

## GAY RIGHTS IN CONGRESS PUBLIC OPINION AND (MIS)REPRESENTATION

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**Abstract** Public majorities have supported several gay rights policies for some time, yet Congress's response has been limited. We document and analyze this tension through dyadic analysis of the opinion–vote relationship on 23 roll calls between 1993 and 2010, revealing a nuanced picture of responsiveness and incongruence. While constituent preferences influence white male Democrats, black lawmakers and white female Democratic lawmakers generally support gay rights and Republicans consistently oppose them, regardless of constituent preferences. Moreover, changes in constituent opinion typically fail to engender vote changes. In sum, despite a degree of responsiveness to opinion, we find there is a persistent bias against constituent will on LGB rights.

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

National and subnational public opinion data show that Americans favor a variety of legal protections for LGB individuals ([Egan and Sherrill 2005](#); [Brewer 2008](#)), yet these protections have not always been adopted. It is therefore difficult to gauge what kind of congressional action—if any—to expect in

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response to the continuing liberalization of opinion on LGB rights. We need to know not only *whether*, but *to what extent*, public opinion incentivizes support from different types of legislators in roll-call votes on LGB issues.

We study the match and mismatch between opinion and policy on LGB rights, engaging in a deep descriptive case study tied to larger theoretical questions about the role of public opinion in the political process. We develop new tools and approaches to examine how public preferences relate to congressional action on LGB rights. Specifically, we analyze roll-call votes on all five major gay rights issues addressed by Congress from the early 1990s to the present: same-sex marriage, adoption, hate crimes, employment nondiscrimination, and military service. We develop an extension of multilevel regression and poststratification (MRP) for this project, to estimate opinion on these issues over time by state and congressional district, and consider the extent to which constituent preferences connect to the votes of members of Congress (MCs). While we find some evidence of responsiveness to opinion, we also document significant breaks, gaps, and lags.

Our findings point to a more nuanced understanding of the power and limits of majority will. Moreover, the MRP extension we present herein expands the range of surveys that can be used to estimate district opinion, facilitating future studies of responsiveness. Our case study is also important in its own right: battles over LGB rights have played a central role in America's ongoing "culture wars," and the policy outcomes of these battles affect the lives of millions of Americans. Our analysis also contributes to long-standing debates over the relative roles of top-down and bottom-up forces in producing civil rights gains, and the appropriate standard of review for LGB rights in federal courts.

## Theoretical and Empirical Foundations

Scholars of Congress have long argued that MCs' desire for reelection motivates them to consider their constituents' preferences in formulating policy positions (Mayhew 1974; Arnold 1990). Many studies find a positive correlation between such preferences and roll-call votes.<sup>1</sup> These correlations are stronger on salient matters (Burstein 1981; Page and Shapiro 1983) and morality policy (Mooney and Lee 1995; Lax and Phillips 2012). This suggests we should expect strong opinion effects on LGB rights issues, akin to Miller and Stokes's (1963) "instructed delegate" model of representation in which MCs know the preferences of the median constituent and act accordingly.

Scholars have also shown that the median constituent does not always get her way (Bishin 2000, 2009; Hacker and Pierson 2005). As Fenno (1978)

1. See Miller and Stokes (1963) and, more recently, for example, Clinton (2006); Kousser, Lewis, and Maskett (2007); Bafumi and Herron (2010); and Kastellec, Lax, and Phillips (2010).

famously articulated, MCs have several constituencies to consider. Within an MC's geographic constituency lie her reelection constituency (electoral supporters), primary constituency (most active and strong supporters), and personal constituency (closest allies and advisors). When their preferences conflict, she may need to prioritize.

For Republican lawmakers, religious conservatives create pressure to vote against LGB rights. Correspondingly, LGB individuals and their allies have become a notable constituency of Democratic lawmakers (Fetner 2008). MCs are also likely to face pressure from party leaders. Starting in 1992, the national parties have staked out increasingly divergent positions on LGB rights. These positions play a significant role in party branding (Bishin and Smith 2013).<sup>2</sup>

Thus, we anticipate partisan differences in responsiveness. Interest group and party pressures should lead Republicans to be *less* sensitive than Democrats to liberalizing public preferences on gay rights.<sup>3</sup> The MC's own views and background can also matter. Elites who are members of historically oppressed groups might set aside public opinion unfavorable to LGB rights, drawing analogies between their own civil rights struggles and the fight for gay rights. The National Association for the Advancement of Colored People (NAACP) has supported gay rights since the debate over open military service reached the national stage in 1993, even over the objections of many of its members and sometimes black public opinion more broadly (cf., Edsall 1993; Conant 2010; Wallsten 2012), linking the battle for LGB rights to the struggle for African American civil rights (cf., Robinson 2012). Similarly, the National Organization for Women (NOW) has supported the cause since 1971, when it expanded its mission to include lesbian rights.

Another reason the median constituent may not get her way is stickiness. Besides potential status quo biases, MCs might not wish to "flip-flop," even if public opinion has changed. Lawmakers could also be unaware of opinion change, though this is less likely for salient policies.

Most existing work on public opinion and LGB rights compares state-level opinion to state policy adoption (e.g., Haider-Markel 2001; Haider-Markel and Kaufman 2006; Lax and Phillips 2009b).<sup>4</sup> We cannot assume Congress will match state-level patterns. On the one hand, congressional votes are more visible to the public, so federal lawmakers may be more sensitive to

2. For example, the 1992 Republican platform opposed including sexual preference in federal civil rights statutes, legal recognition of same-sex relationships, adoption of children by gay and lesbian couples, and open inclusion of gays and lesbians in the military; the Democratic platform called for civil rights protections for gays and lesbians and an end to discrimination in the Defense Department.

3. This parallels Brady and Schwartz's (1995) finding that concern about primary election constituencies constrained Republicans' responses to liberalizing opinion on abortion in the 1970s and 1980s.

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

public preferences. On the other hand, party pressures are perhaps greater in Congress. Moreover, state-level studies connect opinion to system-level outcomes, rather than *individual* lawmakers' votes.

The few existing studies of congressional action on gay rights tend to employ coarse measures of constituent preferences and legislative behavior. To capture the former, scholars create indices of pro-gay opinion by averaging constituent preferences across several issues; to capture the latter, they create indices averaging roll-call votes and/or cosponsorships (Lewis and Edelson 2000; Haider-Markel 2001; Oldmixon and Calfano 2007). This inhibits precise analysis, since surveys consistently document much greater support for some gay rights policies than others. Further, indices of opinion and policy lack a common metric, severely constraining the inferences one can draw. Researchers can show the degree and direction of the correlation between constituent ideology and roll-call voting, but, unlike our dyadic analysis, cannot tell whether MCs follow their median constituent, whether policy is over- or under-responsive to opinion, whether opinion or ideology is the key, how responsiveness varies across policies, or whether opinion change results in policy change.

Notably, Bishin and Smith (2013) depart from the trend of using indices to measure opinion, using MRP to calculate district-level opinion on DOMA. They find that MCs consider opinion generally, and pay particular attention to important subconstituencies, consistent with findings by Bishin (2000, 2009). However, public opinion on this set of votes was exceptionally low (on average, 29 percent of constituents supported same-sex marriage at this time), and a broader analysis is needed.

## Data and Methods

### ROLL-CALL VOTES

We evaluate the opinion-vote relationship on 23 roll-call votes across the five issue areas considered by Congress between 1993 and 2010. We use survey questions on the issue being voted upon around the time of (almost always before) the vote (see table 5 in the [supplementary data](#) online for details).

*Adoption:* There were two House votes on amendments to the Washington, DC appropriations bill to prohibit unrelated couples in Washington, DC from adopting a child (one passed in 1998; one failed in 1999).

*Same-sex marriage:* There were three proposals. (1) The Defense of Marriage Act (DOMA) defined marriage as a union between one man and one woman, so that the federal government could not recognize same-sex marriages and no state would be required to recognize those from out of state. It passed both chambers by wide margins. (2) The Federal Marriage Amendment (FMA) aimed to amend the Constitution to define marriage as a union between one man and one woman, but failed to receive the requisite supermajority in the House in 2004, and failed cloture votes in the Senate in 2006. (3) An

amendment to the Health Care and Education Reconciliation Act, suspending the issuance of marriage licenses to same-sex couples in DC, was rejected by the Senate in 2010.

*Gays in the military:* There were four failed votes in 1993 and three successful votes in 2010. Of the failures, two tried to codify a full ban on military service by gays and lesbians, and two aimed to allow the president to decide the issue.<sup>5</sup> In 2010, the House voted twice and the Senate once to repeal DADT, the policy prohibiting the military from asking recruits about their sexual orientation but allowing the military to discharge gay service members.

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

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

#### OPINION ESTIMATION: MR. P GOES TO WASHINGTON

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

MRP proceeds in two stages. The first estimates a multilevel model of individual survey response as a function of a respondent's demographic characteristics as well as her state and (where appropriate and available) her congressional district. Our models use gender, race, age, and education.<sup>6</sup> We include state- and district-level variables that should be correlated with support for gay rights.<sup>7</sup> Finally, we control for slight differences across polls and thus variation in question wording.

5. We interpret a "yea" as a vote to allow gays to serve openly in the military, since this was President Clinton's position.

6. Gender uses two categories: male and female. Race uses three categories: black, Latino, and white or other. Age uses four: 18–29, 30–44, 45–64, and 65+. Education uses five: less than high school, high school degree, some college, college degree, and postgraduate degree.

7. State effects are modeled as a function of region, percent African American, percent Mormon or Christian Evangelical, and percent voting Democratic in the prior presidential election. District effects are modeled similarly (except for district religion data, which are not available), and are grouped by state effect.

We then use this model to “predict” opinion for each demographic-geographic type of respondent (e.g., the probability that a college-educated black female in New York of age 30–44 supports same-sex marriage). Then, the opinion estimates for each type are weighted (poststratified) by their percentages in actual populations (in the state or district) to form the state or district estimate. Population frequencies come from Public Use Micro Data Samples supplied by the Census Bureau, with conversions to congressional district using the Missouri Census Data Center’s Geographic Correspondence Engine (geocorr2k).<sup>8</sup>

#### “CROSS-LEVEL MRP”

One challenge in generating estimates by congressional district is that polling data for some issues do not include district identifiers, preventing the direct use of district-level predictors in the modeling stage even if we have them at the poststratification stage. Normally, if we used a variable such as presidential vote measured at the district level, we would predict response for a given hypothetical respondent type using that hypothetical respondent type’s district\* the estimated coefficient on district-level presidential vote. We always have the former term (by public record) but sometimes lack the latter term. In these cases, one simple way forward would be to use state-level values and correlations for things like presidential vote, with the recognition that the poststratified estimates will then vary only because the demographic composition of each district varies.

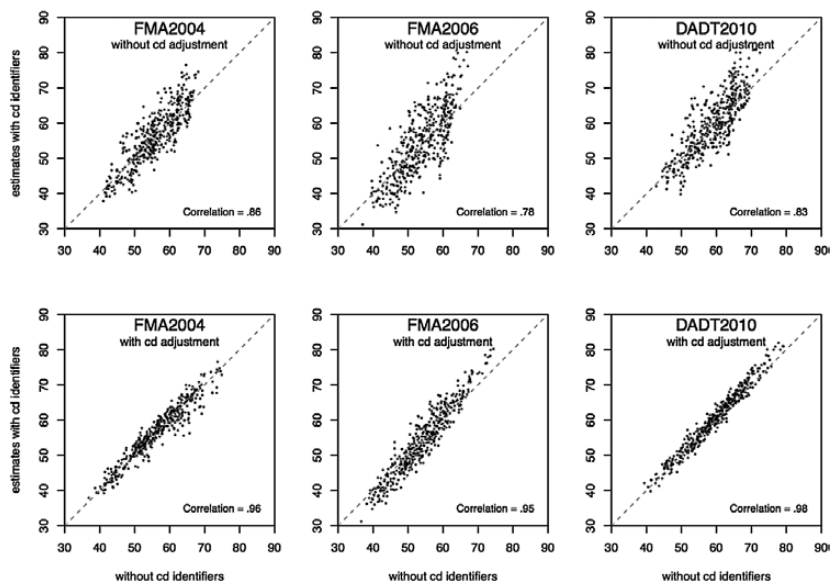
Fortunately, there is another way forward, which does not ignore district-level correlations, and outperforms the simpler solution described above. This modification to basic MRP runs the modeling stage at the only possible level of aggregation, the state level, but imputes the needed coefficient on (say) presidential vote to be the coefficient on district-level presidential vote as if we had originally done the analysis at the district level. Here, we use state-level (as opposed to district-level) values for presidential vote share in the first-stage response model. Then, in the prediction stage, we multiply the resulting coefficients on these state-level variables not with the state-level values but with the congressional district values for presidential vote share. We do the same with percent black. This assumes that the “effect” of aggregate presidential vote on individual response is the same whether measured at the state level or district level, or at least that an estimate from the former is a good estimate of the latter.<sup>9</sup>

To validate this, we take policies that do have congressional district identifiers in the survey data and estimate district opinion using (1) a standard MRP that makes use of the congressional district identifiers; (2) an MRP that uses

8. We use distinct poststratification files for the periods before and after the 2000 national redistricting, after the 2003 Texas redistricting, and after the court-required changes to the 2003 Texas redistricting.

9. [Ardoin and Garand \(2003\)](#) call this top-down estimation.

state-level data for presidential vote and percent black in both the response model and in prediction; and (3) an MRP that uses state-level data for presidential vote and percent black in the response model, but district-level values for these variables in the prediction and poststratification phase (our modification). Figure 1 plots estimates of district-level opinion for three issues using survey data that include congressional district (cd) identifiers (on the y-axis) against similar estimates that do not make use of these identifiers (on the x-axis). The top panel uses state-level presidential vote and share black in both the response model and the prediction phase; the bottom panel uses state-level values of these variables in the response model, but district-level values in the prediction phase. The 45-degree line is shown. Our modified MRP strongly improves the accuracy of estimates, compared to using only state-level information in both the response model and prediction, producing estimates of district-level opinion that are very similar to the estimates we get when district identifiers are available.



**Figure 1. Validating Cross-Level MRP.** This figure plots estimates of district-level opinion for three issues using survey data that includes congressional district (cd) identifiers (on the y-axis) against similar estimates that do not make use of these identifiers (on the x-axis). The top panel uses state-level presidential vote and share black in both the response model and prediction phase; the bottom panel uses state-level values of these variables in the response model, but district-level values in the prediction phase. The 45-degree line is shown.

## DATA SUMMARY

**Table 1** displays summary statistics for our 23 roll-call votes and related opinion. Our estimates are coded in the pro-gay direction: higher values indicate higher support for gay rights.

## Results

### RESPONSIVENESS AND CONGRUENCE

If MCs act as instructed delegates on gay rights issues, their roll-call votes should be both highly responsive to and congruent with constituent preferences. That is, a strong positive correlation should exist between constituent opinion and the probability of a pro-gay vote. A congruent vote is one aligned with majority constituent opinion.

### RESPONSIVENESS

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

### CONGRUENCE

The opinion–vote relationship appears weaker when it comes to actual congruence, and is often biased in one direction or the other. Consider the maps of majority opinion and roll-call votes on DADT and ENDA in **figure 3**. There are far more conservative votes than there are conservative constituencies.

We can see this in **figure 2** as well. The dotted line extending from the  $x$ -axis indicates the 50 percent opinion level, and the line from the  $y$ -axis indicates a 50 percent pro-gay vote probability. The  $y$ -value at which the logit curve intersects the vertical dotted line is the predicted probability of a pro-gay roll-call vote when public support is 50 percent. The  $x$ -value at which the horizontal dotted line intersects the curve is the level of public support needed for the predicted probability of a pro-gay vote to reach 50 percent. In a system of perfect majoritarianism, the regression curves would be very steep at 50 percent opinion and pass through the crosshairs in the middle of each graph. This would yield perfect congruence. For some votes (cf., “FMA2006senate”), the curve comes close to this “majoritarian ideal,” but we do not always observe majoritarianism.



**Table 1. Opinion and Congruence by Roll-Call Vote**

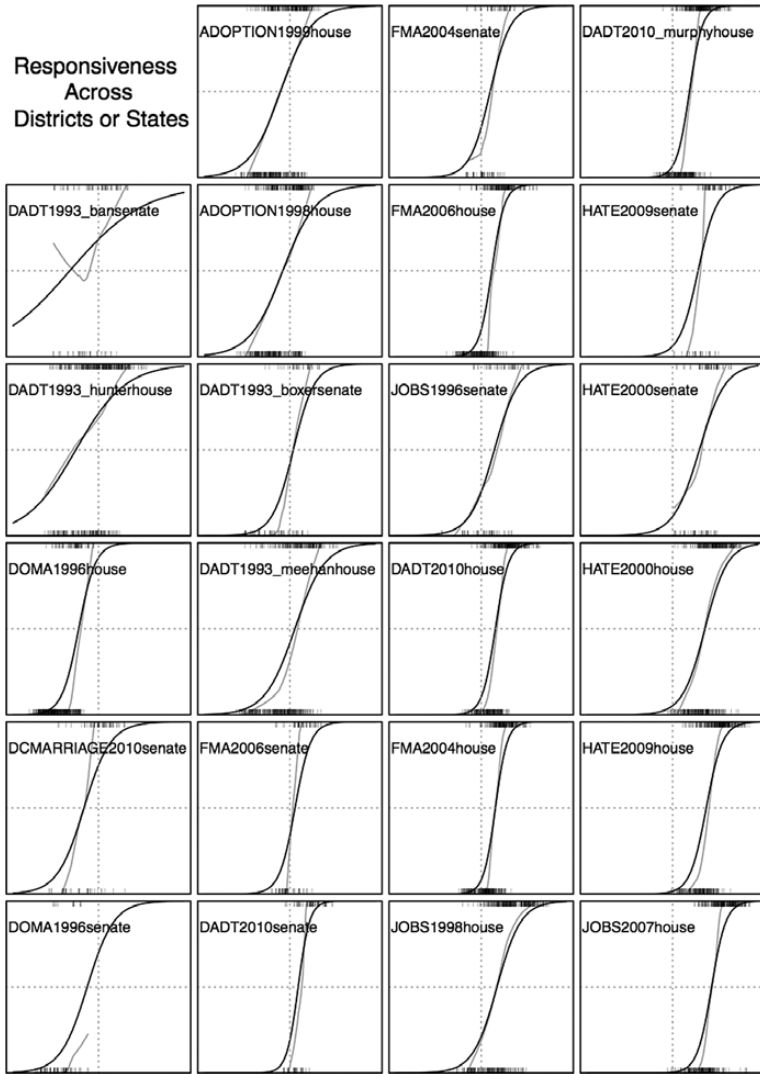
Vote	Mean pro-gay op. (%)	Min. pro-gay op. (%)	Max. pro-gay op. (%)	Pro-gay opinion majorities (%)	Pro-gay vote (%)	Congruence (%)	Net liberal vote bias House	Net liberal vote bias Senate
ADOPTION1998house	44	21	63	35	46	69	43	
ADOPTION2000house	45	21	66	35	50	69	59	
DADT1993bansenate	46	26	66	40	63	61		18
DADT1993boxersenate	46	26	66	40	36	77		-8
DADT1993hunterhouse	48	21	76	45	66	63	79	
DADT1993meehanhouse	48	21	76	45	40	71	-30	
DADT2010house	59	39	79	87	54	68	-127	
DADT2010murphyhouse	59	39	79	87	59	65	-146	
DADT2010senate	58	45	70	88	68	74		-21
DCMARRIAGE2010senate	46	23	64	44	61	74		12
DOMA1996house	29	12	47	0	17	83	68	
DOMA1996senate	28	13	44	0	14	86		13
FMA2004house	56	38	77	80	45	62	-151	
FMA2004senate	55	42	73	78	51	59		-28
FMA2006house	54	31	80	65	44	73	-95	
FMA2006senate	53	40	67	58	49	80		-9
HATE2000house	69	47	90	98	54	56	-187	
HATE2000senate	67	51	82	100	58	58		-41
HATE2009house	71	49	92	100	59	59	-172	
HATE2009senate	69	51	83	100	69	69		-28
JOBS1995senate	56	29	76	72	48	64		-24

*Continued*

**Table 1.** *Continued*

Vote	Mean pro-gay op. (%)	Min. pro-gay op. (%)	Max. pro-gay op. (%)	Pro-gay opinion majorities (%)	Pro-gay vote (%)	Congruence (%)	Net liberal vote bias House	Net liberal vote bias Senate
JOBS1998house	62	32	87	85	59	71	-113	
JOBS2007house	73	47	92	99	56	56	-180	
Mean	54	33	74	64	51	68	-73	-12

NOTE.—The first three columns summarize opinion by district or state. The fourth is the percentage of constituencies with pro-gay opinion majorities. The fifth and sixth columns show percentages of pro-gay roll-call votes and congruent votes, respectively. The final columns are the net number of pro-gay votes, by chamber, lost due to incongruence. There is a large range in opinion across states and districts. Senate votes are in italics.



**Figure 2. Basic Relationships.** Each graph plots the probability of a pro-gay vote from a logistic regression curve (the dark line) given state or district opinion (lighter lines are lower curves). Each x- and y-axis runs from 0 to 100 percent for opinion and the probability of a pro-gay vote, respectively. Opinion in states/districts whose MC cast a pro-gay (anti-gay) vote are plotted in a “rug” on the top (bottom) axis. Dotted lines show the 50 percent marks in opinion and vote probability. Panels are ordered by the position of the curve relative to the 50 percent crosshairs (top to bottom, left to right).

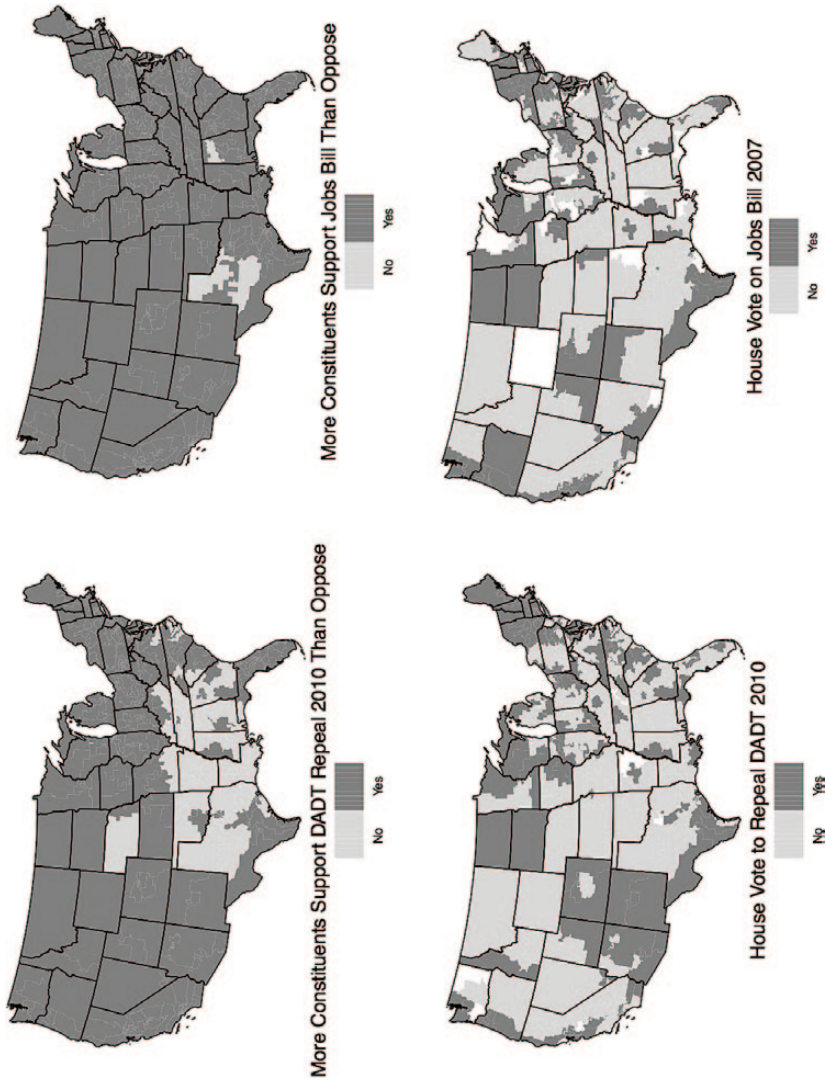


Figure 3. Maps of Opinion and Voting on “DADT2010house” and “JOBS2007house.”

Of course, some degree of incongruence is expected. An MC may not know or care about the difference between 48 and 52 percent support. Mismatches between opinion and voting near the majority threshold are not necessarily of academic interest either. When large supermajorities are needed to bring about a 50 percent chance of a pro-gay vote (i.e., if the logit curve is shifted far to the right of the crosshairs), however, there are significant biases in policymaking

that cannot be explained by uncertainty or dismissed as trivial.<sup>10</sup> For example, in the case of “JOBS2007house,” constituent opinion needs to be 71 percent before the MC has a 50 percent probability of casting a liberal vote. For “HATE2009house,” constituent opinion needs to be 68 percent. Consequently, congruence for both is relatively low—only 56 percent for “JOBS2007house” and 59 percent for “HATE2009house.” In contrast, congruence for the 2006 Senate vote on the Federal Marriage Amendment (with a responsiveness curve that passes through the crosshairs) is a whopping 80 percent.

Overall, we find that 68 percent of the 6,435 terminal roll-call votes in our analysis are congruent.<sup>11</sup> By roll-call vote, congruence ranges from 56 to 86 percent. By issue area, congruence is highest on same-sex marriage (74 percent) and lowest on hate crimes (61 percent).<sup>12</sup>

#### SYSTEMATIC MISREPRESENTATION

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

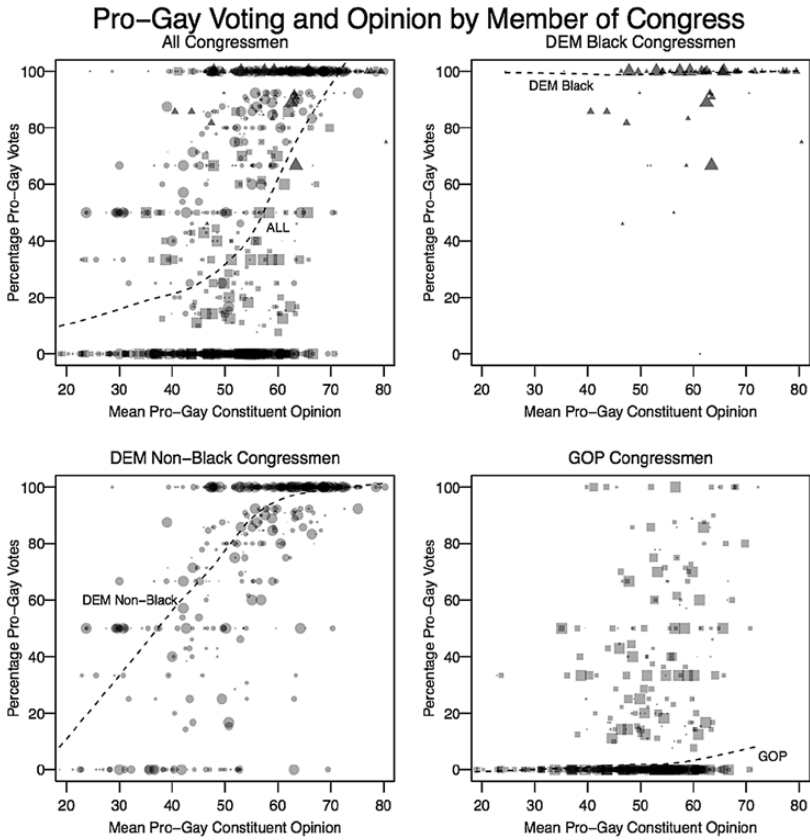
#### DIFFERENCES BY PARTY, RACE, AND GENDER

Now consider “raw” voting records by MC, shown in [figure 4](#). Each graph plots mean pro-gay opinion against the career percentage of pro-gay votes cast by each MC. The top-left panel captures the positive overall relationship

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

11. If we consider roll-call votes only where the size of the opinion majority is greater than 60 or 70 percent, then congruence rises to 78 and 86 percent, respectively.

12. To put this in perspective, [Lax and Phillips \(2009b\)](#) find a similar 62 percent level of congruence between opinion and policies (not votes) at the state level, which is significantly higher than the 48 percent congruence level that [Lax and Phillips \(2012\)](#) find over a much larger set of policy types. [Matsusaka \(2010\)](#) finds a 57 percent congruence level for a subset of those policies. Finally, [Monroe \(1998\)](#) finds a 55 percent match between national policies and national opinion majorities over a wide set of issues.



**Figure 4. Pro-Gay Voting Record Given Opinion, By Party and Race.** The unit is the member of Congress, plotted by mean pro-gay votes and mean pro-gay opinion. The size of the points shows the number of votes represented (from 1 to 14). Republicans are shown with squares, white Democrats with circles, and black Democrats with triangles. Lowess curves are displayed.

between opinion and roll-call voting. However, this aggregate panel masks significant variation by party and race, shown by the other three panels. Democratic non-black (i.e., white, Hispanic, or other race) MCs drive the aggregate relationship between voting and opinion; neither Democratic black MCs nor Republican MCs show much of a relationship between opinion and voting. Black MCs are concentrated at the top of the graph, and, comparing the flat lowess curve in the top-right graph to the steep curve in the lower left, there is a much weaker relationship between opinion and voting for black Democrats than for non-black Democrats. Democratic female MCs vote

similarly to black MCs (see figure 8 in the [supplementary data](#) online).<sup>13</sup> In sum, black MCs and Democratic female MCs tend to support LGB rights, even when their constituents do not. Republican MCs are far less responsive to the liberalization of opinion on LGB rights than Democrats. Two-thirds of Republicans in our sample have never cast a pro-gay roll-call vote, regardless of opinion.<sup>14</sup> These results suggest that public opinion “matters” for roll-call voting only in a broad sense; the success of proposals to extend LGB rights will depend in large part on the composition of Congress.

#### VOTE-SWITCHING

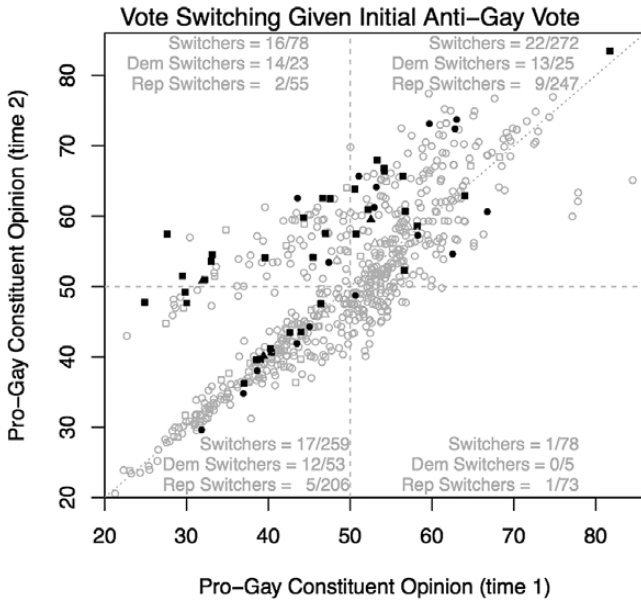
We go further by focusing on MCs who cast multiple votes on the same issues over time, to see if opinion *change* matters (we might not expect votes to change if opinion has not). Since support for gay rights has been steadily increasing over time, we are most interested in studying the extent to which MCs shifted from opposition to support for gay rights. So, we analyze the 687 (of 1,453) pairs in which the first vote was against gay rights.

Figure 5 plots pro-gay constituent opinion at the time of the first vote against pro-gay opinion at the time of the second vote. Each point represents a legislator who voted twice on a particular issue. The key area is the top-left quadrant. Here, we have MCs whose constituents did not support gay rights at the time of the first vote, but did at the time of the second. In a world of perfect majoritarianism, all of the dots in this quadrant would be black (i.e., every legislator should switch his vote). In reality, only 21 percent in this quadrant switched their votes (14 of 23 Democrats switched, while only 2 of 55 Republicans did). White male Republicans who started out with an anti-gay vote in an anti-gay district, whose district shifted to being pro-gay, had only a 4 percent chance of switching to the pro-gay position in the second vote. Similarly situated white male Democrats had a 65 percent chance of switching.

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

13. Female Republican MCs are between Democratic and Republican male MCs. See figure 8 in the [supplementary data](#) online.

14. Figures 9 and 10 in the [supplementary data](#) online show a comparison to MC Nominate scores for context.



**Figure 5. Vote Switching.** We plot voting behavior for the 687 pairs of votes by the same legislator on the same issue where the initial vote was anti-gay. Each circle is a Republican, each square a white Democrat, and each triangle a black Democrat, filled in when the second vote was pro-gay, and hollow when the second vote was anti-gay. The  $x$ -axis shows opinion at time 1 and the  $y$ -axis at time 2, with the 45-degree line showing where opinion has not changed. We break the votes into quadrants to show whether opinion at each time was above or below the 50 percent mark. The fraction switching within each quadrant is shown.

#### MODELS OF ROLL-CALL VOTES

The dependent variable is whether the roll-call vote cast was pro-gay (liberal).<sup>15</sup> We include indicator variables for *Republican*, *Female*, *Latino*, *Black*, and *Senate*. We also include both dimensions of the Poole and Rosenthal measures of MC ideology, *DW Nominate 1* and *DW Nominate 2*. Table 2 displays results from eight model variants, to check robustness across specifications (with further notes in the [supplementary data](#) online, pp. iv–v) and to facilitate

15. We performed a similar analysis of congruence. Because the results were substantively identical, we put this in the [supplementary data](#) online (see table 4) rather than in the paper. Our discussion of congruence in the “Time Trends” section of the paper refers to “bottom line” congruence; that is, we simply look at whether or not MCs voted with the majority in their state or district. The models in the [supplementary data](#) online facilitate more complex all-else-equal comparisons. For congruence, however, we believe the bottom line is sometimes more important.



**Table 2. Responsiveness Models**

Responsiveness regressions (Did the legislator cast a pro-gay vote?)								
	Model 1		Model 2		Model 3		Model 4	
	<i>b</i>	(SE)	<i>b</i>	(SE)	<i>b</i>	(SE)	<i>b</i>	(SE)
<b>Opinion</b>	6.2*	(0.6)	5.7*	(0.5)	4.5*	(0.5)	6.0*	(0.5)
<i>(Slope st. dev.)</i>		(2.5)		(1.9)		(1.9)		(1.8)
Republican			-3.7*	(0.1)			-3.6*	(0.1)
Female							1.2*	(0.1)
Fem. * Rep.								
Latino							0.5	(0.3)
Black							0.9*	(0.2)
Senate							0.3	(0.5)
DW Nom1					-5.0*	(0.1)		
Intercept	0	(0.3)	2	(0.3)	0.2	(0.2)	1.7	(0.4)
<i>N</i>	6,435		6,435		6,427		6,435	
AIC	6,198		3,923		3,454		3,834	
	Model 5		Model 6		Model 7		Model 8	
	<i>b</i>	(SE)	<i>b</i>	(SE)	<i>b</i>	(SE)	<i>b</i>	(SE)
<b>Opinion</b>	4.5*	(0.5)	4.3*	(0.5)	6.0*	(0.5)	3.0*	(0.5)
<i>(Slope st. dev.)</i>		(1.8)		(1.8)		(1.9)		(1.9)
Republican			.7*	(0.2)	-3.7*	(0.1)	-1.1*	(0.3)
Female			1.4*	(0.3)	1.3*	(0.3)	1.4*	(0.4)
Fem. * Rep.			-0.6	(0.3)	-0.3	(0.4)	-0.7	(0.4)
Latino	0.2	(0.3)	0.2	(0.3)	0.5	(0.3)	0.4	(0.3)
Black	-0.1	(0.2)	-0.2	(0.2)	0.5*	(0.2)	-1.0*	(0.3)
Senate	-0.1	(0.4)	-0.1	(0.4)	0.3	(0.5)	-0.7*	(0.3)
Black * Op.					-2.0*	(0.5)	-2.2*	(0.5)
Latino * Op.					0.2	(0.7)	-0.4	(0.7)
Republican * Op.					-0.8*	(0.3)	-0.6*	(0.3)
Female * Op.					0.4	(0.6)	0.8	(0.7)
Fem. * Rep. * Op.					-0.1	(0.9)	-0.5	(1.0)
DW Nom1	-5.0**	(0.1)	-5.7**	(0.3)			-5.5*	(0.3)
DW Nom2							-2.2*	(0.1)
Intercept	0.1	(0.3)	-0.2	(0.2)	1.8	(0.4)	1.0	(0.2)
<i>N</i>	6,427		6,427		6,435		6,427	
AIC	3,405		3,398		3,823		3,062	

NOTE.—Standard errors are shown next to the coefficients. Continuous variables are standardized (subtracting the mean and dividing by 2 standard deviations, putting them on the same scale as each other and roughly the same scale as the dichotomous variables).

Two-tailed tests are used: \**p* < .05, \*\**p* < .01.

various “all else equal” comparisons (so raw coefficients must be interpreted with caution). We allow varying intercepts and slopes for opinion.

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

Party also predicts voting (e.g., models 2, 4, and 7; in models 6 and 8, the *Republican* coefficient is the effect of party after controlling for Nominate score, a strange all-else-equal comparison). Model 4 shows that blacks and Latinos tend to vote pro-gay relative to whites, controlling for opinion (and not controlling for Nominate). Models 5 and 6 show almost no difference between blacks and whites once we control for Nominate, but this is true only on average, as explained later.<sup>16</sup>

Regressions confirm that black MCs are more likely to cast pro-gay votes than white MCs (see the positive, significant coefficient on *Black* in model 4). These models allow for the effect of opinion to vary by MC type. Additional pro-gay support matters less for black MCs than white MCs, as indicated by the negative and significant coefficient on the interaction with opinion in models 7 and 8. For each additional point of policy-specific opinion (in model 7), the probability of a white male Democrat casting a pro-gay vote rises by 5. For white Republicans, the probability only rises by 4, and for black Democrats, it only rises by 3. [Table 3](#) shows the level of pro-gay opinion needed for different types of MCs to have a 50 percent probability of casting a pro-gay roll-call vote, based on model 7. It is highest for white male Republicans (66 percent support) and lowest for black female Democrats (31 percent support).

Overall, we find strong evidence for our hypothesis that support for gay rights should be especially high among MCs belonging to groups that have historically faced discrimination. Though our findings about Latinos depend on model specification, we consistently find that African American and female MCs are especially likely to cast pro-gay votes.<sup>17</sup> Turning to differential

16. We generally find no significant differences between the House and Senate (see the [supplementary data](#) online, pp. iv, vii–viii).

17. Interacting party and gender, we find that the effect of gender varies by party. This is also clear in figure 8 in the [supplementary data](#) online. We do not interact race and party, because there is almost no variation in party identification among African American MCs, and little among Latinos. There does not appear to be a particularly strong interaction between party and race for Latinos. Latino Democrats voted pro-gay 90 percent of the time; Latino Republicans voted pro-gay 33 percent of the time. White Democrats voted pro-gay 82 percent of the time; white Republicans voted in the pro-gay direction 11 percent of the time. Latino Democrats are congruent 87 percent of the time; Latino Republicans are congruent 57 percent of the time. In comparison, white Democrats are congruent 82 percent of the time, while white Republicans are congruent 47 percent of the time.

**Table 3. “Coin Flip” Points**

	“Coin flip” point
Black female Democrats	31 (18, 39)
Black male Democrats	39 (29, 45)
White female Democrats	40 (35, 45)
White male Democrats	46 (42, 50)
White female Republicans	60 (55, 64)
White male Republicans	66 (62, 70)

NOTE.—We used model 7 to calculate the level of pro-gay opinion needed for a 50 percent probability of casting a pro-gay roll-call vote for six types of MCs, ordered from most pro-gay to least (for the average roll call). Confidence intervals are displayed in parentheses.

responsiveness, however, race seems more influential than gender. While women are not any more or less responsive to growing support for gay rights than men, changes in opinion have less influence on African American MCs than their white colleagues. This is primarily because black MCs strongly support gay rights, even if their constituents do not.

To further examine the LGB rights–civil rights connection, we coded floor speeches on four of our votes to see what kind of arguments MCs made in favor of LGB rights (see pp. v–vi of the [supplementary data](#) online). We found that, for each vote, civil rights arguments played a greater role in speeches by black Democrats, compared to white Democrats or Republicans. Older cohorts of black MCs (i.e., those socialized in the civil rights era) are more likely to cast pro-gay votes, relative to younger cohorts of black MCs, conditioned on opinion. We find no similar relationship for white or Latino MCs. We also find that the second dimension of Nominat, which tended to represent racial justice issues for much of the twentieth century, also influences voting on gay rights issues (see model 8). This is notable, as [Poole and Rosenthal \(2007\)](#) show that most conflict occurs on the first ideological dimension today. Overall, MCs’ preferences with regard to civil rights appear to influence their willingness to support LGB rights, and this connection is particularly strong for African American MCs.

#### TIME TRENDS

The snapshot provided thus far obscures important differences over time, illuminated in [figure 6](#). Reading these panels in order tells the following story: [1] Mean pro-gay opinion increased over time, from around 45 to around 60 percent. [2] The number of pro-gay opinion majorities increased more sharply, from around 35 to 85 percent. [3] However, the percentage of pro-gay roll-call votes cast increased far less dramatically, from 50 to 60 percent. [4] Surprisingly—for now—overall congruence stayed nearly constant (around 70 percent). [5] and [6] But, the nature of incongruence changed drastically. Incongruence, once leaning to the liberal side, now strongly cuts against pro-gay policy, measured either as a percentage of total incongruence (where the



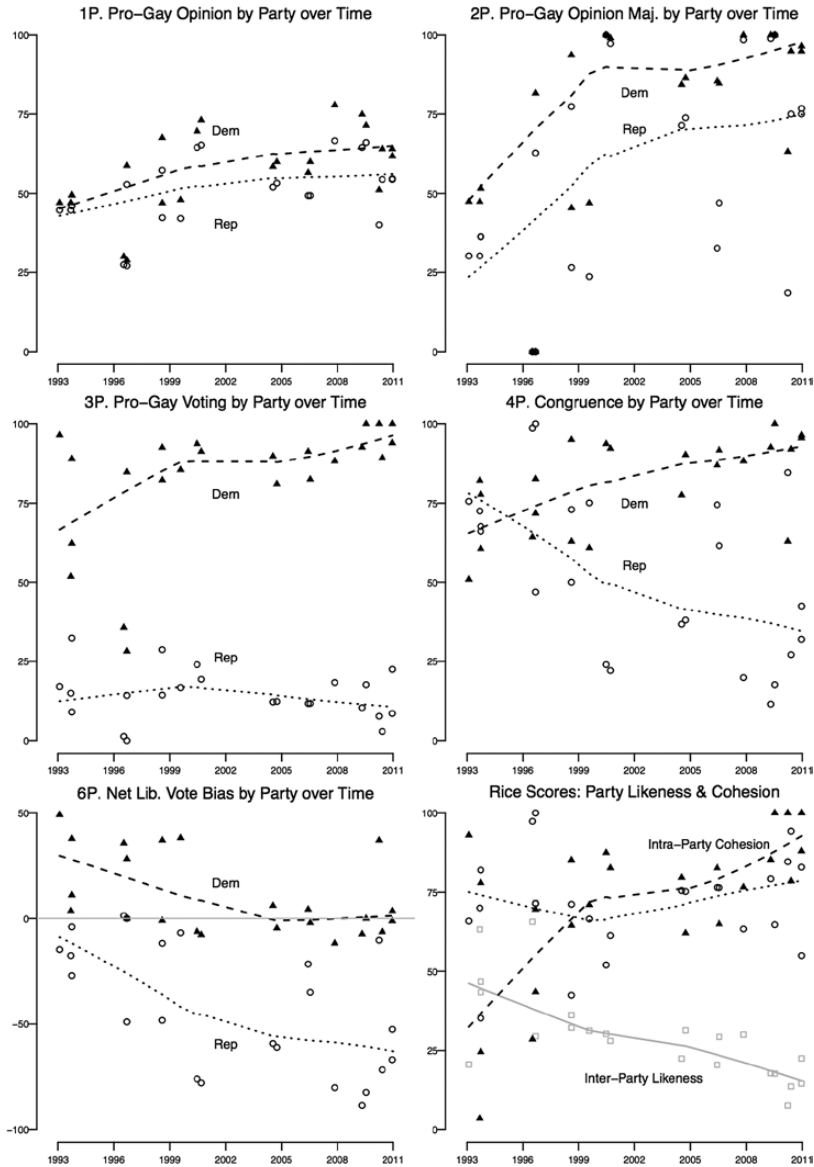
degree of incongruence is incorporated) or by the net vote bias (under +15 to -25 percent). The predicted conservative vote bias from incongruence now averages 109 votes in the House (i.e., 109 votes are “lost” because MCs are not following constituent opinion) and 25 in the Senate.

Breaking this down by party, [figure 7](#) reveals more nuance. Five of the panels parallel panels in the previous figure, and are labeled [P] to indicate as much. They show: [1P] Support for gay rights has grown in both Democratic and Republican constituencies over time. While the parties started roughly in the same place, in terms of opinion in their districts/states, Democrat-represented constituencies (DRCs) have grown more liberal at a slightly higher rate than Republican-represented constituencies (RRCs), leading to a small party gap today (roughly five percentage points). [2P] There is a larger and more constant gap in terms of opinion majorities. DRCs went from a rough split between pro-gay and anti-gay majorities to nearly 100 percent pro-gay majorities. Most RRCs have been majority pro-gay since the late 1990s as well (75 percent as of 2011). [3P] Within Congress, we observe a very different pattern. Democrats have steadily voted more pro-gay over time, starting from a relatively high base rate. But, Republicans have remained relatively constant around a much lower rate (less than 15 percent), despite changes in their constituencies. Consequently, while the gap between Democratic and Republican districts has grown only slightly, in Congress it has grown dramatically. (This is consistent with work by [Hacker and Pierson \[2005\]](#), who say increasingly conservative policymaking does not reflect public will.) The final panel focuses more directly on party polarization.<sup>18</sup> [4P] Since RRC pro-gay majorities have become far more common, Republican congruence rates have plummeted from 75 to 35 percent. Democratic congruence has increased. [6P] This is partly because DRCs have moved in line with the initial pro-gay voting rates observed, and partly because Democrats have moved to match their increasingly pro-gay DRCs by voting along those lines. The initial liberal vote bias by Democrats disappeared by the early 2000s, and they have stayed in line on average since (that is, the remaining incongruence cancels out). Republicans, who started out with balanced incongruence, now show clear conservative bias relative to their RRCs. Congruence remained constant overall because the increase in Democratic congruence balanced the decrease in Republican congruence.

## The Limits of Responsiveness

In his dissenting opinion in *Lawrence v. Texas*, Justice Antonin Scalia accused his fellow Supreme Court justices of being complicit in a subversion of the

18. The Rice likeness score is the absolute difference between the percentage of yeas cast by each party, subtracted from 100, measuring similarity of pro-gay voting rates between parties. The Rice cohesion score is voting agreement within each party (absolute difference between the yea and nay votes cast within a party) ([Rice 1925, 1928](#)). Cohesion has risen and likeness plummeted, a clear display of polarization.



**Figure 7. Parties over Time.** Panels other than the last are numbered in parallel with figure 6, but broken down by party. Democrats are shown with solid triangles and a dashed lowess curve; Republicans are shown with open circles and a dotted lowess curve. The bottom-right panel contains Rice likeness scores (shown with gray open squares and gray solid line) and Rice cohesion scores.

democratic process, rushing ahead of public opinion: “So imbued is the Court with the law profession’s anti-anti-homosexual culture, that it is seemingly unaware that the attitudes of that culture are not obviously ‘mainstream.’” He invokes the lack of congressional action on LGB rights as clear evidence that the “homosexual agenda” is counter-majoritarian.

We actually find the *opposite* pathology: there is a persistent conservative bias against constituent will on LGB rights. Our analysis might even underestimate this bias, because it does not account for agenda control. Pro-gay legislation, even when supported by large opinion majorities, is almost never brought to a vote in the House when Republicans control the chamber.

Our results suggest that LGB individuals cannot rely on the political process to further their rights. Support in roll-call votes requires a large (and likely unachievable) supermajority of public support for many MCs; and those MCs who are relatively impervious to gains in public support for LGB rights often constitute a pivotal voting bloc in Congress. LGB individuals may need to turn to courts to protect their rights, and courts would have the grounds to step in to do so—not being able to resolve the problem using normal political processes is one of the reasons that courts raise the standard of review they apply in cases of potential discrimination. LGB individuals seemingly qualify for “suspect class” status; that is, they are a group in need of particular protection on the basis of political vulnerability (a concept introduced by Justice Stone in *United States v. Carolene Products*).<sup>19</sup>

Disaggregating MCs by party, gender, and race illuminates important nuances in the opinion–vote relationship that system-level studies, like those conducted at the state level, cannot capture. Increased polarization at the elite level has inhibited responsiveness to the liberalization of opinion on LGB rights. While black MCs and white female Democratic MC generally cast pro-gay votes regardless of their constituents’ preferences, they cannot compete with Republican MCs in terms of numbers, and the latter have maintained their anti-gay stance, even against strong pro-gay majorities. Altogether, these patterns have led to a large partisan gap in responsiveness, and a growing conservative bias in policymaking.

Our findings resist an easy categorization into top-down or bottom-up explanations for policy change. There seems to be a top-down process pulling black and female MCs toward gay rights, and bottom-up pressure from the public pushing

19. When the courts deal with discrimination claims, they can apply different standards of review, from the lowest hurdle, rational basis; to intermediate scrutiny; to strict scrutiny, the highest hurdle. The rational basis test requires only some rational basis for the differential treatment, with a presumption of constitutionality. Strict scrutiny begins with a strong presumption of unconstitutionality, which the government can overcome only if it has a compelling interest in the law, which must also be narrowly tailored to that interest. There are two reasons to apply strict scrutiny: a violation of a fundamental right or if the population affected constitutes a “suspect class.” At present, “suspect classes” include race, religion, and national origin. We do not speak here to the “fundamental right” basis for strict scrutiny, but our results speak to the second basis.

many white Democratic MCs. However, our analysis of vote change shows that Republican MCs are not the only ones who hold their ground against gay rights even when a majority of their constituents grow supportive—many Democratic MCs fail to switch their votes as well. On the whole, opinion change has limitations as a tool for achieving civil rights gains. Much depends on the partisan composition of Congress, and even member replacement among Democrats.

Scholars have long argued that it is important for women and minorities to hold office because they should be most willing and able to represent people sharing their demographic characteristics (e.g., Pitkin 1967; Sapiro 1981; Phillips 1995; Mansbridge 1999), and have evaluated the extent to which such descriptive representation occurs (e.g., Swers 1998, 2002; Harris 2012). We cannot speak *directly* to this, as openly LGB members of Congress are still too few to study systematically. We can look more broadly at the extent to which MCs who are members of historically underrepresented populations represent members of *other* historically underrepresented populations. Our findings suggest that descriptive representation can operate in this broader sense; however, this can come at the expense of classic descriptive representation. Like the NAACP, African American MCs (many representing majority-minority states and districts) have sometimes supported LGB rights over the objections of African American constituents.<sup>20</sup> The potential for conflict between narrower and broader views of descriptive representation in Congress is intriguing and deserves further study.

We would also like to see more work on dyadic representation and on stop-pages in the democratic process, to put our extended case study into context. Methodologically, we have extended the reach of the MRP opinion-estimation technique, facilitating this substantive research agenda.

## Supplementary Data

Supplementary data are freely available online at <http://poq.oxfordjournals.org/>.

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