

The Policy Landscape of Sexual Orientation

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This paper examines the intersection of public administration and sexual orientation through a policy process framework that combines the stages model of policymaking and elements of the policy streams metaphor. Within this framework, we explore the emergence of sexual orientation as a policy issue, the extension of domestic partner benefits, and the battle over marriage equality in the legislative and judicial arenas of local, state, and federal government.

Public policy has been defined as “who gets, what, when and how” (Laswell, 1958) and the “sum of government activities”(Peters, 1996, p. 4). In general, public policy consists of political decisions for implementing programs to achieve societal goals” (Cochran and Malone, 1995). Whereas , the construction of public policy takes into consideration a number of factors, including the definition of the problem (Rochefort and Cobb 1994), participants in the process, the intended effects, and the declaration of social and political values. Having defined public policy, our paper now shifts to the policy landscape of sexual orientation. There is a sharp ideological divide over gay rights policy in the United States concerning the role of government in securing equality. Conflicting court decisions and legislative variations among states contribute to the complex state of affairs. This paper examines the intersection of public administration and sexual orientation through a policy process framework that combines the stages model of policymaking (Gerston 1997; Birkland 2005) and elements of the policy streams metaphor (Kingdon 1995). Within this framework we explore how public discourse on sexual orientation is framed by competing interests at the state and national level. We specifically examine state legislation and judicial rulings on domestic partner benefits, civil unions, and same-sex marriage. We then consider the normative role of the public administrator in adhering to the principles (and law) of the U.S. Constitution, specifically the Equal Protection Clause and the Full Faith and Credit Clause.

Policy Models

The stages model of policy making presents the policy process in a systematic approach beginning with agenda setting and progressing through stages of formulation,

implementation, and evaluation (Anderson 2003; Birkland 2005). Problems are identified, defined, and demands for government action may occur during the identification phase of the stages model of public policy. Values are inherent in problem identification and definition as perceptions of a problem will vary among groups within society. The definition of a problem also affects considerations of policy alternatives (Rochefort and Cobb 1994). Values interpreted through politics are also highly visible in the agenda-setting phase of public policy process. It is at this stage where publicity and information provided by public officials, mass media, interest groups, and bureaucracy shape the policy agenda (Gerston 1997). Considering the diverse population and ideologies of the American public, our values are often interpreted through participation in the political process and policymaking is a constant struggle of ideas.

In comparison, the streams metaphor (Kingdon 1995) proposes that windows of opportunities arise when the politics stream (representing the political realm), the problem stream (representing the degree and perception of a problem), and the policy stream (representing solutions to problems) all converge. While the stages model has been criticized for interpreting policy as a progression of linear phases rather than an integrated cyclical process, and the streams metaphor has been criticized for not moving beyond windows of opportunity both models still provide a useful framework for examining significant events in public discourse which have placed marriage equality and nondiscrimination in the workplace on the national public agenda.

Emergence of Sexual Orientation as a Policy Issue

The emergence of sexual orientation as a policy issue can be examined through collective action frames and advocacy coalition frameworks (Swank and Fahs 2012). Dimensions of collective action frames include rendering a social norm as unjust, identifying the causes, convincing citizens that political strategies are necessary for change, and establishing a shared identity (Swank and Fahs 2012). Similarly, the advocacy coalition framework (ACF) emphasizes interest group development and action in placing issues on the policy agenda when group alliances form around core values. Within the ACF model both 'relatively stable' parameters and 'dynamic system events' influence policy making (Birkland 2001). In the example of Lesbian Gay Bisexual Transgender (LGBT) rights, a relatively stable parameter is the Constitutional framework of our legal system while dynamic system events may include changes in political power, public opinion, and policy. Similarly, ideological shifts in Congress and state legislatures represent change in the politics stream of Kingdon's (1995) model, while increased social acceptance of homosexuality contributes to changes in the perception of the problem of marriage equality.

The historic marginalization of homosexuality within American society likely contributed to the slow pace of collective action. The Mattachine Society, founded in 1951 in Los Angeles by Henry "Harry" Hay Jr. was one of the first groups to advocate for the LGBT community (Hall 2010). Struggles over organization and strategy at the local and national levels led to its demise, however, chapters in New York, Philadelphia, and Washington continued to function under the new name of the Janus Society (Hall 2010). Nevertheless, a significant triggering event for collective action within the gay liberation movement resulted from the New York City Police raid on the Stonewall Inn in 1969.

The fifty gay organizations that had existed in 1969 had grown to more than eight hundred four years later, and tens of thousands of gays and lesbians became actively involved in the gay rights movement...If not a decisive break, Stonewall certainly marked the movement's evolution

from a thinly spread reform effort into a large, grassroots movement for liberation, and the riot itself was of enormous symbolic importance and rhetorical power (Hall 2010, 546).

The Gay Liberation Front emerged after Stonewall and adopted a more aggressive approach to advance gay liberation and transform society. Rather than being concerned with gaining social acceptance, the group sought to reform the social and political system. In comparison, the Gay Activists Alliance championed their cause through patriotic dissent by appealing to core American values of liberty and equality (Hall 2010). These three interest groups played a critical role propelling LGBT rights forward while laying the groundwork for the national debate on domestic partner benefits.

Nondiscrimination and Domestic Partner Benefits in the Workplace

The slow progression toward LGBT rights first appears in state and local government actions toward nondiscrimination in employment and the extension of domestic partner benefits to same-sex spouses of employees. Regarding nondiscrimination in employment, former New York City Mayor Lindsay issued an executive order in 1971 prohibiting discrimination based on sexual orientation in selection and promotion decisions (Potter 2012). In addition to nondiscrimination in employment, several localities also enacted ordinances to prevent broader discrimination in the LGBT community. However, by the late 1970s, coalitions between conservatives and Christians mobilized as both groups sought to rescind previous equality initiatives. The strength of the coalition materialized in Dade County, Florida in 1977 as an ordinance that prohibited discrimination against homosexuality in matters of employment, housing, and public services was overturned by voters via an aggressive campaign using Anita Bryant (former Miss America and Mouseketeer) as the symbol of traditional family values (Hall 2010; Potter 2012). In comparison, LGBT activists found greater success in California during this time. In 1978, Proposition 6 (also referred to as the Briggs initiative) intended to prohibit homosexuals from teaching in public schools, failed to pass. Two prominent individuals in opposition to Prop.6 were Ronald Reagan and Harvey Milk, an openly gay elected official. That same year Milk was successful in passing a nondiscrimination ordinance in the City of San Francisco (Hall 2010; Potter 2012). In 1982, the state of Wisconsin passed legislation to prohibit discrimination based on sexual orientation. Although New York City had an executive order, a law to prohibit nondiscrimination based on sexual orientation in municipal employment did not pass until 1986. As of this writing, 20 states and 81 localities prohibit sexual orientation discrimination in employment (Human Rights Campaign 2009).

In 1984, the city of Berkeley, California extended domestic partnership benefits to employees (Duncan 2001). Today, 15 states and 151 localities provide domestic partner benefits (Human Rights Campaign 2009). Twelve localities have gone a step further by adopting equal benefits ordinances. For example, the ordinance in San Francisco even requires city contractors to provide domestic partner benefits to their employees (Human Rights Campaign 2009; Knauer 2008). Nevertheless, there are still wide variations across states and localities regarding non-discrimination and domestic partner benefits as 29 states still afford no protection to the LGBT community against discrimination (Eichner 2010). In addition, legal challenges to domestic partner benefits have produced contradictory outcomes and continue to circulate through the legal system. For example, the Virginia Supreme Court overturned the extension of domestic partner benefits in Arlington County when a citizen challenged the policy under the Dillon Rule which limits powers of

municipalities (Duncan 2001). Virginia has also acted more aggressively in recent years through the passage of the Marriage Affirmation Act, which attempts to prohibit domestic partner benefits in the private sector (Knaeur 2008).

Table 1: State Benefits Extended to Same-sex Domestic Partners

Alaska (2006)	Iowa (2003)	New York (1995)
Arizona (2008)	Maine (2001)	Oregon (1998)
California (1999)	Maryland (2009)	Rhode Island (2001)
Connecticut (2000)	Montana (2005)	Vermont (1994)
Hawaii (1997)	New Jersey (2004)	Washington (2001)
Illinois (2006)	New Mexico (2003)	Wisconsin (2009)

Data Source: National Conference of State Legislatures 2012

At the federal level, President Clinton issued Executive Order 13087 in 1998 to add sexual orientation as a protected category to prohibit discrimination in executive branch employment (Office of Personnel Management 2012). Of greater significance is President Obama's move in 2011 to prohibit discrimination against homosexuals in the U.S. Military by eliminating the policy of Don't Ask Don't Tell (Pub. L.104-10, 10 U.S.C. § 654). In addition, President Obama issued a memo to the Office of Personnel Management to identify means to extend benefits to same-sex domestic partners of federal employees ("Presidential Memo" 2010). Moreover in 2011, Obama declared the Defense of Marriage Act (DOMA) unconstitutional. DOMA defines marriage as a union between a man and a woman, and denies federal benefits to same sex partners (Department of Justice, February 23, 2011).

Marriage Equality: Agenda Setting and Policy Formation

The stages and streams policy models are useful for examining LGBT rights at state and local levels. Changes in public attitudes toward homosexuality represent a dynamic system event in the streams model and a triggering mechanism in the stages model. Triggering mechanisms are events that capture public attention of a problem to place it on the public agenda and social evolution is a critical point of origin for triggering mechanisms (Gerston 1997). There is evidence that American attitudes toward homosexuality have evolved over the past couple of decades. The American Psychiatric Association (APA) dropped homosexuality from the registry of mental illnesses in 1973. In 2005, the guiding body of the APA formally declared support for full marriage equality (Association of Gay and Lesbian Psychiatrists 2012). According to The Pew Forum on Religion and Public Life (2012b), only 32% of Americans supported same-sex marriage in the 2003-2004 presidential campaign compared to 46% in favor of same-sex marriage in the 2011-2012 campaign. Public support has continued to increase. As of June 2012 over 50% of all Americans support same sex marriage (CNN Poll, 2012) In 2011, President Obama repealed the Don't Ask Don't Tell policy that banned homosexuals in the military. One year later, President Obama announced his support for marriage equality.

While social transformation represents a change in attitude and behaviors among large sectors of the population, it does not imply consensus of the population as the battle over marriage continues within state judicial and legislative arenas. Proponents and opponents alike engage in venue shopping among institutions and levels of government that appear likely to provide favorable outcomes for their position. Birkland (2001) asserts, "We can think of venues in institutional terms—legislative, executive, or judicial—or in vertical

terms—federal, state, local government” (119). Proponents of same-sex marriage frame the issue in terms of equality and fairness relying more heavily on litigation to promote their policy agenda. In contrast, opponents of same-sex marriage frame the issue around religious freedom and traditional family values (marriage is for procreation, same sex marriage harms children – See California Proposition 8) and more often use legislative strategies to restrict the definition of marriage.

Litigation

The Gay and Lesbian Advocates and Defenders (GLAD) and Lambda Legal are among the most prominent groups advocating marriage equality. The litigation strategy of LGBT activists includes initial identification of states with equal protection clauses in state constitutions as well as gender-neutral marriage laws (Knauer 2008). For example, appellants challenged the denial of same-sex marriage in Hawaii as a violation of the equal protection clause of the state constitution in *Baehr v. Lewin* (1993). Upon remand, the trial court held that the denial of same sex marriage was a violation of the state constitution (*Baehr v. Miike* 1996). Despite the court rulings, Hawaiian citizens used the ballot initiative in 1998 to restrict marriage to heterosexual couples, yet a statewide domestic partnership law was enacted during the same time-period. Similarly, the Vermont Supreme Court ruled in *Baker v. Vermont* (1999) that the prohibition of same-sex marriage violates the Common Benefits Clause of the Vermont Constitution. However, a court order to develop an equivalent system to marriage resulted in the establishment of civil unions by the state legislature. In 2003, Massachusetts became the first state to recognize the right of same-sex couples to marry (*Goodridge v. Department of Public Health*). The following year, the U.S. Supreme Court declined to hear the case intended to overturn the Massachusetts decision.

Table 2: Timeline of Significant State Court Decisions on Same-sex Marriage

Hawaii <i>Baehr v. Lewin</i> (1993) <i>Baehr v. Miike</i> (1996)	Prohibition of same-sex marriage violates the state constitution equal protection clause. Followed by legislative action banning same-sex marriage and the creation of domestic partnerships
Alaska <i>Brause v. Bureau of Vital Statistics</i> (1998)	The state must identify a compelling reason to deny same-sex marriage licenses. Followed by ballot initiative banning same-sex marriage
Vermont <i>Baker v. Vermont</i> (1999)	Prohibition of same sex-marriage violates the state constitution common benefits clause. Court orders legislature to develop legal structure ‘equivalent’ to marriage
Massachusetts <i>Goodridge v. Department of Public Health</i> (2003)	Prohibition of same-sex marriage violates the state constitution equal protection clause. Permits same-sex marriage
Arizona <i>Standhardt v. Superior Court</i> (2003)	Court upholds state prohibition of same-sex marriage
New Jersey	Recognizes right of equivalent legal status

<i>Lewis v. Harris</i> (2006)	for same-sex couples. Court orders legislature to develop legal structure 'equivalent' to marriage
New York <i>Hernandez v. Robles</i> (2006)	Court upholds state prohibition of same-sex marriage. Followed by legislative action permitting same-sex marriage
Washington State <i>Anderson v. King County</i> (2006)	State Supreme court upheld Washington DOMA
Nebraska <i>Citizens for Equal Protection v. Bruning</i> (2006)	8 th Circuit Court of Appeals ruled Nebraska constitutional amendment prohibiting same-sex marriage and civil unions does not violate the U.S. Constitution
California <i>In re Marriage Cases</i> (2008) <i>Perry v. Schwarzenegger</i> (2010) <i>Hollingsworth v. Perry</i> (2010) <i>Perry v. Brown</i> (2012)	Prohibition of same-sex marriage violates the state constitution. Permits same-sex marriage, followed by ballot initiative restricting same-sex marriage, followed by 9 th Circuit Court of Appeals decision that the ballot initiative is unconstitutional.
Connecticut 2008 Kerrigan v. the State Commissioner of Public Health	Prohibition of same-sex marriage violates the state constitution equal protection clause. Permits same-sex marriage
Iowa 2009 Varnum v. Brien	Prohibition of same-sex marriage violates the state constitution equal protection clause. Permits same-sex marriage

The right to marry is a liberty protected under the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments, and marriages performed in one state are recognized by other states via the Full Faith and Credit Clause of Article IV, section 1 of the U.S. Constitution. Nevertheless, the Defense of Marriage Act of 1996 (DOMA) (Public Law 104-199) permits the federal government and states to reject the legitimacy of same-sex marriage performed in other states. In addition, DOMA defines marriage at the federal level as between a man and a woman (Public Law 104-199) . Since its passage, legal scholars have questioned the constitutionality of DOMA under Full Faith and Credit and the Equal Protection Clause (Knaeur 2008). In 2011, President Obama and U.S. Attorney General Eric Holder declared that the administration will no longer defend DOMA because it is unconstitutional (White House, February 23, 2011). House Republicans then formed The Bipartisan Legal Advisory Group (BLAG) to defend DOMA.

Plaintiffs in several cases challenging DOMA have recently petitioned the U.S. Supreme Court to grant certiorari. In *Gill et al. v. U.S. Office of Personnel Management*, the U.S. Court of Appeals for the First Circuit (Boston, Massachusetts) ruled that section 3 of DOMA violates the Equal Protection Clause of the Fifth Amendment. Although plaintiffs are legally married within their own state, the refusal of the federal government to recognize their marriage as legitimate results in harm due to the inability to file joint tax returns and Social Security protections. Similarly, *Pederson et al. v. Office of Personnel* was filed in

Federal District Court in Connecticut. Plaintiffs, consisting of thirteen individuals in the states of Connecticut, Vermont, and New Hampshire, argue that DOMA deprives same-sex couples equal protection. In the case of *Windsor v. U.S.*, a federal district judge for the Southern District of New York also ruled that section 3 of DOMA is unconstitutional. In this specific case, Thea Clara Spyer passed away in 2009 and left her estate to her legally married spouse Edith Windsor. Because their marriage is not legally recognized at the federal level, Edith was obligated to pay over \$300,000 in estate taxes. Recently, the U.S. Solicitor General has petitioned the U.S. Supreme Court to hear both the Pedersen and Windsor cases, bypassing the Second Circuit (Denniston 2012). These legal rulings increase the probability that the U.S. Supreme Court will determine the constitutionality of DOMA in the near future; until then marriage recognition is determined by the states.

Legislative Restrictions and State Constitutional Bans

There are wide variations in same-sex marriage and recognition among the states. Currently, there are nine states that recognize same-sex marriage: Connecticut, Iowa, New Hampshire, New York, Maine, Maryland, Massachusetts, Vermont, and Washington. According to the Human Rights Campaign (2012), states that ban same-sex marriage but permit civil unions or domestic partnerships include California, Hawaii, Nevada, Oregon, and Wisconsin. In contrast, states that do not ban same-sex marriage and permit civil unions or domestic partnerships include Delaware, Illinois, New Jersey, Rhode Island, and Washington.

Previous court decisions in Alaska and Hawaii that ruled the prohibition of same-sex marriage violated the equal protection clause of state constitutions is categorized as both a dynamic systems event and a significant triggering event that mobilized opposition to same sex marriage. Introduced by then-Presidential candidate Senator Bob Dole (Knauer 2008), the timing of the passage of DOMA coincided with the early judicial decisions in Alaska and Hawaii. Following the federal model of DOMA, several state legislatures narrowed the definition of marriage through legislation or state constitutional bans (see Table 3).

Aside from reactions to judicial rulings, explanations for state constitutional amendments that ban same-sex marriage consider factors such as size of the Evangelical population, ideological shifts to the far right among state legislators, and “gay baiting” as a campaign strategy. One study by Fleishman and Moyer (2009) found that variations in support were related to education levels of citizens and the size of the evangelical population. Similarly, Gaines and Garand (2010) found that individuals characterized as strongly identifying with Christian religious values and interpreting the bible as “the literal word of God” were strongly opposed to same sex marriage. A comparison of religious denominations also revealed that Evangelicals were even less supportive of marriage equality than non-Evangelicals (Gaines and Garand 2010).

Ideological shifts to the right and the use of “gay baiting” as a campaign strategy to garner public support also help to explain state constitutional bans on same-sex marriage (Frank 2008). Same-sex marriage amendments were more likely to appear on state ballots during presidential election years. For example, during the presidential election year of 2004, thirteen states introduced ballot initiatives to prohibit same sex marriage. Similarly, marriage restriction was on the ballot in eight states during the congressional elections of 2006. In 2008, two additional states banned same-sex marriage. With the exception of proposition 107 in Arizona in 2007, ballot initiatives to restrict-same sex marriage always passed when introduced.

Table 3: The Status of Marriage Equality across States

	State Prohibition of Same-sex Marriage	Civil Union or Domestic Partnership	Recognition of Same-sex Marriages from other states	State issues Same-sex Marriage Licenses
Alabama	X (2006)			
Alaska	X (1998)			
Arizona	X (2008)			
Arkansas	X (2004)			
California	X (2008)	X (1999)	X (2009)	X* (2008)
Colorado	X (2006)			
Connecticut				X (2008)
District of Columbia				X (2010)
Delaware		X (2012)		
Florida	X (2008)			
Georgia	X (2004)			
Hawaii	*	X (2012)		
Idaho	X (2006)			
Illinois		X (2011)	X (2011)	
Indiana				
Iowa				X (2009)
Kansas	X (2005)			
Kentucky	X (2004)			
Louisiana	X (2004)			
Maine	X (2009) 2012 ballot to repeal			X* (2009)
Maryland			X (2010)	2012 ballot
Massachusetts				X (2003)
Michigan	X (2004)			
Minnesota	2012 ballot to repeal			
Mississippi	X (2004)			
Missouri	X (2004)			
Montana	X (2004)			
Nebraska	X (2000)			
Nevada	X (2002)	X (2005,2009)		
New Hampshire				X (2009)
New Jersey		X (2007)	X (2007)	
New Mexico			X (2011)	
New York			X (2008)	X (2011)
North Carolina	X (2012)			
North Dakota	X (2004)			
Ohio	X (2004)			
Oklahoma	X (2004)			

Cont. Table 3	State Prohibition of Same-sex Marriage	Civil Union or Domestic Partnership	Recognition of Same-sex Marriages from other states	State issues Same-sex Marriage Licenses
Oregon	X (2004)	X (2008)		
Pennsylvania				
Rhode Island		X (2011)	X (2012)	
South Carolina	X (2006)			
South Dakota	X (2006)			
Tennessee	X (2006)			
Texas	X (2005)			
Utah	X (2004)			
Vermont		X (1999)		X (2009)
Virginia	X (2006)			
Washington		X (2007)		2012 ballot
West Virginia				
Wisconsin	X (2006)	X (2009)		
Wyoming				

Data Sources: Pew Forum on Religion and Public Life 2012a; Human Rights Campaign 2012

The relationship between expenditures and electoral outcome is inconclusive for ballot initiatives that restrict marriage. Table 4 provides data on ballot measure expenditures and citizen votes on state ballot initiatives to ban same-sex marriage. States where proponents of same-sex marriage spent more in an effort to defeat marriage restrictions but were unsuccessful include California, Colorado, Florida, Idaho, Kentucky, Maine, Missouri, Montana, Oregon, South Carolina, South Dakota, Utah, Virginia, and Wisconsin. In comparison, states where opponents of same-sex marriage spent more and were successful include Alabama, Arizona, Arkansas, Kansas, Louisiana, Michigan, Ohio, Oklahoma, and Tennessee.

In 2008, significant battles over marriage equality erupted in Arizona and California. The first proposition to ban same-sex marriage in Arizona failed in 2007; with expenditures of \$1,039,093 and 721,489 citizens voting for proposition 107 (defining marriage as between a man and woman/no recognition of same sex partnerships) and 775,498 against (with expenditures at \$1,897,693). However, the following year, opponents of same-sex marriage spent \$7,782,275 compared to \$833,041 in expenditures by proponents of marriage equality (National Institute on Money in State Politics, 2012).

The greatest controversy over marriage equality in recent years has transpired in the judicial and legislative arenas in California. In the year 2000, voters prohibited same-sex marriage; however, same-sex couples could register as domestic partners. In 2005, the domestic partnership law expanded to include nearly all rights and responsibilities as provided to married couples. In 2008, the California Supreme Court ruled that the prohibition on same-sex marriage violated equal protection. That same year, a ballot initiative to prohibit same-sex marriage (proposition 8) was passed by voters. Proponents of

same-sex marriage spent \$64,351,406 compared to \$43,329,562 in expenditures by opponents (Followthemoney.org 2012), nevertheless, the initiative passed. In 2009, the California Supreme Court upheld proposition 8, followed by a federal court decision (*Perry v. Schwarzenegger* 2010) which ruled proposition 8 violated the Equal Protection and Due Process Clauses in the U.S. Constitution. In *Perry v. Brown* (2011) the California Supreme Court held that proponents of proposition 8 had legal standing to appeal the decision. Proponents of proposition 8 have filed a petition for certiorari with the U.S. Supreme Court under *Hollingsworth v. Perry*.

Table 4: State Prohibition of Same-sex Marriage: Expenditures and Votes

	Ballot Initiative, Year	Proponents of Same-sex Marriage		Opponents of Same-sex Marriage	
		Expenditures	Votes	Expenditures	Votes
Alabama	Primary Amendment Act 2005-35, 2006	\$11,616	161,694	\$21,644	697,591
Alaska	Ballot Measure 2, 1998	---	71,631	---	152,965
Arizona	Proposition 102, 2008	\$833,041	980,753	\$7,782,275	1,255,835
Arkansas	Amendment 3, 2004	\$2,952	251,914	\$337,682	753,770
California	Proposition 8, 2008	\$64,351,406	6,401,482	\$43,329,562	7,001,084
Colorado	Amendment 43, 2006	\$5,459,145	699,030	\$1,376,486	855,126
Florida	Amendment 2, 2008	\$4,397,206	3,008,026	\$1,607,803	4,890,883
Georgia	Amendment 1, 2004	---	768,716	\$92,765	2,454,930
Hawaii	Question 2, 1998	---	117,827	---	285,384
Idaho	House Joint Resolution 2, 2006	\$106,378	163,384	\$27,104	282,386
Kansas	Amendment, 2005	\$105,129	179,432	\$154,182	417,675
Kentucky	Amendment 1, 2004	\$522,864	417,097	\$201,370	1,222,125
Louisiana	Amendment 1, 2004	\$23,547	177,067	\$43,117	619,908
Maine	Measure 1, 2009	\$5,678,579	238,595	\$3,367,018	266,324
Michigan	Proposal 04-2, 2004	\$854,212	---	\$1,931,409	---
Mississippi	Amendment 1, 2004	---	155,648	\$7,215	957,104
Missouri	Amendment 2, 2004	\$488,189	439,529	\$29,613	1,055,771
Montana	CI-96, 2004	\$51,498	148,263	\$10,870	295,070
Nebraska	Initiative 416, 2000	---	203,667	---	477,571
Nevada	Question 2, 2002	---	164,573	---	337,197
North Carolina	Amendment 1, 2012	---	840,802	---	1,317,178
North Dakota	Amendment 1, 2004	\$8,974	81,716	---	223,572
Ohio	Issue 1, 2004	\$942,421	2,065,462	\$1,202,762	3,329,335
Oklahoma	State Question 711, 2004	\$11,616	347,303	\$21,644	1,075,216
Oregon	Measure 36, 2004	\$2,967,012	787,556	\$2,455,816	1,028,546
South Carolina	Amendment 1, 2006	\$370,427	234,464	\$116,122	830,081
South Dakota	Amendment C, 2006	\$171,578	160,152	\$123,166	172,305
Tennessee	Amendment 1, 2006	\$158,814	327,536	\$299,279	1,419,434
Texas	Proposition 2, 2005	\$780,669	536,913	\$495,059	1,723,782
Utah	Amendment 3, 2004	\$780,840	307,488	\$521,925	593,297
Virginia	Question 1, 2006	\$1,548,139	999,687	\$415,170	1,328,537
Wisconsin	Question 1, 2006	\$4,313,493	862,924	\$669,251	1,264,310

Data Sources: National Institute on State Money in Politics 2012; Ballotpedia 2012

On the 2012 Ballot

In addition to the pending petitions for certiorari at the U.S. Supreme Court, four states (Maine, Maryland, Minnesota, and Washington) voted on same-sex marriage in the 2012 elections (NCSL 2012). Maine, Maryland, and Washington voters determined permission of same sex marriage in their states. In Minnesota, a repeal on the ban of same sex marriage was on the ballot.

The state legislature in Maine legalized same-sex marriage in 2009; however, voters repealed the law through the referendum process. The 2012 ballot initiative allowed voters to decide whether to repeal the ban on same-sex marriage. Maine citizens voted to repeal the ban and affirm gay marriage. The most active coalition groups supporting equality include Mainers United for Marriage, EqualityMaine, and Freedom to Marry Maine PAC (Freedom to Marry 2012).

Maryland currently recognizes domestic partnerships and same-sex marriages performed in other states. The General Assembly passed legislation permitting same-sex marriage in 2012. Shortly thereafter, opponents gathered enough signatures to place the issue of same-sex marriage on the ballot (question 6). Equality Maryland, Marylanders for Marriage Equality, and the Human Rights Campaign were the most active coalitions supporting the measure to allow same-sex couples the right to marry (Freedom to Marry 2012). In November 2012, Maryland voters passed marriage equality. Included in the language are protections for churches that do not wish to perform same-sex ceremonies.

The ballot initiative in Washington (referendum 74) was also the result of opposition to recent passage of same-sex marriage by the state legislature. Proponents of same-sex marriage raised \$2,250,910 compared to \$155,983 raised by opponents. The most active coalition groups included Washington United for Marriage, Freedom to Marry, and the Human Rights Campaign (Freedom to Marry 2012). Voters passed Referendum 74; same-sex couples can now marry in the State of Washington.

According to the National Conference of State Legislatures (2012), proponents of marriage equality circulated petitions to legalize same-sex marriage or repeal existing bans in California, Colorado, Florida, Nebraska, and Ohio, however, not enough signatures were gathered to place the initiatives on the ballot. The New Jersey lawmakers also passed legislation to permit same-sex marriage; however, Governor Chris Christie vetoed it.

Concluding Remarks

Historically, the U.S. has been a world leader in human rights. However, when it comes to gay rights, the U.S. has lagged behind other countries. Today, same-sex marriage is legal in 11 countries: Argentina, Belgium, Canada, Denmark, Iceland, the Netherlands, Norway, Portugal, South Africa, Spain, and Sweden. Unlike other countries, in the U.S. same sex marriage has not been nationalized; gay rights vary by jurisdiction. Recognition of same-sex marriage in the U.S. varies by state. Currently, nine states legally recognize and support same-sex marriage: Connecticut, Iowa, New Hampshire, New York, Maine, Maryland, Massachusetts, Vermont, and Washington. However, equal rights for the LGBT community continue to be at the forefront of national politics. The Obama administration has taken major steps to institutionalizing gay marriage in the US. Specifically, the Obama administration issued a legal brief to the US Supreme Court requesting that the 1996 Defense of Marriage Act (DOMA) be struck down because it violates the equal protection clause of the US Constitution. Previously, the Obama administration stated that DOMA is unconstitutional. Equally important, the US Supreme Court will hear arguments Spring

2013 on two cases involving same-sex marriage: *United States v. Windsor* (denies federal benefits under DOMA, specifically estate taxes) and *Hollingsworth v Perry* (formerly *Perry v. Brown*, California's Proposition 8). These two legal cases will determine same sex marriage and extension of federal benefits to same sex partners in all 50 states.

Public administrators play a normative role in adhering to the principles of equality within the parameters of the law and the professions code of ethics. According to the American Society for Public Administration's (ASPA), Code of Ethics, public servants are to "oppose all forms of discrimination and harassment," "be prepared to make decisions that are not popular," (Section 1), "eliminate unlawful discrimination," and promote constitutional principles of equality," (Section II). We should be mindful of these principles in the heat of the policy battles concerning nondiscrimination based on sexual orientation.

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References

- American Society for Public Administration, Code of ethics. Accessed Sept. 1, 2012 at http://www.aspanet.org/public/ASPA/Resources/Code_of_Ethics/ASPA/Resources/Code%20of%20Ethics1.aspx?hkey=acd40318-a945-4ffc-ba7b-18e037b1a858
- Andersen v. King County*, 138 P.3d 963, 2006.
- Anderson, James. 2003. *Public policymaking* (5th ed.). New York: Houghton Mifflin Company.
- Association of Gay and Lesbian Psychiatrists. 2012. APA position statement - Support of legal recognition of same sex marriage." Accessed July 15, 2012 at <http://www.aglp.org/pages/position.html#same>
- Baehr v. Lewin*, 74 Haw. 530, 852 P.2d 44, 1993.
- Baehr v. Miike*, 950 P.2d 1234, 1996.
- Baker v. Vermont*, 744 A.2d 864, 1999.
- Ballotpedia.org. 2012. An interactive almanac of state politics." Accessed May 3, 2012 at http://ballotpedia.org/wiki/index.php/Main_Page
- Birkland, Thomas. 2005. *An introduction to the policy process: Theories, concepts, and models of public policymaking*. Armonk: ME Sharpe.
- Brause v. Bureau of Vital Statistics*, WL 88743, 1998.
- Citizens for Equal Protection v. Bruning*, 455 F. 3d 859, 8th Cir, 2006.

- Cochran, Clark E. and Eloise F. Malone. 1999. *Public policy: Perspectives and choices*. New York, NY: McGraw Hill.
- Commonwealth of Massachusetts v. the United States Department of Health and Human Services*, 698 F.2d 234, 2011.
- CNN, Political Unit. 2012. CNN Poll: Americans' attitudes toward gay community changing. Accessed August 31, 2012 at <http://politicalticker.blogs.cnn.com/2012/06/06/cnn-poll-americans-attitudes-toward-gay-community-changing/>
- Defense of Marriage Act. 1996. Pub. L. No. 104-199, 110 Stat. 2419 1 U.S.C. § 7 and 28 U.S.C. § 1738C. <http://www.gpo.gov/fdsys/pkg/PLAW-104publ199/html/PLAW-104publ199.htm>
- Denniston, Lyle. 2012. U.S. to file new DOMA pleas. *Supreme Court of the United States Blog*. Accessed August 31, 2012 at <http://www.scotusblog.com/2012/08/u-s-to-file-new-doma-pleas/>
- Department of Justice. 2012. Statement of the attorney general on litigation involving the defense of marriage act. February 23, 2011. Accessed September 1, 2012 at <http://www.justice.gov/opa/pr/2011/February/11-ag-222.html>
- Don't Ask, Don't Tell Repeal Act of 2010. Pub. L 111-131. Accessed at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ321/html/PLAW-111publ321.htm>
- Duncan, William. 2001. Domestic partnership laws in the United States: A review and critique. *Brigham Young University Law Review* 3: 961-993.
- Eichner, Maxine. 2010. The employment non-discrimination act: Requiring fairness for all employees regardless of sexual orientation or gender identity. *American Constitution Society for Law and Policy*. Accessed August 1, 2012 at <http://www.acslaw.org/publications/issue-briefs/the-employment-non-discrimination-act-requiring-fairness-for-all-employees>
- Frank, Barney. 2008. This critical moment. *The Gay & Lesbian Review Worldwide*. 15(5): 13.
- Freedom to Marry.org. 2012. *States*. Accessed August 26, 2012 at <http://www.freedomtomarry.org/states/>
- Gaines, N. Susan and James Garand. 2010. Morality, equality, or locality: Analyzing the determinants of support for same sex marriage. *Political Research Quarterly* 63(3): 553-567.
- Gertson, Larry. 1997. *Public policy making*. Armonk: M.E. Sharpe.
- Gill et al. v. Office of Personnel Management*, 682 F.3d 1, 1st Cir. 2012.
- Golinski v. Office of Personnel Management*, 824 F.Supp 2d 968, N.D. Cal. 2012.
- Goodridge v. Department of Public Health*, 798 N.E.2d 94, Mass. 2003.
- Hall, Simon. 2010. American gay rights movement and patriotic protest. *Journal of the History of Sexuality*, 19(3):536-562.
- Hernandez v. Robles*, 855 N.E. 2d.1, 7 N.Y.3d 338, 2006.
- Hollingsworth v. Perry*, 130 S. Ct. 705, 710, 2010.
- Human Rights Campaign. 2009. State of the workplace 2007-2008. Accessed August 2, 2012 at http://www.hrc.org/files/assets/resources/HRC_Foundation_State_of_the_Workplace_2007-2008.pdf
- Human Rights Campaign. 2012. Marriage equality and other relationship recognition laws. Accessed July 15, 2012 at http://www.hrc.org/files/assets/resources/Relationship_Recognition_Laws_Map.pdf

- In Re Marriage Cases*, 43 Cal.4th 757, 76 Cal.Rptr.3d 683, 183 P.3d 384, 2008.
- Kerrigan v. The State Commissioner of Public Health*, 289 Conn. 135, 957 A.2d 407, 2008.
- Knauer, Nancy. 2008. Same-sex marriage and federalism. *Temple Political & Civil Rights Law Review* 17:421-442.
- Kingdon, John. 1995. *Agendas, alternatives, and public policies*. (2nd ed.). New York: Addison, Wesley Longman, Inc.
- Lasswell, George. 1958. *Politics: who gets what, when, how*. (2nd ed.). New York: McGraw-Hill.
- Lewis v. Harris*, 188 N.J. 415, 2006.
- National Conference of State Legislatures. 2012. Same-sex and domestic partnerships on the ballots. Accessed August 1, 2012 at <http://www.ncsl.org/legislatures-elections/elections/same-sex-marriage-on-the-ballot.aspx>
- National Institute on Money in State Politics. 2012. Ballot measures by subject. Accessed August 5, 2012 at <http://www.followthemoney.org/database/BallotMeasureSubjects.phtml?bm=154>
- Perry v. Brown*, 671 F.3d 1052, 1082, 9th Cir. 2012.
- Perry v. Schwarzenegger*, 591 F.3d 1147, 9th Cir. 2010.
- Peters, Guy. 1996. *American public policy: Promise and performance*. Chatham: Chatham House Publishers.
- Pew Forum on Religion and Public Life. 2012a. States with voter approved constitutional bans on same sex marriage. Accessed June 22, 2012 at <http://www.pewforum.org/Gay-Marriage-and-Homosexuality/States-With-Voter-Approved-Constitutional-Bans-on-Same-Sex-Marriage-1998-2008.asp>
- Pew Forum on Religion and Public Life. 2012b. Religion and attitudes toward same-sex marriage. Accessed June 22, 2012 at <http://www.pewforum.org/Gay-Marriage-and-Homosexuality/Religion-and-Attitudes-Toward-Same-Sex-Marriage.aspx>
- Potter, Claire. 2012. Paths to political citizenship: Gay rights, feminism, and the Carter presidency." *Journal of Policy History*, 24(1): 95-114.
- Rochert, David A. and Roger W. Cobb. 1994. *The politics of problem definition: shaping the policy agenda*. Lawrence: University Press of Kansas.
- Swank, Eric and Breanne Fahs. 2012. Resources, social networks, and collective action frames of college students who join the gay and lesbian rights movement." *Journal of Homosexuality*, 59: 67-89.
- U.S. Office of Personnel Management. 2012. Addressing sexual orientation discrimination in federal civilian employment: A guide to employee's rights. Accessed May 10, 2012 at <http://www.opm.gov/er/address2/guide01.asp>
- Varnum v. Brien*, 763 n.w.2d 862, Iowa 2009.
- White House, Office of the Press Secretary. 2010. Presidential memorandum-extension of benefits to same-sex domestic partners of federal employees. Accessed June 5, 2012 at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-extension-benefits-same-sex-domestic-partners-federal-employment>
- White House, Office of the Press Secretary. 2011. Press briefing by press secretary Jay Carney. Accessed June 5, 2012 at <http://www.whitehouse.gov/the-press-office/2011/02/23/press-briefing-press-secretary-jay-carney-2232011>