ABSTRACT

TAYLOR, JAMI KATHLEEN. The Adoption of Gender Identity Inclusive Legislation in the American States. (Under the direction of Andrew J. Taylor.)

This research addresses an issue little studied in the public administration and political science literature, public policy affecting the transgender community. Policy domains addressed in the first chapter include vital records laws, health care, marriage, education, hate crimes and employment discrimination. As of 2007, twelve states statutorily protect transgender people from employment discrimination while ten include transgender persons under hate crimes laws. An exploratory cross sectional approach using logistic regression found that public attitudes largely predict which states adopt hate crimes and/or employment discrimination laws. Also relevant are state court decisions and the percentage of Democrats within the legislature. Based on the logistic regression’s classification results, four states were selected for case study analysis: North Carolina, Pennsylvania, Maryland and Massachusetts. The case studies found that legislators are often reluctant to support transgender issues due to the community’s small size and lack of resources. Additionally, transgender identity’s association with gay rights is both a blessing and curse. In conservative districts, particularly those with large Evangelical communities, there is strong resistance to LGBT rights. However, in more tolerant areas, the association with gay rights advocacy groups can foster transgender inclusion in statutes. Legislators perceive more leeway to support LGBT rights. However, gay activists sometimes remove transgender inclusion for political expediency. As such, the policy core of many LGBT interest groups appears to be gay rights while transgender concerns are secondary items. In the policy domains studied, transgender rights are an extension of gay rights.
The Adoption of Gender Identity Inclusive Legislation in the American States

by
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DEDICATION

This dissertation is dedicated to my family and friends. Without their assistance, completion of this endeavor would not have been possible. Special thanks are extended to Ann Cyptar for helping me find the courage to dream.
BIOGRAPHY

Jami Kathleen Taylor is a native of Norfolk, Virginia. She holds a bachelor of arts in economics and a masters degree in public administration from Old Dominion University. Additionally, she holds a masters degree in library and information science from the University of North Carolina at Greensboro. Prior to admission in the PhD program in public administration at North Carolina State University, Jami was a municipal real estate appraiser. Currently, she teaches political science at Ohio University.

Jami is blessed to have one child, Jessica.
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CHAPTER 1: PRIMER ON TRANSGENDER AND PUBLIC POLICY

During the past decade, transgender issues have become more visible in daily life and in public affairs. An increasing number of jurisdictions offer protections against gender identity related bias. Despite the increased awareness and protection, transgender people remain subject to significant discrimination and disproportionate violence (Minter & Daley, 2003; Wilchins, 2004; Rudacille, 2005). Additionally, these individuals must navigate a system of governance premised on a binary notion of sex and gender. At the very least, segments of the transgender community challenge the immutability of sex while others call into question the notion of a binary gender system. This has important implications for governance as numerous aspects of public policy rely on sex classification. However, the statutes that define one’s legal sex are vague, contradictory and inadequate. The resulting sex classification of transgender individuals and the subsequent conveyance of legal rights is often the result of agency rule-making, administrative discretion, or judicial decree. Outcomes are dependent on the context, jurisdiction and decision making biases of the administrator or judge. The increased visibility of transgender issues, their haphazard legislative treatment, and a host of contradictory administrative/judicial decisions have created an incoherent policy framework.

This policy incoherence, combined with widespread discrimination, raises two important issues for administrators. First, such an environment is conducive to litigation. Increasingly, government agencies find themselves on the losing side of such cases. As such, increased environmental scanning on transgender related public policy is important for public management and administrator self interest. Second, the “thin, heterogeneous
and ad hoc” (Dasti, 2002) policy framework raises important civil rights concerns. Civil rights issues are relevant because equality and equity are important ethical concerns for public administrators (Frederickson, 1971; Hart, 1975; Cooper, 2004). As with other equity issues that have received insufficient consideration (Oldfield, 2003), the field should give increased attention to this important, yet ignored area.

In order to facilitate environmental scanning (Eadie, 1983) and increase the awareness of equity concerns, this study provides an overview of transgender identity’s intersection with governance. As such, the first substantive portion of the text seeks to increase reader familiarity with transgender identity. Despite common confusion with gay identities (Carroll, Gilroy and Ryan, 2002), gay and transgender people sometimes have different policy interests (Currah, Minter and Green, 2000). Therefore, the study’s subsequent examination of various policy domains differentiates transgender related concerns from those of gay/lesbian individuals. Attention is also given to policy variation toward subgroups of transgender identity. While much attention is given to variation in state policies, federal and local laws are discussed when relevant.¹

The Concept of Transgender

At birth, individuals are identified as male or female according to their external genitalia (Bishop & Myricks, 2004). Secondary sex characteristics, hormone levels, reproductive organs, and genes provide additional clues regarding an individual’s sex. Gender identity, a person’s internal sense of being male or female (Bullough, 2000) is another important characteristic. Gender identity is measured on a continuum between

female and male (Eyler & Wright, 1997). It is likely “hardwired into the brain at birth” (Rudacille, 2005). Gender identity is different from sexual orientation. Sexual orientation refers to a person’s attraction to men and/or women.

When a person’s gender identity is not congruent with the other physical sex demarcating characteristics, that person is said to be transgender. Transgender is an “informally used term to refer to any person with any type of gender identity issue” (Harry Benjamin International Gender Dysphoria Association, 2001). The umbrella nature of the term transgender makes it inclusive of different groups; the gender queer, crossdressers and transsexuals. The gender queer reject the notion of a binary gender system. Thus, they freely mix and match the gendered behaviors and characteristics associated with men and women. Crossdressers suffer from comparatively mild gender dysphoria. These individuals may occasionally adopt the dress of the opposite sex but otherwise present as members of their birth sex. People with a “strong and persistent cross-gender identification” (American Psychiatric Association, 1994) are said to have a gender identity disorder. They are commonly called transsexuals. Transsexualism might be caused by pre-natal exposure to abnormal levels of sex hormones that alter the development of the brain structures that determine gender identity (Zhou, et al., 1995; Kruijver, et al., 2000). Transsexualism may also be genetic in origin (Green, 2000; Hennigsson, et al., 2005). Regardless of cause, transsexualism is not responsive to psychotherapy (Cohen-Kettenis & Gooren, 1999). For those with severe gender identity

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2 As used in this research, gender dysphoria refers to the degree of discomfort with one’s birth sex. It is not meant to imply any formal psychiatric classification.
disorders, sex reassignment surgery is the most effective treatment available (Cohen-Kettenis & Gooren, 1999).

The prevalence of transsexualism is disputed. Estimates range from 1:10,000 to 1:40,000 for natal males and 1:30,000 to 1:100,000 for natal females (Cohen-Kettenis, 2004). However, some researchers and activists contend that the prevalence of transsexualism ranges from 1:1,500 to 1:2,500 (Conway, 2002; Rudacille, 2005). By comparison, incidence rates for homosexuality range from 1-10% of the population for men and 1-6% for women (Herek, 2004). With regards to the broader category of transgender, incidence rates are “mere guesswork” (Rudacille, 2005). However, it is generally accepted that transsexuals are the smaller part of the broader transgender community. Pre-eminent activist, author and GenderPAC founder Riki Wilchins (2004) stated, “There may be 100,000 or so transsexuals in the United States, but there are undoubtedly several million crossdressers.” Prevalence rates within the entire lesbian, gay, bisexual and transgender (LGBT) community are suppressed by social stigma. However, transgender prevalence rates likely experience greater suppression as transgender identities have greater social stigma (Taylor, 2005). Additionally, many transgender people do not seek treatment or counseling (Rudacille, 2005). Treatment, particularly sex reassignment, is also often in inaccessible due to cost (Cohen-Kettenis & Gooren, 1999; Dasti, 2002). Having introduced the concept of transgender identity, the next section of this paper address how transgender identity intersects with the policy process.
The Fragmented Nature of Public Policy Regarding Transgender Issues

Public policy toward transgender identity is incoherent for several reasons. Perhaps most importantly, there has been legislative avoidance of these issues. This stems from several factors. The small size and closeted existence of the transgender community makes it difficult to register policy concerns in the public’s consciousness. Thus, a lack of salience is a hurdle to access on the policy agenda (Kingdon, 1984). Movement in the politics stream (Kingdon, 1984) is further hampered by the small size of the transgender electorate in combination with the rational election seeking behavior of legislators (Mayhew, 1974). While legislators often advance nonsalient issues, they must be judicious in order to avoid opposition (Geer, 1996). Given that public attitudes set the parameters of acceptable public policy (Erikson, Wright & McIver, 1993), and that attitudes toward gay and transgender rights vary by jurisdiction (Brace, Sims-Butler, Arceneaux, & Johnson, 2002), the policy framework in this area is fragmented.

Legislative bodies are not solely responsible for setting public policy. Svara (1999) noted that there is political and administrative complementarity in the policymaking process. However, bureaucratic policymaking, particularly in controversial areas pertaining to equality or equity, raises important questions about legitimacy, accountability and deference to popular and political control (Finer, 1941; Sayre, 1958; Lowi, 1993; Selden, 1997). The legitimacy of the judiciary’s policy role is subject to similar scrutiny (Patterson, 2006). The political backlash to Brown v. Board of Education (1953), Lawrence v. Texas (2003), and Goodridge v. Department of Public
Health (2003) serve as important examples of the tension between judicial accountability and the protection of minority civil rights.

Faced with normative and political concerns about their policy-making role, administrators and the judiciary frequently look to the legislature for guidance. However, for reasons previously discussed, such guidance is often not forthcoming. Therefore, legislative avoidance, jurisdictional variation in public attitudes, and questions surrounding the policy making role of other institutions have contributed towards this incoherence. The following sections explore this realm of public policy.

**Vital Records: Differences in State Law and State Sanctioned Outing**

Gay and lesbian people do not rely on the state to recognize their identity. One’s sexual orientation is not recorded on a driver’s license, passport, birth certificate or any other public identification record. Unless entering into a civil union or same-sex marriage, a person’s sexual orientation is a purely private matter as the state does not collect or disclose this information. However, transgender identities are public. Many transgender individuals must rely on government approval of legal name changes, birth certificate amendments, passport changes, and the updating of Social Security records. Transsexuals and crossdressers (when crossdressed) must often cope with identification documents and public records that “out” them as transgender. The increased availability of public records on the Internet and via commercial databases increases the likelihood of disclosure. Outing is particularly problematic during the lengthy process of changing sex. Regardless of when outing occurs, such disclosures may lead to discrimination or violence against transgender people.
With proper documentation, the post-operative transsexual may have his/her passport and Social Security records amended by the appropriate federal agencies. However, vital records regulations are generally governed by state laws. As of 2006, twenty-four states have statutes that explicitly allow a post-operative transsexual person to amend his or her birth certificate (Greenberg, 2005). Nineteen states have general statutes that authorize changes to the sex designation on a birth certificate (Lambda Legal, 2005). Using administrative discretion, these states interpret their general statutes to allow amendment based on sex reassignment. However, courts have frequently not respected birth certificates that were amended under general statutes (Littleton v. Prange, 1999; In re Estate of Gardiner, 2002; Greenberg & Herald, 2005). Additionally, absent statutory language, state courts in Ohio (In Re Ladrach, 1987) have refused to amend birth certificates by citing a lack of statutory authority. Four states have no statutory guidance yet allow amendment via an administrative process (Greenberg, 2005). Only Tennessee has explicit statutory language forbidding birth certificate amendments in the event of a sex change (Tennessee Statute 68-3-203). Table 1.1 provides a state-by-state treatment of vital records laws.

As with the variety of policies regarding vital records amendment, there are varying standards as to what constitutes sex reassignment. In 2006, this issue was the subject of controversy in New York City (Yoshino, 2006). Using its rulemaking authority, the city’s Board of Health proposed a policy that would have permitted a transgender individual to amend his/her birth certificate provided (Yoshino, 2006):
• He or she had undergone a legal name change
• Lived in the acquired gender for at least two years
• Submitted two affidavits (from qualified medical & psychological professionals) that demonstrated full transition and its intended permanence

These proposed guidelines did not require sex reassignment surgery. City health commissioner Thomas R. Frieden justified the new policy by stating that “surgery versus nonsurgery can be arbitrary…It’s the permanence of the transition that matters most” (as cited in, Cave, 2006). While supported by many activists because sex reassignment is costly and often unavailable, the proposal drew heavy criticism from institutional stakeholders such as hospitals, jails and schools (Yoshino, 2006). These institutions rely on sex classification but they were not consulted during the rulemaking process. In addition to ignoring those potential administrative concerns, the proposal might have conflicted with existing state policy and proposed federal guidelines. In response to public and institutional outcry, Commissioner Frieden admitted that the board “hadn’t thought through” the proposal’s implications (Yoshino, 2006). Subsequently, the board scuttled the original proposal and settled for an incremental revision to the existing policy. It allowed post-operative transsexuals to amend their birth certificates to show the acquired sex (Yoshino, 2006).

Not surprisingly, the amendment process is also heterogeneous. Some states allow amendment via administrative procedures while others require a court order. States
that require a court order create an additional hardship when the transsexual person is no
longer a resident. In these instances, there are jurisdictional concerns between the
transsexual’s state of residence and his/her place of birth. A recent Maryland appellate
court decision, In the matter of Robert Wright Heilig/Janet Heilig Wright (2002)
addressed this issue and found that Maryland circuit courts have jurisdiction to confirm a
non-native citizen’s sex change. However, that finding is not binding outside of
Maryland (Greenberg & Herald, 2005). Therefore, amended birth certificates face
obstacles to recognition when crossing state lines (In re Estate of Gardiner, 2002;
Greenberg, 2005). This may be a violation of the Full Faith and Credit Clause
(Greenberg, 2005; Greenberg & Herald, 2005). However, the federal courts have not
weighed in on this matter. Thus, despite policy variation within the federal system,
transsexuals may not totally avoid unfavorable policy outcomes by voting with their feet.
A transsexual’s birth place and place of residency may have significant influences on his
or her civil rights.

Transsexuals and Marriage Law: Echoes of the Same-Sex Marriage Debate

Marriage law is a concern for administrators grappling with transgender issues.
The legality of a marriage is important for a variety of issues. In certain situations,
marital status determines who is eligible for health insurance benefits provided to
employees and their families. Marital status is also a relevant concern in state/federal tax
codes and under certain entitlement programs. Additionally, it may affect who has legal
standing in a particular situation.
For the majority of the transgender community, marriage laws are quite straightforward. As of 2006, with the exception of Massachusetts, only marriages between those who are legally of the opposite sex are permitted. Thus, a male-bodied crossdresser or pre-operative male-to-female transsexual can only marry a woman. However, marriage laws and a variety of judicial decisions address post-operative transsexual persons in confusing and contradictory ways. For example, a post-operative female-to-male transsexual is allowed to marry a woman in some states. However, he could only marry a man in others. In several states, such a marriage is of undetermined legal status. Of course, in Massachusetts, this individual could marry a person of either sex. Depending on state law, marriages entered into by post-operative transsexuals may or may not qualify as a same-sex marriage under the federal Defense of Marriage Act (DOMA). DOMA holds that same-sex marriages are not recognized for federal purposes. However, if the transsexual person was legally married prior to sex reassignment surgery, the bonds of matrimony are not automatically severed. In general, only the parties involved have legal standing to dissolve an existing marriage. Thus, regardless of location, this type of same-sex marriage seemingly remains valid based on its original legal status.

With regards to marriages entered into by post-operative transsexual individuals with members of their birth sex, courts in Texas (Littleton v. Prange, 1999), Kansas (In re Estate of Gardiner, 2002) and Florida (Kantaras v. Kantaras, 2004) have rejected their legality. Ohio courts refuse to grant marriage licenses to such couples (In re Application for Marriage License for Nash, 2003). In contrast, courts in New Jersey (M.T. v. J.T., 1976) and California (Minter, 2003; Greenberg, 2005) have upheld the validity of
marriages involving post-operative transsexuals to members of their birth sex. Regardless of whom the post-operative transsexual person subsequently marries such couples face legal questions if they engage in interstate travel within the United States (Greenberg & Herald, 2005). Because the legality of a marriage entered into by a post-operative transsexual is dependent on location, such couples may lose legal standing when crossing state lines. Table 1.2 provides a state-by-state analysis of marriage policy. [Table1.2 about here]

Much of the legal analysis in transsexual related marriage cases focuses on laws prohibiting same-sex marriages and how to determine a person’s legal sex. Courts have tended to shy away from creating public policy in this realm and have often deferred to the state legislatures for guidance. Post-operative transsexuals can marry persons of their birth sex in the states where specific statutes provide for birth certificate amendment in the event of sex reassignment. Persons benefiting from these statutes acquire the rights associated with the “new” sex. Where statutes provide only general guidance to birth certificate amendment, the marriage rights of post-operative transsexuals is subject to judicial interpretation. Interestingly, states that ban marriage between a post-operative transsexual and someone of his/her genetic birth sex have opened the door to same-sex marriage (Kogan, 2004). States that do not respect a transsexual person’s “new” identity must allow marriage to someone of the opposite genetic birth sex as it is improbable that states can constitutionally withhold all marriage rights to transsexual people (Bishop & Myricks, 2004). Therefore, in these states, a post-operative male-to-female transsexual woman would only be allowed to marry a genetic female. This would be true despite the
transsexual woman holding a U.S. passport with a female sex designation, being recognized as female by the Social Security Administration, and having a neo-vagina. With certainty, one can conclude that marriages entered into by a post-operative transsexual person may face legal scrutiny regardless of the sex of the partner.

*Case Study: Federalism, Same-Sex Marriage, and Marriages Involving Transsexuals*

The following case underscores the need for administrators to understand the complexities of marriages that involve transsexual individuals. In April of 2004, William Yates, Associate Director of Operations for the Citizen and Immigration Services Department (CIS) used administrative discretion to fashion an immigration policy on marriages involving transsexual persons (Mehta, 2004; US Citizen and Immigration Services, 2004). He held that marriages involving a transsexual person were not valid for the purposes of immigration applications. Yates relied on DOMA’s prohibition on same-sex marriage as the basis for his decision. The case of *In re Jose Mauricio Lovo-Lara* (2005) directly challenged the Yates doctrine. In this case, a male-to-female transsexual, born in North Carolina married a man from El Salvador. The husband attempted to immigrate to the United States based on the immediate relative status of his wife. However, his visa application was denied. Immigration officials held that the union was an illegal same-sex marriage. Also, they maintained that sex was always and immutably determined by an individual’s chromosomal pattern (XY for male and XX for female). However, the Department of Justice’s Board of Immigration Appeals (BIA) overturned the decision. The ruling noted that *chromosomal patterns do not always determine a person’s sex* given the variety of intersex conditions in the medical literature (Greenberg,
1999). The decision deferred to North Carolina law which determined that the individual was a female based on her sex reassignment surgery and amended birth certificate. Additionally, the marriage was valid under North Carolina law. The ruling also stated that DOMA does not address marriages involving transsexuals. Thus, it held that marriages involving transsexual individuals (as with all marriages except same-sex marriage) are a policy concern for the states.

**Transgender People and Employment Law**

Transgender identity is an increasingly relevant topic in human resources/personnel management. The recently initiated case of *Schroer v. Billington* (2005) is an example where uninformed or biased bureaucratic discretion and a vague legal framework intersected with transgender identity. This suit alleged that a supervisory employee of the Library of Congress’ Congressional Research Service withdrew a job offer to a male-to-female transsexual woman after learning about her impending sex reassignment (ACLU, 2006). The plaintiff, Diane Schroer, a well-qualified and decorated former Army Ranger interviewed for the position just prior to her transition. After being offered the job, she disclosed her transition plans to the hiring official, Charlotte Preece. According to the complaint:

“The following day, Preece called Plaintiff and explained that, after a ‘long, restless night,’ she had decided that, ‘for the good of the service,’ and ‘given [Plaintiff’s] circumstances that [they] spoke of yesterday,’ Plaintiff would not be a ‘good fit’ at the Library of Congress, or words to that effect.” (ACLU, 2005)

Ms. Schroer’s lawsuit alleged a violation of Title VII protections against sex discrimination, and it alleged due process violations (ACLU, 2005).
As demonstrated above, transgender people face tremendous discrimination in the workplace and throughout society (Lombardi, et al., 2001). A recent study of transgender individuals in San Francisco noted that 50% of the respondents had faced employment discrimination (Minter & Daley, 2003). Often these individuals are stigmatized and face chronic under-employment or unemployment. However, there has been some movement to include transgender individuals under anti-discrimination statutes. This is most commonly done by adding the terms gender identity and gender expression to the relevant non-discrimination statute. This addition is necessary because transgender individuals are generally not covered under sexual orientation inclusive policies (Maffei v. Kolaeton Industry, Inc., et al., 1995; Underwood v. Archer Management Services, Inc., 1994; Minter, 2003). However, a few lawmaking bodies have elected to define gender identity as a type of sexual orientation when drafting legislation against discrimination or hate crimes.

In 1993, Minnesota became the first state to pass an explicitly transgender inclusive non-discrimination law. As of January 1, 2008, twelve states (CA, CO, IA, IL, ME, MN, NJ, NM, OR, RI, VT, WA) and the District of Columbia will protect transgender people from employment discrimination (Transgender Law and Policy Institute, 2007b). In addition, courts in three states (MA, NJ, & NY) have extended transgender protections through interpretations of existing laws against sex discrimination. Executive orders (KY, PA, IN) have also been utilized to bar
discrimination against transgender individuals within state government (Transgender Law and Policy Institute, 2007b). However, such orders are subject to repeal as was done by Kentucky Governor, Ernie Fletcher (Alessi, 2006). On the local level, more than 70 municipalities protect transgender individuals from employment discrimination. By comparison, gay and lesbian individuals receive statutory discrimination protections in 20 states and by more than 160 local governments. Executive orders barring discrimination in public employment have been used in an additional 7 states (Human Rights Campaign, 2006a).

Transgender individuals are not explicitly protected under the federal Title VII prohibition on sex discrimination (Albright, 2002). Thus, discrimination cases involving transgender individuals have received mixed treatment by the federal court system. In an early case, Holloway v. Arthur Andersen (1977) the 9th Circuit Court of Appeals held that Title VII must be narrowly interpreted so as to only protect against sex discrimination. It held that discrimination experienced by transsexuals was based on gender, thus not covered by Title VII. In a later decision, the 7th U.S. Circuit Court of Appeals held in Ulane v. Eastern Airlines (1984) that discrimination against a transsexual individual was permissible under Title VII if the discrimination occurred because of transsexual identity. However, in Price Waterhouse v. Hopkins (1989), the U.S. Supreme Court ruled that sex role stereotyping was not permissible under Title VII of the Civil Rights Act of 1964. In 2004, the 6th U.S. Circuit Court of Appeals applied the logic of the Price Waterhouse decision to the case of Smith v. City of Salem, Ohio (2004). This landmark ruling held

that overturned a lower level non-inclusive ruling. The Enriquez decision was denied appeal to Supreme Court of New Jersey
that discrimination against transsexuals was sex stereotyping and, thus, not permissible under Title VII. In November of 2005, the U.S. Supreme Court turned aside an appeal of a related case, Cincinnati, OH v. Barnes, Philecia (2005). The trial court’s ruling, upheld by the 6th U.S. Circuit Court of Appeals, cost the City of Cincinnati $870,000 in damages/legal fees (Associated Press, 2004a). The 9th Circuit Court of Appeals also adopted this transgender inclusive interpretation of Title VII. Although not ruling directly on a transgender employment case, it noted in Schwenk v. Hartford (2000) that Price Waterhouse clearly overruled Ulane and Holloway. Interestingly, Title VII is one of the few areas where transgender people have a greater claim to non-discrimination protections than do gays and lesbians. The Court in Price Waterhouse was explicit in not extending Title VII protections to gays and lesbians on the basis of sexual orientation. Table 1.3 provides state-by-state coverage of sexual orientation and gender identity under state non-discrimination laws, state and federal court decisions, and executive orders. [Table 1.3 about here]

Health Care Policy and Gender Identity Disorders

Gender identity disorders have been recognized as a “cognizable medical condition with a prescribed course of treatment” (Doe v. Boeing Co., 1993). However, the course of treatment, sex reassignment, is always an expensive and often cost prohibitive process. The cost of surgeries, hormones, psychotherapy, and other related procedures can reach upwards of $100,000 (Dasti, 2002). However, cosmetic procedures, hormones, and surgeries related to sex reassignment are almost always excluded from coverage under private health insurance. Additionally, future
complications, even those remotely related to such procedures, may be excluded from coverage. Such exclusions are often so broadly constructed that the transsexual might find difficulty getting any covered medical treatment (Currah, Minter, & Green, 2000). However, a recent decision by the Superior Court of Massachusetts ruled that a transsexual could not be denied coverage for a necessary medical procedure because of her sex change (Beger v. Division of Medical Assistance, 2000; Minter, 2003). Genetic females received coverage for the same procedure, breast reconstruction surgery.

Sex reassignment surgery is not covered by Medicare (Minter, 2003). With respect to Medicaid, many states ban coverage of this procedure. Some courts have overturned such bans by finding inconsistency with federal guidelines on medical necessity (Dasti 2002). As a result, there are a few cases where transsexual individuals have won the right to obtain Medicaid covered sex reassignment surgery (Dasti 2002; Minter, 2003). Sex reassignment surgery is sometimes excluded from coverage by defining it as cosmetic surgery and/or by arguing against its medical necessity (Mario v. P & C Food Mkts., Inc., 2002).

The debate over the medical necessity of sex reassignment surgery has implications for tax policy. The United States Internal Revenue Service defines medical expenses as the costs to cure, mitigate, prevent, or diagnose physical or mental illness/defects (Internal Revenue Service, 2004). Medical expenses meeting these guidelines are tax deductible under the Internal Revenue Code, provided these outlays exceed 7.5% of one’s gross income (Internal Revenue Service, 2004). However, cosmetic surgeries are specifically disallowed. In a tax proceeding publicized in
November of 2004, an IRS tax examiner refused to allow sex reassignment related medical deductions to a transsexual woman, Rhiannon O’Donnabhain. The tax examiner’s decision held that sex reassignment surgery is strictly cosmetic. However, in 2004, Gay & Lesbian Advocates & Defenders (GLAD) successfully argued on appeal that Ms. O’Donnabhain’s sex reassignment surgery was a treatment protocol for gender dysphoria (Gay & Lesbian Advocates & Defenders, 2004). Subsequently, Thomas Moffitt of the IRS Office of Chief Counsel used administrative discretion to rule that sex reassignment surgery was not a deductible medical expense (Internal Revenue Service, 2005). Mr. Moffitt’s opinion cited a lack of explicit statutory guidance. He also referenced an editorial, which was critical of sex reassignment, from the religiously oriented opinion magazine, First Things. Mr. Moffitt did not mention any of the scientific literature that supports sex reassignment, thus raising significant concerns about administrative bias.

While addressing health care policy, it is worth noting that transsexualism and gender identity disorders not resulting from physical impairments are specifically excluded from protections offered under the Americans with Disabilities Act (42 U.S.C. §12211(1)(b)) and Federal Rehabilitation Act ((29 U.S.C. §705(20)(F)(i)). For clarification, homosexuality, bisexuality, and transvestitism are excluded from coverage also. While admitting that gender identity disorders could qualify as medical conditions, Congress specifically prohibited their inclusion in order to allay fears of recognizing transgender identity and giving it legal status (House Committee on Education and Labor, 1990). Several states model their disability policies on federal law.
It is important to add that transgender people also suffer from discrimination by public and private health care providers. Types of discrimination include but are not limited to substandard treatment, harassment, and denial of service. Discrimination may sometimes place public health care providers and rescue workers in legal jeopardy. For example, the Washington D.C. Fire Department was held liable for lewd comments made by rescue workers treating a badly injured pre-operative transsexual, Tyra Hunter, who was involved in a 1995 traffic accident. The rescue workers withheld treatment because they were amused by the patient’s gender non-corresponding genitalia. This contributed to Ms. Hunter’s death at DC General Hospital. The jury awarded $600,000 to the victim’s mother for the rescue personnel’s discriminatory treatment (Fernandez, 1998). The mother also received an additional $2.3 million dollars from DC General Hospital for their failure to follow standards of care.

**Education and Transgender Identity**

University policies addressing discrimination on the basis of gender identity or gender expression have become more common in the past few years. As of October 2007, 94 colleges and universities extend gender identity protections to their students and staff (Transgender Law and Policy Institute, 2007a). Additionally, universities and K-12 schools located in jurisdictions with gender identity inclusive non-discrimination laws are subject to those statutes. Also, some states (CT, MA, and NJ) have transgender friendly case law or human rights commissions (Transgender Law and Policy Institute, 2007a). In one notable judicial decision, *Doe v. Yunits* (2001) the Massachusetts Superior Court held that school districts have civil liability for forcing gender stereotypical dress on
students with documented gender identity disorders. This decision found that Doe, because of her gender identity disorder “was a qualified handicapped individual” under Article CXIV of the Declaration of Rights of the Massachusetts Constitution. As a result, school officials were liable for their discriminatory conduct and harassment.

Title IX of the Education Amendment Acts of 1972 is another important area to address. Title IX applies to any school or college that receives federal funds. It protects students from sex stereotype based discrimination and harassment. Schools covered by Title IX must respond to discrimination or harassment aimed at gender nonconforming students (Griffin, et al., 2002). With respect to litigation in this area, a federal district court ruled in Miles v. New York University (1997) that a transsexual person could proceed with a sexual harassment case under Title IX. However, interpretation of this ruling is clouded by the fact that the harassing professor did not know that the victim was a transsexual (Phadke, 2006). The harassment was based on his perception of her sex, thus the case was deemed within the purview of Title IX. As of 2006, there have been no other significant transgender related Title IX decisions. Future litigation in this area likely will mirror trends in Title VII employment cases (Phadke, 2006).

**Gender Identity and Sexual Orientation Inclusion under Hate Crimes Laws**

Transgender individuals likely face greater risks of violence than do most members of society. This is particularly true for those who are “visibly queer” (Wilchins, 2004). The highly publicized murders of Gwen Araujo and Brandon Teena illustrate the risks of transgendered identity. While not all cases have a high profile, hate crimes against transgender people regularly occur (Rudacille, 2005). Because of the endemic
violence, several states passed transgender inclusive hate crimes laws. Minnesota passed the first of these laws in 1988. As of January 2006, eight states (CA, CT, HI, MN, MO, NM, PA, and VT) include transgender people as a specific protected class under hate crimes legislation (Human Rights Campaign, 2006b). Two additional states, Maryland and Colorado provide hate crimes protections through an expanded definition of sexual orientation (Human Rights Campaign, 2006c). By comparison, gay individuals receive hate crimes coverage in 31 states. Federal hate crime laws do not protect gay or transgender people. Table 1.4 compares the coverage of state hate crimes laws.

Criminal Justice and Transgender Persons in Prison

Men and women are segregated in prison based on anatomical sex (Dasti, 2002). Therefore, transsexual individuals are generally placed in prisons corresponding to their genitalia. This places a pre-operative male-to-female transsexual in either a dangerous situation or one where they must be segregated from the general prison population. Courts have denied transfers of transsexual inmates to gender appropriate prisons (Dasti, 2002). Additionally, prison officials are not liable for harm inflicted on transsexual inmates unless they have actual knowledge that the inmate is at risk and deliberately fail to act (Farmer v. Brennan, 1994).

Some transgender individuals have won the right to medical treatment while incarcerated. In Meriwether v. Faulkner (1987), the 7th Circuit Court of Appeals held that transsexual prisoners have a right to some sort of medical therapy for transsexualism. However, they did not have a right to particular therapies. More recently, a federal judge
held that gender identity disorder is a serious medical condition (Kosilek v. Maloney, 2002; Minter 2003). Trial and appellate courts have also supported medical treatment for transsexualism in Brooks v. Berg (2003) and De’Lonta v. Angelone (2003). Thus, federal policy is contradictory. Increasingly, the federal courts, including the conservative 4th Circuit Court of Appeals in De’Lonta, rule that treatment of transsexual prisoners is a medical necessity. However, the Internal Revenue Service denies tax deductions by citing a lack of medical necessity. Thus, federal policy is contradictory.

**Conclusion**

This chapter addressed a topic of growing concern to public administrators, transgender identity related issues. It provided background information on the term transgender and the identities that fall under its umbrella. Additionally, this chapter covered key policy areas where controversies over transgender identity have arisen. Attention was provided to local, state and federal variation in the legal treatment of transgender identity. Often, this policy terrain is complex due to federalism, conflicting laws and court decisions, and public confusion between transgender identity and homosexuality. With respect to the latter dimension, the chapter explored how sexual orientation and gender identity are different legal constructs. While often combined in the public’s consciousness, the gay/lesbian and transgender communities have different if often overlapping policy concerns. While it is hoped that this effort increased awareness of and knowledge about these issues among scholars and practitioners, this chapter also raises an important question: why is there such variation in state policies towards transgender people? The remainder of this research effort addresses this question.
Table 1.1: Vital Records Laws and Sex Reassignment

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</table>

Key:
1: Specific Statutory Authorization
2: General Statute Authorizing Amendment
3: Amendment via administrative process
4: Refuses to allow amendment
Table 1.2: Marriage Entered Into by Post-operative Transsexuals

<table>
<thead>
<tr>
<th>State</th>
<th>Trans marriage</th>
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<th>Trans marriage</th>
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*Key:*
1: Post-operative transsexuals can only marry someone of their birth sex
2: Post-operative transsexuals can only marry someone of the opposite birth sex
3: Open legal question
4: Any person can marry an individual of either sex

Note: this analysis is based on court rulings on marriages involving transsexual individuals and laws allowing birth certificate amendment
Table 1.3: Gender Identity and Sexual Orientation Discrimination Protections

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Key:
No: Law does not include sexual orientation or gender identity
1: Executive order bans discrimination in public employment on the basis of sexual orientation
2: Executive order bans discrimination in public employment on the basis of sexual orientation and gender identity
3: Law bans discrimination in employment on the basis of sexual orientation
4: Law bans discrimination in employment on the basis of sexual orientation and gender identity
5: Federal court protection at the appellate level via interpretation of Title VII
6: State court protection to transgender people through existing state laws banning sex discrimination
Table 1.4: Comparison of Hate Crimes Laws

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</table>

Key:
1: Hate crimes law is inclusive of sexual orientation and gender identity
2: Hate crimes law is inclusive of sexual orientation
3: Hate crimes law does not include sexual orientation or gender identity
4: No hate crimes law

Source: Human Rights Campaign
CHAPTER 2: LITERATURE REVIEW AND METHODOLOGY

As the previous chapter demonstrated, there are a variety of issues where transgender identity intersects with public policy. Three areas have received significant attention from state legislatures: laws permitting birth certificate amendment, non-discrimination protections, and hate crimes coverage. In addressing the variation among states, it is tempting to operationalize transgender inclusive laws as encompassing each of those areas. However, many of the birth certificate amendment laws pre-date the widespread emergence of transgender activism in the 1990’s. For example, North Carolina’s law on birth certificate amendments was ratified in 1983 (North Carolina General Assembly, 1983). For this pre-advocacy reason, transgender inclusive laws are operationally defined as the passage of statewide transgender inclusive hate crimes or non-discrimination statutes.

As of February 2006, 14 state governments have transgender inclusive hate crimes and/or anti-discrimination laws. This raises the question, why do only 14 of 50 states have these transgender inclusive laws? The policy literature provides many potential explanations. For example, state legislative outcomes are often attributed to internal state characteristics (Erikson, Wright and McIver, 1993). For instance, within the related sexual orientation policy literature, the percentage of Protestant fundamentalists within a state has been demonstrated to correlationally have a negative effect on the passage of gay favorable legislation (Haider-Markel, 1999; 2001a; Haider-Markel & Meier, 2003; Barclay & Fisher, 2003). Also, states with higher percentages of

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4 The 1993 murder of Brandon Teena galvanized the transgender civil rights movement (Wilchins, 2004). Additionally, transgender identity was popularized by Kate Bornstein’s *Gender Outlaw* (1995).
college graduates are less likely to adopt laws banning same-sex marriage (Barclay & Fisher, 2003; Haider-Markel & Meier, 2003).

<table>
<thead>
<tr>
<th>Hypotheses</th>
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<tbody>
<tr>
<td>1. States with a higher percentage of college graduates are more likely to have transgender inclusive laws</td>
</tr>
<tr>
<td>2. States with lower evangelical adherence rates are more likely to have transgender inclusive laws</td>
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Another possible explanation of difference is partisan issue evolution (Carmines & Stimson, 1989; Carmines & Woods, 2002; Wright & Schaffner, 2002). While the literature has not adequately addressed the attitudes of party activists on transgender issues, there has been research on party identification and policies that address sexual orientation. Republicans have introduced the vast majority of state level legislation seeking to ban same-sex marriage (Haider-Markel, 2001a). Additionally, Lublin (2005) noted the increasing role of party identification within Congress on gay rights. At the state level, Democrats have used institutional mechanisms (committees and leadership) to block anti-gay legislation (Haider-Markel, 2001b). Given the widespread confusion with sexual orientation, Democrats should be more supportive of transgender issues than are Republicans.

<table>
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<tr>
<th>Hypotheses</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Legislatures controlled by Democrats are more likely to adopt transgender inclusive laws</td>
</tr>
<tr>
<td>4. Democratic governors are more likely to sign transgender inclusive laws</td>
</tr>
</tbody>
</table>

Status quo policy, an institutional factor, is also relevant (Krehbiel, 1998). Smith (2005) noted that prior to Lawrence v. Texas (2003), sodomy laws were used to deny

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5 In acquiring data used in this project, Dr. Gerald Wright of Indiana University advised that this framework might be a viable explanation for the passage of transgender inclusive legislation. Gerald Wright, e-mail, March, 2006.
civil rights to gays and lesbians. As in *Lawrence*, court decisions may affect status quo policy in this area. The previous chapter noted that courts in three states (MA, NJ, NY) have extended the scope of existing sex discrimination laws to cover transgender people. These decisions may lessen the need for additional transgender inclusive non-discrimination legislation.

**Hypothesis**

| 5. States that currently have court decisions that protect transgender people under existing sex discrimination laws are less likely to adopt additional transgender inclusive laws. |

Another potential explanation rests with public opinion. In a democracy, public opinion is of critical importance as it sets the parameters for acceptable public policy (Erikson, Wright & McIver, 1993). It is also the foundation for median voter theory (Downs, 1957). Unfortunately, public opinion on transgender issues has not been well studied. The literature review revealed only one nationwide study of public opinion on transgender issues. This study, conducted by Lake, Snell, Perry and Associates (2002), found that:

“Sympathizers and opponents of transgender people each have clearly defined demographic characteristics. Sympathizers tend to be: liberal, Democratic, college graduates, younger, female, and secular. They agree people are born transgender and are not making a choice. They also believe it is “all right” to be transgender.”

“Opponents tend to be: conservative, Republican, age 50 or older, frequent churchgoers, fundamentalist/born again, blue-collar, not college graduates, and male. They are most likely to believe transgender is a moral issue, that being transgender is morally wrong, and that being transgender is a choice.”

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6 This study was conducted for the Human Rights Campaign (HRC) and HRC kindly provided a summary memo via email on August 6, 2003. However, they were not willing to provide access to the raw data.
Given the lack of state level opinion data on transgender issues, public attitudes must be ascertained indirectly. A potential indirect measure is ideology. Erikson, Wright, and McIver (1993) found that state policy is largely determined by the public’s ideological leaning. In testing their hypothesis, they developed a measure of policy liberalism that included state approval of the Equal Rights Amendment. That amendment is relevant here because it addressed gender roles. Gender roles and gender stereotypes are at the heart of transgender identity. Conservative states were less likely to pass the Equal Rights Amendment (Erikson, Wright, & McIver, 1993). Thus, conservative states should be less inclined to pass transgender inclusive legislation.

A few studies address public attitudes on homosexuality and its affect on policy. People who believe there is a biological basis for homosexuality are more likely to support gay rights (Wood & Bartkowski, 2004; Haider-Markel & Joslyn, 2005). Additionally, positive attitudes toward homosexuality have correlated with support for AIDS funding (brace, Sims-Butler, Arceneaux & Johnson, 2002).

<table>
<thead>
<tr>
<th>Hypotheses</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Liberal states are more likely to have transgender inclusive laws</td>
</tr>
<tr>
<td>7. States that are more accepting of homosexuality are more likely to have trans inclusive laws</td>
</tr>
</tbody>
</table>

**Research Methodology**

To investigate the research hypotheses, qualitative and quantitative methodologies are used. This multi-method approach can increase the validity of research findings because the dependent variable is studied through different strategies (Garson, 2007). The quantitative portion of the analysis relies on logistic regression techniques. Logistic regression was chosen as it is ideally suited to address a dichotomous dependent variable
(Tabachnick & Fidell, 2001). In accordance with social science convention, tests of significance are provided to judge the effect of individual variables/components. However, because the data are not based on a random sample, such tests are of limited value (Garson, 2007). Summary measures such as Nagelkerke R-square, an approximation of R-square for logistic regression (Garson, 2007) and the percentage reduction in error are provided to judge the efficacy of the model. Classification plots are studied to ensure that the distribution of predicted values is not clustered around the cut point (.5). Distributions weighted towards .0 and 1 are indicative of models with good fit (Garson, 2007).

Prior to building the logistic model, multicollinearity among independent variables will be explored through bivariate correlations. Principal components analysis (PCA) is used to ameliorate multicollinearity problems among the variables with high (> .70) and borderline correlations (Tabachnick & Fidell, 2001). PCA removes multicollinearity concerns by constructing new, uncorrelated components from the correlation matrix. PCA is performed with an unrotated solution, and component selection is confined to those with eigenvalues greater than one (Garson, 2007). The following sections describe the variables included in the model:

Dependent Variable: Transgender Inclusive Legislation

The model’s dichotomous dependent variable is defined as the adoption of a statewide transgender inclusive non-discrimination and/or hate crimes law as of 1/31/2006. Using this definition, 14 of 50 states have transgender inclusive laws.
Sources for this information include the Human Rights Campaign (2006a; 2006b) and the Transgender Law and Policy Institute (2007b).

**Independent Variable: Ideology**

The first independent variable is state ideology. A measure of state ideology was developed by using a technique put forth by Erikson, Wright and McIver (1993). Fortunately, Dr. Gerald Wright continues to gather information on state ideology, and he graciously makes this data publicly available (Wright, 2006). His data are based on state sorted ideological preference questions asked in national CBS/New York Times polls.7 However, it does not include respondents for Alaska and Hawaii. Therefore, this information was supplemented with similar data (1995-1999) collected from Dr. John McIver’s website (2001). Additionally, ideology scores for 2004 were compiled for all states via direct analysis of CBS/New York Times national polls held by ICPSR.8 Development of the measure entailed coding each response within a state in the following manner:

-100 Conservative

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7 The CBS/NYT polls ask the following political philosophy question: How would you describe your views on most political matters? Generally do you think of yourself as liberal, moderate, or conservative? Dr. Wright’s data runs through 2003.

8 Analysis of 2004 polling data was limited to datasets with SPSS compatible file formats. The following polls were utilized:
- CBS News/New York Times Monthly Poll #1, November 2004
- CBS News/New York Times Monthly Poll #1, October 2004
- CBS News/New York Times Monthly Poll #2, October 2004
- CBS News/New York Times Monthly Poll #6, October 2004
• 0 Moderate or Do not know
• 100 Liberal

These figures were summed and then divided by the total number of state respondents. The resulting mean could range from –100 (arch conservative) to 100 (arch liberal).

**Independent Variable: Education**

Following precedent (Barclay & Fisher, 2003), this analysis uses the percentage of state residents, age 25 and older with a bachelor’s degree or higher. Education estimates were collected from the 2004 American Community Survey.

**Independent Variable: Religion-Evangelical Church Membership**

State level evangelical adherence estimates were obtained from the Association of Religion Data Archives (ARDA). ARDA classifies denominations as evangelical Protestant, mainline Protestant, Orthodox, Catholic, and other. This analysis relies on ARDA’s 1990 estimates because the 2000 figures do not include congregation data for historically African-American denominations (Association of Religion Data Archives 2006). This does not greatly affect the analysis as Gibson (2004) found little variation in denominational adherence within states between 1990 and 2000.

In developing this measure, it is important to note the debate over which denominations qualify as evangelical (Gibson, 2004). Additionally, some non-evangelical Christian denominations and other faiths may find common ground with evangelical Protestants in some areas of LGBT public policy (Rabinowitz, 1992; Wellman, 1999; Hodge, 2005). In an attempt to address these potential allies, the Church

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of Jesus Christ of Latter-Day Saints was included with the evangelical camp because of its open hostility towards homosexuality (Goodwill, 2000; Human Rights Campaign, 2007). Erikson, Wright and McIver (1993) made a similar accommodation for this denomination. While the Roman Catholic Church does not approve of transsexualism (Fraser, 2003) or homosexuality (Vatican, 1993), it was not included with the evangelical group. Catholic teachings support laws protecting LGBT individuals from discrimination and/or hate crimes (Vatican, 1993). 10 ARDA does not provide a way to explore different philosophical strains of Judaism or Islam. Thus, these faiths are excluded as allies.

Independent Variable: Attitudes toward Homosexuality

Because of the public’s confusion between gay and transgender identities, attitudes toward homosexuality were included in this analysis. Data for this variable were taken directly from Brace, Sims-Butler, Arceneaux and Johnson (2002). 11 Values range from zero to one with higher values indicating more acceptance of homosexuality. For the few states where estimates were not available, scores were developed by averaging data from the surrounding states. 12

10 The following is taken from the Catechism of the Catholic Church, #2358 “The number of men and women who have deep-seated homosexual tendencies is not negligible. This inclination, which is objectively disordered, constitutes for most of them a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided. These persons are called to fulfill God's will in their lives and, if they are Christians, to unite to the sacrifice of the Lord's Cross the difficulties they may encounter from their condition.”
http://www.vatican.va/archive/ENG0015/_INDEX.HTM

11 Their state level variable was constructed from aggregated responses to the GSS (1974-1998) question “Sexual relations between two adults of the same sex?”

12 These states are Hawaii, Idaho, Maine, Nebraska, Nevada and New Mexico. Hawaii’s measure was developed by averaging Alaska, California, Oregon, and Washington. Maine’s statistic was computed by averaging New Hampshire, Vermont, and Massachusetts. The statistics for Idaho, Nebraska, Nevada and New Mexico were computed from their bordering states.
Independent Variable: Status Quo Policy-Transgender Inclusive Judicial Decisions

A variable addressing judicial decisions is included in the model. This dichotomous variable addresses whether or not state courts have placed transgender people under the protection of existing laws against sex discrimination. One could argue that the ruling in Smith v. City of Salem (2004) requires the creation of a separate variable that addresses federal appellate court decisions. The multi-jurisdictional reach of this case and similar decisions is important to consider. However, because Smith addressed a federal question and it relied on the Supreme Court’s ruling in Price Waterhouse, a separate independent variable to account for federal court decisions was not created. Conceivably, all cases would have been coded the same.

Independent Variable: Democratic Party Control of the Legislature

As previously stated, partisan legislative control is addressed in this model. However, rather than using a dummy variable for party control, a continuous variable addressing the average percentage of Democrats in a state’s upper and lower legislative chambers was compiled for the years, 1992-2005 (Smith, 1997). Nebraska’s legislature is unicameral and lacks a partisan coalition structure (Wright & Schaffner, 2002). Therefore, it was excluded.  

Independent Variable: Party of Governor

As governors are important in legislative outcomes (Barrileaux & Berkman, 2003; Smith, 1997), the percentage of Democratic gubernatorial control (1992-2005) was calculated for each state. While governors differ with respect to their formal powers

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13 Nebraska is sometimes eliminated from studies of American state politics due to the legislature’s organizational structure. For example, see Prince & Overby, 2005; Fellows, Gray & Lowery, 2006.
(Beyle, 2004), there is no need to control for this because all governors have veto power. Admittedly, states differ with respect to override provisions. However, veto overrides are very rare (Council on State Government, 2002 as cited in Beyle, 2004). Partisan legislative and gubernatorial data were collected from various editions of Statistical Abstract of the United States.

**Qualitative Research**

Case studies are the “preferred strategy if one wants to learn the details about how something happened and why” (O’Sullivan & Rassel, 1999). Such a qualitative strategy is ideally suited to investigating the adoption of any particular transgender inclusive law in the American States. The research hypothesis and findings from the quantitative analysis will provide the “foreshadowed problems” (Hammersley & Atkinson, 1995) used to inform development and analysis in a series of case studies. Such a process is sometimes referred to as pattern matching. Garson (2007) describes pattern matching as “the attempt of the case researcher to establish that a preponderance of cases are not inconsistent with each of the links in the theoretical model which drives the case study.” Thus, these case studies will attempt to confirm and further illuminate the factors associated with the adoption of transgender inclusive legislation. To the extent the quantitative results are valid, these case studies will triangulate those findings through corroboration via different types of data. When diverse sources reach the same conclusion, one can be more confident of the results (Hammersley & Atkinson, 1995). Triangulation is particularly important, as this research is the first to study the passage of transgender inclusive laws.
Four states Maryland, Massachusetts, North Carolina, and Pennsylvania, were selected for the qualitative portion of this effort. The selection process was driven by classification table results for previously described logistic regression.\textsuperscript{14} Classification tables in logistic regression are formed by placing the model’s expected results in a grid with the observed results. Because expected and observed values in binary logistic regression are dichotomous, a two by two table is created (see figure 2.1). A state was chosen from each of the four possible groups, thus selection was theory driven (Garson, 2007). Selection within each category was based on the feasibility/cost of collecting information, geographic variability, and illustrative value. North Carolina’s selection was based on its geographic diversity (southern), illustrative value (high partisan competition), and its proximity to the researcher. Pennsylvania was selected because of its geographic diversity (middle Atlantic) and illustrative value. Indeed, it is the only state where a Republican legislature passed such legislation. Geographic diversity (northeast) and illustrative value influenced the selection of Massachusetts. It was the most liberal of the three states eligible for selection from this group (MA, NJ, NY). Maryland’s selection was based on two factors: geographic proximity to the researcher and illustrative value. Of the eight states in this group (CA, CT, HI, MD, ME, RI, WA, VT), three were dismissed because of the difficulty in obtaining data (CA, HI, WA). Of the remaining five states, Maryland had the largest population and was the most demographically comparable to the nation.

\textsuperscript{14} Court decisions were not included in this logistic model. Inclusion would have made it extremely difficult to qualitatively address the role of court decisions due to separation (discussed in the next chapter).
Case study methodology

Where transgender inclusive laws have been adopted, the factors associated with its passage will be studied. In the selected jurisdictions without such laws, the most recent transgender inclusive bills submitted to the legislature will be the phenomena under review. In all cases, the history of state level transgender inclusive bills will be explored. As previously stated, the analysis will be informed by the findings and hypotheses generated from the quantitative approach. Case study data collection will utilize primary (activists, reporters, and if possible, elected officials) and secondary sources (legislative archives, LexisNexis, and newspaper reports).

Data collection from primary sources will utilize unstructured interviews. This provides the researcher flexibility to pursue factors that might not be identified by the quantitative approach. Prior to undertaking any interaction with primary resources, the researcher will have her interview protocols approved by the North Carolina State University Institutional Review Board. Given the sensitive nature of the topic, respondents who are not public figures will be allowed to choose a pseudonym. Additionally, identifying information will be kept separate from field notes.

Conclusion

This chapter reviewed the policy literature, particularly the body of work focused on the adoption of sexual orientation inclusive laws. Based on this literature review, several research hypotheses about the adoption of transgender inclusive laws were presented. In addition, this chapter described the quantitative and qualitative
methodologies used in this research. The following chapter discusses the results of the quantitative analysis.
Table 2.1: Classification Table

<table>
<thead>
<tr>
<th>Transgender Inclusive Legislation Observed</th>
<th>Transgender Inclusive Legislation Predicted</th>
<th>Percentage Correct</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>32</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>State selected: NC</td>
<td>State selected MA</td>
</tr>
<tr>
<td>Yes</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>State selected PA</td>
<td>State selected: MD</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CHAPTER 3: QUANTITATIVE FINDINGS

Before proceeding to the logistic model, a comparison of means between states with and states without transgender inclusive laws is conducted. This assesses whether the research hypotheses have basic empirical support. Inferential statistics (tests of significance) are not necessary because group differences could not occur because of sampling; the population of all states is included in the study. Table 3.1 reveals that 14 states have transgender inclusive laws while 36 states do not have such laws. With the exception of hypothesis four, Democratic control of the governor’s mansion, all of the research hypotheses found empirical support in the data.\textsuperscript{15}

[Table 3.1 about here]

With respect to the hypothesis that was not supported, it was surprising that Republican governors held greater control of the executive office in both transgender inclusive and transgender non-inclusive states. With respect to control in the actual year of policy adoption, Republican governors signed fifty percent of this legislation (9 of 18, 4 states have multiple transgender inclusive laws). As with the executive branch, average party representation in the legislature may not be relevant when looking at the passage of a single bill. Further analysis revealed that a transgender inclusive bill has passed only once in a Republican controlled legislature, Pennsylvania in 2002. Democratic controlled legislatures passed the remaining 17 laws. In the year of legislative approval, the mean

\textsuperscript{15} Data that support hypothesis 5 (states with transgender inclusive court decisions are less likely to pass transgender inclusive laws) was not shown because of measurement differences. However, no state with a transgender inclusive state court decision has passed a transgender inclusive law.
percentage of Democrats in both legislative houses was slightly above 60%. These findings provide additional support for hypothesis three.

The problem of multicollinearity among independent variables was explored via bivariate correlations. Using Tabachnick and Fidell’s (2001) guideline (.70) to avoid flaws associated with multicollinearity, several relationships were deemed problematic. The correlation between the average percentage of Democratic representation in each house was the most excessive (.862). Additionally, numerous relationships between the variables ideology, attitudes toward homosexuality, evangelical adherence and education exceeded or nearly reached the threshold.

In order to combat the multicollinearity problem, Principle Components Analysis was utilized to create uncorrelated factors (Garson, 2007). The variables selected for inclusion were limited to those with high and borderline correlations (Garson, 2007). The six variables included in the procedure yielded two clearly distinguishable components. These components accounted for 82.35% of the variance in the correlation matrix. Table 3.2 shows that the most prominent component (51% of variance) loads heavily (factor loadings > .6; Garson, 2007) on attitudinal items and the demographic variables. This component will be referred to as progressive attitudes as it draws most heavily from ideology and attitudes toward homosexuality. Of the four measures that strongly affect this component, all show the expected relationship direction. Only evangelical adherence shows a negative relationship. The second component loads heavily on Democratic strength in the upper and lower legislative

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16 An unrotated solution was used. Extraction was derived from eigenvalues > 1, the Kaiser criterion.
houses and it accounts for 31% of the variance. As such, this component will be referred to as Democratic legislative control. Multicollinearity was not found between the two new components and the remaining independent variables.

[Table 3.2 about here]

After addressing multicollinearity, the analysis proceeded to the logistic model. The independent variables in the model were progressive attitudes, transgender inclusive court decisions, Democratic executive control, and Democratic influence of the legislature. Table 3.3 shows two variables were significant at the .05 level, progressive attitudes ($p = .002$) and Democratic influence in the legislature ($p = .035$). For every unit increase in progressive attitudes, the likelihood of there being a transgender inclusive law increases by a factor of 37.17. For every unit increase in the Democratic legislative variable, the likelihood of a transgender inclusive law increases by a factor of 6.11. The model prediction rate was an impressive 91.8%. It correctly predicted 82.4% of transgender inclusive states (11 of 14). States without transgender inclusive laws were correctly predicted at a 96.8% rate (31 of 32). The percentage reduction in error was 71.33% and Nagelkerke $R^2$, an approximation of $R^2$ for logistic regression (Tabachnik & Fidell, 2001) equaled .729. These results are indicative of a strong model.

[Table 3.3 about here]

However, of interest was the non-significance of transgender inclusive court decisions and its extremely large standard error. This is sometimes indicative of separation. Separation may be caused by possible definitional overlap between the

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17 Significance is shown due to social science convention (Garson, 2007). Because we have all states, there is no chance that random sampling error affected the results.
independent and dependent variables (Garson, 2007). This is very plausible as state court rulings that extend discrimination protections to transgender people set legal precedents. These precedents, to the extent they are followed, may have the same effect as a law. Therefore, the analysis was recomputed with transgender inclusive court rulings included in the dependent variable. For comparison, the analysis was also computed without the impact of court rulings.

Table 3.4 shows that recoding the dependent variable to encompass these decisions did not increase the percentage correctly predicted (PCP = 91.8%). However, failure to address court decisions reduces the effectiveness of the model. The prediction rate falls by approximately 10% (81.6% < 91.8%) with a larger drop in PRE (35.66% < 76.37%). In the model without court decisions, only progressive attitudes are significant ($p = .001$). When taking court decisions into account, progressive attitudes ($p = .001$) and Democratic influence in the legislature ($p = .031$) are significant. For every unit increase in progressive values, the likelihood of a transgender inclusive law increases by a factor of 44.73. For every unit increase in the Democratic legislative variable, the likelihood of a transgender inclusive law increases by a factor of 6.53. These findings illuminate an important role that these precedent setting court decisions might play. It is interesting to note that such rulings seem to only occur where other factors predict transgender inclusive laws. Analysis of the residuals revealed that the states with favorable court decisions, New York, New Jersey and Massachusetts, were expected to have transgender inclusive laws. It is likely that these court decisions reduce the pressure for further legislative remedies. When taking this into account, the model is highly accurate.
Analysis of the classification plots for the original model and the one with court decisions in the dependent variable revealed that the vast majority of predicted values were not clustered around the cutoff criterion (.5). These distributions are further indications of good model fit (Garson, 2007).

[Table 3.4 about here]

**Discussion**

The preceding analysis shows the importance of ideology, attitudes toward homosexuality, evangelical adherence levels, education, and legislative partisanship in predicting the adoption of transgender inclusive legislation/court decisions. The important question is why? Patterson (2006) describes ideology as a consistent pattern of policy opinions that stem from core beliefs. Americans are sometimes divided into four ideological types based on the role of government in promoting traditional values and the role of government in ameliorating social problems (Patterson, 2006). Conservatives favor little government involvement in ameliorating social problems but favor government promotion of traditional values. Liberals tend to favor more government involvement in combating social problems and are less inclined to support the governmental propagation of traditional values.

It is likely that transgender people and their issues face hostility from conservatives because they are associated with a gay rights movement that is contrary to traditional values. Conservatives, particularly conservatives influenced by their religiosity, have fought against gay rights in numerous policy areas since the late 1960’s. Examples include fights over sodomy laws, AIDS funding, adoption by homosexuals,
inclusion under discrimination and hate crimes laws, and, most recently, same-sex marriage. In an attempt to explore this angle, the logistic model was altered with the dependent variable becoming the adoption of sexual orientation inclusive laws in these policy areas. Table 3.5 shows that the model, while very effective, is comparatively less successful in predicting outcomes (81.6% < 91.8%). Further exploration via comparison of means revealed that the ideology of states with transgender inclusive laws is more liberal than states with gay inclusive policies (-7.00 > -10.57). Conversely, the mean ideology of states without transgender inclusive laws is less conservative than the mean ideology of states without gay inclusive laws (-21.13 < -17.53). A cross tabulation between states with gay inclusive laws (31 or 62%) and states with transgender inclusive laws (14 or 28%) revealed that all transgender inclusive states have laws inclusive of sexual orientation. The 14 transgender inclusive states represent 45.2% of the states with laws inclusive of sexual orientation. No state has ever passed a piece of explicitly transgender inclusive legislation without previously or concurrently adopting legislation that is inclusive of sexual orientation. The most liberal of the liberals might view transgender inclusive laws as a logical extension. However, conservatives may be quicker to oppose what Wilchins (2004) described as the “visibly queer.” This pattern also holds for other independent variables. When compared to the sexual orientation inclusive states, those that are transgender inclusive are on average more educated (29.32% > 27.75%), more accepting of homosexuality (.255 > .2213), and have less evangelical adherence (11.35% < 15.10%). Clearly, transgender inclusive laws currently remain on the policy frontier of the larger LGBT rights movement.
Perhaps more fundamentally than the association with gay rights, transgender people (and by extension transgender inclusive laws) face criticism from conservatives over a traditional value and core belief within Western culture: the recognition of two sexual identities, male and female. These sexual identities (not to be confused with sexual orientation) are so seemingly basic that they do not need definition. Sexual identities are somewhat like Justice Stewart’s definition of obscenity; “I know it when I see it” (Jacobellis v. Ohio, 1964). These sexes are viewed as mutually exclusive and generally immutable. A person is usually assigned to a sex at birth, and he/she stays that sex for life. Within each assigned sex, there are behavioral norms of gender expression. Of course, the sexes have some overlap of gendered behavior but there are clearly types of gender expression that are identified with each sex. Thus, there is a binary notion of sexual and gender identity. However, transgender individuals and those who are intersexed challenge this basic binary understanding. For example, a pre-operative transsexual person has a gender identity that does not match his/her genitalia. An intersexed person may have a chromosomal pattern that does not correspond to his/her genitalia. Some transgender individuals, particularly crossdressers and the gender queer, do not follow norms of gender expression. Columnist and provocative social commentator Dennis Prager (2005) addressed the intersection of transgender, transsexualism and traditional understandings of sex and gender in a recent article:

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18 Some cultures recognize more variations of sex and gender. For example the Hijiras in India or the berdache within some Native American cultures.

19 Intersex refers to those born with genital or chromosomal ambiguities.
“Transgender is not the same as transsexual. In theory, Judeo-Christian values have no problem with a transsexual -- someone who has undergone a sex change -- if that person then behaves in ways associated with his or her new sex.”

*With respect to crossdressing, he added:*

“However, when a man does this in public, he has publicly blurred the man-woman distinction, and society has the right -- and the duty, if it cares about Judeo-Christian values or simply cares about not confusing children as to sexual identity -- to say this violates a norm that society does not wish violated.”

Prager highlighted a key problem that conservatives, particularly religious conservatives, have with some portions of the transgender community.20 They see transgender identity as threatening a basic building block of society, the belief in a binary gender system. It is important to recognize that Prager and *some* influential religious conservatives are not opposed to transsexualism (Rabinowitz, 2003; Robertson, 2006). However, this is dependent on transsexuals behaving according to the norms of the “adopted” sex.

It should also be noted that another aspect of conservative ideology may be problematic for transgender inclusive laws. Conservatives tend to favor a lack of government involvement in economic affairs. Non-discrimination laws inherently involve government intervention in the economy. Conservatives might naturally oppose many types of non-discrimination laws on this basis. Therefore, transgender people are problematic for conservatives on both ideological dimensions (government’s role in the economy and traditional values). Perhaps, this is an explanation as to why ideology is a better predictor of transgender inclusive laws than is evangelical adherence. Table 3.6

20 There are biblical prescriptions against crossdressing. In the King James Bible, Deuteronomy 22:5 states “The woman shall not wear that which pertaineth unto a man, neither shall a man put on a woman’s garment: for all that do so are abominations unto the LORD thy God.”
shows that using a single independent variable to predict outcomes, ideology outperforms all other variables.\textsuperscript{21}

[Table 3.6 about here]

With respect to the role of legislative partisanship in the adoption of transgender inclusive laws, again attitudes toward homosexuality and ideology are important. It is commonly accepted that the Republican Party is more conservative than the Democratic Party. With respect to gay rights, the Democrats are certainly more inclusive than are the Republicans (Lublin, 2005). The extent to which these dimensions influence partisan wrangling may affect transgender related legislative outcomes. However, anecdotal evidence points to a general lack of transgender acceptance in both the Democratic and Republican parties. This researcher recently lobbied a State Senator in North Carolina to include transgender people in his employment nondiscrimination bill.\textsuperscript{22} While he favored sexual orientation based protections, the Senator, a Democrat representing a rural county, felt that transgender inclusion would “raise too many eyebrows.” At the federal level, even openly gay Democratic Congressman Barney Frank does not advocate for the inclusion of transgender protections in federal non-discrimination legislation (Jost, 2006).\textsuperscript{23} In 2007, he even scuttled transgender inclusion from a bill protecting gays from employment discrimination (Murray, 2007).

\textsuperscript{21} Chi square difference tests are not appropriate, as these are not nested models (Garson, 2007). Given the similar level of performance with the progressive component derived from PCA, we will utilize ideology in the case studies for parsimony. Additionally, it is not possible to collect all of the necessary data at smaller units of analysis.

\textsuperscript{22} Senator X conveyed his sentiments during a legislative visit in conjunction with Equality North Carolina’s Lobby Day on 4-5-2005. The senator requested that his name not be included in this research given that he is engaged in a reelection campaign.

\textsuperscript{23}
Further anecdotal evidence lies in each party’s lack of attention in its national platform (DNC, 2004; RNC, 2004). By comparison, the platforms address gay equality in opposite ways. It should be noted that attitudes within the Democratic Party might be softening. In 2004, seven openly transgender delegates/committee members attended the Democratic National Convention. However, they openly criticized the party’s platform for advocating equality for gays and lesbians but excluding any reference to transgender equality (Lavers, 2004). It is not surprising that when compared to the gay rights inclusive states, transgender inclusive states require greater Democratic dominance in their legislatures (lower 58.79% > 54.93%; upper 58.57% >53.43%). At present and on average, only the most Democratic of the Democratic dominated legislatures are likely to pass these laws.

Another important question concerns the way attitudes about transgender issues are transmitted into policy. As previously discussed, there is little opinion data in this area. Given this problem, the connection with gay rights might allow legislators to draw inferences about the political feasibility of transgender inclusion. Alternatively, we know

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23 Congressman Frank’s sentiments on transgender inclusion in the proposed Employment Non-Discrimination Act were conveyed to this researcher during a reception at Duke University, 10-21-2004. He felt that transgender individuals raise significant issues with respect to restroom and locker room facilities. Additionally, he felt that transgender inclusion reduced the likelihood that the legislation would pass.

24 Quoting the 2004 Democratic platform, “We support full inclusion of gay and lesbian families in the life of our nation and seek equal responsibilities, benefits, and protections for these families. In our country, marriage has been defined at the state level for 200 years, and we believe it should continue to be defined there. We repudiate President Bush's divisive effort to politicize the Constitution by pursuing a "Federal Marriage Amendment." Our goal is to bring Americans together, not drive them apart.”

Quoting the Republican platform: “We affirm traditional military culture, and we affirm that homosexuality is incompatible with military service.” Also: “President Bush will also vigorously defend the Defense of Marriage Act, which was supported by both parties and passed by 85 votes in the Senate. This common sense law reaffirms the right of states not to recognize same-sex marriages licensed in other states.”
that ideology, a summary measure of public attitudes on policy issues, has an effect on state level policy (Erikson, Wright & McIver, 1993). By definition, ideology also has a degree of consistency. This consistency might allow ideology to be viewed somewhat as a demographic characteristic in addition to being a broad measure of public opinion. In this respect, constituent ideology can serve as a guide for elected officials when confronted with issues where there is a lack of specific attitudinal data (Wright, 2003). Politicians in conservative areas, being at least somewhat cognizant of their constituents’ ideological tendencies, may translate these general attitudes into a negative stance on transgender inclusive legislation. Conversely, politicians representing liberal areas may translate ideology in the other direction. It is interesting to note that Republican governors involved in the passage of these laws represented more liberal states than did Democrats that signed similar legislation. Despite being members of the nation’s conservative party, these Republican governors translated liberal public attitudes within their state into transgender inclusive laws.

Conclusion

This chapter is one of the first efforts within political science and public administration to explore the passage of transgender inclusive laws in the American states. It found that public attitudes, particularly ideology, are strong predictive factors in the passage of transgender inclusive legislation. Also, partisanship in the legislature, likely informed by ideology and attitudes toward gay rights has an effect. Additionally, it found that state court decisions which extend discrimination protections to transgender people based on existing sex discrimination law may ameliorate the need for further
legislative action. It is important to mention that the passage of transgender inclusive laws is likely affected by variables not included in this analysis. The role of advocacy groups merits exploration (Wright, 2003). Advocacy groups are important because it is doubtful that transgender inclusive laws spring from the legislature like manna from heaven. Unfortunately, this researcher could not find adequate measures of advocacy group involvement in all states over time. Furthermore, while institutional factors (status quo policy, governor and legislature) were included in the analysis, attention to these issues may have been inadequate. Perhaps, a better way of addressing these factors would be to study all transgender inclusive bills introduced in the various state legislatures. This paper only addressed laws that were adopted. Further research in this area should better explore these issues.

The findings in this chapter inform the development of this dissertation’s next four chapters. Each chapter is a case study that provides a detailed look at a state’s social and legislative landscape with respect to transgender inclusive laws. As noted in chapter two, four states were selected for analysis. The first state addressed is North Carolina. It is followed by Pennsylvania, Maryland and Massachusetts.
Table 3.1: Means

<table>
<thead>
<tr>
<th>States with Transgender Inclusive Legislation</th>
<th>Median Ideology</th>
<th>Evangelical &amp; LDS Membership</th>
<th>Attitude Toward Homosexuality</th>
<th>Percentage Democratic Governor</th>
<th>Avg. Percentage Democratic (Lower House)</th>
<th>Avg. Percentage Democratic (Upper House)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Mean -17.22</td>
<td>.25</td>
<td>.17</td>
<td>44%</td>
<td>49%</td>
<td>49%</td>
</tr>
<tr>
<td>N=36</td>
<td>Std. Dev. 7.7</td>
<td>.17</td>
<td>.07</td>
<td>.08</td>
<td>.16</td>
<td>.15</td>
</tr>
<tr>
<td>Yes</td>
<td>Mean -6.73</td>
<td>.11</td>
<td>.26</td>
<td>44%</td>
<td>59%</td>
<td>59%</td>
</tr>
<tr>
<td>N=14</td>
<td>Std. Dev. 5.55</td>
<td>.08</td>
<td>.07</td>
<td>.08</td>
<td>.12</td>
<td>.14</td>
</tr>
<tr>
<td>Total</td>
<td>Mean -14.28</td>
<td>.21</td>
<td>.19</td>
<td>44%</td>
<td>52%</td>
<td>52%</td>
</tr>
<tr>
<td>50</td>
<td>Std. Dev. 8.56</td>
<td>.16</td>
<td>.08</td>
<td>.08</td>
<td>.15</td>
<td>.15</td>
</tr>
</tbody>
</table>
Table 3.2: Principal Components Analysis

<table>
<thead>
<tr>
<th>Components</th>
<th>Progressive attitudes</th>
<th>Democratic legislative control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average percentage Democratic (Lower House)</td>
<td>0.183</td>
<td>0.948</td>
</tr>
<tr>
<td>Average percentage Democratic (Upper House)</td>
<td>0.199</td>
<td>0.940</td>
</tr>
<tr>
<td>Evangelical and LDS membership</td>
<td>-0.825</td>
<td>0.181</td>
</tr>
<tr>
<td>Attitude toward homosexuality</td>
<td>0.883</td>
<td>-0.144</td>
</tr>
<tr>
<td>Percentage (age 25 and older) w/BA or Higher</td>
<td>0.804</td>
<td>-0.197</td>
</tr>
<tr>
<td>Mean ideology</td>
<td>0.938</td>
<td>0.079</td>
</tr>
<tr>
<td>Percentage of variance</td>
<td>51.003</td>
<td>31.347</td>
</tr>
<tr>
<td>Cumulative percentage of variance</td>
<td>51.003</td>
<td>82.35</td>
</tr>
</tbody>
</table>

54
Table 3.3: Logistic Model-Dependent Variable Transgender Inclusive Laws

<table>
<thead>
<tr>
<th>Variables in the Equation</th>
<th>B (S.E.)</th>
<th>EXP (B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Progressive attitudes</td>
<td>3.62 (1.19)**</td>
<td>37.17</td>
</tr>
<tr>
<td>Transgender inclusive court decision</td>
<td>-29.24 (18312.85)</td>
<td>0.00</td>
</tr>
<tr>
<td>Percentage Democratic controlled governor</td>
<td>-.03 (7.61)</td>
<td>0.97</td>
</tr>
<tr>
<td>Democratic legislative control</td>
<td>1.81 (.86)*</td>
<td>6.11</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.18 (3.54)</td>
<td>0.31</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Model</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage correctly predicted (PCP)</td>
<td>91.800</td>
</tr>
<tr>
<td>Percentage modal category (PMC)</td>
<td>71.400</td>
</tr>
<tr>
<td>Percentage reduction in error (PRE)</td>
<td>71.330</td>
</tr>
<tr>
<td>Nagelkerke R Square</td>
<td>0.729</td>
</tr>
</tbody>
</table>

* p ≤.05  **p ≤ .01  *** p ≤.001
Table 3.4: Logistic Model Comparison

<table>
<thead>
<tr>
<th>Variables in the Equation</th>
<th>DV w/court decisions</th>
<th>DV w/o court decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B (S.E.)</td>
<td>EXP (B)</td>
</tr>
<tr>
<td>Progressive attitudes</td>
<td>3.80 (1.19)***</td>
<td>44.73</td>
</tr>
<tr>
<td>Democratic legislative control</td>
<td>1.88 (.87)*</td>
<td>6.53</td>
</tr>
<tr>
<td>Percentage Democratic controlled governor</td>
<td>-.03 (7.73)</td>
<td>0.97</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.16 (3.51)</td>
<td>0.31</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Model: DV w/court decisions</th>
<th>Model: DV w/o court decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage correctly predicted (PCP)</td>
<td>91.80</td>
<td>81.60</td>
</tr>
<tr>
<td>Percentage modal category (PMC)</td>
<td>65.30</td>
<td>71.40</td>
</tr>
<tr>
<td>Percentage reduction in error (PRE)</td>
<td>76.37</td>
<td>35.66</td>
</tr>
<tr>
<td>Nagelkerke R Square</td>
<td>0.76</td>
<td>0.45</td>
</tr>
</tbody>
</table>

* p ≤ .05, ** p ≤ .01, *** p ≤ .001
Table 3.5: Logistic Model; Dependent Variable Sexual Orientation Inclusive Laws

<table>
<thead>
<tr>
<th>Variables in the Equation</th>
<th>B (S.E.)</th>
<th>EXP (B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Progressive attitudes</td>
<td>2.30 (.71)**</td>
<td>10.00</td>
</tr>
<tr>
<td>Percentage Democratic controlled governor</td>
<td>-0.26 (4.58)</td>
<td>0.77</td>
</tr>
<tr>
<td>Democratic legislative control</td>
<td>.72 (.48)</td>
<td>2.05</td>
</tr>
<tr>
<td>Constant</td>
<td>1.16 (2.11)</td>
<td>3.20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Model</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage correctly predicted (PCP)</td>
<td>81.60</td>
</tr>
<tr>
<td>Percentage modal category (PMC)</td>
<td>61.20</td>
</tr>
<tr>
<td>Percentage reduction in error (PRE)</td>
<td>52.58</td>
</tr>
<tr>
<td>Nagelkerke R Square</td>
<td>0.52</td>
</tr>
</tbody>
</table>

* p ≤.05  **p ≤ .01  *** p ≤.001
Table 3.6: Logistic Model with Single IV Comparison

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>PMC</td>
<td>65.30</td>
<td>66.00</td>
<td>66.00</td>
<td>66.00</td>
<td>66.00</td>
<td>66.00</td>
<td>65.30</td>
<td>65.30</td>
</tr>
<tr>
<td>PCP</td>
<td>87.80</td>
<td>90.00</td>
<td>80.00</td>
<td>86.00</td>
<td>84.00</td>
<td>66.00</td>
<td>65.30</td>
<td>65.30</td>
</tr>
<tr>
<td>PRE</td>
<td>0.65</td>
<td>0.71</td>
<td>0.41</td>
<td>0.59</td>
<td>0.53</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Nagelkerke R Square</td>
<td>0.68</td>
<td>0.68</td>
<td>0.44</td>
<td>0.48</td>
<td>0.45</td>
<td>0.00</td>
<td>0.18</td>
<td>0.13</td>
</tr>
</tbody>
</table>
CHAPTER 4: NORTH CAROLINA CASE STUDY

The previous chapter presented several factors affecting the adoption of transgender inclusive legislation. As noted, public attitudes, as measured by ideology, are extremely strong predictors of whether or not a state has a transgender inclusive law. Additionally, legislative partisanship and state court decisions seemingly play a minor role. Using a case study approach, the remainder of this research attempts to validate and expand upon those findings. This chapter takes a look at North Carolina, a state that our model correctly predicted to not have a transgender inclusive law. North Carolina was selected for review because the researcher had access to relevant formal and informal policy actors. Relative to the other states addressed in this work, it also adds geographic and cultural diversity. Before exploring the reasons the state does not have this type of law, it is important describe the lay of North Carolina’s political landscape.

Federal Politics

With respect to presidential elections, North Carolina consistently favors Republican candidates. In fact, the state last cast electoral votes for a Democratic candidate in 1976. In both 2000 and 2004, George W. Bush pulled 56% of the state’s two party popular vote (U.S. Census Bureau, 2006). These outcomes mirror trends in other Southern states.

Since the retirement of John Edwards in 2004, Republicans have held both Senate seats. In the House, Republicans held a majority of the state’s delegation from 1997 through 2006. However, Democrats gained the upper hand with a razor thin margin in
The Democrats hold the congressional seats around the Research Triangle (Raleigh, Durham, and Chapel Hill) and those areas with high minority populations.

**North Carolina Government and Politics**

Throughout much of the South, the Democratic Party was dominant from the end of Reconstruction through the early 1970’s. However, Republicans now hold legislative majorities in most South Atlantic states (U.S. Statistical Abstract, 2006). Unlike their regional brethren, North Carolina’s Democratic Party remains dominant in the state legislature. As of 2006, Democrats enjoyed a 29-21 majority in the Senate. In fact, the chamber has been a Democratic bastion for decades (North Carolina General Assembly, 2006b). The closest Republicans have been to parity was a 2 seat deficit for the 1995 and 1996 sessions. Senate Democrats hold strong bases of support in the rural east, with its large concentration of minority voters, and in the Piedmont’s urban areas. Republicans are dominant in the western portion of the state and in the suburban/exurban districts around the larger cities.

Over the past two decades, the House has been electorally competitive. Party control changed hands in 1993 (to Republican) and 1999 (to Democratic) (North Carolina General Assembly, 2006b). Due to a Republican defection, the parties briefly reached parity for the 2003 and 2004 sessions (Rice, 2003). During this period, the House maintained a controversial power sharing arrangement between moderate Republicans and Democrats. Conservative Republicans were outraged and subsequently engineered a purge of the moderates (Robertson, 2004; Christensen, 2006). As of 2006, Democrats held a 63-57 advantage in the chamber. Geographic bases of support in the House were
similar to those of the Senate. However, Republicans have made inroads in the eastern legislative districts that have relatively low minority presence. Indeed, the Republican held House districts east of Wake and Cumberland counties are on average 17.08% African-American. This is far less than the 38.59% average for seats held by Democrats. Based on this evidence, it is highly likely that African-American voters remain vital to Democratic competitiveness.

**Governor**

As with the state legislature, Democrats remain competitive for statewide office. They have won the last four gubernatorial races. Republicans last controlled the Governor’s mansion during the tenure of James Martin (1985-1993). Prior to the term of Jim Holshouser Jr. (1973-1977), Republicans had not held the governor’s mansion since the McKinley administration. Despite the imbalance, Republicans generally lose by narrow margins. Their last four nominees for governor have garnered more than 40% of the two party vote.²⁵

**History of Gender Identity Inclusive Legislation in NC**

As of 2007, North Carolina has not established a gender identity inclusive law. According to the Transgender Law and Policy Institute (2007b), no North Carolina municipal government has a gender identity or sexual orientation inclusive non-discrimination or hate crimes ordinance. However, the towns of Chapel Hill and Carrboro have internal personnel policies that are gender identity and gender expression inclusive. Both policies were adopted in 2004 (National Gay and Lesbian Task Force, 2006; Transgender Law and Policy Institute, 2007b). By comparison, there are eight

²⁵ See the North Carolina State Board of Elections. http://www.sboe.state.nc.us/
local jurisdictions with internal nondiscrimination policies that cover sexual orientation (Human Rights Campaign, 2004). In addition to Chapel Hill and Carrboro, notable municipalities with these policies include Mecklenburg County and the cities of Durham, Greensboro, and Raleigh.

At the state level, several gender identity inclusive bills have been introduced.26 The first gender identity inclusive piece of legislation (HB 1085) was introduced in 1997. This bill attempted to expand state’s laws against ethnic intimidation, G.S. 14-3(c) and G.S. 14-401.14 to cover sexual orientation and gender identity. The existing law included race, color, religion, nationality or country of origin. Beyond adding those classes, the legislation sought to increase penalties for crimes committed under this statute.

House bill 1085 had sixteen sponsors. Eleven of these sponsors represented urban or urban influence districts in the counties of Wake, Orange, Durham, Guilford, and Mecklenburg. Each of these counties is home to at least one university with more than 10,000 students.27 Most notable among these schools are UNC-Chapel Hill and Duke University, institutions with a strong reputation for liberalism (Luebke, 1998). Supporters from other parts of the state were primarily members of the House’s African-American caucus. All of the bill’s sponsors were Democrats. Understandably, this was a

26 In order to explore the history of this type of legislation in North Carolina, LexisNexis State Capital was utilized. A keyword search on the terms gender identity, gender expression, and gender related identity was performed for the years 1991-2005.

problem given that Republicans controlled the House. As such, the bill died in the Judiciary I Committee.

Gender identity and gender expression were not included in efforts to amend the hate crimes law during the 1999 and 2001 sessions. Those bills were narrower in scope, offering protections on the basis of sexual orientation. Perhaps in part because of the high profile murder of Matthew Shepard, the 1999 attempt (HB 884) successfully advanced from committee (Judiciary I). 28 However, it failed on the House floor by a vote of 58-48 (Rawlins, 1999). Ten Democrats voted to defeat the measure while two Republicans offered support (Rawlins, 1999). In large part, the measure was defeated because of conflict about homosexuality. The resistance to gay rights was perhaps best illustrated by Representative Zeno Edwards (D-Washington). He stated "You do realize that many of us can support 90 percent of this bill…sexual orientation is a deep-founded conviction of many of us who cannot support the bill for that reason" (Rawlins, 1999).

Because of the high profile defeat in 1999, the 2001 hate crimes bill died in committee. In 2003, transgender inclusion in the hate crimes bill was revived. Unlike the 1997 bill, SB 736 used the term gender expression instead of gender identity. This likely made little legal difference as statutes in other jurisdictions often refer to gender identity and gender expression. Each of SB 736’s seven sponsors were Democrats. Five of the seven sponsors represented urban influence areas around Durham, Orange, Wake and Mecklenburg counties. Another supporter came from Buncombe County, home of gay friendly Asheville (D’Addono, 2006). However, committee support was still lacking.

28 Shepard was a former North Carolina resident who was killed in Laramie, Wyoming in 1998.
Despite introduction in an institution controlled by Democrats, SB 736 failed to advance from the Judiciary I committee.

Another piece of legislation offered in 2003 aimed to expand the scope of employment discrimination protections within state government. The sponsor, Paul Luebke (D-Durham), wanted to add sexual orientation, gender identity and gender expression to the list of protected classes.\(^2^9\) The existing statutes covered discrimination and harassment on the basis of age, sex, race, color, national origin, religion, creed or handicapping condition. The bill received no attention from the House Committee on State Government.

The 2005 session saw three bills that addressed gender identity. SB 445 and HB 1322 were new attempts at hate crimes legislation. The Senate proposal had nine sponsors, all Democrats. This was an increase of two sponsors over the previous bill. While a net increase, it lost Steve Metcalf (D-Buncombe) due to his resignation (Associated Press, 2003). This bill also lost the support of Robert Lee Holloman (D-Bertie, Chowan, Gates, Halifax & Hertford). He represented a rural, heavily minority district in the northeast. However, it gained support from new legislators, Berger (D-Franklin, Granville, Vance, & Warren), Cowell (D-Wake), Graham (D-Mecklenburg), and Atwater (D-Durham, Chatham & Lee). With the exception of Berger, each represented areas with significant urban or college town influence.

House bill 1322, another attempt to amend the hate crimes law, had eight sponsors. Like each of the previous bills, all of the sponsors were Democrats. Three of the sponsors were holdovers from the 1997 effort (Luebke (D-Durham), Wainright (D-

\(^2^9\) HB 924 would have amended G.S. 126-16, G.S. 126-34.1, and G.S. 126-36
Craven & Lenoir), and Insko (D-Orange)). Four of the five new supporters were Democratic women representing urban areas around Raleigh, Durham, Greensboro and Charlotte. The fifth supporter was Susan Fisher, a Democrat from the Asheville area. The bill was not sponsored by former supporters Wright (D-New Hanover & Pender), Miller (D-Durham), Michaux (D-Durham), McAllister (D-Cumberland), Alexander (D-Mecklenburg), Earle (D-Mecklenburg), Hackney (D-Chatham, Moore, & Orange), and Hunter (D-Bertie, Gates, Hertford & Perquimans). Of these seven individuals, five were African-Americans who represented districts with large minority populations. This bill failed to advance from the House Committee on Rules, Calendar, and Operations of the House.

The state’s personnel laws again received attention in 2005 via HB 1203. This bill had two co-sponsors, Luebke (D-Durham) and Womble (D-Forsyth). As with the other legislative attempts, this bill did not advance from committee.30

**Barriers to Gender Identity Inclusive Legislation**

Gender identity inclusive legislation in North Carolina faces many hurdles. These barriers include nonsalience, public attitudes, and legislator self interest. Partisanship, as shaped by attitudes found within the parties, may also be a factor. The following sections describe these barriers.

**Nonsalience**

Public attitudes have an effect on public policy and generally set the parameters of what is acceptable (Erikson, Wright & McIver, 1993). Politicians attempt to maximize

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30 HB 1203 was assigned to the House Committee on Rules, Calendar, and Operations of the House
their electoral chances by moving to the center of public opinion (Downs, 1957; Geer 1996). They act on salient issues and ignore nonsalient issues (Geer, 1996). This is problematic for the transgender community. In North Carolina, discrimination and hate crimes perpetrated against the transgender community are likely nonsalient issues. Several of the political elites interviewed for this project agreed that the state’s electorate does not think about transgender people or their issues.31 As noted by interview subject Carter Wrenn, a Republican political consultant, North Carolina politicians do not even bother polling on the issue.32 Without polling data, transgender concerns are delegitimized as a concern for legislators (Herbst, 1993). To the extent legislators exhibit Downsian behavior, the lack of salience, as evidenced by the lack of polling, dampens legislative support for transgender inclusive bills.

In part, nonsalience comes from the lack of familiarity with transgender issues. As noted in chapter one, many transgender people are closeted and those who are out are small in number. Thus, there is a lack of personal contact with transgender people. Members of the general public are far more likely to know gay people and be sympathetic to their cause. Indicative of this problem, John Rustin, Director for Government Relations for the North Carolina Family Policy Council, a group that strongly opposes LGBT rights, noted that he was using my research interview as an opportunity to learn about transgender issues. This lack of awareness decreases salience and hurts the ability of transgender people to get legislative protections enacted.

31 John Hood of the John Locke Foundation, Rep. Paul Stam, and political consultants Carter Wrenn and Gary Pearce noted that transgender issues are not broadly held public concerns.

32 Carter Wrenn was interviewed on October 2, 2006 via telephone.
The transgender community’s small size (or perceptions of its size) is another obstacle for gender identity inclusive legislation. Advocacy for transgender protections generates little goodwill as there are relatively few direct beneficiaries of such efforts. The lack of potential electoral gain gives rational election seekers (Fiorina; 1974; Mayhew, 1974) little incentive to support these bills. As a “new issue” to be injected into debate (Geer, 1996), it is lacking. Interview respondent Representative Paul Stam (R-Wake) alluded to this problem and partially attributed his opposition to such bills by saying, “There is no benefit to legislators.”

The evidence presented thus far points to a lack of salience on transgender issues. However, nonsalient issues are regularly addressed by legislators. Geer (1996) argues that when legislators advance nonsalient issues, they must be judicious about which ones they support. Legislators do not want to generate opposition by taking stands on potentially divisive issues. This is problematic for transgender people because their issues are associated with gay rights. In much of the nation, the “homosexual agenda” and same-sex marriage are the subject of contentious debate. These topics are probably more divisive in North Carolina than in much of the nation. Gay baiting is still frequently used in the state’s political campaigns. A notable example of this occurred in the 2006 race for the state’s 13th congressional district. Although unsuccessful, Republican candidate Vernon Robinson ran an advertisement that stated, “If (Brad) Miller had his way, America would be nothing but one big fiesta for illegal aliens and homosexuals” (Sexton, 2006).
To the considerable extent transgender issues are subsumed in this cultural conversation, they are also controversial. Support for LGBT inclusive bills might offend some constituents, thus increasing the salience of a non-issue. Given fears of retrospective voting (Jacobs & Shapiro, 2000), legislators might take this into account (Kingdon, 1989). Several of the interview subjects noted that this was a big concern for legislators. Democratic political consultant Gary Pearce and Representative Stam agreed that legislators were risk averse on these issues. Such fears seem well founded given anecdotal evidence presented by Ian Palmquist of Equality North Carolina. He asserted that David Redwine’s (D-Brunswick) support for the 1999 hate crimes bill contributed to his ouster in 2002. Therefore, it is hardly surprising that North Carolina legislators are hesitant to support protections for gender identity.

**Negative Attitudes**

Salience issues aside, substantial evidence exists that views toward transgender issues are negative. Negative attitudes are important because public opinion “more often constrains government from doing something” (Kingdon, 2003). While there are no publicly available statewide polls on this issue, a summary measure of public attitudes, ideology, might be a useful proxy. Based on the CBS-New York Times data used earlier in this study, North Carolina ranks as the 14th most conservative state in the union. However, the most conservative state with any sort of gender identity inclusive law is Missouri (rank 20). In addressing the policy relevance of ideology, Carter Wrenn, argued that conservative North Carolinians, a majority of the state, oppose this type of legislation because they view it as government approval of an offensive lifestyle. As demonstrated
in the previous chapter, conservative states are far less likely to adopt this type of law. Therefore, it is not surprising that North Carolina, a relatively conservative state, does not have a gender identity inclusive law.

If North Carolina’s conservative public attitudes do set the bounds for acceptable government action, it should hold true regardless of level. The federal government addresses matters affecting the LGBT community. National interest groups, such as the Human Rights Campaign (HRC), publish scorecards that rate legislator performance on these issues. If public attitudes are important in determining legislator positions, members of Congress from North Carolina and other conservative states should show less support for LGBT issues.

Scores from HRC’s instrument ranged from zero to one hundred, with higher numbers representing more support of LGBT concerns (Human Rights Campaign, 2006). In both chambers, the scores for the North Carolina delegation were greatly below the national average. Within the U.S. Senate, the average score was 42.46. Both of North Carolina’s senators achieved a zero ranking. Within the House, the average score was 41.2. North Carolina’s representatives averaged 27. While this finding was consistent with the hypothesis, it is possible that party affiliation skewed the results.


34 The House of Representatives portion of the Human Rights Campaign’s *Measuring Support for Equality in the 109th Congress: Congressional Scorecard* addressed positions taken on: The Federal Marriage Amendment (H.J. Res. 88), the Conyers Amendment to the Child Safety Act (H.R. 3132), co-sponsorship of the Local Law Enforcement Hate Crimes Prevention Act (H.R. 2662), co-sponsorship of the Military
When controlling for partisanship, Democratic representatives averaged a 78.29 score in HRC’s report whereas the Republicans averaged 8.77. In the Senate, Democrats averaged 82.91 while Republicans averaged 9.11. These differences are expected as Congressional Democrats are more supportive of LGBT issues than are Republicans (Lublin, 2005). However, North Carolina Democrats averaged 58.5 while North Carolina Republicans registered no support in either the House or Senate. North Carolina Democrats, despite their party’s advocacy of LGBT issues, supported such measures at a much lower rate than their Democratic colleagues. Therefore, it appears that members of the state’s delegation, particularly Democrats, respond to conflict within their “field of forces” (Kindgon, 1989) by voting according to constituency cues on LGBT issues rather than relying on party signals. While this is not conclusive proof that North Carolina politicians translate actual or perceived negative public attitudes on LGBT issues into negative stances, these results are consistent with such a hypothesis.

*The Political Socialization of Negative Attitudes: Political Culture*

Several factors beyond a proxy measure like ideology point towards negative attitudes on transgender issues. A person’s attitudes are the product of political socialization. Affecting political socialization is the political culture in which this process occurs (Patterson, 2006). While most Americans share a national political culture, there is state and local variation (Elazar, 1984). North Carolina has a traditionalistic political culture (Elazar, 1984; Gray, 2004). This cultural variation exhibits defense of the existing social order and for maintaining traditional patterns of

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Readiness Enhancement Act (H.R. 1059), and co-sponsorship of the Uniting American Families Act (H.R. 3006)
life. Not surprisingly, traditionalistic political cultures have opposed civil rights for minorities (Elazar, 1984). As such, Luebke (1998) described the gay rights movement as an “anathema” to traditionalists. Indeed, former North Carolina Senator Jesse Helms, a “staunch defender of down-home traditional values” (Luebke, 1998), often campaigned using blatant race and gay baiting. As evidenced by Helms’ numerous successful campaigns, such racist and homophobic attitudes are or were held to some degree by the majority of white North Carolinians (Luebke, 1998). The tactic has proven so successful that North Carolina Republicans continue to rely on such themes. Because of the confusion with gay rights, a sizeable block of North Carolinians are predisposed, via the state’s political culture, to oppose transgender inclusive legislation. Even when people do not view transgender rights in connection with gay rights, a large portion of North Carolinians will be opposed given a predisposed dislike of social change. Indeed, Luebke (1998) noted that North Carolina politicians, regardless of party label, have generally been reluctant to expand opportunities to those outside the power structure.

While traditionalistic political culture is dominate throughout the state, particularly east of Interstate 95, notable moralistic subcultures exist in the urban areas of the Piedmont region and in the mountains (Elazar, 1984). According to Elazar (1984), moralistic areas are more likely to generate policy proposals that disregard public opinion. Such action is tolerated provided these initiatives are intended to improve society. In regions of the state with prominent moralistic political subcultures, there have been some local successes for gay and transgender activists. In 2004, Guilford County’s school board enacted a policy that banned bullying against gay and transgender students.
(Fernandez, 2004). As previously mentioned, Chapel Hill and Carrboro protect transgender people from discrimination in municipal employment. No localities in traditionalistic areas have passed such ordinances. Perhaps, the local prominence of this moralistic subculture partially explains the state’s progressive reputation (Key, 1949; Luebke, 1998).

With respect to the state legislature, moralistic areas have elected most of the legislators that support gender identity inclusive bills. Six of the eight co-sponsors for the House’s 2005 hate crimes bill (HB 1322) represented the Piedmont’s urban moralistic areas. Another supporter hailed from Buncombe County, also labeled by Elazar (1984) as a moralistic influence area. With respect to the Senate’s 2005 hate crimes bill, eight of the nine sponsors clearly represented moralistic influence areas around the major cities of the Piedmont. The remaining senator, Doug Berger, hailed from a district that abuts the Raleigh area. While legislators from moralistic districts are in a legislative minority, their voice is heard. Unlike other Southern states, North Carolina has not passed nor is it scheduled to vote on a constitutional amendment banning same-sex marriage.35

The Political Socialization of Negative Attitudes: Religion

Through political socialization, individual attitudes are also shaped by religion (Patterson, 2006). Therefore, the theological doctrines proscribed by one’s religion may likely shape attitudes in this area. Gay rights, and by extension transgender rights, are the subject of much controversy in various religious sects. Troubling for LGBT activists is that approximately 40% of North Carolina residents are either members of an Evangelical church or the Church of Jesus Christ of Latter Day Saints (Association of Religion Data

35 North Carolina has not considered a constitutional amendment banning same sex marriage as of 2006.
This is double the national average of 20%. Most prominent among this family of faiths is the nation’s second largest denomination, the Southern Baptist Church. It is by far the largest denomination in North Carolina. Table 4.1 shows that it has more than twice the adherents (21.82% of the 1990 population) as the next largest group, the United Methodist Church (9.13%).

[Table 4.1 about here]

As a denomination, Southern Baptists strongly oppose gay rights. One of their position papers states, “We affirm God's plan for marriage and sexual intimacy – one man, and one woman, for life. Homosexuality is not a "valid alternative lifestyle." The Bible condemns it as sin” (Southern Baptist Convention, 2006). The denomination’s North Carolina affiliate, the Baptist State Convention of North Carolina, is vehemently anti-gay. In 2006, it enacted a policy which bars from membership any church that "knowingly affirms, approves, or endorses homosexual behavior" (Shimron, 2006). In fact, it kicked Cabarrus County’s McGill Baptist Church out of the organization after it baptized two gay men and accepted them as members (Shimron, 2003).

According to the Human Rights Campaign (2004b), the Southern Baptist Convention is silent on transgender issues. However, given their longstanding hostility to gay and lesbian people, it is doubtful that transgender issues would be viewed in a different light. Allied organizations, such as the North Carolina Family Policy Council, do not condone what they call “gender confusion” (North Carolina Family Policy Council, 2004).

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36 LDS and Evangelical membership was combined in the preceding national analysis and was done by Erikson, Wright & McIver (1993).
Within historically African-American denominations, the third and fourth largest groups in the state, there is also animus towards LGBT issues. Stanley Dunston, Pastor of Allen Chapel Baptist Church in Louisburg, stated that the historically African-American denominations would not differentiate between transgender concerns and those of gays and lesbians. Pastor Dunston, citing Leviticus, referred to these issues as an abomination before God. He said that leaders in the historically African-American denominations would likely view transsexualism and homosexuality as “not part of God’s plan.” Such religious attitudes may partly underlie the racial differences toward LGBT rights noted by Lewis (2003).

Given that three of the top five denominations in the state are theologically hostile to LGBT concerns, it is highly likely that the religious views of North Carolinians negatively affect opinion and thus public policy towards transgender people. This religious dimension creates problems for legislators of both parties. Potential Republican supporters of LGBT affirming bills risk alienating Christian Evangelicals, a vital part of the Republican coalition. Democratic politicians risk friction with the historically African-American denominations. Both Stam and Democratic consultant Garry Pearce echoed these concerns.

General Opposition to These Laws and the Conflation with Gay Rights

The association with gay rights is a large legislative hurdle for transgender inclusive bills. In North Carolina, to the extent gender identity is identified as a gay issue, legislative defeat is certain. Sexual orientation inclusive bills have repeatedly failed in the legislature. As previously discussed, through 2006, the closest a sexual

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37 Pastor Dunston was interviewed on November 3, 2006.
orientation inclusive bill has come to passage in either chamber was 1999’s hate crimes bill. It suffered a 10 vote defeat in the House (Rawlins, 1999). Subsequent attempts to pass similar legislation have not advanced from committee. Several former sponsors of the various hate crimes bills appear to have reevaluated their support. This is likely a function of the increasing salience of same-sex marriage due to Goodridge v. Department of Public Health (2003) and the role that it played in the 2004 elections (Lewis, 2005).

As noted previously, many of the legislators who reevaluated their position represented districts with large African-American populations. It is possible that religious attitudes within many of the historically African-American denominations affected subsequent position taking by these legislators. Given widespread calls for a state constitutional amendment banning same-sex marriage, it is likely that many legislators want to avoid “Wilsonian leadership by mistake” (Geer, 1996) on LGBT issues.

**Legalistic Arguments**

While public attitudes likely play a strong role in shaping opposition to sexual orientation and gender identity inclusive legislation, there are other arguments against such bills. Representative Stam and John Hood of the John Locke Foundation cited legalistic arguments and general opposition to hate crimes and nondiscrimination statutes. With respect to the legalistic arguments, some interview respondents stated that sexual orientation is not defined under North Carolina law, thus enforcement would be problematic. Of course, the problem could be remedied by defining sexual orientation in the statute. However, John Rustin, Director of Government Relations for the North Carolina Family Policy Council and Representative Paul Stam (R-Wake County) noted
there is strong opposition to any bill which would define sexual orientation or gender identity under North Carolina law. Opponents argue that sexual orientation inclusive language would subsequently protect bestiality and pedophilia (Bonner, 2003). Hood mentioned that many of the arguments against LGBT inclusive legislation were taking this type of legalistic approach as opposed to being openly homophobic. Arguments that frame opposition as a fight against “special rights” are similar. The change in rhetoric might be a sign of attitude evolution.

Opposition to sexual orientation and gender identity inclusive legislation might also stem from broader beliefs about a particular class of legislation. With respect to hate crimes measures in general, Representative Stam described them as a “cause celebre in the 1980’s.” He described hate crimes measures as bad law that does not fit into the “criminal context.” Hood also opposed hate crimes laws as people and crimes are not treated equally. Even Ian Palmquist of Equality North Carolina was troubled by penalty enhancement for crimes committed against gay people.

Partisanship

Legislative partisanship is likely another large hurdle for gender identity and sexual orientation inclusive laws in North Carolina. While the Democrats control both legislative chambers, the legislature is closely divided between Republicans and Democrats. This is particularly true in the House of Representatives. The electoral competition in the House makes it difficult for Democrats to support these bills. John Hood concurred with this sentiment:

“…in closely divided states like NC, it is difficult for politicians (even Democrats) to support the bills. Even Democratic leaders, while in
relatively safe districts are worried about the effect on their majority…they are worrying about the voter in the middle and support could cost them tossup seats…it is about power.”

In a legislative chamber where party control has changed hands twice in recent memory and is currently divided 63-57, such a concern seems warranted.38 A loss of a few seats could easily sway control of the chamber. Thus, as Stam noted, politicians want to stay away from controversial issues. Hood argued that gender identity and sexual orientation inclusive measures would have more support if either party had a dominant legislative majority. Support for this assertion might be found in the Senate, a Democratic bastion for decades. In proportional and absolute terms, there is more support for gender identity inclusive hate crimes legislation in the Senate than in the House. Eighteen percent of senators supported hate crimes legislation in 2005. Only 8.3% of house members supported the legislation.

Partisanship is also affected by political attitudes such as ideology. Given that North Carolina is a conservative state, this has important legislative and electoral dimensions. Minority parties always attempt to inject new issues in the debate in an attempt to gain electoral superiority (Stimson, 2004). However, in a conservative state, Democratic support for LGBT rights can be utilized by Republicans to paint Democrats as being out of the political mainstream. Republican strategist Carter Wrenn stated that support for such legislation would assist in defining an opponent as a liberal. Furthermore, Ian Palmquist described support for LGBT issues as “politically suicidal.” Democratic consultant Gary Pearce added that North Carolina Republicans have moved from “race baiting” to “gay baiting.” He noted that Republican Senate candidates, such

38 As of 2006, the lower chamber was divided 63-57.
as Jesse Helms and Richard Burr, framed their Democratic opponents as being out of touch with North Carolina values when they supported gay rights. Quoting Mr. Pearce, “when Democrats talk about or attention goes to LGBT issues, we lose. The better strategy is to talk about jobs and education.”

The above comments demonstrate that gay baiting is useful as a wedge issue in North Carolina politics. It offers Republicans a chance to cleave off a percentage of Democratic or unaligned supporters. Gay baiting also offers an opportunity to rally the Republican base by energizing social conservatives. Such tactics are crucial in narrowly divided contests.

**Conclusion**

Built upon the foundations of the previous section, this chapter addressed North Carolina, a state that was correctly predicted by the national model to not have a transgender inclusive law. In part, the state does not have a gender identity inclusive law because transgender issues lack salience in the general population. This problem exists because the transgender community is small, closeted, and few people know transgender individuals. As such, legislators have little to gain from promoting these issues.

Legislative support is also hindered because transgender identity is often conflated with sexual orientation. Gay rights face significant public opinion hurdles within the state. These negative attitudes are likely shaped by the dominance of religious denominations that vehemently oppose LGBT rights. Such religion influenced opposition may extend beyond the Evangelicals who are commonly associated with Republicans to an important part of the Democratic base, African-Americans. Beyond
religion, attitudes are likely affected by the state’s dominant political culture, traditionalism.

Given public sentiments, there are important political implications. North Carolina Republicans have often successfully engaged in “gay baiting” during election campaigns. Therefore, only the safest Democrats can avoid the fear of a queer smear. However, despite gerrymandering, the tactic is successful because the state is narrowly divided between Republicans and Democrats. Control of the legislature, particularly in the House can turn on a few races. Thus, Democratic legislative leaders have self interest motives to avoid controversial issues like LGBT rights. They also may worry about alienating some parts of their important African-American constituency given religion influenced attitudes. For these reasons, gay and transgender inclusive bills face significant hurdles in the legislature.
<table>
<thead>
<tr>
<th>Rank</th>
<th>Religious Bodies</th>
<th>Theology</th>
<th>Congregations</th>
<th>Adherents</th>
<th>Percentage 1990 Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Southern Baptist Convention</td>
<td>Evangelical Protestant</td>
<td>3,527</td>
<td>1,446,228</td>
<td>21.82%</td>
</tr>
<tr>
<td>2</td>
<td>United Methodist Church, The</td>
<td>Mainline Protestant</td>
<td>1,983</td>
<td>605,362</td>
<td>9.13%</td>
</tr>
<tr>
<td>3</td>
<td>Black Baptists Estimate</td>
<td>Evangelical Protestant</td>
<td>0</td>
<td>462,785</td>
<td>6.98%</td>
</tr>
<tr>
<td>4</td>
<td>African Methodist Episcopal Zion Church</td>
<td>Evangelical Protestant</td>
<td>651</td>
<td>312,693</td>
<td>4.72%</td>
</tr>
<tr>
<td>5</td>
<td>Presbyterian Church (U.S.A.)</td>
<td>Mainline Protestant</td>
<td>743</td>
<td>205,548</td>
<td>3.10%</td>
</tr>
<tr>
<td>6</td>
<td>Catholic Church</td>
<td>Catholic</td>
<td>175</td>
<td>149,483</td>
<td>2.26%</td>
</tr>
<tr>
<td>7</td>
<td>Evangelical Lutheran Church in America</td>
<td>Mainline Protestant</td>
<td>231</td>
<td>87,815</td>
<td>1.32%</td>
</tr>
<tr>
<td>8</td>
<td>Episcopal Church</td>
<td>Mainline Protestant</td>
<td>252</td>
<td>73,664</td>
<td>1.11%</td>
</tr>
</tbody>
</table>

Source: Association of Religious Data Archives

*All others less than 1%.*
CHAPTER 5: PENNSYLVANIA CASE STUDY

The preceding chapter addressed North Carolina, a state where the national model correctly predicted the lack of a transgender inclusive law. This chapter examines Pennsylvania, a case of model failure. Unexpectedly, this state has a gender identity inclusive hate crimes statute. Pennsylvania was chosen for analysis because it had a Republican controlled state legislature at the time of the law’s adoption. As of 2007, it is the only state where this has occurred. As with the previous section, this chapter briefly describes the state’s political landscape and its history of gender identity inclusive bills. Via a simple model of legislative voting, it also addresses the factors that were conducive to the passage of a transgender inclusive hate crimes bill in 2002.

Pennsylvania: Background

According to the United States Statistical Abstract (2006), Pennsylvania is the nation’s 6th largest state with a population of 12.4 million inhabitants. Despite Pennsylvania’s vast rural expanses, approximately 77% of its residents are urban dwellers. Compared to the national average, Pennsylvania is disproportionately Caucasian (86.19% > 80.39%). The African-American community is slightly less proportionate than the national average (10.51% < 12.77%)

Federal Politics

From the Civil War era through the Depression, Pennsylvania was the most Republican of all states (Barone, Lilley & DeFranco, 1998). However, the state now has strong party competition at the federal level. There have been several recent shifts in party dominance within the state’s congressional delegation. As of 2007, Democrats find
themselves with an 11-8 majority. Their victories in 2006 allowed them to overcome a large advantage (12-7) that Republicans enjoyed during the 109th Congress (US Statistical Abstract, 2006). Democratic seats are concentrated around Philadelphia, Pittsburg and in the Northeast. Republicans hold the districts in the middle of the state and those in the northwest. Republicans also hold isolated seats near Pittsburgh (Tim Murphy in the 18th district) and along the New Jersey border (Charles Dent in the 15th district).

Since the 1960’s, the state’s Senate seats have normally been held by Republicans. An exception to this occurred when Democrat Harris Wofford (1991-1995) filled the unfinished term of the deceased Sen. John Heinz. Tradition was also broken in 2006 when Bob Casey Jr. defeated Republican incumbent Rick Santorum. In part, analysts attributed Santorum’s defeat to the electorate’s tiring of the GOP’s social conservatism (Fitzgerald & Worden, 2006).

In presidential politics, Pennsylvania favored the Democratic nominee during the past four cycles. The last Republican to carry the state was George H.W. Bush in 1988 (US Statistical Abstract, 1994). However, the gap between the parties in presidential politics has narrowed. Democratic candidates saw their advantage diminish from approximately 9 percentage points in 1992 and 1996 to 2.5 percentage points in 2004.

**Pennsylvania Politics**

Historically, Pennsylvania was viewed as a modified one party state (Ranney & Kendall, 1954). Republicans generally prevailed over a weak but viable Democratic party. However, Bibby and Holbrook (2004) found that there is now a weak two party
system. In both houses, Democratic strength is found in the urban areas of Pittsburgh and Philadelphia (Barone, Lilley & DeFranco, 1998). There are also pockets of Democratic influence in the smaller cities such as Erie and Scranton. Republicans dominate the rural expanse between Philadelphia and Pittsburgh, an area known as the “T” (Barone, Lilley & DeFranco, 1998). They are also influential in the suburbs of the major cities.

The House has experienced swings in partisan dominance. The Republicans took control of the House in 1994 with a narrow 102-101 majority. As of 2004, Republicans held a 110-93 advantage in the House. Democrats reclaimed the chamber in 2007 with a narrow 102-101 majority. However, due to intraparty squabbling, a Republican, Dennis O’Brien was chosen Speaker with bipartisan support (Bumstead, 2007).

The degree of partisanship in the Senate is muted as the Republicans have held a majority since the Carter administration (Cox, 2007). In 1992, the Republicans held a slim 25-24 majority in the Senate. However, in 1994, they extended their majority to 29-21. It remains at that level as of 2007.

Governor

As evidenced by the various changes in party control, the state has experienced strong partisan competition for the executive branch. The well respected and conservative Robert Casey (D) served from 1987-1995 (Carocci, 2005). He was succeeded by Tom Ridge (R) from 1995-2001. When Governor Ridge left for a federal appointment under George W. Bush, Mark Schweiker (R) filled the remainder of his term. Edward Rendell (D) was elected in 2003.
Courts

Pennsylvania judges and justices are selected via a partisan electoral process. They serve a ten-year term. To date and unlike neighboring New York and New Jersey, the Pennsylvania courts have not weighed in on whether or not gender identity is covered under the definition of sex with respect to employment law. However, the state Supreme Court recently ruled on a gay rights case. In 2002, it unanimously approved (6-0) same-sex second parent adoptions (Alexander, 2002).39

History of Gender Identity Inclusive Bills

The late 1980’s witnessed several attempts to include sexual orientation under Pennsylvania’s hate crimes law, The Ethnic Intimidation Act (Culhane & Sobel, 2005).40 While successful in getting the legislature to consider various bills, gay and lesbian activists repeatedly saw measures defeated or killed in committee (Culhane & Sobel, 2005). Only once, in 1990, did they achieve a vote on the House floor. The bill lost 80-118 (Culhane & Sobel, 2005). These early efforts did not include protections based on gender identity.

According to keyword search of the General Assembly’s session information database, Pennsylvania’s first bill addressing transgender people had a hostile intent.41 House bill 2620 (1998) was designed to increase police awareness and sensitivity towards

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39 After completion of this research, a state appellate court struck down the expanded hate crimes law addressed in this chapter. The court’s ruling was premised on the unusual procedure used to advance HB 1493, gutting an unrelated bill and replacing it with the hate crimes language. As of November 30, 2007, it is unclear if the state will appeal the ruling (Rafaelle, 2007).

40 18 P.A.C.S. § 2710

41 See http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm
disabled persons. It would have required that law enforcement officers receive specialized training about various disabilities and psychological conditions. However, mirroring language contained in the federal Americans with Disabilities Act, gender identity disorders and transsexualism were singled out and added to a list of prohibited categories for instruction.\(^{42}\) The legislation was co-signed by 24 representatives. Eighteen of the sponsors were Democrats while six were Republicans. The bill’s failure in committee was followed by a similar attempt during the 1999 session (HB 117). However, it had only 20 supporters (13 Democrats & 7 Republicans). It met the same committee fate, and it has not been reintroduced.

The first affirmative pieces of legislation addressing transgender persons were introduced in 2001. For the first time, transgender identities were included in the annual effort to pass hate crimes legislation. HB 1493 had 53 sponsors while SB 1061 had a single sponsor. In the House bill, Democratic sponsors outnumbered Republicans 43-10.\(^{43}\) Each of these bills aimed to protect actual or perceived sexual orientation and/or gender identity. According to leading LGBT activist Stacey Sobel (Sorokin, 2002),

\(^{42}\) Both HB 2620 (1998) and HB 117 (1999) stated: (2): The term "disability" does not include:
(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
(ii) compulsive gambling, kleptomania, or pyromania;
or
(iii) psychoactive substance use disorders resulting from current illegal use of drugs, as defined in schedules I through V of the act of April 14, 1972(P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

\(^{43}\) Rep. Italo Cappabianca (D-Erie) died in 2001 and was succeeded by Rep. Gayle Wright (D-Erie). Both representatives sponsored the bill.
gender identity inclusion was controversial among Democratic allies. As such, competing hate crimes measures such as HB 748 were introduced without gender identity inclusive language. According to Ms. Sobel, many Democrats felt that avoiding gender identity would increase the likelihood of passage. Interestingly, Republicans were far more supportive of gender identity inclusion (Culhane & Sobel, 2005). According to Ms. Sobel, the Republicans “got it” but left the matter for the activists to sort out. However, as noted during interviews with Sobel and leading transgender activist Mara Keisling, the LGBT activists maintained an “all or nothing stance.” This brought reluctant Democrats along.

The bill’s prospects for passage were improved because the rules of the Pennsylvania General Assembly allow legislation approved in one house to be altered beyond recognition by the other chamber. The primary restriction is that amendments must deal with the same general subject area (League of Women Voters of Pennsylvania, 1989, p. 59). Using this tactic, at the end of the June 2001 session, the Senate gutted a house bill that dealt with agricultural vandalism (HB 1492). It was controversially amended in the middle of the night to include the text for HB 1493 (Culhane & Sobel, 2005). Senate Democrats, along with a small number of Republicans, forced a floor vote. The supporters beat back several attempts to neuter the bill through amendments (Culhane & Sobel, 2005), and it passed 32–15 (Pennsylvania Legislative Journal-Senate, 2001).

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44 Stacey Sobel was interviewed via telephone on September 29, 2006. At the time of the bill’s passage, she was the executive director of the Center for Lesbian and Gay Civil Rights. This organization was responsible for the language of HB 1493 (Sorokin, 2002).

45 Ms. Keisling was interviewed via telephone in January of 2007.
The bill was returned to the House for approval. However, the Rules and Judiciary Committee held the measure until after the November 2002 elections. On the last day of the 2002 lame duck session and after frantic lobbying by LGBT activists, House Majority Leader Perzal (R-Philadelphia) allowed a vote on the bill (Harris and Worden, 2002). It passed by a vote of 118-79 (Pennsylvania Legislative Journal-House, 2002, p. 2276). House bill 1493 was subsequently signed by Republican Governor Mark Schweitzer.

After the surprising victory in 2002, the 2003 legislative session witnessed the introduction of several bills that attempted to combat discrimination in two areas, education and employment. Two education bills in the Senate (SB 609 & SB 707) were proposed amendments to the Pennsylvania Fair Educational Opportunities Act of 1961. SB 609, offered protections based on class, sexual orientation, and gender identity or expression. The four sponsors were Democrats. SB 707 had 18 sponsors, 17 of which were Democrats. Three of the four sponsors of SB 609 backed this bill. SB 707 dropped references to class and included a provision that mandated the payment of attorney fees to the prevailing side. The competing bills died in the education committee. Discrimination in education was also addressed in the House (HB 1851). This bill received similar backing as the previous session’s hate crimes bill, 50 sponsors (43 Democrats-7 Republicans). However, it also died in committee.

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46 See P.L. 776 No.341
With respect to employment and housing discrimination, the 2003 legislative session saw several attempts to amend the Human Relations Act of 1955.\textsuperscript{47} SB 608 proposed that protected class status be extended on the basis of handicap, disability, familial status, and actual or perceived sexual orientation or gender identity. It was sponsored by four legislators, the same Democrats who introduced SB 609. The bill expired in the Labor and Industry Committee. SB 706 offered protections on the basis of actual or perceived sexual orientation or gender identity. It died in the Judiciary Committee. The 18 sponsors of SB706 were identical to those who supported SB 707. A similar bill was introduced in the House (HB 1850). It had the same 50 sponsors who supported HB 1851. It too failed to advance from the Judiciary Committee.

The 2003 session also saw legislation that would have negatively affected the transgendered. HB 2180 tried to amend the Commonwealth Attorneys Act of 1980. It would have prohibited legal aid for lawsuits advocating treatment for incarcerated transgender persons.\textsuperscript{48} Of the 26 co-sponsors, a slight majority were Democrats (14>12). However, this legislation failed to advance from the Judiciary Committee.

The 2005 session witnessed three bills dealing with gender identity. Two affirmative pieces of legislation (SB 912 & HB 3000) were new attempts to expand the protected classes covered by Pennsylvania’s Human Relations Act. The upper chamber’s bill had 17 sponsors, 15 of whom were Democrats. This was two fewer sponsors than similar legislation in 2003. The reduction might have been due to the national backlash

\textsuperscript{47} See P.L. 744, No. 222

\textsuperscript{48} See P.L. 950, No.164
over gay rights in light of Goodridge and the effective use of same-sex marriage bans in the 2004 presidential campaign. However, HB 3000 had a record 57 sponsors. The partisan breakdown on sponsorship was 49 Democrats and 8 Republicans.

The 2005 session also witnessed an attempt to remove sexual orientation and gender identity inclusive protections from the state’s hate crimes statute (HB 204). Of the 17 sponsors of this bill, 16 were Republicans. The lone Democrat was Tom Yewic (D-Cambria & Somerset). This effort died in the House Judiciary Committee.

**Why does Pennsylvania have a law?**

As explained in the previous chapter, the salience of transgender issues is generally low. This is likely true in all states given the small size of the “out” transgender community. Thus, a lack of salience is a problem to overcome in any state. However, we know, contrary to expected results, that Pennsylvania has a transgender inclusive hate crimes law. The following sections address the conditions that likely fostered the adoption of the hate crimes legislation in 2002. We take some of the factors discussed in the earlier chapters, political culture, partisanship, and citizen attitudes, and combine them with other items thought to affect legislative outcomes. Ignoring abstentions, roll call votes are dichotomous. Thus, logistic regression was the chosen methodology. The following provides brief treatment to the variables.

*Dependent Variable: Roll Call Vote*

The dependent variable is the roll call vote of each legislator on HB 1493. A vote in support of HB 1493 was coded with a one. This data was collected from the legislative journals of the state’s upper and lower chambers.
Independent Variable: Citizen Attitudes within Legislative Districts

A legislator’s perception about constituency attitudes and the related potential impact on his/her reelection efforts is important in determining roll call vote outcomes (Fiorina, 1974; Kingdon, 1989; Geer, 1996, Wright, 2003). Assuming that legislators have adequate information on constituent preferences (Herbst, 1993; Geer, 1996), a broad measure of citizen attitudes was developed by extending Ardoin and Garand’s (2003) novel method of estimating congressional district ideology to the state legislative district level. They modeled Erikson, Wright and McIver’s state ideology estimates (1993) as a function of the state’s Democratic percentage of the two party presidential vote, whether or not it was a southern state, and several U.S. Census variables.49 The census variables utilized by those authors were the percentage of home ownership (tenure), percentage with blue collar occupations,50 and percentage urban.51 Ardoin and Garand were careful to select measures that were available at both the state and congressional district levels of measurement. Additionally, they avoided variables such as race that might have different effects depending on the level of aggregation (Ardoin & Garand, 2003). The coefficients obtained from the OLS regression model were then paired with the congressional district level census data and voting results.

49 Garand and Ardoin’s dichotomous geographic variable is labeled “deep south.” They define this as all of the states of the Confederacy except for Virginia and Tennessee (Ardoin email correspondence February 6, 2007).

50 In email correspondence dated February 1, 2007, Dr. Ardoin noted that the following occupational categories were included in their measure of blue collar employment: farming, fishing and forestry occupations; construction, extraction and mining occupations; production, transportation and material moving occupations. See U.S Census 2000, Summary File 3 (SF 3), Table P50.

51 The 2000 Census differentiates between two types of urban area: urban clusters (2,500-50,000 residents) and urbanized area (greater than 50,000 residents). In accordance with Ardoin and Garand (2003), this research uses total urbanized area. See U.S. Census 2000, Summary File 3 (SF 3), Table P5.
This research utilizes the Ardin and Garand framework but applies it to state legislative districts. This became feasible in late 2006 when the United States Census Bureau released demographic data aggregated at the state legislative district level.\textsuperscript{52} Unfortunately, presidential voting data for the 2000 election, aggregated at the state legislative district level is difficult and costly to obtain.\textsuperscript{53} However, county totals were easily obtained from the Pennsylvania Department of State. Thus, state legislative district Presidential vote totals were estimated by using the Democratic candidate’s percentage of the county vote. When a legislative district crossed county lines, a multi-county average was used. Admittedly, this method of estimation is imprecise as state legislative districts are generally drawn to partisan advantage. To the extent such advantages translate to presidential races, the role of voting in this measure was depressed. Despite this, it is still expected that representatives from liberal districts were more likely to support the bill.\textsuperscript{54}

\textsuperscript{52} The Census 2000 State Legislative District Summary Files can be obtained via American Fact Finder: http://factfinder.census.gov/

\textsuperscript{53} The 2000 election was used because the debate over HB 1493 occurred between 2001 and 2002.

\textsuperscript{54} The debate over HB 1493 occurred during the post-census redistricting process. The mandated post-census redistricting plan was approved in fall of 2001. Therefore, representatives serving in the legislature at the time of the debate over HB 1493 were elected from districts formed by the 1991 map. The new plan did not go into effect until the 2002 election. However, except for the small number of members who became lame ducks as a result of this process, any additional impacts of redistricting on HB 1493 are assumed away. This assumption is justifiable because the redistricting plan changed relatively few districts (Bull, 2001, Associated Press State and Local Wire, 2002b) and was unanimously supported by all members of the bipartisan reapportionment commission (Strawley, 2001). Thus, compared to previous redistricting cycles, fewer lawmakers retired in anticipation of difficult reelection fights (Associated Press State & Local Wire, 2002b).
Political Culture

Political culture information for each district was obtained through analysis of Elazar’s map (1984, p. 124-125). It clearly denotes population centers within each state and these conform to the urban areas found on legislative district and travel maps of the various states. While not an exact science, assigning political culture typology is a relatively straightforward endeavor that entails aligning legislative districts maps with Elazar’s work. Traditionalistic influence areas should be less likely to favor the bill.

Partisan Affiliation of Legislator

Parties play numerous roles in politics. Within a legislative context, they play an important organizing role. Thus, party affiliation helps explain outcomes on roll call votes (Kingdon, 1989; Jenkins, 2006). In this policy realm, Democrats are more supportive of LGBT rights than are Republicans (Lublin, 2005). Thus, Democratic legislators should have been more likely to back HB 1493. Party affiliation data was obtained from the Wilkes University Pennsylvania Election Statistics Project.  

Legislator Margin of Victory

Candidate margin of victory is included as a variable because legislators modify their voting behavior when they perceive unacceptable electoral threats (Fiorina, 1974). Such candidates align their votes with the strongest groups given their need for electoral resources (Baughman, 2004). To account for this, we look at past electoral performance. Legislators who have faced close races in the recent past might perceive relatively more threat to their future electoral prospects. Such legislators might believe that support for

gender identity inclusive legislation is at best a non-issue given the small number of direct beneficiaries. At worst, support would afford opponents a potent campaign issue. Therefore, candidates in safer districts, as measured by the margin of victory in their previous election, should have more latitude to vote for this bill. This data was obtained from the Pennsylvania Manual and Pennsylvania’s Department of State.

**Lame Duck Status**

Given that the House vote for HB 1493 occurred after the November elections, a control for lame duck status was needed. This is necessary because most legislators are concerned with their prospects for reelection thus they are instrumentally rational in their position taking (Fiorina, 1974; Mayhew, 1974). However, some legislators did not run for reelection or were redistricted out of a seat. Additionally, a small number of legislators suffered primary or election losses. Such legislators were no longer constrained by the fear of retrospective voting. As such, members of the House and Senate who were not returning for the General Assembly’s 2003-2004 session were coded as lame ducks (a dummy variable). Lame duck legislators should have been more likely to vote for HB 1493.

**Model Results**

After using bivariate correlations to check for multicollinearity problems between independent variables, the model was tested on each chamber. However, the Senate iteration ran afoul of an important logistic regression assumption; each categorical variable did not have at least one observation in each cell (Garson, 2007). Rather than dropping the offending variable, I chose to run a combined model of the House and
Senate. Table 5.1 displays model results for the House and combined models. In the House model, the modal category of the dependent variable (those voting yes) yielded 59.9%. The model correctly predicted (PCP) 77.2% of outcomes. The resulting percentage reduction in error (PRE) was a substantial 43.14%. Nagelkerke R square, an approximation of R square for logistic regression (Tabachnik & Fidell, 2001) was .433. This indicated that a substantial amount of variance was explained by the independent variables. In the combined model, Nagelkerke R Square, PCP and PRE estimates are similar to those of the House.

Table 5.1 also addresses the performance of independent variables within the models. In the House version, party is a significant predictor of outcomes. When controlling for other variables, Democrats were approximately seven times more likely to support HB 1493 than were Republicans. Another way of looking at this is to construct the logistic regression equation using the parameter estimates and the means (or modal values for dichotomous variables) of the independent variables.56 Holding all other variables constant, a change from the modal party to Democratic increases the likelihood of the average legislator voting by 44%. The relevance of the party is not surprising given that members often look to those with similar outlooks for voting cues (Kingdon, 1989).

56 The resulting value is the logit of the probability of a hypothetical average legislator voting in favor of HB1493. This equation is:
Logit(p) = -0.46+(2.026*0)+(0.067*-10.805)+(-0.013*64.676)+(0.593*0)+(1.576*1)+(2.828*0)
Logit(p) = 1.569
Logit(p) is back transformed into the probability by using the following formula:
\[ p = \frac{1}{1 + e^{-\text{logit}(p)}} \]
Thus, the probability of the average legislator voting for the bill was .3877.
Members from liberal districts were also more likely to have voted for the bill. For every positive unit change in a district’s liberalism (measured on a -100 to 100 scale), the likelihood of the representative voting for HB 1493 increases by a factor of 1.07 when controlling for other variables. As above, when holding all other values at their mean or mode, a one standard deviation increase over the mean district ideology yields a 19% increase in the probability of voting for the measure. All other variables were insignificant in the House model.

[Table 5.1 about here]

In the combined model, party and ideology were again significant. The magnitudes were similar to those found in the House only model. Additionally, margin of victory was of interest. Contrary to expected results, it showed a negative relationship with the dependent variable. For every unit increase in the margin of victory, the likelihood of support falls by a factor of .99. The probability of voting for the measure falls by 8% when increasing the margin of victory by a standard deviation over its mean. The unexpected results are likely attributed to the fact that most Republicans, the majority party, comfortably won reelection but did not support the measure.

When looking across models, one can conclude that a legislator’s party and his/her constituency’s ideological tendencies have the most important impacts on outcomes. It is important to note that the relative importance of constituent ideology is likely underreported in this model as a legislator’s partisan affiliation is partially a function of district ideology (Erikson & Wright, 1980). Because Democrats are

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The standard deviation for margin of victory was 35.06. The mean was 62.90. The probability of the average legislator voting for the measure was .31.
consistently more liberal than are Republicans (Erikson & Wright, 1980; Erikson, Wright & McIver, 1993), the electorate can ascertain which party nominates candidates who most likely approximate their policy views. Thus, district attitudes affect who is nominated by the parties, and they affect which candidate wins. However, despite district ideology’s antecedent role, one should not drop party because of the independent effects it has on legislative behavior. Party is important for vote cueing when legislators are not fully informed (Kingdon, 1989). Party leaders also affect outcomes (Kingdon, 1989).

**Discussion: Attitudes and LGBT Rights**

As shown above and contrary to the national model’s failure to correctly predict Pennsylvania’s hate crimes law, public attitudes were in part responsible for the passage of HB 1493. In this section, we discuss how attitudes contributed to a climate where LGBT inclusive legislation was possible.

Pennsylvania is often described as a conservative state (Budoff, 2003; Loviglio, 2004). This is likely true relative to other Middle Atlantic States: New Jersey, Maryland and New York. However, when compared to the nation it is quite moderate. According to state aggregated CBS/New York Times surveys (1992-2004), Pennsylvania is the 32nd most conservative state in the union. It is more liberal than some states, Missouri (20th) and New Mexico (29th), with gender identity inclusive laws. Not surprisingly, it is far more liberal than North Carolina (14th). Thus, to the extent that ideology affects LGBT related policy, Pennsylvania seems somewhat receptive on the issue.

More specific, with respect to the tolerance of homosexuality, Brace, Sims-Butler, Arceneaux, and Johnson (2002) found that the views of Pennsylvanians approximate the
nation’s middle ground. Using an index created by state aggregated responses to General Social Survey questions, their measure found that Pennsylvania ranked 22\textsuperscript{nd} in acceptance of homosexuality. 58 By comparison, North Carolina ranked 39\textsuperscript{th}. This measure had a significant correlation of moderate strength with the states that have gay inclusive hate crimes and/or nondiscrimination laws.59

These statewide attitudinal measures show that there is some political latitude to support LGBT issues. As such, it is no shock that Democrat Ed Rendell won the governor’s office in 2002 with a strong pro-gay rights reputation. As mayor of Philadelphia, he championed same-sex partner benefits for city employees. He won reelection as mayor with 81\% of the vote. Governor Rendell noted that “people aren’t one issue voters, even if they believe you’re wrong…Most people look at the totality of what you have done” (Rotstein, 2006). In 2003, he continued his support for gay and transgender rights by signing an executive order which banned discrimination on the basis of gender identity (Budoff, 2003). Subsequently, he won reelection as governor in 2006. With respect to another office elected statewide, Pennsylvania is also home to one of the most pro-gay rights Republicans in the United States Senate, Arlen Specter (Human Rights Campaign, 2002; 2006).

While the electoral successes of Rendell and Specter show latitude at the state level, legislators are more concerned with attitudes within their districts. Thus,

58 The Brace et al (2002) measure was constructed with 44 states, thus Pennsylvania’s score approximates the national median with respect to tolerance of gay people. They excluded Idaho, New Mexico, Maine, Nebraska, Nevada, and Hawaii from their analysis. Three of the excluded states have transgender inclusive laws (Maine, New Mexico and Hawaii).

59 The Brace et al (2002) measure produced a Pearson correlation of .437 with states having a sexual orientation inclusive hate crimes and/or nondiscrimination law.
exploration of district level attitudes is necessary to better flesh out the connection to legislative votes. We do this by addressing the connection between religious beliefs and attitudes. As noted in the North Carolina chapter, religious beliefs partially shape attitudes on LGBT issues. Evangelical Christians are more likely to oppose such rights (Haider-Markel, 1999; 2001; Layman, 2001; Haider-Markel & Meier, 2003; Barclay & Fisher, 2003). However, unlike North Carolina, the Roman Catholic Church is by far Pennsylvania’s largest denomination (ARDA, 2006). Table 5.2 shows that Evangelical denominations comprise only 2 of the state’s top 10 religious groups. Combined, Evangelicals comprise approximately 2% of the state’s population. Relative to North Carolina, the differences in adherence rates likely indicate a more LGBT friendly environment.

[Table 5.2 about here]

Of course, a state’s adherence rates do not tell the whole story. Adherence rates are not spread uniformly across states. Immigration affects the distribution of such patterns (Schneider, 1976). As we see with today’s migration patterns, immigrants are drawn to places of economic opportunity. As such, the old industrial cities such as Pittsburgh and Philadelphia were attractive to late 19th and early 20th century immigrants. Many of these people were Irish or from Southern Europe, thus they were overwhelmingly Roman Catholic (Schneider, 1976). Figure 5.1 shows the distribution of Roman Catholics per 1,000 residents (ARDA, 2006). The areas with the greatest densities of Roman Catholics are found in the eastern and western portions of the state, the homes of the old industrial cities. The relevance of this distribution is that the
religious doctrine of the Roman Catholic Church does not oppose laws protecting the LGBT community from discrimination and hate crimes (Vatican, 1993). Indeed, Catholics have a tradition of social justice advocacy. Figure 5.2 shows the districts that had representatives voting in support of HB 1493. By comparing this map with Figure 5.1, one can conclude that support for the hate crimes bill came largely came from the areas with high Catholic adherence rates. It is possible that Catholic teachings about social justice helped to contain the scope of conflict over HB 1493 (Schattschneider, 1960). When conflict over gay rights is contained, Haider-Markel and Meier (2003) noted that an interest group model prevails over a morality politics model. The LGBT community is viewed on par with other organized interests and not worthy of special sanctions. In such an environment, it is difficult for opposition politicians to easily exploit anti-LGBT bias through issue injection (Carmines & Stimson, 1989). Thus, relative to North Carolina politicians, Pennsylvania legislators can address these issues with less electoral fear.

Further evidence of religion’s impact on attitudes can be seen in the sponsorship of the bill designed to repeal hate crimes protections for the LGBT community. The majority of the support for HB 204 (2005) came from the south central portion of the state, an area with a strong Evangelical presence. Sponsors came from districts where the average Evangelical adherence rate was twice of that for the state.\(^6\) Nine of the

\(^6\) 114.31 per 1,000 residents, far above the state’s average of 57.34 per 1,000 residents
seventeen sponsors of this bill came from legislative districts based in counties that were in the top quartile with respect to Evangelical adherence. Five of the remaining supporters came from the districts in the second highest quartile. Only three supporters, Rep Leh. (R-Berks), Rep. Miller (R-Berks), and Rep. Rohrer (R-Berks), a graduate of South Carolina’s controversial and religiously ultra conservative Bob Jones University, represented districts with below average Evangelical adherence rates.

Discussion: Additional Evidence of the Latitude to Support LGBT Rights

The preceding section suggests that members of the Pennsylvania legislature are relatively less constrained by negative public opinion when crafting policies in this area. As noted earlier, lawmakers from heavily Catholic areas find this to be true. Interestingly, such attitudes seem to affect policy outcomes at the local level also. The Philadelphia metropolitan area, the Lehigh Valley, and the area around Scranton are generally far more supportive of gay rights than are the central and western portions of the state (Roberts, 2000). As of 2007, eight local governments in this region have transgender inclusive nondiscrimination laws. Most of these laws were in existence prior to the passage of HB 1493. Notable cities in this group include Philadelphia, Scranton and Allentown.

Outside of the eastern areas, there are additional pockets of support for transgender rights. Erie County passed a gender identity inclusive nondiscrimination bill

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61 Sam Rohrer profile
http://www.legis.state.pa.us/cfdocs/legis/home/member_information/house_bio.cfm?id=73

62 The eight municipalities in eastern Pennsylvania with gender identity inclusive nondiscrimination laws are Easton, Lansdowne, Swarthmore, West Chester, Scranton, Allentown, New Hope, and Philadelphia.
in 2002. Pittsburgh’s 1997 nondiscrimination ordinance actually predates Philadelphia’s law by 5 years (Transgender Law and Policy Institute, 2007b). Harrisburg was the fifth city in the nation (1983) to adopt one of these policies. York also became an early adopter in 1998 (Transgender Law and Policy Institute, 2007b). If support of transgender rights was a significant electoral obstacle in these areas, it is doubtful that so many large municipalities would offer transgender inclusive nondiscrimination laws. Of course, Culhane and Sobel (2005) argued that these nondiscrimination protections are an even tougher sell than the hate crimes protections enacted by HB 1493.

To further explore this attitudinal connection, crosstabulation of HB 1493 supporters with those having transgender nondiscrimination municipalities within their districts was performed. Table 5.3 reveals that 95.8% of representatives with districts containing such municipalities favored HB 1493. This is much higher than the 59.89% of legislators who voted in support of the bill.63 Despite comprising slightly less than a quarter of the chamber, legislators from these areas provided nearly half of the bill’s support. It is possible that these local conditions provided precedents for the legislators. As such, local conditions serve as handy vote justifications when questioned by constituents (Kingdon, 1989). Additionally, given the lack of polling data on these issues cited in our North Carolina chapter, it is possible that the existence of transgender inclusive laws at the local level provided legislators with low cost information about constituent attitudes. Regardless of these interesting possibilities, it is highly likely that

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63 197 Representatives voted on HB 1493, 118 For, 79 Against. 59.89%
the congruence of localities with transgender inclusive laws and legislators voting in support of HB 1493 are tied to attitudes in those areas.\(^{64}\)

[Table 5.3 about here]

**Attitudes and Party**

The constituent attitudes connection finds additional support when one looks at the pro-LGBT rights views of many Pennsylvania Republicans at the federal and state levels. Using the Human Rights Campaign’s scorecard (2006) we find that the average score for the Pennsylvania delegation to the House of Representatives was 38.26. This was slightly less than the national average of 41.2. However, when controlling for party, Pennsylvania Republicans exceeded their caucus’ average (17.75 > 8.77). Similar results exist in the HRC scorecard for the 107\(^{th}\) Congress (Human Rights Campaign, 2002). Republican support in both scorecards primarily comes from the eastern congressional districts, areas previously noted for supporting LGBT rights (Roberts, 2000).\(^{65}\)

Not surprisingly, 70\% of the Republican supporters of HB 1493 also came from eastern Pennsylvania. Indeed, many of the Republican supporters of this bill represented the areas that surround Philadelphia. Alone, Montgomery County, an area just outside of Philadelphia was responsible for 3 of the 10 Republican supporters of the bill. The underlying changes in the county may be partly responsible for this support. Between

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\(^{64}\) I also ran iterations of the model with the existence of a transgender inclusive law in the district as an independent variable. It added little explanatory value to the overall model. However, it was consistently a significant variable. This was at the expense of district ideology. Because district ideology is hypothesized to be an antecedent of transgender laws, the existence of a transgender inclusive law was removed from the model.

\(^{65}\) Republicans with HRC scores exceeding zero are Jim Gerlach (6\(^{th}\) district, HRC score 75), Curt Weldon (7\(^{th}\) district, HRC score 25), Michael Fitzpatrick (8\(^{th}\) district, HRC score 63), Charles Dent (15\(^{th}\) district, HRC score 25), Todd Platts (19\(^{th}\) district, HRC score 25).
1990 and 2000, it experienced significant population growth (10.61%) that far
outstripped the state’s 3.36% growth rate (U.S. Census Bureau, 2007). Like much of
Pennsylvania outside of the two major cities, this county was historically dominated by
Republicans. Indeed, during the 1999-2000 legislative session, Republicans held 10 of
12 house seats that were at least partially apportioned to the county. However, at the time
of the debate over HB 1493, these districts were increasingly trending Democratic
(Associated Press, 2001a; Strawley, 2002). Over this period, Montgomery County
experienced an 8.7% net increase in registered Democratic voters (Pennsylvania
Department of State, 2007). Statewide, Democrats only experienced a .7% increase. Not
surprisingly, Democrats hold 5 of the county’s 13 seats as of 2007.

In a January 2007 interview, transgender activist Mara Keisling noted that the
increasingly Democratic nature of Montgomery County was placing pressure on local
Republicans to moderate their views. Keisling’s insight finds support in the literature as
Erikson and Wright (1980) noted that moderate districts force Republican incumbents to
move left lest Democratic challengers capture the districts. Consistent with these findings
is that six of the ten House Republicans who sponsored HB 1493 won their seat in 2000
with less than 60% of the vote.66 Only three Democrats, despite having 4 times as many
sponsors, faced similar levels of competition.67 The other four Republican sponsors were
unopposed. Twenty of the Democratic sponsors faced no Republican opposition in the
2000 election. Indeed, some Republicans, like John Lawless (Montgomery) were not

66 Representatives Ross (158th), Browne (131st), Cappelli (83rd), McGill (151st), Taylor (177th), McIlhinney
(143rd)

67 Representatives Trich, (47th), Samuelson (135th), Grucela (137th)
Representative Lawless noted that “…I will simply be representing my constituents as part of a caucus that embraces diversity, instead of one that punishes diversity” (Associated Press, 2001a). The relative policy liberalism of the Republican legislators is a reaction to partisan competition.

**Missing but Important Factors**

Despite the arguments presented thus far, only wishful and simplistic thinking would allow one to attribute the status of transgender inclusive laws to public opinion and partisanship. Policymaking is a complex activity. With respect to the Pennsylvania context, Sam Katz, a former Republican candidate for mayor in Philadelphia stated “ultimately in Harrisburg, the leadership drives outcomes” (as quoted in Harris & Worden, 2002). Of course, this is a reference to the important role of veto players and institutional rules in lawmaking (Krehbiehl, 1998). The model presented here ignored those issues. Additionally, advocacy groups (Wright, 2003) and their policy entrepreneurs (Kingdon, 2003) are not afforded their rightful place. Despite these omissions, the positions of veto players and advocacy groups in the fight for HB 1493 are certainly deserving of attention.

Several authors (Harris & Worden, 2002; Culhane & Sobel, 2005) noted the important role that LGBT activists played in securing the support of key legislators and other veto players. Since the late 1980’s, these policy entrepreneurs had attempted to “soften up” (Kingdon, 2003) the legislature and the broader public. Importantly, they also maintained a united front on the inclusion of gender identity in HB 1493 (Culhane &
Sobel, 2005). This was vital as group cohesion is important when advocating for policy change (Olson, 1965; Kingdon, 2003).

The activists also strategically selected hate crimes legislation as an important first step in gaining LGBT equality. Stacey Sobel, a key LGBT activist associated with this bill, noted that it was “unlikely that legislators would support nondiscrimination protections if they felt it was okay to beat gay people up.”68 Additionally, Sobel and Mara Keisling mentioned the importance of tactics. The activists strategically focused initial efforts on the Senate given its much smaller size. Their use of inside lobbying tactics was also extraordinary. To gain access to and the subsequent support of Senate Majority Leader Jubilier (R-Blair), they obtained help from his rabbi (Harris & Worden, 2002). In addition to influence within the Senate, Jubilier also controversially held the Lieutenant Governorship, an executive branch position. Thus, his potential to influence actions and other actors was multifaceted. Jubilier’s subsequent endorsement opened many doors (Harris & Worden, 2002). Notable among those was that of Sen. Noah Wenger (R-Lancaster County), Republican caucus chair in the Senate. In the House, they also won the support of Majority Leader Perzal and Speaker Ryan (Pennsylvania General Assembly, 2002). However, it should be noted that both men represented districts in the eastern part of the state.

Governor Mark Schweiker (R) also hailed from Bucks County, located in the eastern part of the state. He was elevated from his position as Lieutenant Governor to fill the final year of Tom Ridge’s term. Governor Schweiker did not plan to run for a full term as governor (Jackson, 2001) and thus was a lame duck during his brief tenure. In

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68 Ms. Sobel was interviewed in the fall of 2006.
addition to not having electoral concerns, the governor had good relations with the gay community. Prior to the bill’s passage, he appointed an openly gay man, Stephen A. Glassman to the state’s Human Relations Commission (Pennsylvania Human Relations Commission, 2007). Mr. Glassman, notably the state’s first openly gay appointed official, was also one of the leading proponents of the bill (Culhane & Sobel, 2005). Thus, the advocacy groups were well positioned to advance HB 1493. Their tactics were also well executed. However, as evidenced from this discussion, they also benefited from the fact that the key veto players represented or came from areas of the state that were accepting of LGBT rights.

Conclusion

This chapter showed that support of HB 1493 was largely a function of pro-LGBT attitudes within large portions of the Pennsylvania electorate. These constituent attitudes are likely shaped by denominational adherence patterns. Constituent attitudes, as measured by ideology, partly determine who will represent each district. It also influences what issue legislators are likely to support. The relative tolerance of LGBT rights in many parts of Pennsylvania makes it less likely that support for inclusive laws will be a useful wedge issue in political campaigns. As evidenced by the existence of numerous local level policies and through the votes of the Pennsylvania delegation to Congress, support for HB 1493 was likely not a function of a legislator’s personal beliefs being out of sync with his district. Even Republicans, at least those from the eastern

69 This appointment marked the first time in Pennsylvania history that an openly gay person was appointed to a position that was subject to state senate approval.
portion of the state, have districts that are amenable to gender identity inclusive legislation. This allowed for bipartisan support of HB 1493.

If, as this chapter argues, the strategic lay of the land determined the outcome of HB 1453, an important question must be raised. Why has Pennsylvania subsequently not passed a statewide transgender inclusive nondiscrimination law? The answer to this question concerns the timing of HB 1493. This legislation was enacted prior to the backlash against gay rights that occurred nationally during 2004. Nationally, the salience of gay rights increased due to the 2003 decision in Goodridge and related events in San Francisco (Lewis, 2005). Subsequently, many states passed ballot initiatives banning same-sex marriage between 2004 and 2006. A constitutional ban on same-sex marriage was also an issue during the 2004 presidential race. Despite increased sponsorship for nondiscrimination legislation in the 2005 session, it is quite possible that the backlash temporarily closed the policy window (Kingdon, 2003). Legislators, likely getting conflicting signals from their constituencies over opposition to same-sex marriage but being against discrimination, likely chose to avoid the issue rather than provide “leadership by mistake” (Geer, 1996).
### Table 5.1: Variables in the Model & Summary Statistics

<table>
<thead>
<tr>
<th>Variable</th>
<th>B (S.E.) House Model</th>
<th>Odds Ratio House Model</th>
<th>House Model Statistics</th>
<th>B (S.E.) 2 Chamber Model</th>
<th>Odds Ratio 2 Chamber Model</th>
<th>2 Chamber Model Statistics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party</td>
<td>2.03 (.39) ***</td>
<td>7.58</td>
<td>Percentage Modal Category 59.9%</td>
<td>2.16 (.36) ***</td>
<td>8.63</td>
<td>Percentage Modal Category 61.5%</td>
</tr>
<tr>
<td>District ideology</td>
<td>.07 (.02) ***</td>
<td>1.07</td>
<td>Percentage Correctly Predicted 77.2%</td>
<td>.074 (.018) ***</td>
<td>1.08</td>
<td>Percentage Correctly Predicted 77%</td>
</tr>
<tr>
<td>Lame duck status</td>
<td>.59 (.59)</td>
<td>1.81</td>
<td>Percentage Reduction in Error 43.14%</td>
<td>.86 (.57)</td>
<td>2.36</td>
<td>Percentage Reduction in Error 40.26%</td>
</tr>
<tr>
<td>Margin of victory</td>
<td>-.01 (.01)</td>
<td>.99</td>
<td>Nagelkerke R Square .433</td>
<td>.25 (.94)</td>
<td>1.28</td>
<td>Nagelkerke R Square .448</td>
</tr>
<tr>
<td>Traditionalistic political culture</td>
<td>1.58 (1.28)</td>
<td>4.83</td>
<td>N 197</td>
<td>2.10 (1.47)</td>
<td>8.12</td>
<td>N 244</td>
</tr>
<tr>
<td>Political culture-Individualistic</td>
<td>2.83 (1.71)</td>
<td>16.91</td>
<td></td>
<td>.77 (1.06)</td>
<td>2.16</td>
<td></td>
</tr>
<tr>
<td>Political culture-Individualistic with moralistic influence</td>
<td>-.46 (1.37)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Legend: *** $p \leq .001$; ** $p \leq .01$; * $p \leq .05$
### Table 5.2: Denominational Adherence-1990

<table>
<thead>
<tr>
<th>Denomination</th>
<th>Theology</th>
<th>Adherents</th>
<th>% of Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholic Church</td>
<td>Catholic</td>
<td>3,675,250</td>
<td>30.93%</td>
</tr>
<tr>
<td>United Methodist Church, The Mainline</td>
<td>Mainline Protestant</td>
<td>722,871</td>
<td>6.08%</td>
</tr>
<tr>
<td>Evangelical Lutheran Church in America</td>
<td>Mainline Protestant</td>
<td>682,111</td>
<td>5.74%</td>
</tr>
<tr>
<td>Presbyterian Church (U.S.A.)</td>
<td>Mainline Protestant</td>
<td>388,774</td>
<td>3.27%</td>
</tr>
<tr>
<td>Jewish Estimate</td>
<td>Other Theology</td>
<td>329,651</td>
<td>2.77%</td>
</tr>
<tr>
<td>United Church of Christ</td>
<td>Mainline Protestant</td>
<td>284,275</td>
<td>2.39%</td>
</tr>
<tr>
<td>Black Baptists Estimate</td>
<td>Evangelical Protestant</td>
<td>215,320</td>
<td>1.18%</td>
</tr>
<tr>
<td>Episcopal Church</td>
<td>Mainline Protestant</td>
<td>138,152</td>
<td>1.16%</td>
</tr>
<tr>
<td>American Baptist Churches</td>
<td>Mainline Protestant</td>
<td>113,025</td>
<td>.95%</td>
</tr>
<tr>
<td>Assemblies of God</td>
<td>Evangelical Protestant</td>
<td>74,616</td>
<td>.63%</td>
</tr>
</tbody>
</table>

Source: Association of Religious Data Archives
Values per 1,000:

- 345.8 to 646.4
- 219.8 to 337.2
- 165.1 to 218.4
- 115.9 to 164.6
- 14.7 to 100.2

Source: Association of Religion Data Archives

**Figure 5.1: Roman Catholic Adherence per 1,000 Residents by County**
Figure 5.2: House Roll Call Vote for HB 1493 by District
Table 5.3: Crosstabulation: Vote for HB 1493 and Local Inclusive Laws

<table>
<thead>
<tr>
<th>Vote for HB1493</th>
<th>Local transgender inclusive nondiscrimination law in 2002</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Count</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>vote for hb1493</td>
<td>no</td>
<td>77</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>% within Local transgender inclusive nondiscrimination law in 2002</td>
<td>51.7%</td>
<td>4.2%</td>
</tr>
<tr>
<td></td>
<td>yes</td>
<td>72</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>% within Local transgender inclusive nondiscrimination law in 2002</td>
<td>48.3%</td>
<td>95.8%</td>
</tr>
<tr>
<td>Total</td>
<td>Count</td>
<td>149</td>
<td>48</td>
</tr>
<tr>
<td></td>
<td>% within Local transgender inclusive nondiscrimination law in 2002</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>
CHAPTER 6: MARYLAND CASE STUDY

The preceding cases addressed states where the model, successfully or not, predicted failure. This chapter looks at a state where it correctly predicted a transgender inclusive law. The state chosen for analysis was Maryland. In part, it was selected because of the proximity to Washington D.C., home of the nation’s major LGBT advocacy organizations. This increased the likelihood of talking with primary sources. Additionally, secondary data sources were highly accessible given media coverage by the Washington Post and Baltimore Sun. Additionally, and in contrast to the period of unified government addressed in Pennsylvania, Maryland offered an opportunity to look at periods of divided and unified government. Similar to North Carolina, it is also a state with a large African-American population. This may be important given that blacks and whites have divergent opinions on homosexuality and LGBT rights (Lewis, 2003).70

As with the previous case studies, this chapter briefly describes the state’s political landscape. Attention is also given to its history of gender identity inclusive bills. As with the Pennsylvania case study, a legislative voting model on a transgender inclusive hate crimes bill is developed. There is also discussion of the factors that affected its passage.

Maryland People

According to the United States Statistical Abstract (2006), Maryland is the nation’s 19th largest state with a largely urban population of 5.6 million inhabitants. Compared to the nation, Maryland is disproportionately African-American

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70 Using national survey data, Lewis (2003) found less favorable attitudes in the African-American community towards gays and lesbians when compared to whites. However, he noted that when controlling for education and religion, blacks were more supportive of gay inclusive nondiscrimination laws.
In fact, it has the highest proportion of African Americans of any non-southern state (Barone, Lilley, & DeFranco, 1998).

Maryland Politics

The Statistical Abstract of the United States (2007) showed that Democrats in the General Assembly’s lower chamber experienced a slight reduction in their majority since 1990. In that year, Democrats held 82% of the seats. The 1994 elections whittled this down to a still commanding 71%. The partisan breakdown in the House of Delegates remained relatively stable through 2006. However, Democrats increased their share to 74% in 2007. Democrats have an electoral stranglehold on Washington’s suburban counties (Montgomery and Prince George’s) and in the Baltimore metropolitan area (Barnes & Marimow, 2006; Barone, Lilley & DeFranco, 1998). Republican strength is concentrated north and west of Baltimore and to a lesser extent on the Eastern Shore. There are also swing seats around Annapolis (Barone, Lilley, & DeFranco, 1998).

Maryland’s Senate has also been a Democratic bastion (U.S. Census Bureau, 2007). In 1990, they held 81% of the seats. As with the House, 1994 was a bad year for Democrats. Their majority fell to 68%. The 1998 elections saw this increase to 70%. It remained at that level through 2006. Democratic strength is centered in the Washington and Baltimore areas. Republicans are strongest in the north, far west, on the rural Eastern Shore. They also have some support near Annapolis.

Despite long periods of one party rule, the General Assembly has experienced division. As such, Maryland politics revolves around financial disputes between the

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71 The United States Statistical Abstract (2006), states that the nation’s demographic profile is 80.39% White, 12.77% African American, 14.07% Hispanic, and 4.2% Asian. In Maryland, whites comprise 64.47% of the population while 5.36% of the state is Hispanic.
haves and have nots, notably Montgomery County and Baltimore City (Barone, Lilley & DeFranco, 1998). Such differences highlight ideological cleavages within the state’s Democratic Party. Despite once holding sway, conservative Democrats have seen their ranks and influence dwindle. Former House majority whip George Owings III, a conservative Democrat from Calvert County, noted that the philosophical shift to a more liberal Democratic Party occurred during the Glendening administration (D-1995-2003) (Brody, 2007).

Governor

Since the first election under the state’s 1867 Constitution, Republicans have held gubernatorial control 19% of the time (Maryland State Archives, 2007). Only one Republican governor, Theodore McKeldin (1951-1959) has served more than a single term. Robert Ehrlich, Jr. (2003-2007) was the last Republican governor. He lost a reelection bid to former Baltimore mayor, Martin O’Malley (D) in 2006.

Beyle (2004) finds that Maryland governors have slightly greater personal and institutional power relative to the nation’s average governor. As will later be discussed, Governor Parris Glendening used his office as a vehicle to advance gay rights.

Judiciary

The Court of Appeals is at the apex of the state’s judicial system. Care (2005) noted the Court’s historic role in advancing rights for gays and lesbians. As of June 2007, it is grappling with the constitutionality of the state’s ban on same-sex marriage (Rein, 

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72 Judges are appointed by the Governor, subject to confirmation. As with other merit plans, voters later assess the performance of the judges. In such races, the judges are unopposed and those accepted by the voters are given a new ten year term (Maryland Manual, 2007).
2007). A widely anticipated decision that could force the state to allow same-sex marriages or civil unions is imminent. According to Equality Maryland lobbyist, Ann Ciekot, this decision had legislators on edge during the 2007 General Assembly session as any finding by the Court will be controversial.73

Legal advances for the transgender community have also emanated from Maryland courts. They have declared post-operative transsexuals, not born in the state, members of the adopted sex (In the matter of Robert Wright Heilig/Janet Heilig Wright, 2002). However, in contrast to a few Northeastern states (MA, NY, NJ), the courts have not extended sex based nondiscrimination protections to transgendered people.

**Federal Politics**

As of 2007, Maryland’s House delegation consisted of 6 Democrats and 2 Republicans. The distribution of party strength is similar to that found in the statehouse as Democrats held all of the seats in the Baltimore and Washington D.C. areas. In the Senate, Barbara Mikulski (D), generally a supporter of LGBT rights (Human Rights Campaign, 2006) has represented the state since 1987. Her predecessor was Charles Mathias (R) who served from 1969-1987. Senator Mikulski is joined by the newly elected Benjamin Cardin (D). He follows Paul Sarbanes (D) who served from 1977-2007.

**Why Does Maryland have a Law?**

In a departure from the order presented in the previous sections, this chapter develops the model of legislative behavior before commencing with the history of gender

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73 Ann Ciekot was interviewed via telephone on June 26, 2007. She is a partner with the lobbying firm Binderman & Ciekot.
identity inclusive bills. This allows for better integration of findings into the legislative history discussion.

Informed by findings in the previous chapters, the following model addresses the factors that likely affected the adoption of a transgender inclusive hate crimes bill (HB 692) in 2005. As the dependent variable, the roll call vote on HB 692 is dichotomous, we again employ logistic regression. The independent variables selected for the model were legislator party affiliation, his or her margin of victory, and district ideology. In part, district political culture was dropped because of its poor performance in the Pennsylvania case study. Additionally, Senate districts with traditionalistic political cultures did not have any supporters of the bill. Since this violated a basic assumption of logistic regression, all categorical independent variables must have at least one observation in each cell (Garson, 2007), it would have been necessary to drop it from the Senate model anyway. The following provides a brief discussion of the variables.

*Dependent Variable: Roll Call Vote*

The dependent variable is the roll call vote of each legislator on HB 692. The legislation passed the House, 95-37. The Senate concurred, 34-13. A vote in support of HB 692 was coded one. In the House, three members did not vote and six had excused absences. They were dropped from the analysis. All members of the Senate voted. Data was collected from the Maryland General Assembly’s website.74

74 [http://mlis.state.md.us/#pryr](http://mlis.state.md.us/#pryr)
Independent Variable: Citizen Attitudes within Legislative Districts

Again, Ardoin and Garand’s (2003) method of estimating district ideology was used. Between the two chambers, the most conservative district (1A-Garret County) scored -28.44. Prince George’s County’s district 23A was the most liberal at 19.32. The mean district ideology score was -1.35 in the House and -1.02 in the Senate. Hence, members from liberal districts should have been more likely to support HB 692.

Independent Variable: Partisan Affiliation of Legislator

In 2005, Democrats held a 98-43 advantage in the House and a 33-14 margin in the Senate. Republicans were coded zero with Democrats being represented by a one. Because Democrats are more supportive of LGBT rights than are Republicans (Lublin, 2005), they should support HB 692. Data was obtained from the General Assembly.75

Independent Variable: Legislator Margin of Victory

Maryland legislators serve 4-year terms. The prior election year to HB 692 was 2002. Because Maryland has multi-member districts in the House, margin of victory for that chamber was calculated as the difference between the winning candidate’s percentage of the vote minus that of the best performing loser.76 For both chambers, the mean margin of victory was 28.3%. The highest margin was 100%. This occurred in four Senate races where Democratic candidates were unopposed. The smallest margin of

75 See http://mlis.state.md.us/Other/Roster/Roster.htm

76 This analysis only addressed candidates fielded by the major parties. At present, third party candidates do not hold state office in Maryland. In instances where third parties were the only viable competition, the winner’s percentage of the vote reflects this as his/her total is less than 100%.
victory was less than 1%. Election results were obtained from the Maryland State Board of Elections. Candidates in safer districts, as measured by the prior margin of victory, should have felt more latitude to vote for this legislation.

**Model Results**

Iterations of the model were run on each chamber. In the House, the nine members who did not vote were excluded from the analysis. Also excluded were districts containing legislators that were elected in 2002 but who were no longer serving when HB 692 was decided. This left 123 cases in the House. The Senate remained steady at 47.

Table 6.1 provides model summary statistics. In the iteration addressing only the House, the modal category notes that 72.4% of the chamber voted for the bill. The model improved on this by correctly predicting (PCP) 90.2% of outcomes. The resulting percentage reduction in error (PRE) was a substantial 64.49%. Nagelkerke R Square, an approximation of R square for logistic regression (Tabachnik & Fidell, 2001) was .776. This indicated that a large amount of variance was explained by the model.

In the Senate model, the performance metrics were slightly better than those found in the House model. The Senate version correctly predicted 93.6% of outcomes and PRE equaled 76.9%. Nagelkerke R Square was a substantial .82.

[Table 6.1 about here]

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77 In House district 3A (Frederick County), Galen Clagett (D) beat fellow Democrat, Dick Zimmerman by a mere 146 votes (Clagett: 11,434- Zimmerman: 11,288). District 30 (Anne Arundel County) also had a very close House race with Republican Herb McMillan besting Democrat Dick D’Amato by 427 votes (McMillan: 20,972- D’Amato: 20,545).

78 See [http://www.elections.state.md.us/](http://www.elections.state.md.us/)
With respect to the performance of independent variables, district ideology was significant in both models. For each positive unit of change in district ideology, measured on a -100 to 100 scale, the likelihood of voting for HB 692 increased by a factor of 1.17. In the Senate, a unit increase in ideology improved the likelihood of voting for the measure by a factor of 1.48. When holding all independent variables at their mean or mode, a one standard deviation decrease in House district ideology yielded a 23.27% reduction in the likelihood of supporting HB 692. The same change in the Senate resulted in a 46.73% decrease in the likelihood of support.

With respect to party, it was only significant in the House model. Only 5.5% of Democrats failed to vote for the bill. Joining the majority of Democrats were the 22% of Republicans voting to support the legislation. Democrats were thirty-nine times more likely to vote for the measure than were Republicans. When holding all variables but party constant, a change from Democrat to Republican decreases the likelihood of support by 59.51%.

An important caveat is necessary regarding the performance of independent variables. Legislator party and district ideology suffer from multicollinearity. The Pearson correlation between the two variables was a substantial .60. While this would be tolerable if the both variables were continuous (Tabachnick & Fidell, 2001), the dichotomous nature of party reduces the maximum possible Pearson score to approximately .85 (Garson, 2007). When interpreted through that lens, the relationship

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79 The mean district ideology for the House was -1.35. The mean Senate district ideology was -1.02. The standard deviation was 13.83 in the House and 14 in the Senate. With all independent variables at their mean or mode, the likelihood of voting for HB 692 was 97.5% in the House and 99.6% in the Senate.
between party and district ideology is unacceptably strong. As such, the offending variables were alternatively dropped and additional iterations of the model were run.\(^{80}\) The results were mixed. District ideology outperformed party in the Senate by yielding a higher Nagelkerke $R^2$ (.817 > .539) and PRE (69.31% > 38.63%). However, in the House, the reverse was true.\(^{81}\) Party was the stronger contributor. Comparison of means revealed that this might be attributable to the diversity in district ideology found among members of both parties in the House. Relative to the parties in the Senate, each had a higher standard deviation for district ideology.\(^{82}\)

It is important to note that the models that dropped party or district ideology mostly failed to match the performance of the original model. This is not surprising. As noted in the previous chapter, district ideology plays a major role in candidate selection and in determining electoral outcomes. However, party plays important legislative roles that are not fully captured by district ideology.

**Discussion**

The preceding analysis showed that district attitudes strongly predicted which legislators would support HB 692. However, since a proxy variable was used, district ideology as a measure of support for LGBT inclusive laws require additional support. For this, we turn to the state’s geographic distribution of religious groups. As with Pennsylvania, this pointed to large swaths of LGBT rights acceptance. Only 13% of state

\(^{80}\) The independent variables in these iterations were margin of victory and party or district ideology.

\(^{81}\) Nagelkerke $R^2$: .659 > .589 & PRE 67.75% > 44%

\(^{82}\) Standard deviations of district ideology when controlling for party: Republicans in House 8.46 > Republicans in Senate 6.71; Democrats in House 12.06 > Democrats in Senate 10.85
residents are members of an Evangelical or LDS church. The average for the nation is 20% (Association of Religion Data Archives, 2006). Opposition to HB 692 largely came from the districts with the greatest Evangelical denomination adherence rates. Figure 6.2 shows that the strongest concentrations of Evangelicals, as measured in number per 1,000 residents, were found in counties on the Eastern Shore and in the far western portion of the state. The strength of Republicans and the consistent lack of legislative support for LGBT inclusive policies in these areas speak to Layman’s (2001) conception of religious belief based issue evolution. As Evangelicals and other religious conservatives have gravitated to the Republican Party, Republican elected officials took policy stances that were responsive to this constituency.

[Figure 6.2 about here]

With respect to individual denominations, Table 6.2 shows that the Roman Catholic Church is the state’s largest. While not accepting of homosexual acts, Catholic teachings call for individuals to respect themselves and others, including gay and transgender persons. With respect to transsexualism, Reverend James Garneau of the Raleigh Diocese stated that the Church does not have an official position. Thus, their nuanced view of homosexuality and lack of a consensus on transsexualism likely did not hinder general Catholic support for nondiscrimination and hate crimes protections. Of course, individual dioceses or officials may oppose the intricacies found in particular bills. As such, Ann Ciekot noted some half-hearted opposition from Catholic officials to

\[83\] This clarification came from Leopold Tapler, Reverend Deacon and Director of Human Resources of the Raleigh Diocese. He was interviewed via telephone on June 5, 2007.

\[84\] Reverend James Garneau, PhD was interviewed in Mount Olive, NC on June 21, 2007.
HB 692. However, the laity did not mobilize in opposition to the measure. The legislators who supported HB 692 came from the areas (with the exception of Baltimore City) with the strongest concentrations of Catholics, the urban corridor between Washington and Baltimore.

Beyond Catholics, the strength of other denominations might have contributed to the tolerant attitudes. With respect to other groups, the United Methodist Church, a mainline Protestant denomination, is the second largest in the state. The Methodists and the large Episcopal Church, have experienced intra-denominational fights over gay rights. While those battles have not ended, there is clearly some tolerance of LGBT rights within these groups. The fourth largest classification is Jewish groups. This is notable because Judaism has evolved to reflect changes in gender roles and has accommodated homosexuality (Rudavsky, 1995). As previously noted, the Conservative movement of Judaism also condones medical treatment for transsexualism. Judaism adherents are nearly twice the size of the state’s Southern Baptists.

Those bases of support might be somewhat offset by the state’s third largest group, black Baptists. As noted by Pastor Dunston in our discussion about North Carolina politics, African-American churches are not generally receptive to LGBT rights. Such opposition is common in Maryland as evidenced by the prominence of Bishop Harry Jackson’s High Impact Leadership Coalition. People for the American Way (2006) describe Jackson as a “fervent opponent of gay rights.” His group’s advisory panel is largely composed of Maryland pastors who support those stances (High Impact
Leadership Coalition, 2007). However, opposition from historically African-American churches may be diminished by the salience of other identities within the African-American community. Blacks have strongly associated themselves with the Democratic Party for many years. As such, they are often allied with other liberal Democratic leaning groups, particularly the LGBT community. These connections likely provide a countervailing information flow (Zaller, 1992). Because of this, and unlike Republican Evangelicals, religious conservatives in the African-American community do not find attitude reinforcement. Thus, they might be less inclined to mobilize in opposition.

This section provided additional support to the belief that public attitudes strongly affect the adoption of gender identity inclusive legislation. We now turn our attention to the history of gender identity inclusive bills in the state. The political battles waged in the state legislature will provide addition backing for our position. In this qualitative exercise, we will also further explore the degree to which transgender rights are affected by the fight for gay and lesbian protections.

**History of Gender Identity Inclusive Bills-Maryland**

The previous sections discussed the factors that allowed for the adoption of gender identity inclusive legislation. In order to follow the history of transgender inclusion in the Maryland General Assembly, content analysis of bills found in the state’s legislative information database was performed. This online resource covers the period 1996-2006. Unlike Pennsylvania and North Carolina, Maryland’s database does not support full-text keyword searches. All bills are indexed using controlled vocabulary and only those keywords may be searched. Neither gender identity, transgender, nor
transsexual (nor derivations of those terms) exist in the controlled vocabulary. However, beginning with the 2000 session, sexual orientation was listed in the index. Some of the bills cross-referenced with that term also included gender identity. In order to address this research limitation, searches were done on “work, labor, and employment” and “harassment.” These terms were cross-indexed with the 2001 employment nondiscrimination and 2005 hate crimes laws.

As discussed in earlier chapters, transgender rights are an extension of political gains made by gays and lesbians. Care (2005) noted increasing levels of equality for gays and lesbians within Maryland’s legal system. In addition to policy areas addressed by this research, gays have won statewide improvements in child visitation rights, same-sex second parent adoption, and the decriminalization of sodomy prior to Lawrence v. Texas. These advances came in multiple venues: the legislature, courts, and under various governors. At the local level, they also gained a number of antidiscrimination measures (Care, 2005). Prior to the 2001 passage of the state’s sexual orientation inclusive nondiscrimination law, municipalities offering such protections included the majority of the state’s population centers, notably Baltimore City, Montgomery and Prince George’s counties. Given the scope of rights for gays and lesbians, the state was and is fertile ground for gender identity inclusion.

Early Period

At the behest of gay activists, the state legislature’s first sexual orientation inclusive nondiscrimination bill was introduced in 1976 by Delegate Sheila Hixson (D-

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85 Prince George’s County, Baltimore City, Montgomery County, Anne Arundel County, Howard County, and Caroline County have nondiscrimination policies that are inclusive of sexual orientation.
Montgomery) (McClellan & Grief, 2004). However, it gained little support and the issue laid dormant in the legislature for the next decade and a half. Delegate Hixson reintroduced the measure in 1992 and added transgender inclusion (McClellan & Grief, 2004). With the help of Free State Justice and other advocacy groups, support was gradually built. Assisting in this process was the small but increasing number of gay/lesbian members in the state legislature. Despite the growing support for gays, transgender inclusion was often controversial (McClellan & Grief, 2004).

The Glendening Years and Betrayal

Governor Parris Glendening spent much political capital during his second term by trying to advance gay rights (Wagner & Mosk, 2005). Glendening, whose gay brother had died of AIDS, vested the full weight of his office trying to pass Hixson’s measure, HB 315 (Jansen, 1999). He even testified in support of the measure before legislative committees (Jansen, 1999). As with Delegate Hixson’s previous bills, transgendered identities were protected in the definition of sexual orientation. However, the House Judiciary Committee amended the measure to remove the transgender inclusive language. The altered bill passed the House by a vote of 80-56 but it stalled in the Senate. The proposal did not have the support of the Judicial Proceedings Committee chairperson, Walter Baker (D-Caroline, Cecil, Kent, Queen Annes's & Talbot) (Kelly, 2004).

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86 Equality Maryland is the successor organization to Free State Justice

87 Crossfiled with SB 138

88 Transgender identities were included in the definition of sexual orientation: “having or being perceived as having an identity, expression or physical characteristic not traditionally associated with an individual’s biological sex at birth.”

89 See HB 315, Amendment 232304/1
The opposition was not surprising given that Sen. Baker represented a Republican trending rural area on the Eastern Shore. He was also viewed as one of the legislature’s old guard conservative Democrats (Kelly, 2002).

The 1999 session also saw fully LGBT inclusive hate crimes measures introduced in the House (HB 92 & HB 969). Given the introduction of a similar measure, the single sponsor of HB 92 withdrew the bill after a committee hearing. The House Judiciary Committee eliminated HB 969’s gender identity protections.90 The bill passed the House by a vote of 111-23. However, the cross-filed bill (SB 139), along with a similar measure (SB 184), was again halted in the Senate’s Judicial Proceedings Committee. That body was widely regarded as the most conservative committee in the entire legislature (Stuckey, 2000). Notably, it featured Senator Alex Mooney (R-Frederick & Washington), an outspoken opponent of LGBT rights. As such, Judicial Proceedings became the gatekeeper for gay and transgender rights.

The 2000 session saw another gay and transgender inclusive hate crimes bill, HB 875. It had 40 sponsors, including Speaker Rosenberg. As with the 1999 bill, gender identity was included in the definition of sexual orientation. However, it again did not advance from committee.

While unsuccessful in 1999, Governor Glendening continued to press for a sexual orientation inclusive nondiscrimination bill in 2001. Given problems at the committee level in previous sessions, the new nondiscrimination bill (SB 205) was not transgender inclusive. This was a huge disappointment for many transgender activists. In our interview, Equality Maryland lobbyist, Ann Ciekot, likened their treatment to “being

90 See HB 969, Amendment number 402101/1.
thrown overboard.” She noted that many legislators, while not personally opposed to inclusion, felt that protecting transgender people was a bridge too far for their colleagues. As such, the political expediency left the transgender community feeling betrayed by legislators and advocacy groups (McClellan & Grief, 2004).

While eliminating transgender people from the bill was important in gathering support, the Senate’s Judicial Proceedings Committee remained a formidable hurdle to passage. Glendening engaged in an intense personal lobbying campaign directed at Chairperson Walter Baker, a man with whom he had developed a good working relationship (Associated Press, 2001b). According to the Associated Press (2001b), important to changing Baker’s mind was the precedent set by several localities. Four of the largest jurisdictions in the state already had nondiscrimination policies that were inclusive of gays and lesbians.91 Changes in committee composition also shaped the dynamics. Senator Norman Stone (D), an opponent of the bill from relatively conservative Baltimore County, was removed from Judicial Proceedings at the start of the 2001 session. He was replaced by a key sponsor, Sen. Sfikas (D-Baltimore City). (Associated Press, 2001b). Baker’s change of heart and the removal of Sen. Stone allowed the Judicial Proceedings Committee to pass the measure on a 6-5 vote.

While transgender people were not protected by the legislation, they remained part of the discussion. During the floor debate, Senator Mooney attempted an amendment that would have explicitly allowed employers to regulate dress in a manner consistent

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91 The four large jurisdictions covering sexual orientation in their nondiscrimination policies were Baltimore City, Prince George’s County, Montgomery County and Howard County.
with an employee’s biological sex.\textsuperscript{92} This proposal was rejected, 14-30. The sexual orientation inclusive nondiscrimination bill passed the Senate by a vote of 32-14. It passed the House, 90-47 and was signed by Governor Glendening. Some advocacy groups, notably the Gay, Lesbian, Bisexual and Transgender Community Center of Baltimore and Central Maryland (GLCCB), began lobbying the state’s Human Relations Commission to cover transgender people under existing prohibitions on sex and gender discrimination (McClellan & Grief, 2004). Additionally, Ciekot noted that Equality Maryland agreed to later back a gender identity inclusive nondiscrimination bill. This stance was necessary to heal divisions within their membership.

\textit{Divided Government and a Controversial Victory}

The 2003 session ushered in an era of divided government as Robert Ehrlich (R) became governor. As such, Equality Maryland and its legislative allies did not make good on their promise to transgender people. However, an inclusive hate crimes bill (HB 322) was put forth during the session. Transgender people were included in the proposal by adding a reference to gender and “whether or not the person’s belief was correct.” However, the House Judiciary Committee eliminated those protections. In a fall 2006 interview, Dan Furmansky, Executive Director of Equality Maryland said that this occurred over their strenuous objections. He noted that the chairperson of the Judiciary Committee, Joseph Vallario (D-Calvert & Prince George’s), had been a supporter of gender identity inclusion. However, he wavered and allowed the bill to be changed.\textsuperscript{93}

\textsuperscript{92} See SB 205, Amendment Number: 283124/1.

\textsuperscript{93} Dan Furmansky was interviewed via telephone on September 27, 2006.
The amended bill passed the House by a vote of 89-45. However, according to Furmansky, his organization used a lot of political capital to halt the bill in the Senate’s Judicial Proceedings Committee. This was necessary because of lingering bitterness over transgender exclusion during the 2001 fight.

Another attempt at a transgender inclusive hate crimes bill occurred during the 2004 session. HB 365, cross-filed with SB 698 referenced the terms gender identity or expression. Differing from the 2003 legislation, the bills defined the terms as “having or being perceived as having a gender related identity, appearance, expression, or behavior, whether or not that identity, appearance, expression, or behavior is different from that stereotypically associated with the person’s assigned sex at birth.” Yet again, the House Judiciary Committee struck the protections. The amended bill received a favorable report from committee, and it passed the lower house by a vote of 94-41.94 However, despite a favorable report from the Senate’s Judicial Proceedings Committee, the Senate did not vote given pressure from the activist community.

Gay rights were the subject of intense partisan and ideological warfare in 2005 (Snyder & Mosk, 2005). Divided government contributed to the rancor. The session saw another transgender inclusive hate crimes bill (HB 692) introduced. It also saw fights over gay rights measures such as a partner registry and one allowing for medical decision-making. Given past experiences in committee, gender identity inclusion in the hate crimes bill was the subject of much controversy. Delegate Rich Madaleno Jr., a gay Democrat from Montgomery County, opposed transgender inclusion despite previously sponsoring it. Echoing previous battles, he felt that adding gender identity would be “a

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94 There were 5 members not voting and 1 excused absence.
step too far for many” (Crea, 2005). He wanted to gain a partial victory. Madaleno also asserted that transgender people are attacked because they are perceived to be gay and that perception is covered under the law (Crea, 2005). However, Equality Maryland, not wanting to chance a court’s interpretation, and given commitments to their constituency, only backed bills that were explicitly transgender inclusive (Crea, 2005). A legislative compromise defined sexual orientation as male or female homosexuality, heterosexuality or bisexuality, or gender-related identity.

Equality Maryland’s firm stance on transgender inclusion was aided by an important change in the composition of the House Judiciary Committee. Bill sponsor Samuel Rosenberg (D-Baltimore City) was added to the committee as vice chairperson. Also, an increasing number of states, notably neighboring Pennsylvania, had recently provided precedents for transgender inclusion. At the local level, Baltimore City decided to include transgender people under its nondiscrimination ordinance in 2002 (Vozzella, 2002). For the first time, a transgender inclusive hate crimes bill advanced with a favorable report from committee.

On the tactical level, interview subject Dan Beyer noted the importance of the willingness of community members to testify. This was vital, given the lack of knowledge about transgendered people and a dearth of governmental statistics documenting attacks on such persons. As with testimony by gays and lesbians supporting

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95 Ciekot noted the commitment to gender identity inclusion during out telephone interview on June 26, 2007

96 See Baltimore City ordinance 02-453. It offers protections based on actual or perceived gender identity or expression in employment, public accommodations and housing.

97 Dana Beyer was interviewed September 27, 2006.
the 2001 nondiscrimination bill (Greif & McClellan, 2003), face-to-face lobbying and 
committee appearances by transgender people personalized the issues for legislators. As 
research has shown (Altemeyer, 2001; Overby & Barth, 2002), increased contact with 
LGBT persons improves support. Contact allows for the sharing of common concerns. 
This builds common understandings and as noted by Herson & Hofstetter (1975), “people 
do tolerate groups closer to their own prejudices to a greater extent; they also tolerate 
groups further from their own prejudices to a lesser extent.”

On the House floor, personalization tactics were also employed to build support 
for the hate crimes and other LGBT related bills. Delegate Doyle Niemann (D-Prince 
George’s) passionately talked about his lesbian daughter (Mosk, 2005). Delegate 
Madaleno discussed the potential effects on his life (Mosk, 2005). Eventually, the hate 
crimes measure passed the House by a vote of 95-37. Speaker Busch (D-Annapolis) 
voted with the majority on this bill and the other LGBT rights bills considered during the 
session (Abrams, 2005a).

In the Senate, the Judicial Proceedings Committee remained a formidable 
obstacle. However, Furmansky and Equality Maryland found an aggressive champion in 
Senator Gianetti. According to interview subject Dana Beyer, the Senator’s wife and the 
couple’s devout Roman Catholic faith heavily shaped his positive stance. Ms. Gianetti, in 
particular, thought that transgender inclusion was the right thing to do, and she pressured 
her husband. With Gianetti’s shepherding and given the religious cover that he provided, 
the measure passed committee on a 6-5 vote. On the floor, Senator Mooney tried to 
attach several poison pill amendments but these were turned back. However, the bill was
amended to include protections on the right to peacefully express religious convictions. Larry Haines (R-Carroll) pushed for this measure given the arrests of religious protestors under Pennsylvania’s hate crimes law (Wood, 2005). With this change, Haines, an opponent at the committee level, sided with the majority on a 34-13 vote.

The passage of this bill, along with three additional measures that advanced gay rights, outraged some conservative and religious activists. Particularly offensive to opponents, given their concerns about gay marriage, was a bill that aimed to create a registry of unmarried couples. Nationwide, same-sex relationship recognition had become a political hot potato following the Goodridge decision in Massachusetts and the ensuing backlash in the majority of states. In addition to this concern, there was worry over the promotion of homosexuality in the public schools (Associated Press, 2005a).

Conflict expansion ensued (Schattschneider, 1960) as Tres Kerns of Take Back Maryland attempted to initiate the referendum process on each LGBT related bill (Associated Press, 2005a). Delegate Don Dwyer (R-Glen Burnie), assisted by religious groups such as the Christian Coalition, VoteMarriage.org, and Defend Marriage Maryland (Associated Press, 2005a; Abrams 2005b), spearheaded the necessary petition drive (Abrams, 2005b). Some prominent African-American pastors, such as Harry R. Jackson and his High Impact Leadership Coalition, were also involved (Abrams, 2005b). However, after a court fight over the validity of signatures, the petition drive was abandoned (Parker, 2005). In part, this was due to the nature of the bills. Bishop Jackson expressed frustration, “I think when you start talking about hate crimes bills or whatever, it’s just so complicated. There isn’t a clear rallying cry” (Parker, 2005). The inability to mobilize
widespread opposition within the African-American community, despite disapproval of homosexuality, conforms to the mild and nuanced support for nondiscrimination and hate crimes inclusion found by Lewis (2003). This may represent a sensitivity to discrimination and maltreatment that overrides other concerns. It could also be attributed to the previously discussed crosscutting cleavages and competing information flows somewhat moderating the attitudes of some African-Americans.

Despite the failure of the petition drive, Governor Ehrlich subsequently vetoed two of the bills, one creating a registry of unmarried couples and one giving hospital visitation rights to same-sex partners. Yet Ehrlich, having campaigned as a tolerant Republican and libertarian on gay rights (Craig, 2003), quietly signed the hate crimes legislation. He also approved a bill requiring schools to track incidents involving intimidation of gay and transgender students (Wagner, 2005; Abrams, 2005b). Furmansky felt that the passage of multiple LGBT rights bills gave Ehrlich cover to sign some and veto others without totally alienating his Republican base.

Surprise Defeat

In 2007, Equality Maryland’s number one legislative priority was passing a gender identity inclusive nondiscrimination bill. This was their first attempt to make good on the promise issued in 2001. Supporters in the Senate, notably Senator Madaleno (D-Montgomery County), expected a good reception because of the increased visibility of transgender issues.98 Ciekot mentioned educational gains on the issue given that transgender people were increasingly in the news and before the legislature. Additionally, transgendered candidate, Dana Beyer’s nearly successful race for one of

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98 Madaleno won promotion to the Senate in 2006.
Montgomery County’s seats in the House of Delegates (Lynsen, 2007) opened a few eyes. Beyer also noted that transgender people in the media and movies like Transamerica “helped to move the debate forward.”

Given these developments, legislative prospects seemed good. Ciekot stated that opponents who had worked against gay inclusive bills in 2001 and 2005 did not organize for this fight. The only significant opposition came from a single retail trade group, the Maryland Retailers Association. They were concerned about restroom issues but were willing to compromise with Equality MD. Given that the newly elected Governor, Martin O’Malley (D), had signed such a bill in Baltimore City everything seemed in place. However, the bill ran aground in a familiar place, the Senate’s Judicial Proceedings Committee. SB 516 failed on a 6-5 vote. All of the Republicans voted against the measure. Additionally, Senator Muse (D-Prince George’s) and Senator Stone (D-Baltimore Co.) voted against it. According to Dan Furmansky and Ann Ciekot, the committee troubles occurred because leadership did not want the bill on the floor.99 Ciekot noted that the Senate leadership was worried about the potential for electoral backlash given the state’s pending high court decision on same-sex marriage. This “known unknown” about same-sex marriage, not discrimination against transgender people, was the real issue. The outcome was a shock to Equality Maryland.

**Committees: Move Evidence of Attitudes at Work**

The actions of the Senate’s Judicial Proceedings Committee highlight the intersection of public attitudes on the legislative process. To study this, a one-

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dimensional policy space on a conservative to liberal continuum (Krehbiel, 1998) was created with the assumption that legislator preferences are a function of district attitudes (Fiorina, 1974).\textsuperscript{100} Tables 6.3, 6.4 and 6.5 display this information. Also displayed are the votes on LGBT related bills for the 2001, 2005 and 2007 sessions of the Judicial Proceedings Committee. In accordance with the information perspective on legislative committees (Prince & Overby, 2005; Battista, 2006), the ideological characteristics of districts represented by members of the Judicial Proceedings Committee closely conform to those of the chamber.\textsuperscript{101} In each period studied, the mean district ideology within the Judicial Proceedings Committee closely tracked the mean within the larger body (-1.02).\textsuperscript{102} In 2001, the committee was slightly to the right of the chamber (mean = -3.95).\textsuperscript{103} In 2005, the committee was slightly to the left of center with a score of .219. In 2007, the committee averaged -1.91. Each of these figures is far less than a standard deviation from the chamber’s mean district ideology.\textsuperscript{104}

\begin{itemize}
  \item [Table 6.3 about here]
  \item [Table 6.4 about here]
  \item [Table 6.5 about here]
\end{itemize}

\textsuperscript{100} The district ideology scores were computed in the same manner as those found in the Pennsylvania chapter. This is an adaptation of Ardoin and Garand (2003).

\textsuperscript{101} In theory, this allows the committee to act as an agent that conveys legislative and political information to the principal through an unbiased lens. See the literature reviews in Prince & Overby, 2005 and Battista 2006 for a quick study on the three major theories of legislative organization.

\textsuperscript{102} The mean is the same over each period as it is based on legislative districts.

\textsuperscript{103} This analysis uses the legislative districts from the 2002 redistricting. The census information necessary to compute ideology scores for 1992-2002 is not aggregated to the state legislative district level. Admittedly, this is problematic for the 2001 session.

\textsuperscript{104} The standard deviation for district ideology within the Senate is 13.99.
The tables reveal that few members to the right of the chamber’s mean (-1.02) voted in favor of these bills. No Republicans supported these measures as each represented a very conservative district. In fact, only three Democrats represented districts to the right of the mean. Tables 6.3 and 6.5 show that two of these Democrats, Senators Stone and Baker, represented districts far more conservative than the chamber average. As Republicans are more conservative compared to Democrats in every state (Erikson & Wright, 1980; Erikson, Wright & McIver, 1993), these two districts are clearly very hospitable to Republicans. Given his conservative district, Senator Stone’s “no” vote in 2007 seems to be the avoidance of a controversial issue. His opposition to LGBT rights was not isolated as he also declined to support Governor Glendening’s push for a gay inclusive nondiscrimination bill in 1999 (Associated Press, 2001b).

With respect to Sen. Baker’s support in 2001, we have already mentioned the intense pressure that he received from Governor Glendening. He did not support the 1999 bill. The lobbying effort might have been effective in 2001 because Sen. Baker was winding down his Senate career at age 73. Baker’s health was a concern due to diabetes and chest pains (Kelly, 2001a). A bout with chest pains actually delayed the nondiscrimination bill’s vote (Kelly, 2001a). While he ran for reelection in 2002, he did not decide on the matter until very late (Kelly, 2002). In addition to health concerns, Baker knew that his district was trending Republican. In fact, he was the only Democrat in that part of the state (Kelly, 2002). Baker was also likely aware of the prospects of a well financed challenge from wealthy Republican businessman, E.J. Pipkin (Kelly,
The two had clashed over environmental issues, and Pipkin cut his political teeth in that fight (Associated Press, 2004b). Given voting trends, an election following redistricting, age, health concerns, and the strong prospect of a well financed and hostile challenger, Baker was likely aware that his career was drawing to an end. Thus, perceptions about district attitudes were likely less relevant in his decision-making.

With one exception in 2007, every legislator to the left of the mean district ideology supported each of these bills. Of course, some of these legislators had personal misgivings about the legislation. Regardless, they tended to defer to district attitudes. For example, Lublin (2007) noted that despite personal disapproval, Sen. Frosh’s support was a response to liberal social attitudes within his district.105

The one opponent from a liberal district was Senator Muse. His biography makes the reasons apparent. He is the founding pastor of Ark of Safety Christian Church, a very large non-denominational church in Upper Marlboro. He is an outspoken opponent of same-sex marriage. According to Concerned Women for America (2004), he lobbied the House of Representatives for a constitutional amendment banning same-sex marriage. This position was not a one off, as he also was opposed to same-sex marriage during his 2006 campaign for the Senate (Gazette.net, 2006). In addition, analysis of the General Assembly’s legislative database revealed that Sen. Muse never sponsored a nondiscrimination bill that was inclusive of the LGBT community during his tenure in the House (1995-1999). In the run up to the 2006 election, Dan Furmansky of Equality Maryland stated that Anthony Muse “is almost decidedly not going to be supportive to

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105 This reference is from Maryland Politics Watch, a blog. While opinion blogs are of dubious credibility, the posting was from Dr. David Lublin, Professor, Department of Government, American University. Dr. Lublin declined requests to clarify his comments (email exchange, June 25, 2007).
our community, judging from his time in the House of Delegates years ago. Thankfully, he has a reputation for being more even keeled than the other clergy member in the general assembly, Del. Burns” (Baltimore Gay Life, 2006). Furmansky’s judgment was prophetic with respect to this bill.

Committees, Partisanship and Racial Attitudes

Senator Muse’s appointment to Judicial Proceedings can also be viewed as anecdotal support for the partisan theory of legislative organization. In that framework, committees are viewed as agents of the ruling party. Thus, legislative action is taken to further the ruling party’s interest (Prince & Overby, 2005; Battista 2006). As previously noted, the connection to this perspective is that homosexuality and LGBT rights are controversial subjects within Maryland’s large African-American community. Mosk & Deane (2006) report that African-Americans in the state are less supportive of gay rights than are whites. As blacks are usually the most reliable Democratic voting bloc (Patterson, 2006), this offers a potential political wedge for Republicans. In Maryland, as well as nationally, the Republican Party has tried to exploit this opening (Stuckey, 2005) by fielding strong and socially conservative African-American candidates.106 In Maryland, Republican candidate Michael Steele ran as an opponent of gay rights in his successful bid for Lieutenant Governor in 2002 (Marsh, 2002). Steele further displayed his opposition to LGBT rights during a failed bid for U.S. Senate in 2006. His political surrogates tried to whip up anti-gay feelings in the black community through targeted radio advertisements and push polling (Wyatt, 2006a; 2006b).

106 The Republican Party’s candidate for governor of Pennsylvania governor was Lynn Swann. Maryland Republicans fielded Michael Steele for Lieutenant Governor in 2002 and for U.S. Senate in 2006.
The importance of the African-American community for Democrats in Maryland is undoubted because blacks comprise more than a quarter of the population. Thus, the party was likely concerned with the possible cleavage. This is particularly true given that the state’s high court, for the entire 2007 legislative session, had an emotionally charged same-sex marriage case sitting on its desk. A recent Washington Post poll (2006) found that half of Maryland residents favored a state law that would allow civil unions. White voters were supportive with 57% approving of such a measure. Sixty-five percent of African-Americans were opposed to the measure (Mosk & Deane, 2006). Given sentiments in the African-American community, past highly charged political fights over LGBT rights, and because of the Republicans’ past exploitation of race (Carmines & Stimson, 1989) and religion (Layman, 2001), Democrats likely raised alarm bells. By placing Muse, an African-American minister and opponent of LGBT rights, on the Judicial Proceedings Committee, the party could tamp down a potential controversy that could add fuel to the same-sex marriage fire. At the same time, given his district’s ideological leanings and his past support from groups like the Sierra Club (2002), Muse might otherwise be viewed as a reliable supporter of progressive policies. Democrats might not receive this type of support from a person representing a more conservative district. Thus, Sen. Muse seems to be the ideal person to advance Democratic interests on the committee. Of course, the political icing on the cake is that gays, another important Democratic constituency, have already secured nondiscrimination protections in Maryland. Thus, only transgender people and their politically aware gay allies are
likely to be angered by Muse’s lack of support. As noted in this paper and by Ciekot, this is a very low salience issue for most people.

The 2001 session also offered support for this partisan role for committees. As noted earlier, Democratic Governor Glendening made the advancement of gay rights the centerpiece of his second term agenda. In 1999, his initiatives were thwarted in the Judicial Proceedings Committee. This may have led to the removal, in order to further the Governor’s agenda, of one Democratic opponent, Sen. Stone. He was replaced by a supporter of the bill. After the uproar over gay rights in the 2005 session, Senator Stone was reappointed to the Judicial Proceedings Committee for the 2006 session. As with Senator Muse’s selection, his reappointment might serve as a brake on further LGBT rights bills coming though the Judicial Proceedings Committee.

**Conclusion**

This chapter discussed the development of gender identity inclusive laws in Maryland. Support for such laws in the legislature was again shown to be a function of legislative partisanship and district ideological inclinations. Those voting in favor of transgender inclusion were mostly Democrats from the urban corridor that runs from the Washington D.C. suburbs to Baltimore City. These legislative districts are the most liberal districts within the state. Contributing to attitudes in those districts are the relative lack of evangelical Christians and the relative prominence of Catholics and Jews.

Also discussed in the chapter was that the 2005 passage of a gender identity inclusive hate crimes law was the product of a long fight for transgender inclusion. Even in a relatively LGBT friendly state like Maryland, it was harder to gain protections for
gender identity than for sexual orientation, as demonstrated by the committee fights over transgender inclusion. Underlying this difficulty was the perception by legislators, particularly early in the fight, that transgender inclusion was too radical a concept for their constituents. The advocacy community did not effectively counteract those perceptions in 2001 and they ditched transgender people for political expediency. Thus, with vigorous assistance from Governor Glendening and legislative maneuvering, sexual orientation nondiscrimination protections overcame committee hurdles and passed the General Assembly by a very wide margin. The margin of victory was likely reflective of the tolerant attitudes of Marylanders. However, the hurdles found within committee reflect the importance of institutions and institutional rules on legislative outcomes.

One group left extremely unhappy with the 2001 victory for gays and lesbians was the transgender community. Their pressure on the advocacy community forced recommitment to the idea of full inclusion. Groups like Equality Maryland became unwilling to budge on transgender inclusion in hate crimes legislation. Despite calls from some legislative allies, they maintained this position even when presented with another opportunity for partial victory. The increased visibility of transgender persons in society and in Annapolis was important to changing the outcome.

The 2005 hate crimes bill also showed that to the extent that transgender protections are coupled with gay rights, the likelihood of success is better. As demonstrated by the failure of the gender identity only nondiscrimination bill in 2007, transgender rights are not as easily claimed as are gay rights. Six years after voting for sexual orientation protections, the Senate leadership remained worried, despite a lack of
organized opposition, about the possibility of a public backlash. However, those fears might not have stemmed from fears about a backlash to gender identity based employment protections. In part, the 2007 measure failed because of the uncertainty surrounding the larger and more contentious issue of same-sex marriage. Therefore, even when not directly linked, the prospects for transgender inclusive legislation remain strongly intertwined with the political battles of gays and lesbians. Complicating this matter for Democrats are attitudes within the African-American community towards the LGBT community.
Figure 6.1: Party Identification-Maryland Senate
Table 6.1: Model Results

<table>
<thead>
<tr>
<th></th>
<th>House Model B (S.E.)</th>
<th>House Model Odds Ratios</th>
<th>House Model Statistics</th>
<th>Senate Model B (S.E.)</th>
<th>Senate Model Odds Ratios</th>
<th>Senate Model Statistics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percentage Modal Category 72.4%</td>
<td></td>
<td>Percentage Correctly Predicted 90.2%</td>
<td></td>
<td>Percentage Correctly Predicted 93.6%</td>
<td></td>
</tr>
<tr>
<td>Party</td>
<td>3.66 (.80) ***</td>
<td>39.03</td>
<td>.60 (1.43)</td>
<td>1.82</td>
<td>.39 (.16) *</td>
<td>1.48</td>
</tr>
<tr>
<td>District ideology</td>
<td>.15 (.04) ***</td>
<td>1.17</td>
<td>.04 (.03)</td>
<td>1.04</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Margin of victory</td>
<td>.03 (.02)</td>
<td>1.03</td>
<td>.04 (.03)</td>
<td>1.04</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-.29 (.70)</td>
<td>.75</td>
<td>3.13 (2.3)</td>
<td>22.79</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Legend: *** p. ≤ .001; ** .001 < p. ≤ .01; * .01 < p ≤ .05

Nagelkerke R Square .776
N 123
Nagelkerke R Square .82
N 47

145
Source: Association Religion Data Archives

Figure 6.2: Evangelical Adherence per 1,000 Residents
Table 6.2 Maryland Religious Denominations

<table>
<thead>
<tr>
<th>Religious Bodies</th>
<th>Theology</th>
<th>Adherents</th>
<th>Percentage of 1990 Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholic Church</td>
<td>Catholic</td>
<td>832,763</td>
<td>17.42%</td>
</tr>
<tr>
<td>United Methodist Church, The</td>
<td>Mainline Protestant</td>
<td>310,008</td>
<td>6.48%</td>
</tr>
<tr>
<td>Black Baptists</td>
<td>Evangelical Protestant</td>
<td>260,695</td>
<td>5.45%</td>
</tr>
<tr>
<td>Jewish</td>
<td>Other Theology</td>
<td>210,965</td>
<td>4.41%</td>
</tr>
<tr>
<td>Southern Baptist Convention</td>
<td>Evangelical Protestant</td>
<td>131,627</td>
<td>2.75%</td>
</tr>
<tr>
<td>Evangelical Lutheran Church in America</td>
<td>Mainline Protestant</td>
<td>106,188</td>
<td>2.22%</td>
</tr>
<tr>
<td>Episcopal Church</td>
<td>Mainline Protestant</td>
<td>82,714</td>
<td>1.73%</td>
</tr>
</tbody>
</table>

Source: Association Religion Data Archives
Table 6.3: Senate Judicial Proceedings Committee, 2001

<table>
<thead>
<tr>
<th>Senator</th>
<th>District</th>
<th>District Ideology</th>
<th>Vote on SB 205</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colburn (R)</td>
<td>37</td>
<td>-21.16</td>
<td>N</td>
</tr>
<tr>
<td>Ferguson (R)</td>
<td>4</td>
<td>-20.68</td>
<td>N</td>
</tr>
<tr>
<td>Baker (D)</td>
<td>36</td>
<td>-20.60</td>
<td>Y</td>
</tr>
<tr>
<td>Mooney (R)</td>
<td>3</td>
<td>-16.67</td>
<td>N</td>
</tr>
<tr>
<td>Jimeno (R)</td>
<td>31</td>
<td>-14.84</td>
<td>N</td>
</tr>
<tr>
<td>Haines (R)</td>
<td>5</td>
<td>-14.68</td>
<td>N</td>
</tr>
<tr>
<td>Forehand (D)</td>
<td>17</td>
<td>7.64</td>
<td>Y</td>
</tr>
<tr>
<td>Mitchell (D)</td>
<td>44</td>
<td>11.32</td>
<td>Y</td>
</tr>
<tr>
<td>Sfikas (D)</td>
<td>46</td>
<td>12.40</td>
<td>Y</td>
</tr>
<tr>
<td>Hughes (D)</td>
<td>40</td>
<td>14.60</td>
<td>Y</td>
</tr>
<tr>
<td>Green (D)</td>
<td>23</td>
<td>19.25</td>
<td>Y</td>
</tr>
</tbody>
</table>
Table 6.4: Judicial Proceedings Committee, 2005

<table>
<thead>
<tr>
<th>Senator</th>
<th>District</th>
<th>District Ideology</th>
<th>Vote on HB 692</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jacobs (R)</td>
<td>34</td>
<td>-20.97</td>
<td>N</td>
</tr>
<tr>
<td>Mooney (R)</td>
<td>3</td>
<td>-16.67</td>
<td>N</td>
</tr>
<tr>
<td>Jimeno (R)</td>
<td>31</td>
<td>-14.84</td>
<td>N</td>
</tr>
<tr>
<td>Haines (R)</td>
<td>5</td>
<td>-14.68</td>
<td>N</td>
</tr>
<tr>
<td>Stone (D)</td>
<td>6</td>
<td>-12.28</td>
<td>N</td>
</tr>
<tr>
<td>Forehand (D)</td>
<td>17</td>
<td>7.64</td>
<td>Y</td>
</tr>
<tr>
<td>Garagiola (D)</td>
<td>15</td>
<td>11.18</td>
<td>Y</td>
</tr>
<tr>
<td>Frosh (D)</td>
<td>16</td>
<td>12.26</td>
<td>Y</td>
</tr>
<tr>
<td>Hughes (D)</td>
<td>40</td>
<td>14.60</td>
<td>Y</td>
</tr>
<tr>
<td>Giannetti (D)</td>
<td>21</td>
<td>16.92</td>
<td>Y</td>
</tr>
<tr>
<td>Green (D)</td>
<td>23</td>
<td>19.25</td>
<td>Y</td>
</tr>
</tbody>
</table>
Table 6.5: Senate Judicial Proceedings Committee, 2007

<table>
<thead>
<tr>
<th>Senator</th>
<th>District</th>
<th>District Ideology</th>
<th>Vote on SB 516</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jacobs (R)</td>
<td>34</td>
<td>-20.97</td>
<td>N</td>
</tr>
<tr>
<td>Mooney (R)</td>
<td>3</td>
<td>-16.67</td>
<td>N</td>
</tr>
<tr>
<td>Simonaire (R)</td>
<td>31</td>
<td>-14.84</td>
<td>N</td>
</tr>
<tr>
<td>Haines (R)</td>
<td>5</td>
<td>-14.68</td>
<td>N</td>
</tr>
<tr>
<td>Stone (D)</td>
<td>6</td>
<td>-12.28</td>
<td>N</td>
</tr>
<tr>
<td>Brochin (D)</td>
<td>42</td>
<td>-1.41</td>
<td>Y</td>
</tr>
<tr>
<td>Raskin (D)</td>
<td>20</td>
<td>6.04</td>
<td>Y</td>
</tr>
<tr>
<td>Forehand (D)</td>
<td>17</td>
<td>7.64</td>
<td>Y</td>
</tr>
<tr>
<td>Frosh (D)</td>
<td>16</td>
<td>12.26</td>
<td>Y</td>
</tr>
<tr>
<td>Muse (D)</td>
<td>26</td>
<td>16.78</td>
<td>N</td>
</tr>
<tr>
<td>Gladden (D)</td>
<td>41</td>
<td>17.14</td>
<td>Y</td>
</tr>
</tbody>
</table>
CHAPTER 7: MASSACHUSETTS CASE STUDY

Thus far, we have addressed states where the national model correctly predicted outcomes (Maryland and North Carolina). Additionally, we looked at a case where the model failed to predict the existence of a transgender inclusive law, Pennsylvania. This chapter focuses on another case of model failure, Massachusetts. The Commonwealth was predicted to have a transgender inclusive hate crimes or nondiscrimination law. However, as of July 2007, no such statewide law exists. In accordance with the national model presented earlier, Massachusetts was selected for analysis because it is possible that court rulings influenced the state’s lack of action.

As with the previous chapters, this case study provides a brief lay of the political landscape. It also covers the state’s legislative history on transgender issues. Afterwards, there is development of a model predicting sponsorship of a transgender inclusive bill. This model uses the same independent variables tested in the previous chapters. The chapter concludes with discussion of the unique hurdles to gender identity inclusion found in the Commonwealth of Massachusetts.

Massachusetts People

According to the United States Statistical Abstract (2006), Massachusetts is the nation’s 13th largest state with a population of 6.42 million inhabitants. Compared to the national average, it is disproportionately Caucasian (86.98% > 80.39%). The African-American (6.77% < 12.77%) and Hispanic (7.7% < 14.07%) communities are under-represented while Asians are nearly at par with the national average (4.59% > 4.2%).
Approximately 91% of its residents are urban dwellers. The state’s population is also well educated; 37% hold a bachelors degree or higher (U.S. = 27%).

**Massachusetts Politics**

Without a doubt, Massachusetts is a relatively liberal state. The CBS/NY Times based ideology measure used in the model ranked the state as the second most liberal in the nation.\(^{107}\) It only trailed Vermont with respect to citizen liberalism. Of course, Vermont is the only state that legally recognized same-sex partners before Massachusetts. It passed a civil unions law in 2000. Vermont also protects gay and transgender persons under hate crimes and employment nondiscrimination law.

It is probable that the state’s progressive attitudes are shaped by a lack of evangelical Protestants. Only 3% of Massachusetts residents are members of an Evangelical or LDS church. The average for the nation is 20% (Association of Religion Data Archives 2006). Table 7.1 shows that the dominant faith in the Commonwealth is Roman Catholicism. In 1990, it garnered nearly 50% of the state’s population. [Table 7.1 about here]

The lack of fundamentalists may partially explain relatively tolerant attitudes towards gays and lesbians. Brace, Sims-Butler, Arceneaux, and Johnson (2002) found that the views of Massachusetts residents are far more accepting than the average state.\(^{108}\) Their measure ranked the state third in acceptance of homosexuality.\(^{109}\) On the narrower question of same-sex marriage, Massachusetts residents are far more approving of those

\(^{107}\) Ideology score: 2.54

\(^{108}\) See chapter 5 for a discussion the Brace et al. measure

\(^{109}\) homosexuality index score = .32, national average = .19
relationships than the national average. A statewide poll, conducted in 2005 by the *Boston Globe*, found that 56% of Massachusetts respondents supported same-sex marriage (Greenberger, 2005). By comparison, a similarly timed nationwide poll, also contracted by the Boston Globe, found that 37% of national respondents favored legalizing such unions (Greenberger, 2005). Nationally, 62% of those opposing same-sex marriage cited religious or moral reasons for their opposition. Protestants were also more likely to be in opposition (Greenberger, 2005). The small size of Massachusetts’ evangelical community, combined with higher education levels, most likely contribute to the lower levels of opposition to LGBT civil rights.

The public’s tolerant attitudes seemingly translate into position taking by legislators. Acceptance of LGBT rights is strongly demonstrated within the state’s congressional delegation. With respect to position taking within the delegation, Massachusetts’ representatives to the 109th Congress averaged 97.6 on HRC’s 100 point LGBT rights scale (Human Rights Campaign, 2006). In comparison, the nation’s average legislator scored 41.2. When controlling for party effects, necessary because all members of the delegation are Democrats, the disparity remains. The delegation’s mean is greater than the 78.29 average for all House Democrats. Of course, the delegation’s support for LGBT rights is also longstanding. In the 108th Congress, the state’s average score was 96.4 and in the 107th Congress, it was 100 (Human Rights Campaign, 2004a; 2002). Compared to other states discussed thus far, the Massachusetts delegation is far more supportive of LGBT rights. Given that the state’s delegation consistently, over a
number of electoral cycles, supports LGBT issues at a greater rate than their peers, it is very likely that they have greater electoral latitude to undertake such positions.

Acceptance extends beyond support for legislation. Members of the LGBT community find support in the electoral arena. Demonstrated by the election of openly gay candidates fielded by both major parties, gays in Massachusetts have demonstrated a longstanding ability to win office at multiple levels. Of course no discussion in this area can fail to mention the long and colorful career of Representative Barney Frank (D-MA 4th). Despite his involvement in a sordid sex scandal in the 1980’s, Frank remains a popular member in the state’s Congressional delegation (Pierce, 2005).

State Legislature

Be it Federalist, Republican or since the 1960’s, Democratic, Massachusetts has often been a strong one party state (Barone, Lilley & DeFranco, 1998). In fact, the state’s Republican Party has become increasingly irrelevant in the legislature (Peyser, 2006). In 1990, Democrats held 76% of the lower chamber and 63% of the Senate (U.S. Census Bureau, 2007). The 1996 elections saw Democrats markedly increase their holdings to over 80% in each chamber. By 2007, it grew to 87% of the House and 87.5% of the Senate.

110 Openly gay candidates have been able to win elected office since the 1970’s (Bull & Gallagher, 1996). With respect to the Republican Party, Patrick Guerriero (R-Melrose) served on Beacon Hill between 1993 and 1997. He was named Jane Swift’s Lieutenant Governor running mate during her ill-fated election bid (Log Cabin Republicans, 2006). Massachusetts also has the distinction of having the first known transgender person in the country to win elected office. In 1992, Althea Garrison (R-Suffolk), was elected to the state’s House of Representatives. However, she was not out at the time that she ran and still refuses to discuss her identity. After this story was broken in the Boston Herald, Garrison became the butt of jokes and was narrowly defeated during her reelection bid. Garrison remains a perennial candidate having sought office at least 14 times since 1981 (Reilly, 2005).
As with most one party states, there are factions within the dominant party. As with Democrats in Maryland, Massachusetts’ Democratic Party has a liberal wing and a more moderate to conservative wing. Also like Maryland, the liberals gained ascendancy over the past few years (Associated Press, 2005c). Relevant to this research, anti-gay Democrats have been swept aside by progressives (Kiritsy, 2005c).

The state’s most liberal districts tend to be in highly urban Suffolk County (Boston) and its suburb of Middlesex County. The attitudes of Bostonians likely gave the city’s politicians the necessary latitude to pass a gender identity inclusive nondiscrimination ordinance in 2002 (Jacobs, 2006b). Likewise, in 1997, Middlesex County’s Cambridge became the state’s first jurisdiction to protect transgender people from discrimination (Kiritsy, 2003). The western part of the state, despite its non-urban environment is also relatively liberal. Hampshire County is to home to several colleges and universities, most notably: the University of Massachusetts at Amherst, Mt. Holyoke and Amherst. The only city in Hampshire County, Northampton, adopted a transgender inclusive nondiscrimination law in 2005 (Bay Windows, 2005). The most conservative districts on average are found in Worchester and Plymouth counties.

Governor

Despite Democratic dominance in the state legislature, Republicans have been able to win statewide offices. Barone, Lilley & DeFranco (1998) attribute Republican ascendancy to fiscal mismanagement under Michael Dukakis (D, 1974-1978 & 1983-1991). Clearly, public dissatisfaction with Dukakis was not ideological as they elected social liberal, William Weld (R, 1991-1997) as his successor (Barone, Lilley &
DeFranco, 1998). After failing to unseat John Kerry in the U.S. Senate, Weld accepted an appointment by President Clinton. Upon Weld’s resignation, Lieutenant Governor Paul Celucci (R-1997-2001) ascended to higher office. Celucci subsequently left for an ambassadorial appointment by President Bush (Macero & Miga, 2001). Thus, Jane Swift (R-2001-2003) became acting governor. During her later campaign for election, she named openly gay former state representative, Patrick Guerriero, as her running mate. However, Swift’s unpopularity resulted in an aborted (re)election bid (Woodlief, 2002). This allowed Mitt Romney to capture the Republican nomination and subsequently win the general election. Romney declined to run for a second term (Johnson, 2005) and focused his ambitions on a White House bid. In 2007, he was succeeded by Deval Patrick (D), a strong proponent of LGBT rights (Keen, 2007).

Courts

The courts in Massachusetts are on the cutting edge of advances in LGBT rights. Most notably, the Supreme Judicial Court mandated recognition of same-sex marriage in Goodridge v. Department of Public Health (2003). Additionally, the courts have taken a strong stand against discrimination against transgender people. For example, the Superior Court ruled that a transsexual could not be excluded from necessary breast reconstructive surgery if genetic females were allowed to have the same procedure (Beger v. Division of Medical Assistance, 2000). In Doe v. Yunits (2001), the Superior Court also held that school districts have civil liability for forcing gender stereotypical dress on students with documented gender identity disorders. Such disorders were found.

111 Weld’s nomination as ambassador to Mexico was blocked by Republicans in the U.S. Senate (Macero & Miga, 2001)
to be disabilities under the state’s Constitution. In addition, it found in Robert Lie aka Allie Lie v. Sky Publishing Corporation (2002) that transgender people were covered by existing statutes forbidding discrimination on the basis of sex and/or disability.

**History of Gender Identity Inclusion by the Legislature**

The legislature’s website contains little archival content. Therefore, unlike previous case studies, this legislative history analysis relied on LexisNexis State Capital.112 The search revealed the existence of three bills: two filed in 2005 and one in 2007. This finding was corroborated by interview subjects, most notably those affiliated with the Massachusetts Transgender Political Coalition (MTPC).

In 2005, legislation (HB 1181) was introduced to stop school bullying in primary and secondary schools. Sexual orientation and gender identity were included in the characteristics singled out for protection. However, the Joint Committee on Education removed the protected characteristics by amending the bill. The substitute draft passed the Senate. However, it received no action after its return to the House.113

The second bill submitted during the 2005 session was sponsored by Representative Wolf (D-Cambridge). It would have required that police officers participate in special education programs in order to improve relationships with transgendered citizens. This measure died in the House Committee on Rules.114

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112 The keyword search terms included gender identity, gender related identity, gender expression, transgender, sex change, change of sex, transsexual, and transgend!.


The first attempt to pass a nondiscrimination or hate crimes law inclusive of transgender people occurred in 2007. Yet the genesis of this bill, HB 1722, occurred two years earlier. In 2005, at a panel discussion at Suffolk University Law School, a conversation about discrimination took place between openly gay Representative Carl Sciortino (D-Somerville) and Gunner Scott of MTPC. Evidently, Sciortino was moved by the conversation. In off the cuff remarks before the panel, he floated the idea of sponsoring a bill protecting transgender people (Kiritsy, 2005a, 2005b). However, introduction was delayed until 2007. Sciortino needed to do research on the issues (Kiritsy, 2005a). There was also debate within the transgender community on whether to include hate crimes provisions and/or discrimination protections in such a bill (Kiritsy, 2005a). According to Gunner Scott, MTPC decided to go with everything on the first try.115 The advances made in nearby states like Vermont, Maine, and New Jersey likely affected this decision. As Sciortino noted with respect to transgender inclusion, the state had “catching up to do” (as quoted in Keen, 2007). A third reason for delay was the ongoing fight for same-sex marriage and its prominence on the LGBT political landscape (Jacobs, 2006b).

Sciortino’s bill had 23 co-sponsors, 20 in the House and 3 in the Senate. By addressing hate crimes and discrimination, HB 1722 is one of the most ambitious bills addressing transgender rights in United States history. Areas covered under the nondiscrimination provisions include education, housing, and public and private employment. As of July 2007, the bill remains mired in the Judiciary Committee.

115 Gunner Scott was interviewed via telephone on July 10, 2007.
Sponsorship of HB 1722

While HB 1722 has not seen committee action at the time of this research, it does give us an opportunity to explore position taking by legislators. Bill sponsorship is a voluntary type of position taking by legislators (Mayhew, 1974; Highton & Rocca, 2005). Kingdon (1989) noted that decision making on voting is similar to the decision making process in other aspects of legislative service. As such, factors that affect voting should influence which bills a legislator sponsors. The following model addresses the factors that likely fostered the submission of this legislation. As with the previous chapters, legislator partisan affiliation, district attitudes, and his/her margin of victory are combined in a logistic regression model of legislative voting. Additionally, since the previous chapters noted a relationship between local laws protecting transgender people from discrimination and state legislator behavior, it was added to the model. The following sections provide brief treatment to the variables.

Dependent Variable: Sponsorship of HB 1722

The dependent variable is whether or not a member of the House of Representatives sponsored HB 1722. Sponsorship was coded one. This data was collected from the state legislature’s session information database.116 In the House, 20 of the 160 members sponsored the bill.117

116 http://www.mass.gov/legis/

117 Only three senators, Benjamin Downing (D-Berkshire, Hampshire and Franklin), Susan Fargo (D-Middlesex) and Edward Augustus (D-Worcester) were co-sponsors. Thus, that chamber was removed from the analysis.
Independent Variable: Citizen Attitudes within Legislative Districts

As in the previous chapter, Garand and Ardoin’s (2003) method of estimating district ideology was used. The most conservative district, the 16th in Essex County, had a score of -13.52. Suffolk County’s district 8 was the most liberal at 16.14. The mean district ideology score was .9968. Again, liberal districts should be more likely to produce representatives who sponsored HB 1722.

Independent Variable: Partisan Affiliation of Legislator

Party affiliation data was obtained from the Secretary of the Commonwealth’s Elections Division.118 As of 2007, there are 19 Republicans and 141 Democrats in the House of Representatives.

Independent Variable: Legislator Margin of Victory

Representatives in Massachusetts serve 2 year terms and the prior election year for HB 1722 was 2006. Because Massachusetts allows voters to leave slots blank, the margin of victory was calculated as the winning candidate’s percentage of the vote minus that of the best major party or independent candidate.119 The mean margin of victory was 62.78%. The largest margin was 86.46% while the smallest was 1.58%. Election results were obtained from the Secretary of the Commonwealth’s Elections Division.120 Candidates in safer districts, as measured by the prior margin of victory, should have more latitude to vote for this legislation.

118 http://www.sec.state.ma.us/ele/eleidx.htm

119 Unlike Maryland, Massachusetts has a legislator that won as an independent. Therefore, this chapter addresses independent or significant minor party candidates in computing the margin of victory

120 http://www.sec.state.ma.us/ELE/eleidx.htm
Independent Variable: Districts with Local Ordinances Protecting Transgender People

The Pennsylvania chapter highlighted the relationship between localities with transgender inclusive ordinances and a legislator’s vote on the state’s hate crimes law. Additionally, in the Maryland case study, a legislator noted that the precedents set by the state’s largest jurisdictions influenced his support of the 2001 gay inclusive nondiscrimination law. As such, we will test the relationship in this model. The dichotomous variable addresses whether or not a locality in the legislator’s district has an ordinance protecting transgender people from discrimination. Localities with such protections are Boston, Cambridge, and Northampton (Transgender Law and Policy Institute, 2007b). These jurisdictions have 24 representatives in the House.

Model Results

The modal category, non-sponsorship of the bill contained 87.5% of legislators. The model correctly predicted 88.1% of outcomes. This yielded a percentage reduction in error of 4.8%. Nagelkerke R Square, an approximation of R-Square for logistic regression (Tabachnick & Fidell, 2001) was .256. The model explained only a modest amount of variance in the dependent variable, bill sponsorship. With respect to the performance of individual variables, no variables were significant. However, party affiliation was problematic as indicated by a massive log likelihood ratio (2E+008). This was indicative of an assumption violation, that each cell of a categorical variable must have at least one observation (Garson, 2007). This was corroborated upon reviewing the party affiliations of the sponsors. No Republicans sponsored HB 1722. Thus, partisan affiliation was removed from the model.
Also, affecting the interpretation of independent variable performance was the relationship between district ideology and local ordinances protecting transgender people. The Pearson correlation for these two variables was .620. At face value, that does not seem high but because local ordinances is a dichotomous variable, the maximum Pearson score is approximately .85 (Garson, 2007). When analyzed through that lens, it is a very strong relationship. A comparison of means further corroborated that finding. It showed that districts without such ordinances had a mean of -.59 while districts with the ordinances were much more liberal with an average of 10. Because attitudes are likely an antecedent to local laws, the latter was dropped from the model.

The removal of the variables had little impact on the effectiveness of the nested model as the chi-square difference was not significant. With respect to the removal of partisanship, it had little impact for three reasons. First, because there are few Republicans in the chamber, party affiliation is not the decisive factor in legislative battles. Second, Highton and Rocca (2005) noted that partisanship is less important on non-roll call position taking because public policy is not directly affected. Third, given that constituencies tend to recruit representatives that reflect their views (Kingdon, 1989) and because of the consistent relationship between party and ideology noted by Erikson Wright & McIver (1993), some of the effects of legislator party affiliation are captured in the measure of district ideology. District ideology is an antecedent variable to legislator party identification.

The irrelevance of the local ordinance variable occurred for similar reasons. While there are slightly more districts with transgender inclusive ordinances than there
are Republicans in the legislature, the percentage is still small (15%). In addition, these ordinances occur where attitudes are liberal. Any benefits that a legislator accrues from added constituent attitude information or from having another way to justify his/her vote (Kingdon, 1989) cannot be parsed from this research design.

Table 7.2 provides the summary statistics of the more parsimonious revised model. The modal category, non-sponsorship of HB 1722, was 87.5%. The model correctly predicted (PCP) 88.1% of outcomes. The resulting percentage reduction in error (PRE) was 4.8%. Nagelkerke R Square was .221. This again indicated that the model explained a modest amount of variance. Indeed, the model only improved upon guessing that each legislator was not a sponsor by a single prediction.

With respect to the performance of individual variables, district ideology was significant. For each positive unit of change in district ideology, measured on a -100 to 100 scale, the likelihood of voting for HB 1722 increased by a factor of 1.18. When holding all other variables at their mean, a one standard deviation increase in ideology increases the likelihood of sponsoring the measure by 10.8%. 121

While district attitudes, as measured by ideology, are important in predicting sponsorship, it is possible that district attitudes do not affect these decisions in quite the same way that a roll call vote does. This might be due to differences between the two forms of position taking. While both roll call votes and sponsorship decisions are likely affected by the legislator’s “field of forces” (Kingdon, 1989), other factors are at play.

121 The mean for district ideology and margin of victory are .9966 and .6278. The resulting likelihood of sponsoring the bill was 7.95%. The standard deviation for district ideology is 6.12. The probability of voting for the measure with a one standard deviation increase in district ideology is 18.79%.
Except when it is electorally advantageous (Mayhew, 1974; Highton & Rocca, 2005), legislators want to avoid unnecessary position taking (Kingdon, 1989). In contrast to the mandated position taking on roll call votes, sponsorship voluntarily discloses a legislator’s position. This is particularly hazardous on potentially controversial matters (Mayhew, 1974; Kingdon, 1989), such as LGBT rights legislation. Given that most bills do not come up for a vote (Kingdon, 1989), sponsorship unnecessarily increases the likelihood of conflict between the legislator and his or her constituency. In addition to constituency concerns, the likelihood of passage might affect sponsorship decisions. Unless trying to curry favor with a portion of the constituency, via position taking (Mayhew, 1974), it is not rational behavior to sponsor a bill that has little chance of passage.

A Lack of Action

The previous section offered additional evidence for the assertion that position taking on transgender inclusive bills is a function of district attitudes. However, despite the comparatively liberal attitudes in the majority of districts, there has been a relative lack of transgender inclusive bills introduced in the legislature. This was not expected given that the state was predicted to have a gender identity inclusive law. Not surprisingly, there are multiple and complex reasons for the lack of attention. As with advocacy efforts in other states, the battle for gay rights greatly affected the fight for transgendered protections. State court decisions also played a role in the lack of action. In the following sections, we discuss how these things blocked transgender people from the legislative agenda.
Gay Rights in Massachusetts

In the 1970’s, gays in Massachusetts began pushing for statewide nondiscrimination protections (Button, Rienzo & Wald, 2000). Relative to other states, Massachusetts seemed more receptive to the concerns of this community. Openly gay candidates were winning election to the statehouse as early as the mid-1970’s (Bull & Gallagher, 1996). While gays were able to win at the ballot box, legislative victories were slower in coming.

At the forefront of the public policy fight were advocacy groups like Gay and Lesbian Advocates and Defenders (GLAD) and the Coalition for Lesbian and Gay Civil Rights (Bull, 1989). The hurdles that they faced were indicative of what would later happen in many other states. According to Bull (1989), the sexual orientation inclusive bills were repeatedly thwarted at the committee level. This was often at the behest of “autocratic” anti-gay rights legislative leaders like former Senate Majority Leader William Bulger or former House Speaker Tom Finneran (Bull, 1989; Kiritsy, 2007b). Often, blockage occurred despite support within the broader chamber (Bull, 1989).

However, lobbying and coalition building gradually built support for the nondiscrimination bill (Bull, 1989). By 1989, a statewide Boston Globe poll registered 70% approval for the nondiscrimination bill (Bull, 1989). After years of disappointment, a strong ally of gay activists, Sen. Stephen Holt challenged Bulger’s leadership. While unsuccessful, the challenge from the left encouraged Bulger to relent in his opposition (Bull, 1989). In 1989, after more than a decade of effort, Governor Michael Dukakis

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122 Elaine Noble, a lesbian, was elected to the House in 1974 and she retired from politics in 1978 (Bull & Gallagher, 1996).
signed the nation’s second statewide sexual orientation inclusive nondiscrimination bill. The scope of the new law covered public and private employment, public accommodations, credit and housing (Bull, 1989).

The passage of the nondiscrimination bill did not end the fight for gay rights in Massachusetts (Bull, 1989). As with Maryland, after passage, the bill faced a potential referendum challenge from opponents. While this failed, other gay rights issues remained. Thus, battles over gay rights took center stage during the term of Dukakis’s successor, Governor William Weld. A moderate Republican, he was a strong advocate for gay rights (Barone, Lilley & DeFranco, 1998). Weld appointed gays and lesbians to positions of authority, and he tackled the issue of suicide by gay teens (Bull & Gallagher, 1996). He also signed a sexual orientation inclusive hate crimes law (Aucoin, 1996).

Despite the gains made in the late 1980’s and early 1990’s, the Commonwealth’s gay community had not gained full equality. Relationship recognition was on the horizon. As noted earlier, Massachusetts Supreme Judicial Court would grapple with same-sex marriage in Goodridge v. Department of Public Health (2003). Applying a rational basis test to the equality and liberty provisions in the Massachusetts Constitution,

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123 In 1982, Wisconsin became the first state to pass a sexual orientation inclusive nondiscrimination bill (Button, Rienzo & Wald, 2000).

124 Dating back to the 1970’s, same-sex marriage was litigated in several states; Minnesota (Baker v. Nelson, 1971), Kentucky (Jones v. Hallahan, 1973), and Washington (Singer v. Hara, 1974), and Hawaii (Baehr v. Lewin, 1993). Most of the unsuccessful cases centered on federal equal protection claims and the meaning of “a fundamental right to marry” (Lewis & Edelson, 2000). Baehr v. Lewin found that same-sex marriage prohibitions were sex discrimination subject to strict scrutiny under Hawaii’s constitution. However, laws passed by the state’s legislature and a subsequent amendment to the state’s constitution avoided same-sex marriage (Lewis & Edelson, 2000). Baehr v. Lewin also encouraged many states to ban same-sex marriage and it led to the federal Defense of Marriage Act (Lewis & Edelson, 2000). In 2000, nearby Vermont’s legislature also addressed the issue. It became the first state to grant same-sex couples civil union status.

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the Court redefined civil marriage as the “voluntary union of two persons as spouses, to
the exclusion of all others.” The decision set off a multiyear judicial and legislative
struggle to enact a constitutional amendment banning such unions. In June of 2007, the
proposed amendment failed to garner enough support for placement on the ballot
(Kiritsy, 2007b). This effectively ended the battle to thwart same-sex marriage in the
Commonwealth.

Late to the Party

The fight for gay rights had several important effects on the struggle for
transgender inclusion. Perhaps most importantly, the relatively early fight for gay rights
in the state created a hurdle for transgender people. Because transgendered identities did
not come into the public’s consciousness until the mid-1990’s (Gallagher, 1994), they
were not a significant part of the state’s nascent advocacy coalition that formed around
gay rights. Unlike sexual minorities in most states, gays and lesbians had already secured
hate crimes and nondiscrimination laws by the time transgender identities became
potential legislative agenda issues. In the language of Sabatier and Jenkins-Smith (1999),
discrimination and hate crimes legislation were no longer part of the “policy core” for
gay and lesbian advocacy groups in Massachusetts. This was vital because shared ideas
and concerns in the policy core are the glue for advocacy coalitions (Sabatier & Jenkins,
1999). At best, transgender inclusion was a late coming secondary interest. Of course,

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125 In order to be placed on the ballot, an initiative petition for constitutional amendment requires that 25%
of a joint session of the General Court (50 votes) support the measure in two consecutive legislative
sessions (General Court of the Commonwealth of Massachusetts, 2007).

126 At worst, transgender people were hangers on whose existence could hamper the ability gays and
lesbians to gain rights (Gallagher, 1994).
secondary concerns can be ignored or used for bargaining. Given the previous discussion about legislation in Maryland, a similar fight in New York, and the bitter fight over removing transgender protections from the Employment Nondiscrimination Act during the 110th Congress, there are clearly precedents for the latter in the LGBT policy area. However, in this case, the evidence points to a lack of attention. Gays already had nondiscrimination and hate crimes protections, thus they did not need to bargain away transgender inclusion to make legislative gains. As such, the mission statement of the state’s largest LGBT advocacy organization, MassEquality states that its sole goal is securing same-sex marriage rights (MassEquality, 2007). Only in 2007, with that victory secured has there been any consideration of expanding the organization’s mission (Kiritsy, 2007a). All of the relevant interview respondents seconded this explanation.127 Perhaps Rachel Culley, an intern with GLAD, best summed it up, “it [transgender inclusion] has not been on the radar.”128

*Distributional Concerns in the Advocacy Coalition*

Sabatier and Jenkins-Smith (1999) noted that distributional concerns cause collective action problems for advocacy coalitions. It is highly likely that this affected the advancement of transgender rights in Massachusetts. In an August 2007 telephone interview, Ian Palmquist noted that gays and lesbians provide the overwhelming amount

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127 The early passage of sexual orientation protections being cited as a reason for the lack of transgender protections was mentioned by Ian Palmquist, Executive Director of Equality NC, Mara Keisling, Executive Director for the National Center for Transgender Equality, Gunner Scott, founding member of the Massachusetts Transgender Political Coalition, and Rachel Culley, intern for Gay & Lesbian Advocates & Defenders.

128 Ms. Culley was interviewed July 9, 2007 via telephone.
of organizational involvement and financial support to most LGBT advocacy groups.\textsuperscript{129} This is not surprising given the poverty, unemployment and underemployment experienced by transgender people (Minter & Daley, 2003). This seems to be at play in Massachusetts as MTPC founder Gunner Scott also noted that transgender people face big obstacles with financial resources.\textsuperscript{130} As such, the state’s primary transgender focused advocacy group, MTPC is a volunteer organization with no paid staff (Kiritsy, 2005a). By comparison, MassEquality, the largest statewide LGBT organization fighting to protect same sex marriage, had revenues of approximately $2.5 million in 2004 (MassEquality, 2005).

Because MTPC has few resources, Scott noted that the transgender community is “…going to have to rely a lot on our allies” in order to make legislative gains (Scott as quoted in Kiritsy, 2005a). However, given the resource disparity between gays and the transgendered, basic questions of fairness are raised over costs and benefits associated with coalition advocacy. Leaders of gay and lesbian groups have little incentive to expend resources on advocacy efforts that do not benefit the overwhelming majority of their constituency. Indeed, despite having already secured same-sex marriage, MassEquality has not offered substantial assistance to MTPC, despite the latter’s formal request for aid (Kiritsy, 2007a).\textsuperscript{131} This distributional concern hurts the prospects for gender identity inclusion.

\textsuperscript{129} In addition to being Executive Director of Equality North Carolina, Palmquist is chair of the board of directors for the Equality Federation, a network of statewide LGBT advocacy groups.

\textsuperscript{130} Gunner Scott was interviewed on July 10, 2007 via telephone

\textsuperscript{131} MassEquality is a member of MTPC (Jacobs, 2007b) but according to Kiritsy (2007a) and Gunner Scott, it has not been a strong advocate for transgender inclusion.
Distributional Concerns, Court Victories, and Timing

Despite the lack of legislative action on transgender interests, LGBT interest groups, such as GLAD, undertook narrow advocacy via the judicial system. In 2002, as previously noted, a superior court decision in Robert Lie aka Allie Lie v. Sky Publishing Corporation extended nondiscrimination protections to transgender people under an existing body of law. While that ruling was issued by a trial court, similar cases also led the Massachusetts Commission Against Discrimination to reach the same conclusions about the reach of the state’s disability and sex discrimination laws (GLAD, 2007). As such, there is now consensus that transgender persons, particularly transsexuals undergoing medical treatment, have some protection against discrimination under state law. However, those litigation victories, along with wins in Beger and Yunits further suppressed interest in advocating for transgender protections in the legislature. Success in the courts made any potential statutory gains partially symbolic. As such, Mara Keisling of the National Center for Transgender Equality noted that influential activists such as Jennifer Levi of GLAD elected not to expend scarce resources on legislative advocacy. Those resources could be put to work on other issues.

The importance of that resource allocation decision was heightened because many of the state’s LGBT organizations had their attention focused on securing marriage rights (Jacobs, 2006a). That costly battle would be fought in the legislature, at the polls, and in

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132 GLAD cites these cases as Jette v. Honey Farms and Millett v. Lutco (2001)

133 See chapter 1 for a discussion of those cases.

134 Keisling noted this during a telephone interview on July 9, 2007. It was corroborated by Rachel Culley on July, 7 2007. Culley is an intern with GLAD and MTPC.
the courts. Representative Carl Sciortino (D-Somerville) addressed the decision to target resources to that issue: “as a community we have limited resources and right now the majority of the attention is focused on preserving marriage equality…” (Sciortino as quoted in Jacobs, 2006a). Keisling seconded this view when she noted that the same-sex marriage fight “blocked out” attention to transgender issues. Such was the pressure to conserve resources that MTPC was encouraged to delay the push for transgender inclusion until the outcome of the proposed marriage amendment was known (Jacobs, 2006b). Of course, the decisions about resource distribution were understandable because it involved a tradeoff between the advocacy coalition’s secondary interests, transgender inclusion, versus its “policy core beliefs,” gay equality (Sabatier & Jenkins-Smith, 1999).

*Population Ecology: is the LGBT Community Tapped Out?*

As noted earlier, MTPC is a volunteer group with no paid staff. Population ecology theory may offer a possible explanation as to why MTPC has been unable to develop into a stronger advocate for policy change. According to this perspective, for any given environment, the density of interest groups is a function of the potential constituency and possible gains through collective action (Lowery & Gray, 1995). Thus, the environment, with its limited “carrying capacity”, regulates the number of interest groups. Within a given issue area, groups find competitive niches (Lowery & Gray, 1995; Haider-Markel, 1997) so as to avoid direct competition with potential rivals. However, groups cannot find viable niches as the carrying capacity is exceeded. As interest group density in a given area approaches saturation levels, a Darwinian sorting
out occurs. Most likely, the successful groups are those with larger and more resource endowed potential constituencies (McCarthy & Zald, 1978) and those that are older and more established (Nownes & Lipinski, 2005).

Given the poverty associated with the transgender community (Minter & Daley, 2003; Wilchins, 2004; Rudacille, 2005), the potential for mobilization solely based on transgender people is limited. While it was not within the scope of this study to determine the carrying capacity of the Massachusetts LGBT community, the state already has several large gay and lesbian advocacy groups. This includes GLAD, MassEquality, the Gay and Lesbian Political Caucus, and the LGBT Political Alliance of Western Massachusetts. There are also national groups like the Human Rights Campaign and National Gay & Lesbian Task Force that advocate for and raise money from Massachusetts residents. It is plausible that the LGBT rights issue area is nearing or has reached its saturation point. Because many national and statewide groups include some transgender issues in their advocacy efforts, it is also difficult to view transgender advocacy as an entirely separate competitive niche. Indeed, Keisling noted that there are very few statewide transgender specific advocacy groups in the United States. This makes MTPC somewhat of an anomaly that lacks legitimation, a term described by Hannan (1995, as cited in Nownes & Lipinski, 2005) as “the status of an organizational form as a taken for granted feature of the society.” For those reasons, it is likely that there is some degree of inter-group competition for resources in Massachusetts. Given the larger size of the gay community (Cohen-Kettenis, 2004; Herek, 2004), more established gay and lesbian focused groups are much better situated to withstand any competition
over resources. Thus, transgender advocacy groups like MTPC, despite description by Keisling as the most successful in the nation, might not be able to compete for the level of resources necessary to mount an effective lobbying campaign. While not conclusive proof of saturation, the previously mentioned inability of MTPC to raise money is consistent with that conclusion. As gay and lesbian groups have not chosen to consistently or intensely advocate for transgender inclusion, prospects in Massachusetts have not been good.

Conclusion

This chapter addressed Massachusetts, a state where the national model predicted the existence of a statewide transgender inclusive hate crimes and/or nondiscrimination law. However, as of August 2007, no such law exists. Surprisingly, the legislature has seen comparatively few gender identity inclusive bills. The first transgender inclusive hate crimes and nondiscrimination bill was not introduced until 2007. Despite this overall lack of policy attention, our model of legislative position taking showed that district liberalism seemed to play an important role in regards to which legislators chose to sponsor that bill.

An interesting thing about HB 1722 is its broad focus. It attempts to enact gender identity inclusive hate crimes and nondiscrimination protections under a single bill. This points to Massachusetts’ outlier status in this policy domain. Despite being the second state to protect gays and lesbians from discrimination, it clearly fell behind other liberal states in protecting transgender people. This occurred for several reasons. The early success of the gay rights movement happened before transgender identities were policy

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135 Keisling was interviewed via telephone on July 9, 2007
issues. As such, they could not join the fight for anti-discrimination or hate crimes laws. Additionally, the later statewide battle for same-sex marriage created a distributional concern for LGBT advocacy groups. Given scarce resources, gay and lesbian groups were faced with a choice between supporting a policy that would benefit their core constituency or advancing partially symbolic protections for transgender people. The latter would have produced only marginal improvements because the state’s judiciary was receptive to extending protections found in existing law to transgender persons. Rationally, the groups chose to advance their “policy core” at the expense of secondary concerns. The population ecology literature may explain why transgender groups have not been able to galvanize into an effective advocacy coalition that is independent of gays and lesbians. Thus, the predominantly gay and lesbian advocacy groups’ inattention to transgender concerns has been a major hurdle to gender identity inclusion in Massachusetts.
Table 7.1: Massachusetts Religious Identification 1990

<table>
<thead>
<tr>
<th>Religious Bodies</th>
<th>Theology</th>
<th>Adherents</th>
<th>Percentage of 1990 Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholic Church</td>
<td>Catholic</td>
<td>2,961,359</td>
<td>49.22%</td>
</tr>
<tr>
<td>Jewish Estimate</td>
<td>Other Theology</td>
<td>283,920</td>
<td>4.72%</td>
</tr>
<tr>
<td>United Church of Christ</td>
<td>Mainline Protestant</td>
<td>135,983</td>
<td>2.26%</td>
</tr>
<tr>
<td>Episcopal Church</td>
<td>Mainline Protestant</td>
<td>122,190</td>
<td>2.03%</td>
</tr>
<tr>
<td>United Methodist Church, The</td>
<td>Mainline Protestant</td>
<td>71,858</td>
<td>1.19%</td>
</tr>
<tr>
<td>Black Baptists Estimate</td>
<td>Evangelical Protestant</td>
<td>69,672</td>
<td>1.16%</td>
</tr>
<tr>
<td>American Baptist Churches in the USA</td>
<td>Mainline Protestant</td>
<td>66,156</td>
<td>1.10%</td>
</tr>
</tbody>
</table>

*Source: Association of Religion Data Archives*
Table 7.2: Model Results

<table>
<thead>
<tr>
<th></th>
<th>B (S.E.)</th>
<th></th>
<th>Model Statistics</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>PMC</td>
<td>87.5%</td>
</tr>
<tr>
<td>District ideology</td>
<td>.16*** (.05)</td>
<td>PCP</td>
<td>88.1%</td>
</tr>
<tr>
<td>Margin of victory</td>
<td>2.32 (1.73)</td>
<td>PRE</td>
<td>4.8%</td>
</tr>
<tr>
<td>Constant</td>
<td>-4.07 (1.28)</td>
<td>Nagelkerke R Square</td>
<td>.221</td>
</tr>
<tr>
<td></td>
<td></td>
<td>N</td>
<td>160</td>
</tr>
</tbody>
</table>

Legend: *** p. ≤ .001; ** .001 < p. ≤ 01; * .01 < p ≤ .05
CHAPTER 8: REVIEW & CONCLUSION

The preceding chapters addressed the intersection of transgender identity with public policy. This chapter will review those findings. It will also comment on some of the weaknesses found in this research and offer directions for future endeavors.

Overview of Findings

The goal of this project was to help us understand the factors influencing the adoption of transgender inclusive laws by American states. To date, this area has not received attention in the political science and public administration literature. As noted in chapter one, transgender identities are a growing concern in public policy and for administrators. These identities raise concerns whenever sex classification is utilized in a policy context. Thus, transgender identity is relevant for a variety of governmental agencies at multiple levels. Despite this policy relevance, the division of responsibilities under the federal system, separation of powers at every level, and the diversity found among jurisdictions have created a confusing and contradictory patchwork of laws and regulations that address transgender identity. As such, jurisdictional variations raise important equity concerns about the treatment of transgendered persons in the United States. Given these jurisdictional variations and the ensuing equity concerns, public administrators, elected officials and scholars should pay more attention to these issues. Of course, the importance of these issues is heightened given the discrimination and violence faced by many transgender people.
Currently, states have addressed transgender issues in three areas: identity recognition, protection from hate crimes, and prohibitions on discrimination.\textsuperscript{136} This research focused on the passage of statewide hate crimes and nondiscrimination laws. Identity recognition was not addressed because many of those laws were passed prior to the explosion of transgender advocacy that occurred in the mid-1990s. Since 2003, when this research began, the number of states with transgender inclusive laws has increased dramatically. In January of that year, only three states had gender identity inclusive hate crimes laws and only two states covered transgender persons in their discrimination statutes. As of 2007, twelve states and the District of Columbia offer transgender people public and private employment protections. Hawaii’s law, while not protecting employment, covers housing discrimination. Ten states protect transgender people under hate crimes laws. The sharp increase in the number of states offering such protections demonstrates the timeliness of this research.

The project’s research design addressed two levels of analysis. First, a national model looked at policy variation between states. The technique chosen for this portion of the analysis was logistic regression. As such, the dependent variable was whether a state had a transgender inclusive hate crimes and/or nondiscrimination law. The model’s independent variables were ideology, attitudes toward homosexuality, education levels, Evangelical and LDS adherence, whether or not the state had court decisions that extended protections to transgender people and measures of partisan control of the executive and legislative branches. However, multicollinearity problems existed for

\textsuperscript{136} Since this research began in 2003, anti-bullying measures for primary and secondary schools have been on the legislative agenda. However, bullying is a type of discriminatory behavior. It is also related to hate crimes as it singles out victims based on a personal trait.
several of the independent variables. Principal components analysis was used to ameliorate that concern. The extracted components loaded heavily upon two distinct groupings of variables. These components were labeled Democratic legislative control and progressive attitudes.

The model results, reviewed below, determined the direction for the second portion of the analysis. From each quadrant of the logistic regression’s classification table, a state was selected for more in-depth treatment. Factors affecting which states were chosen within the quadrants included the researcher’s access to policy makers and the availability of secondary resources. Additionally, in the two quadrants where the model failed, the decision was influenced by the potential for interesting explanatory factors, such as a role for the courts or an unusual level of Republican support in the legislature. Thus, the states selected for these case studies were North Carolina, Massachusetts, Maryland and Pennsylvania. The goal of the case studies was to provide deeper and more nuanced understanding of the factors that encouraged or hindered the passage of transgender inclusive laws within the selected states. In addition to the qualitative analysis that was derived from interviews and secondary data sources, these case studies developed models of legislative voting where applicable. The multi-level design and combination of qualitative and quantitative methodologies allowed for the development of more robust findings.

The national model, presented in chapter three, showed that states with gender identity inclusive hate crimes and/or nondiscrimination laws were more likely to score higher on the progressive attitudes component. A one-unit increase in progressive
attitudes increased the likelihood of an inclusive law by more than a factor of 35. However, because of the difficulty in interpreting components derived from PCA, performance of the independent variables that comprised progressive attitudes was investigated. Ideology was the best predictor of outcomes. Indeed, its performance matched the progressive attitudes component. States with transgender inclusive laws are much more likely to have liberal attitudes. This finding was expected because liberals are generally more tolerant of minorities, particularly sexual ones. Our national model comported to Erikson, Wright and McIver’s (1993) conclusion that state policies are largely reflective of public sentiments. As such and given the consistent distinction between Democrats and Republicans in a one-dimensional ideological policy space, transgender inclusive laws were much more likely to be enacted by Democratic controlled legislatures. To date, only one Republican controlled legislature, Pennsylvania in 2002, has passed a transgender inclusive hate crimes or nondiscrimination law. However, party control does not seem to matter for the executive branch as Republican governors have signed nearly half of the bills. The latter finding was contrary to expectations.

The national model also found that state court decisions might lessen the impetus for transgender inclusive nondiscrimination laws. Transgender people most often receive statutory inclusion by adding gender identity and/or gender expression as protected classes or by creating an expanded definition of sexual orientation. However, courts in a few states have extended protections under existing laws prohibiting sex discrimination.
Courts in Massachusetts, New Jersey, and New York have taken this view. When this occurs, there is less need for legislative remedy. Our Massachusetts case study supported that finding as gay activists did not want to devote scarce organizational resources on partially symbolic legislation. Those advocacy groups were focusing their efforts on preserving same-sex marriage rights extended in Goodridge. However, in New Jersey, a similar court decision provided a convenient explanation rationale for legislators who later supported that state’s transgender inclusive nondiscrimination law. Given the small number of states that have these rulings, no strong conclusions can be drawn.

The case studies partially corroborated the national model’s findings. North Carolina, the most conservative state studied, exhibited the strongest resistance to transgender inclusion. This was demonstrated via the voting records of its Congressional delegation. Additionally, the state had not passed any sexual orientation inclusive laws. It was the only case study with this finding. However, one of the most liberal states in the nation, Massachusetts, does not have a transgender inclusive law. Surprisingly, legislators in that state did not even introduce a bill combating discrimination or hate crimes aimed at transgender people until 2007.

Despite the policy failure in Massachusetts, the Maryland and Pennsylvania case studies further highlighted the importance of constituency ideology. In each of those states, we modeled, via logistic regression, legislative votes on transgender inclusive bills. Those voting models included independent variables on legislator party, constituency ideology and prior margin of victory. State legislative district ideology scores were computed by extending Ardoin and Garand’s (2003) technique for estimating

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137 As a reminder, the Massachusetts case also found protections under disability
Congressional district ideology. In our legislative voting models, we found support consistent with the hypothesized roles for constituency attitudes and party identification. The liberal districts were more likely to have legislators who supported transgender inclusion. Sometimes, this translated into limited Republican support, most notably in Pennsylvania. However, some legislators from conservative districts, regardless of their party affiliation, were vehement in their opposition.

This research also addressed how constituent attitudes are influenced by religious beliefs. Furthermore, it highlighted those implications for transgender advocacy. In three of our case studies, North Carolina, Maryland and Pennsylvania, many conservative districts had large concentrations of Evangelical Christians. This is relevant because of that tradition’s endemic opposition to homosexuality. Because transgender identities are conflated with homosexuality, proposals that address transgender issues have the potential for conflict expansion due to the intensity of theological opposition. Such concerns are heightened because gays are often trying to advance similar protections in these locales. Indeed, protections for sexual orientation and gender identity are often bundled in the same bills. As such, rational election seeking legislators from conservative districts, particularly those with significant Evangelical communities, usually do not support this type of legislation. While afforded discretion on policy matters, legislators likely calculated that the potential risks of support outweighed the potential benefits.\footnote{It is important to note that elected officials often rely on their perception of constituency values in this area. As noted in our North Carolina case study, elected officials most often do not poll on this issue.} This decision making process was best addressed in our North Carolina case study. A Republican representative to the North Carolina House, activists...
on both sides of the issue, and strategists from both parties noted that legislators were concerned with constituency reaction to their decision making on LGBT issues.

Related to the Evangelical tradition’s influence on attitudes are the policy views of many in the African-American community. As noted in the Maryland and North Carolina case studies, there is significant resistance within the African-American community to expanded rights for sexual minorities. As noted by Pastor Dunston, one of our religious contacts in North Carolina, much of the opposition is rooted in religious teachings. The Maryland case study found that ministers from historically African-American churches rallied to fight LGBT inclusion under the state’s hate crimes law. Subsequent to that fight, one African-American minister, elected to Maryland’s Senate, provided the crucial blocking vote on a transgender inclusive nondiscrimination bill. It is possible that Democratic leaders strategically placed this individual on the committee where most LGBT rights legislation is routed. Republicans in Maryland and nationally have attempted to make inroads with African-American voters by pressing Democrats on LGBT rights. By blocking bills in committee and because gays already had nondiscrimination protections, legislators could avoid a potential split within the Democratic coalition on transgender rights.

The effect of religion on attitudes might not be limited to negative reactions by many Evangelical Christians. As demonstrated in the Pennsylvania and Maryland case studies, in areas where Roman Catholicism was prevalent there was greater support for transgender inclusion. While that faith tradition also does not condone homosexuality, it calls on its practitioners to fight unjust discrimination against all people, regardless of
their characteristics. As such, constituencies may be neutral towards or supportive of these proposals. The former is, of course, more likely given the low salience of transgender concerns for the general public. It is plausible that these factors reduce the likelihood of conflict expansion. As such, legislators are afforded more leeway to support transgender inclusion. In this respect, these findings conform to expectations of legislator behavior derived from Fiorina (1974), Mayhew (1974), Kingdon (1989), Geer (1996) and Wright (2003).

One of the interesting and unexpected observations in this research was found at the local level. When localities within a state legislator’s district have included gender identity under local nondiscrimination ordinances, legislators are much more likely to support gender identity inclusion under state statutes. This trend was strongly shown in our Pennsylvania and Massachusetts case studies. It is possible that this gives the legislator increased assurance that a significant portion of his/her constituency will find inclusion either a nonissue or that they support it. The existence of local ordinances also provides a convenient explanation for voting decisions. One can argue that conditions in his/her district do not change as a result of the state law. Alternatively, as noted in our Maryland case study, one can discuss the need for statewide consistency. A convenient explanation of an elected official’s position aside, it is also possible that many legislators hail from areas with gender identity inclusive ordinances because attitudes in those districts provide local politicians with similar information. Thus, local laws might be symptomatic of favorable conditions rather than a case of vertical diffusion.
Regardless of district attitudes, this research also highlighted the difficulties that transgender people have in getting on the governmental agenda. As noted in the introductory chapter and case studies of North Carolina and Massachusetts, the transgender community is relatively small and closeted. Many members of the community lack resources because of discrimination. As most people are not transgendered nor do they know a transgender person, they are less likely to care about the struggles of the transgender community. In short, even relative to gay rights, transgender rights are not salient issues for the voting public. As such, legislators have few reasons to address transgender concerns.

Fortunately, the transgender community has grievances that are addressed by some jurisdictions. This is likely due to the association of transgender people with the gay and lesbian community. That association occurs for a multitude of reasons. These range from a conflation of identities to the communities’ desire to fight bigotry stemming from common foes. However, the transgender community is dwarfed in public awareness and resources by the much larger gay and lesbian communities. As such, transgender people rely heavily on gay activists and their tolerance of transgender hangers on to secure political gains. When transgender people are able to address their grievances at the same time as the gay community, their chances for success are maximized. However, as noted in our Maryland case study and in New York, gay activists sometimes throw transgender people overboard for political expediency. This seems to be occurring less often at the state level, but it remains a concern for transgender activists. Indeed, gender identity protection was recently excluded from the federal
Employment Nondiscrimination Act in order to advance the measure from the House (Murray, 2007).

When transgender issues are addressed separately from gay rights, transgender persons have added difficulty in gaining protections. This was clearly demonstrated in our Maryland and Massachusetts case studies. In the case of Maryland, after the passage of a sexual orientation inclusive nondiscrimination bill in 2001, transgender persons attempted to gain statewide nondiscrimination protections with the strong help of gay activists. While successful in getting a bill introduced in 2007, the bill was bottled up in committee. It is possible that a pending same sex marriage decision by the Maryland Court of Appeals pushed Senate leaders to scuttle the bill. Perhaps they were spooked by any potential ties to that much higher salience issue. However, similar conditions existed in New Jersey during 2006. After that state’s highest court mandated same sex partner recognition, a bill banning discrimination against transgender persons sailed through the legislature with little opposition (Mulvihill, 2007).

As demonstrated in the Massachusetts case study, when gays are not interested in supporting gender identity inclusion, the hurdles for transgender people are drastically raised. In the late 1980’s and early 1990’s, gays in that state gained nondiscrimination and hate crimes protections. These protections were enacted prior to the explosion in transgender advocacy. As transgender identity increased in salience, gays in the Bay State were focused on securing marriage rights. As such, they had little reason beyond altruism, to expend scarce resources advancing transgender hate crimes and nondiscrimination laws. As such, transgender activists, lacking clout or resources, were
unable to even have a bill *introduced* in the legislature. Such legislation was not submitted until the fight for same-sex marriage rights was over. Even then, the primary sponsor was a gay legislator who was sympathetic to the cause. As of September 2007, action on that bill is pending. Thus, transgender access to the governmental agenda is very much affected by the status of issues confronting gays and the willingness of gays to support transgender people. In short, prior to winning support from the public or legislators, transgender people have to gain backing from the gay community in order to make legislative gains. This is true even in the most liberal areas where one would expect transgender inclusive laws.

**Limitations and Directions for Future Research**

Admittedly, this research contains numerous limitations. As such, there are ample opportunities to expand on or improve this work. Perhaps the biggest criticism is that it fails to address the diffusion of transgender inclusive legislation. As noted by Berry & Berry (1999), events history analysis is the best way to address policy research in this area. My cross-sectional approach fails to account for swings in legislative partisanship or gubernatorial control that may affect outcomes. It also ignores the debate in the political science literature concerning the stability of state ideology (Berry, Ringquist, Fording & Hanson, 2007; Brace, Arceneaux, Johnson & Ulbig, 2004; 2007; Erikson, Wright & McIver, 1993; 2007).

Additionally, the research design only addressed laws that were passed. Except in the case studies, it did not inquire about the numerous bills that failed to advance from the legislature. It also ignored bills that were vetoed or were rescinded by public
referendum. Attention to these items might improve understanding about partisanship and its effect on transgender inclusive bills before the legislative or executive branches.

Another limitation affected the three models of legislative behavior. The district ideology measures were heavily influenced by voting in presidential elections. However, presidential voting statistics that were aggregated at the state legislative district were not readily available. As such, this research relied on the county level statistics where the legislative district was situated.¹³⁹ Because legislative districts are commonly drawn for partisan advantage, the effect of the presidential vote on the ideology score was muted. Access to data aggregated at the state legislative district level might expand the role played by attitudes.

Also ignored in this study were queer theorist approaches to the research question. While this researcher acknowledges the validity of such approaches, it was not in the researcher’s career interests to pursue that line of inquiry. Similarly, many normative questions surrounding the research area were ignored.

Concluding Remarks

Despite the limitations mentioned in the previous section, this research contributed to our understanding of transgender related public policy. This work was one of the first within the public administration and political science literature to address transgender identity. As such, it identified several policy areas where public administrators can anticipate concerns related to this increasingly visible group. It also highlighted some of the political problems faced by the transgender community. As such, the latter findings may be of use to scholars, policy analysts and activists.

¹³⁹ Means were used for districts representing multiple counties.
Beyond the uniqueness of the topic area, this work built upon the institutional rational choice policy framework. We saw how public attitudes were important in determining which states pass transgender inclusive laws. This finding held at a smaller unit of analysis as the policy positions held by legislators were largely in line with constituent attitudes. Politicians in districts that are more liberal were more likely to support transgender inclusive laws. Yet as noted in the Massachusetts case study, liberal constituencies were not a sure bet for transgender inclusion. The transgender community’s limited numbers also translate into a lack of salience around gender identity issues. It is likely that attitudes in liberal districts create an environment where legislators feel leeway to support transgender rights. In these areas, pro-transgender rights stances might not cost a great deal of electoral support. Legislators can choose to advance their own policy beliefs or placate special interests. In short, this research offers another view into the rational election seeking behavior of legislators.

The research also relates to agenda setting and advocacy coalitions. We saw a small group (transgender people), often partner with a larger interest (gays and lesbians). For transgender people, this is necessary given the small size of their community and their lack of resources. With respect to the policy areas addressed, this research showed that transgender rights are an extension of gay rights. The gay community acts as a gatekeeper for transgender inclusive legislation. When gays do not have the same policy interests, it is difficult for transgender people to promote their cause. However, even when the gay and transgender communities have a similar policy goal, it is sometimes
politically expedient for gays to avoid advocating for transgender rights. As such, the notion of a united LGBT advocacy coalition is exaggerated.

A last point to address is that scholars normally hope that their efforts provide the springboard for future research. That is certainly the case here as the findings offer some contributions to the fields of minority politics, legislative studies and public policy. However, as noted in the introductory chapter, transgender individuals face widespread discrimination and are often the victims of hate crimes. Thus more importantly, it is hoped that this research offers insight to administrators and policy activists. The issues addressed in this work relate to the ability of transgender persons to survive in our society. It is my sincerest hope that this research will help these individuals navigate a hostile world.
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