts practiced between consenting adults of the same sex (Congressional Digest 2010). The 1971 *Baker v. Nelson* case brought gay marriage to the forefront when a homosexual couple unsuccessfully argued for their right to a marriage license on the grounds that *Skinner v. Oklahoma* (1942) had established a fundamental right to marry (Burkart 2008). Still, state and federal actors did not exhibit a significant interest in pursuing prohibitions on gay marriage until the outcome of the Hawaii Supreme Court case suggested that states could eventually be expected to recognize alternative forms of marriage granted in other jurisdictions (Wardle 2005). Becoming law in 1996, the federal Defense of Marriage Act defined marriage as a legal union between spouses of the opposite sex when “determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States,” (Healey 2012).

Although current arguments against the constitutionality of DOMA range from the claim that marriage should only be a state issue to the frustration with inconsistent marriage rights across states, the historical political context for the act does not suggest that it undermined the majority of state political interests. No states offered legal marriages to gay couples at the time, and unprecedented motions in Hawaii to redefine marriage encouraged Congress to solidify a universal definition for marriage (Healey 2012). However, since states had historically been able to determine their own regulations for legal marriage, the intervention of Congress signaled that there was a significant sociocultural interest in limiting the enjoyment of particular privileges to heterosexual partners (Healey 2012). This is the source of current disagreement, for the most significant problem that opponents of DOMA have with the act is that it effectively undermines the enjoyment of marriage privileges allowed to same-sex couples in states where SSM is allowed (Healey 2012). While DOMA does not invalidate state marriage licenses granted to same-sex couples or revoke the state privileges afforded by those licenses, it regards members of a SSM as single when applying the 1,100 federal statutes and provisions for which marital status is an eligibility factor (Healey 2012).

Proponents of the 1996 Defense of Marriage Act claim that it does not inhibit or impede upon the ability of states to sanction marriages, for even though DOMA applies to residents of all states, it does not expressly affect state requirements for distributing marriage licenses (Healey 2012). Arguments made by the State of Massachusetts contend that the evidence for DOMA violating powers granted to states by the Tenth Amendment lies in the fact that those married in states that do not allow SSM do not experience a change in marital status under federal law (Healey 2012). Since this is not the case for those in states with SSM, there is disparity regarding whether a state can solely determine marriages. The Supreme Court is

expected to issue a decision on the legality of DOMA by late June of 2013, but some suggest the court could avoid ruling on gay marriage due to the overwhelming focus on technical questions during the open hearing (Jost 2013).

### ***Current Challenges to Understanding of SSM as a State Issue***

As of December 2012, the U.S. Supreme Court agreed to hear an appeal regarding California's Proposition 8, a decision that could have the implication of determining whether or not the United States Constitution provides for marriage equality (Savage 2013). While expectations about the content and breadth of the Supreme Court's ruling are varied, unprecedented levels of support for SSM from prominent politicians and the public alike suggest that sweeping regulation could be more likely in the next decade. In approaching hearings on Proposition 8 and DOMA, justices commented on the complexity of relying on five years of information to change the status of an institution that has pertained to only heterosexual partners for most of history (Liptak 2013). Since the provision of marriage licenses is a state power, the Proposition 8 case technically only gives the court the opportunity to rule on whether or not it is constitutional to enforce state regulations limiting legal marriage to heterosexual couples. Still, prominent politicians including former president Bill Clinton and a number of congressmen who were responsible for the enactment of DOMA have come out in support of a reversal in the DOMA case, arguing that what was once a fringe idea is now an important issue for a majority of Americans (Barker 2013). In calling for the policy change, Clinton credits political pressure in an election year as the reason for his hesitant support of DOMA in September 1996, but notes that he privately changed his opinion in the following year due to personal relationships with gay individuals (Barker 2013). Contact has also been the primary motivator for similar SSM position

changes among other high profile political officials, including Sen. Rob Portman and former Secretary of State Hilary Clinton, who have recently argued for the national adoption of gay marriage (Harwood 2013).

## **CURRENT STATUS OF SAME-SEX MARRIAGE**

### ***Framing Marriage Rights***

When conceptualizing marriage rights, a distinction is made between full marriage and civil unions. The difference between these two types of legal recognition is whether participants in the union are granted rights equal to those of heterosexual married couples or if they are only guaranteed some of those privileges (McCabe 2012). It is important to note that when discussing this difference, “equal rights” pertains only to those provided by states, for while states allowing SSM legally provide equal rights to both homosexual and heterosexual couples, the 1996 Defense of Marriage of Act prevents homosexual married couples from receiving federal benefits. That said, research suggests that the manner in which gay marriage is framed impacts levels of support (McCabe 2012). In particular, perceptions about gay marriage differ among older age cohorts when regarded as homosexual marriage, possibly due to the antiquated association of the term “homosexual” with psychological disorder (McCabe 2012).

According to an analysis of previously existing public opinion poll data conducted by McCabe and Heerwig, the distribution of support for gay rights varies tremendously when questions are worded as asking about “gay and lesbian marriage,” “homosexual marriage,” or “same-sex” marriage, though the three labels are frequently used interchangeably (2012). In order to measure differences in strength of support and potentially determine the cause of differences, the researchers produced an independent experiment of their own. For the

purposes of this study, all participants were asked about both civil unions and marriage because context effects were noted for other polls in which a question about civil unions preceded or followed a question about marriages (McCabe 2012). Another reason for intentionally making a distinction between the two types of recognition was because previous studies revealed a larger split between liberals and conservatives in support for gay marriage when poll questions were phrased to imply the provision of special rights to gays as opposed to equal rights (McCabe 2012). Support for civil unions was found to be 14 percent higher than support for gay marriage across the entire sample, but context was more significant than labeling (McCabe 2012). Respondents were 10 percent more likely to favor civil unions when they were asked about support for civil unions after they were asked about support for same-sex marriages (McCabe 2012).

All of this considered, one may still raise the question as to why changes in support due to framing are important to the bigger picture, but the answer is simple: framing is integral in the drafting of policy measures. In undertaking the aforementioned study, McCabe and Heerwig mirrored a similar set of experiments conducted by the General Social Survey in 1987 in which respondents were asked about support for poverty relief problems, and they reached complimentary conclusions. If adequately understood, knowledge of framing effects could allow those on either side of the same-sex marriage issue to tailor the wording of pieces of legislation to be more likely to produce desirable results. In the case of referendums and initiatives, electoral processes in which public opinion correlates more with outcomes, wording is especially important, because ballot explanations and pre-vote informational material tend to be concise. Considering the lack of an informed majority in the electorate, true differences between civil

unions and marriage may not be clear, giving voters the need to infer additional information from context clues.

### ***Gay Marriage Rights and Civil Unions Across the States***

As of April 2013, nine states and the District of Columbia offer full marriage rights to same-sex couples; two additional states (New Mexico and Rhode Island) honor same-sex marriages recognized in other states while not offering gay marriage themselves (NCSL 2013). California and New Jersey could soon be included in this group depending on the outcomes of a Supreme Court case and an attempted veto override respectively (Freedom to Marry, “State Laws,” 2013). Vermont, New Hampshire, and Connecticut compose a special category of states in which civil unions previously existed but have been replaced by full marriage rights for same-sex couples (NCSL 2013). Vermont continues to recognize civil unions preceding September 2009 for those same-sex couples not desiring full marriage in the interest of protecting such rights as state tax benefits, access to family health care coverage, co-parenting privileges, and inheritance rights (NCSL 2013). New Hampshire and Connecticut opted to automatically convert existing civil unions to marriages with equal state rights for heterosexual and homosexual couples (NCSL 2013).

Civil unions providing all of the rights of full marriage are currently available to both heterosexual and homosexual couples in six states. Although the state privileges afforded to those in civil unions are identical to those of marriage, there is no legal requirement for religious organizations or other states to acknowledge civil unions (NCSL 2013). Domestic partnerships are the least uniform type of legal recognition available to same-sex couples in the sense that, with their largely financial and medical focus, there are substantial discrepancies in what they

provide between states (NCSL 2013). Currently, eight states offer domestic partnerships to gay couples. New Mexico is the sole state in which neither legal recognition of same-sex relationships nor a prohibition against gay marriage exists (Freedom to Marry, “State Laws,” 2013).

## **POTENTIAL DETERMINANTS OF STATE SSM POLICY**

### ***Amendment Processes***

In dealing with same-sex marriage policy, the fundamental question arises as to why states choose to amend their constitutions, especially when statutes barring SSM already exist. Hume reports that 27 of 30 states with SSM amendments had previously prohibited gay marriages via statute as recent as a decade before adopting amendments (2011). Thus, as costly and time consuming as proposing and ratifying an amendment is, it is puzzling why states would pursue measures that effectively do nothing to change the status of marriage. One reason proposed by Hume is that seemingly unnecessary amendments fulfill policy and institutional purposes, because they limit the ability of state courts and legislatures to change marriage restrictions at a later time when attitudinal pressures evolve (2011). Furthermore, the inclusion of a marriage amendment in a state constitution defines that policy as inherently constitutional (Lupia 2010). A majority of states that adopted SSM amendments between 1998 and 2008 succeeded in doing so within two years of initially proposing a SSM amendment, emphasizing the importance of time in enacting social and moral policy (Lambda Legal). Hume cites a 1987 study by May examining state constitution procedures that found that the public has a tendency to perceive state constitutions as political documents, because relatively salient moral issues are

much more likely to be addressed in state constitutions than in federal documents, meaning that waves of discussion around an issue could stimulate the amendment process (2011).

Specifically referring to the 2004 general election, some scholars have suggested that SSM amendments have occasionally been placed on the ballot with the intention of indirectly increasing turnout among conservative voter (Smith 2006). The 2004 election is notable because SSM had historically received minimal political attention relative to other key issues, but 2004 saw the inclusion of successful anti-gay measures on the ballot in eleven states (Smith 2006). Researchers and members of the media were quick to propose that Republican officials acted aggressively against gay marriage to mobilize evangelical Christians who were likely to support George W. Bush (Smith 2006). Abramowitz and Stone found that the states that had gay marriage on the ballot did not experience any higher turnout than states without anti-gay marriage referenda (2006). Instead, there is moderate support for the notion that issue engagement increased even if turnout did not (Abramowitz 2006).

In 2010, Lupia and Krupnikov examined the state constitutions of all fifty states to outline prominent constitutional trends in dealing with marriage rights. Responding to the argument by Lax and Phillips that the differing status of gay rights across states is the translation of a greater disconnect between attitudes and institutional responsiveness, Lupia and Krupnikov propose that non-uniform marriage systems are the result of variances in barriers to constitutional change. Analyzing state polls, institutional differences, and state-specific threshold models, they evaluated an initial hypothesis that the legal treatment of same-sex couples in states where citizens vote on constitutional amendments is dependent on state-level public opinion differences on SSM (Lupia 2010). When responses to consistently worded poll questions asking about support or opposition for legalizing same-sex marriage were used as the

measure for comparison, the researchers found that the relationship between amendments and attitudes is strongest at the extremes but has only a moderate correlation in the middle range of opposition (Lupia 2010). More specifically, the eight states in which opposition to SSM was over about 62 percent all had constitutional amendments prohibiting gay marriage. On the other end of the spectrum, only three of the states in which opposition to SSM was below 50 percent had anti-SSM amendments in place (Lupia 2010). The lowest percentages of opposition were found primarily in the northeast with South Dakota being the only outlier; South Dakota was also the most tolerant state in which an anti-SSM amendment was in place (Lupia 2010).

### ***Referendums and Initiatives***

Beyond whether or not states choose to adopt gay marriage amendments, researchers suggest that success of certain types of gay marriage amendment proposals (SSM provision or prohibition) is largely dependent on the ratification process. Two-thirds of gay marriage bans in the United States have been accomplished through direct democracy mechanisms, suggesting that public involvement trumps institutional action in determining state marriage policy, at least in terms of prohibiting same-sex marriage via amendment (Camp 2008). It should be noted however, that while these processes have often replaced existing statutes, voters have primarily passed referendums and initiatives to embed SSM bans in state constitutions rather than to reverse existing bans (Camp 2008). Maryland is the sole exception to this trend, having passed a ballot measure to allow same-sex marriage in November 2012 (NCSL 2013). Camp hypothesizes that due to the lack of participation in elections and the configuration of current party lines (as of 2008), referendums on same-sex marriage create competition between parties that impacts long-term voter behavior more than procedural differences. That is, he suggests that

party competition created by referendum elections is a significant determinant of how participants will vote on gay marriage measures.

Camp's perspective holds that referendums become a useful tool for parties, especially regarding moral issues, because the democratic nature of referendums creates the illusion that the sponsoring party values non-partisan decision making and direct involvement in determining policy (Camp 2008). The driving force behind most legislation to restrict marriage to heterosexual couples is a group of conservative Evangelical Christian groups including Focus on the Family, Family Research Council, and the Southern Baptist Convention (Camp 2008). The result of this involvement has been higher voter turnout among Republican leaning individuals when gay marriage has been put on the ballot either by referendum or initiative petition (Camp 2008). Consequently, Republican candidates fare better in elections where voters are deciding on gay marriage, leaving Democratic candidates without an incentive to support same-sex marriage out of fear of losing an election (Camp 2008). Though Christian groups have been largely responsible for instigating direct democracy measures regarding SSM, Camp found a correlation between higher Democratic turnout and increased opposition to SSM prohibitions (2008). At the same time, partisanship effects do not necessarily persist as momentum builds for gay marriage, because organization among gay political groups improves between referendum elections (Camp 2008).

Among the twenty four states in which citizens can place same-sex marriage on the ballot via initiative, the requirements for securing a ballot initiative vary between states but generally require signatures from around 10 percent of the number of people who participated in the state's last highest election (generally gubernatorial), meaning that interest groups in these states have to be more focused on changing public opinion rather than influencing individual political actors

(Lupia 2010). As of 2008, all fifteen initiative states had constitutionally prohibited gay marriage through initiative votes, supporting the notion that initiative states face fewer procedural obstacles in passing marriage amendments (Lupia 2010). If the procedural requirement for reaching the ballot is a majority vote in the state legislature, initiative states essentially face no procedural requirement when pursuing amendments, expanding the impact of public opinion in deciding policy. For this reason, states in which initiative powers are provided are expected to be the quickest to reverse existing constitutional bans on same-sex marriage (Lupia 2010).

### *Types of Courts*

Though courts have played a crucial role in determining the constitutionality of same-sex marriage prohibitions in states including Hawaii, Massachusetts, and California, their role in influencing SSM policy has often been mistakenly undervalued. A study by Rosenberg in 2008 found that opponents of SSM pursued amendments out of fear that federal judges would force state legislatures to adopt pro-gay marriage policies. Hume differentiates between the impact of types of courts on SSM policy according to professionalism (2011). Professionalized courts where judges have higher salaries, more law clerks, and greater control are differentiated from courts with fewer resources, for more professionalized courts are acknowledged to have more say in the types of cases they will hear (Hume 2011). According to Brace and Hall, professionalized courts have a tendency toward siding with underserved or minority populations, a category that would certainly include homosexual individuals (Hume 2011).

Although further research is constantly developing, recent findings suggest that one of the strongest determinants of how courts rule on moral issues is whether or not a court is

comprised of elected judges. Hume found that professional judges are more likely to adopt pro-gay marriage positions because they do not risk losing reelection over decisions on moral issues; the same cannot be said for elected judges (2011). This in turn could contribute to a greater likelihood of states pursuing amendments prohibiting SSM, as it has been found that states were more likely to consider and adopt amendments when previous rulings by lower and higher courts favored SSM (Hume 2011). While non-elected, professional judges are more likely to take pro-SSM positions because of reduced occupational vulnerability, no clear correlation between judge selection systems and changes in public opinion regarding SSM has been found (Hume 2011). The point that these findings raise is that while courts have historically been the source of rights expansion of disadvantaged groups, the reliance of gay-marriage supporters on the courts to accomplish marriage equality may not be effective depending on the structure of a particular court.

Beyond initially accomplishing marriage equality, it is unclear how state court rulings affect public opinion on same-sex marriage, for thirty states passed amendments to allow for only legal heterosexual marriages after courts sided with SSM supporters (Hume 2012). Hume attempted to measure the capacity of state courts to legitimize policy preferences by conducting a survey in which respondents were asked to indicate their willingness to support a decision by a) the governor in their state, b) the judges in their state, and c) the state legislature to legalize same-sex marriage. Respondents from states in which the courts had already established the legality of same-sex marriages or civil unions were not included in the sample, for the experiment was intended to be hypothetical. Generally speaking, no statistically significant difference was found in support for SSM based on the decision of any of the three institutions (Hume 2012). However, Hume found support for the notion that courts play a stronger role in

influencing attitudes about same-sex marriage among lesser-educated individuals such as minorities (2012). Thus, while differences in court structures and judge selection procedures across states factor into a legitimacy-conferring capacity equal to that of other branches of government, important demographic cleavages could maximize or reduce this effect in particular regions.

### ***State Legislature Profile***

With the exception of Nebraska, nearly all fifty state legislatures are structured as a bicameral system, making it possible to weight structural effects in an analysis of policy preferences. A number of social scientists have commented on the existence of institutionalized party opposition within state legislatures, suggesting that such details as seating organizations within chambers and the size of a legislative body contribute to an influential institutional ecology (Patterson 1972). Beyond this, general institutionalization refers to a situation of stable membership, experienced leadership, defined committee roles, and mechanical solutions for resolving internal conflict within a legislature (Gilligan 1991). It has been claimed that while these conditions appear incapable of dealing with contemporary problems and varied preferences, relatively established methods for problem solving improve the ability of legislative actors to make comparisons between current and previous conditions in order to arrive at informed decisions (Gilligan 1991). Actual findings show no relationship between institutionalization and enhanced performance, because universal decision-making methods may not fit the goals of individual actors (Gilligan 1991). This is a potential explanation for why coalitions of legislators or outspoken individual actors may not uniquely be able to accomplish their desired outcomes when addressing marriage policy in the legislative context.

More insight into how state legislatures affect the type of marriage policies adopted by their state could come from an examination of partisanship and coalition formation models, especially since moral issues typically generate clear factions depending on issue salience. Camp notes that when referenda must be initiated through legislative action, party leaders are likely to take a strong stance on an issue and campaign for their position (2008). Oldmixon and Calfano dispute this claim by differentiating between the levels of individual commitment dedicated to voting for a bill and co-sponsoring it, particularly when gay rights issues are concerned (2007). Additionally, since attitudes towards gay marriage have been changing relatively quickly, legislators are forced to respond more readily to district-specific opinion poll data and may not have the ability to side with partisan cleavages (Oldmixon 2007). Though marriage is predominantly a state issue, historical records indicate that members of the U.S. legislature feel the need to develop a federal response to the gay marriage question (Oldmixon 2007). It is unclear how closely federal action is correlated with policy decisions made by the states, but the amount of data available for the U.S. Congress allows for the construction of a general legislative model.

Oldmixon and Calfano's analysis of support for progressive gay policies and personal qualities indicative of preferences (including religion, ideology, district level of education, etc.) finds that legislative support for pro-gay policies matches partisanship lines because of greater correlation with the socioeconomic and demographic qualities of particular districts (2007). For example, a highly educated district makes a legislator not only more likely to vote in favor of a pro-gay policy but to co-sponsor or promote the policy in order to appease culturally progressive voters (Oldmixon 2007). Still, while House Democrats outweigh Republicans in support for pro-gay policies by at least 14 times, Snyder and Groseclose suggest that the presence of party

leaders at roll call votes creates a unique environment in which party unity is encouraged (Oldmixon 2007). Tight political control does not carry across to sponsorship, however, which could explain why an unprecedented number of Senators have recently changed to a position of support for same-sex marriage (Silver, “Senate,” 2013). The statistical model used by Nate Silver to analyze support for gay marriage among senators finds the strongest support for the idea that senators are more likely to endorse SSM when they perceive that a majority of their constituents support it, sometimes regardless of the ideological and party characteristics of the senator (“Senate” 2013). Studies of legislative effects on state same-sex marriage policy are too few in number at this point to reach sweeping conclusions, but most literature seems to agree that partisanship and district characteristics influence the actions of legislators when the context allows them to risk taking a stronger position. A number of cultural factors are likely to impact legislative action on SSM in a way similar to how traditions and persistent ideological beliefs in the American South challenged the Civil Rights Movement of the of the 1960s, potentially explaining regional trends, but current research has mostly been limited to public opinion data and voter action.

## **STATE-BY-STATE ANALYSIS**

### ***Regional Divisions***

When attempting to identify predominant trends in the gay marriage movement, the regional distribution of marriage rights is one of the most readily identifiable factors. Gay marriage rights have historically been concentrated in those states in the northeastern United States (Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, and Washington, D.C.), with Washington and Iowa as the only outliers (Freedom to Marry,

“Winning,” 2012). Additionally, the northeastern states of Rhode Island and New Jersey are the only two states in which civil unions are provided and no constitutional or statutory ban on SSM exists (NCSL, “Quick Facts,” 2013). While the geographic location of Washington and Iowa relative to the other SSM states could dispute the notion of regional effects outside of the Northeast, closer analysis of state gay rights laws reveals that all of the states offering SSM are bordered by states that provide broad domestic partnerships or civil unions (Freedom to Marry, “Winning,” 2012). Even when anti-gay constitutional amendments are noted for states that allow civil unions or broad domestic partnerships, the national distribution is three groupings of three or more states providing gay marriages, civil unions, or domestic partnerships separated by a continuous spread of states with anti-gay constitutional amendments (Freedom to Marry, “State Laws,” 2013). The outlier in this handling is Colorado, which offers civil unions as of May 2013, but it is still bordered by states with neither relationship recognition nor anti-gay marriage constitutional amendment (Freedom to Marry, “State Laws,” 2013).

Rasmussen, a political scientist at the University of Delaware, studied Nebraska’s highly restrictive gay rights policies and the campaign process for adopting those policies to test the influence of state culture in determining marriage policy (2013). She hypothesized that similar types of relationship recognition become favored in particular regions when citizens feel that a change in marriage norms will somehow damage or alter the existing notion of what it means to be a citizen of a particular state (Rasmussen 2013). These claims were made with reference to arguments made by anti-gay lobby groups that judges in other states had imposed their will on citizens by ruling against state DOMA policies and had essentially re-written marriage laws without regard for their state’s identity (Rasmussen 2013). Similar campaigns in Oregon and Vermont had drawn a stark contrast between a common rural, family-centric identity and a

foreign identity that disregards stability in favor of urban concerns (Rasmussen 2013). Based on this type of comparison and the outcome of pro-DOMA efforts in Nebraska, Rasmussen concludes that identity constructions combining sexuality, traditions, and place can overwhelm arguments that focus only on weaknesses of the political system, allowing for the adoption of strict anti-gay policies (Rasmussen 2013).

The identity argument is hardly the only proposed explanation for the clustering of gay rights policy preferences along geographical lines. Lax and Phillips compiled a number of demographic and geographic indicators to model individual responsiveness on eight gay rights policies including marriage and unions across states (Lax 2009). In estimating the importance of particular preference determinants on an individual basis, the researchers included poll data on sex, race, age, education level, and religiosity and constrained that information to a state or region (Lax 2009). Partisanship levels were also included for each state and region by referring to results from the 2004 presidential election. Lax and Phillips found that, contrary to Erikson, Wright, and McIver's notion that support for pro-gay policies increases primarily from exposure to policy options, state demographic information does a fairly good job of explaining why support for gay rights measures varies between states (2009). At the same time, Lax and Phillips confirm the conclusion of previous researchers that "state political structures do a good job in delivering more liberal policies in more liberal states and more conservative policies in more conservative states," (2009). When looking at gay marriage policy specifically, individual responsiveness is deeply tied to policy-specific opinions that go beyond general ideology, enhancing the role of state political actors in guiding gay rights policy preferences (Lax 2009). State partisan configurations and their association with gay marriage policy will be explored further in the next section.

### *Partisanship Divisions*

In looking to expand upon the geographic distribution of gay partnership recognition between states and explain potential reasons for these regional cleavages, it may be helpful to look at partisanship. When gay rights maps are compared with presidential election returns for the years closest to the year in which each SSM state legalized gay marriage, there seems to be a relationship between adopting gay marriage and supporting the Democratic candidate for president. It should be clarified that this trend has been identified not to suggest a causal relationship but rather to note that each of the nine states offering SSM and Washington, D.C. legalized gay marriages between elections in which the state's Electoral College votes went to the Democratic nominee for president (Table 5.1). Considering that gay marriage was included in the 2012 Democratic Party platform for the first time, it is also interesting to note that all of the states adopting SSM in 2012 expanded gay rights via public vote. The progression of same-sex marriage adoption seems to follow a clear mechanism trend as well, with the first states establishing SSM through court action and the most recent states electing to offer SSM through public vote (Table 5.1). Taking public opinion trends into account, this institutional trend is somewhat expected, but public opinion data does not fully capture the breadth of partisanship effects.

It cannot be said whether court rulings were initially responsible for instigating pro-gay relationship recognition policies, but the courts were instrumental in broadening the legal understanding of partnerships in the first three states to adopt SSM (Hume, "Courts," 2012). These examples are notable in the regard that they were ideally the most isolated from direct partisanship effects since state Supreme Court judges are not subject to the same electoral

processes as members of the legislature. It can be assumed that partisanship is most involved in the outcomes of gay marriage referendums since the public is directly involved in the decision process. Public votes were the mechanism used for the most recent adoptions of SSM, and successful voting on gay marriage measures coincided with the timing of the general election (Freedom to Marry, “Winning,” 2012). One problem with looking for a partisanship effect during a referendum election is the inability to determine whether the party of the favored presidential candidate or the identity of candidate played a larger role in influencing public opinion. However, when state voting history is considered, all of the states in which SSM is provided have chosen the Democratic candidate for president for at least the past four general elections (Table 5.1). Thus, it is probably more likely that the persistence of party identification divisions among an entire state electorate impacts gay marriage votes more significantly than individual candidates.

When successful policies to adopt civil unions are subjected to the same analytical treatment, the same trend of pro-gay policy confirmation only occurring in states that have favored the Democratic nominee for president is substantiated. The pattern changes drastically when noting the mechanism of partnership policy adoption for civil union states, however, for all six states offering civil unions to gay couples ratified civil unions via legislative action (Freedom to Marry, “Winning,” 2012). Taking context into account, all existing ratifications of civil union rights except for Colorado occurred within two years of the period in which same-sex marriage rights were secured by legislative action. Unfortunately, no outside research has been found that entertains a potential relationship here, but perhaps it would be worth examining if future gay rights policy processes follow the same pattern. The relatively short and recent span of time in

which civil unions have been adopted makes it difficult to determine whether civil unions will be favored in the future as a pathway to eventually expanding marriage rights.

**Table 5.1 Policy Adoption and Electoral Preferences Among SSM States**

State	Year Adopted	Mechanism	2004 Election	2008 Election	2012 Election
Massachusetts	2003	Court	Kerry	Obama	Obama
Connecticut	2008	Court	Kerry	Obama	Obama
Iowa	2009	Court	Bush	Obama	Obama
New Hampshire*	2009	Legislature	Kerry	Obama	Obama
Washington, D.C.	2009	Legislature**	Kerry	Obama	Obama
Vermont	2009	Legislature	Kerry	Obama	Obama
New York	2011	Legislature	Kerry	Obama	Obama
Maine	2012	Vote	Kerry	Obama	Obama
Maryland	2012	Vote	Kerry	Obama	Obama
Washington	2012	Vote	Kerry	Obama	Obama

\* Bill in 2012 to repeal SSM was defeated

\*\* In the absence of a legislature, SSM was approved by the DC City Council

Source: [www.freedomtomarry.org/states](http://www.freedomtomarry.org/states)

**Table 5.2 Policy Adoption and Electoral Preferences Among Civil Union States**

State	Year Adopted	Mechanism	2004 Election	2008 Election	2012 Election
New Jersey	2007	Legislature*	Kerry	Obama	Obama
Delaware	2011	Legislature	Kerry	Obama	Obama
Hawaii	2011	Legislature	Kerry	Obama	Obama
Illinois	2011	Legislature	Kerry	Obama	Obama
Rhode Island	2011	Legislature	Kerry	Obama	Obama
Colorado	2013	Legislature	Bush	Obama	Obama

\*Instructed to provide equal protection and recognition by state Supreme Court

Source: [www.freedomtomarry.org/states](http://www.freedomtomarry.org/states)

### *Current State Activity*

In addition to the Supreme Court cases dealing with DOMA and California's Proposition 8, there are several current challenges to existing marriage policies at the state level. In New Mexico, a state that does not legally provide for or prohibit gay marriages and civil unions, the American Civil Liberties Union, the ACLU of New Mexico, the National Center for Lesbian Rights, and a local law firm are pursuing a case against the Bernalillo County Clerk claiming that state marriage laws do not allow county clerks to deny gay and lesbian couples the right to marry (Polaski, "Same-Sex," 2013). Additional support for this position has come from Santa Fe Mayor David Cross and Attorney General Gary King, who argue that county clerks should already be granting marriage licenses to same-sex couples because the state's gender neutral marriage definition does not necessitate that the participants be of the opposite sex (Oswald 2013). On the legislative side, a bill in the state legislature that would have allowed a public vote on same-sex marriage was defeated in the House Voters and Elections Committee by a margin of 3 votes (Simonich 2013). Since the Bernalillo County court case and a proposed resolution in Santa Fe are still in progress, it is possible that New Mexico could join the list of states offering same-sex marriages as the result of judicial ruling.

In Wyoming, a House bill that would have granted same-sex couples the right to domestic partnerships made it through committee with a surprising amount of Republican support in late January, but it was ultimately defeated in a general House vote (Polaski, "Indiana", 2013). While the bill failed and still would not have offered full marriage rights to gay and lesbian couples if passed, it is notable as the first piece of legislation in the Wyoming State Legislature to propose protections for same-sex couples (Polaski, "Indiana," 2013). Minnesota is showing more legislative promise for SSM advocates as a Democrat-sponsored gay marriage bill found majority support in a Senate procedural vote in early April (Condon 2013).

Before a House vote on the matter, there are significant levels of support among state representatives, but sponsors of the House version fear that the high number of Democrat-represented districts favoring traditional marriage could negatively impact expected levels of SSM support among House Democrats (Condon 2013). To add to this challenge, a civil unions bill is simultaneously up for consideration, providing an option for legislators whose constituents favor expanded gay rights but are on the fence about full marriage.

Texas is processing its own piece of pro-SSM legislation in HB 1300, a measure intended to reverse a 2005 amendment that restricted marriage to heterosexual couples (Chammah 2013). Additionally, the proposal, which was co-authored by ten Democratic state senators, would extend rights such as property ownership, child custody, adoption, and worker's compensation benefits to both members in a legally recognized same-sex relationship (Chammah 2013). Though the bill is still under review in the House State Affairs Committee, Representatives Anchia and Coleman have filed to allow a public vote on the matter (Chammah 2013). Despite the reputation of Texas as a heavily conservative state and its history of intolerance for homosexual individuals, the state is entertaining several significant measures related to gay rights during this legislative session. In addition to HB 1300, State Sen. José Rodríguez is pursuing a resolution to strike "homosexual conduct" from the misdemeanor crime category in the Texas Penal Code (Chammah 2013). Another component of this bill is a revision to the current marriage definition to include same-sex couples, thus drawing a parallel to the house bill.

If neither same-sex marriage bill succeeds, those hoping to expand rights for gays in Texas during the 2013 legislative session have an additional opportunities to make those changes possible. State Sen. Juan Hinojosa filed a bill to legalize civil unions for same-sex couples in order to guarantee basic rights reserved exclusively for heterosexual married couples to gay

individuals in committed relationships (Spruill 2013). State Rep. Lon Burnham sponsored a House version of the civil unions bill, but both measures are dependent on a pending partial repeal to the Texas Defense of Marriage Act (Spruill 2013). The challenge in securing the DOMA repeal is that the repeal does not only have to achieve a two-thirds majority vote in both houses, but it must also succeed in a public vote (Spruill 2013). These procedural limitations provide support for the hypotheses posed earlier in this paper regarding why state legislatures pursue constitutional amendments to replace existing gay marriage prohibitions.

One of the most promising pushes for same-sex marriage of the 2013 legislative session is Illinois, where a same-sex marriage bill passed the state Senate and is nearing the margin necessary to pass in the House as of April 8 (Pearson, “GOP,” 2013). While the content of the Illinois proposal is not altogether distinct from that of the bills in the previously discussed states, state senators have noted surprising momentum among Republican members of the Senate (Pearson, “GOP,” 2013). Republican support has been met with substantial backlash, especially against GOP chairman Pat Brady for encouraging legislators to support the bill even though it conflicts with the anti-SSM position included in the state party’s platform (Pearson, “GOP,” 2013). Another complexity in the Illinois gay marriage debate is the role of the House’s African-American caucus, a group of 20 black representatives who have been the target of lobbying efforts from both supporters and opponents of same-sex marriage (Pearson, “Black Lawmakers,” 2013). The focus of these lobbying efforts has been differentiating between the view of gay marriage as a moral issue and gay marriage as a civil rights issue, for one view emphasizes personal religious beliefs and the other acknowledges public opinion more heavily. The African American vote is viewed as especially important in this case because this group does not have a cohesive stance on gay marriage in its typically unified and liberal ideology, but the support of

just over half of the African-American representation would secure the bill's passage (Pearson, "Black Lawmakers," 2013).

### ***State Profile vs. Common Conditions for Support***

At this point, it has been established that even though the type of partnership recognition states provide and the institutional processes for establishing that legal recognition varies substantially, states currently providing same-sex marriages and civil unions have several characteristics in common. It would not be entirely accurate to suggest a formula for the "ideal" future SSM state because of the diversity of state-specific ideologies, but it is fair to say that SSM and civil unions have historically been adopted in states along the coasts in which voters have recently favored the Democratic nominee for president (Freedom to Marry, "State Laws," 2013). Additionally, states are most likely to adopt SSM in the future via public vote if current patterns remain consistent; civil unions are most likely to be ratified through legislative action (Table 5.1, 5.2). The likelihood of public votes on gay marriage and civil unions occurring may change depending on the availability of direct democracy mechanisms in a given state. Nonetheless, it is possible to evaluate current pro-gay activity in states on the basis of what is currently known about marriage policy processes.

The table below lists several prominent state-level pro-gay marriage policy proposals from early 2013 as well as the presidential election results in those states from 2008 and 2012. This information will be used to evaluate the likelihood of gay marriage taking effect within the next couple of years in the states listed by referring to the patterns identified in previous sections. New Mexico is included twice because significant actions were taken regarding SSM using two different policy mechanisms (Freedom to Marry, "Winning," 2012). California was intentionally

left out because the pending U.S. Supreme Court case will determine the legality of existing gay marriage policies in the state. New Jersey presents a special case because a marriage equality bill succeeded in the state legislature in February 2012, but Governor Chris Christie vetoed it, meaning that a veto override will be necessary for the new policy to take effect (Polaski, “New Jersey,” 2012). Illinois, Minnesota, Rhode Island, Texas, and Wyoming complete the list of states that will be analyzed.

**Table 5.3 Prominent State SSM Proposals of 2013 and Electoral Preferences**

State	Year Proposed	Outcome	Mechanism	2008 Election	2012 Election
Illinois	2013	Pending	Legislature	Obama	Obama
Minnesota	2013	Pending	Legislature	Obama	Obama
New Jersey	2012	Veto*	Legislature	Obama	Obama
New Mexico	2013	Pending	Court	Obama	Obama
New Mexico	2013	Defeated	Legislature	Obama	Obama
Rhode Island	2013	Pending**	Legislature	Obama	Obama
Texas	2013	Pending***	Legislature	McCain	Romney
Wyoming	2013	Defeated	Legislature	McCain	Romney

\* Veto override possible until January 2014

\*\*SSM bills passed in both houses and require a House vote after changes

\*\*\* Would require overturning anti-SSM amendment to take effect

Source: [www.freedomtomarry.org/states](http://www.freedomtomarry.org/states)

Of the states listed that proposed SSM in some form during the current year, all used legislative action as the policy mechanism of choice, despite success in other states with public votes. Since legislative action was used to successfully legalize SSM in New Hampshire, Washington, D.C., Vermont, and New York, recent state actions could be signaling a switch back to using state legislatures to pass SSM. When general election results are taken into account, all of the states listed except Texas and Wyoming favored the Democratic candidate for

president in the past two elections. Lax and Phillips's claim that state institutions will produce more liberal policies in more liberal states and more conservative policies in more conservative states would hold that same-sex marriage efforts will be harder to push through in Texas and Wyoming. This seems to be the case at the moment, but growing momentum for the gay marriage movement among Republicans should not be dismissed (Polaski, "Indiana," 2013). According to most polls, support for SSM and civil unions is increasing across the entire United States, so institutional factors could soon surpass partisanship effects in impacting policy outcomes.

As of late April 2013, Rhode Island neared the adoption of same-sex marriage following successful votes in both houses of the state legislature. On April 24, the Rhode Island Senate approved a SSM measure 26-12, one day after the bill cleared the Senate Judiciary Committee (Honan 2013). Although the House of Representatives already passed a similar bill in January 2013, minor changes will require the general body to reapprove the Senate version before it goes to Governor Lincoln Chaffee for a signature (Honan 2013). Gov. Chaffee previously indicated his intention to sign gay marriage into law in hopes of reaffirming the tolerant legacy of the state (Honan 2013). Rhode Island will become the tenth state to legally recognize gay marriages and will be the first state to do so in 2013 if the current efforts succeed.

## **OTHER EXPLANATIONS FOR SAME-SEX MARRIAGE POLICY PREFERENCES**

This paper has primarily discussed the institutional and public opinion related explanations for why states have differed in their treatment of gay marriage rights. While these arguments are seemingly the most manageable considering the information currently available

on gay rights policy adoption, several other explanations for state moral policy have been explored, name economic and contact hypotheses.

### ***Economic Explanation***

The economic approach to state marriage policy focuses on the financial implications of legal marriage, noting that family, employment, and benefits law were initially grounded in sex based classifications (Widiss 2012). Current tax law incorporates marriage penalties and bonuses, and government assistance programs often evaluate the household (Widiss 2012). The expansion of marriage rights to include state-level benefits for same-sex couples essentially removes sex-based classifications from marriage law, changing the societal understanding of traditional household roles. Portelli has assessed the expected microeconomic impact of legalizing same-sex marriage by using a model developed by Nobel laureate economist Gary Becker (2004). He found that while the marriage market could remain efficient if same-sex marriages were included, same-sex households might experience lower incomes relative to heterosexual households due to employment discrimination (Portelli 2004). Still, the demand for same-sex marriages in the market is difficult to quantify due to problems with self-reporting.

Regarding the likely economic impact imposed on the states by same-sex marriage, economists have identified mostly positive economic consequences from expanded marriage rights (Portelli 2004). In particular, analysis of six states revealed that states that legalize SSM are likely to experience an increase in tax revenues, a decrease in state-provided family support, and an increase in tourism revenues (Portelli 2004). These impacts are especially notable because studies indicate that same-sex couples are statistically more likely to have two income earners than heterosexual couples (Portelli 2004). Just in Vermont, the Badgett model suggests

that state tax revenue would increase between \$17,760 and \$1,031,050 per year, state welfare expenditures would fall by between \$112,906 and \$1,850,735 in five years, and tourism revenue would increase by \$18,028,810 over five years if SSM was legalized (Portelli 2004). Vermont has since legalized SSM, but was only considering legislation at the time of Portelli's study.

### ***Contact Hypothesis***

The contact hypothesis has typically been applied to questions of gay rights as a whole, proposing that community context and personal contact with gay individuals is related to support for gay rights initiatives among individuals. Barth, Overby, and Huffmon cite experimental studies that found "a general reduction in discomfort with homosexuals following exposure to and interaction with homosexuals," (2009). Similarly, higher estimations of the local gay population among have resulted in more tolerant attitudes among individuals in most contexts (Barth 2009). The 2006 South Carolina SSM-ban referendum presents an usual case, for personal contact was exploited by both sides of the proposal and resulted in an overwhelming victory for anti-gay activists (Barth 2009). Barth, Overby, and Huffmon concluded that personal contact mattered much more than context in attitude formation, and contact for the majority of voters was more associational than close (2009). Thus, regardless of individual levels of support, state policy processes are dependent on the unclear relationship between public opinion and institutional outcomes, and a single factor is not necessarily the main determinant for each context.

### **DISCUSSION AND CONCLUSIONS**

In approaching this analysis of state same-sex marriage policy processes, the hope was that it would be possible to identify the most prevalent determinants of marriage policy in order

to make predictions about future developments. If a general conclusion is to be identified, it is that particular institutions can play a dominant role in determining state marriage rights when specific context features are in place. In the case of courts, state Supreme Courts have played a key role in early extensions of SSM rights, but types of court systems can also encourage anti-gay marriage legislators to push for prohibitive amendments. This gets at an overall conflict between state institutions in attempting to exert influence over relationship recognition, but recent developments happen to have favored the legislative system. Trends are not consistent between gay marriage and civil unions, but states are continuing to entertain simultaneous proposals for both. Due to the limited history of both types of recognition, it is not possible to definitively state whether the allowance of civil unions necessarily affects the likelihood of a state eventually legalizing SSM, but that is a potential question for future research.

As for public opinion, public support for gay marriage is nearing a solid majority in many states by most accounts. The role of public opinion seems to carry more weight in some states than others, however, depending on state culture, partisanship configurations, and access to direct democracy mechanisms. The most recent allowances of SSM have been accomplished through these mechanisms, possibly signaling more than ever that no one institution has exclusive power over the content of state marriage laws. These trends have differing implications for forces on both sides of the political aisle, and increasing awareness of the gay marriage cause will likely only lead to further innovation among strategists. If one thing is for certain, it is that the gay marriage movement currently has more momentum than ever before, and most, if not all, states will be forced to respond to the marriage question in the near future.

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