

# Who Listens to the Majority?

An Analysis of Institutional Dynamics, Policy-Opinion  
Congruency, and Same-Sex Marriage Outcomes

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Senior Honors Thesis Submitted to the Department of Political Science  
at the University of California, San Diego

March 30, 2020

*Thank you to*

My advisor, Professor Gause,  
our instructors, Professor Butler and Professor Strom,  
and my wonderful sister, Marie <3

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## Introduction

The 2015 *Obergefell v. Hodges* decision legalized same-sex marriage across the United States. The Supreme Court's landmark ruling was a close decision, with only a 5-4 majority in support of Justice Kennedy's opinion. The divided nature of this decision reflected the divisiveness of public opinion at the time; approximately one-third of states had public opinion majorities against legalizing same-sex marriage.<sup>1</sup> Prior to this Supreme Court decision, same-sex marriage was legal in many states, while some states still had constitutional amendments banning same-sex marriage and civil unions. This discrepancy in same-sex marriage policy meant that there was significant inequality for same-sex couples across the United States.

However, the states in which same-sex marriage was banned did not perfectly match the states that had a majority of public opinion against same-sex marriage.<sup>2 3</sup> This begs the question: how does public opinion translate into policy? Perhaps, the state government's ability to discover and implement the public's preferences is a necessary factor in discerning why some states' public opinion correlated with policy, while others' public opinion did not.

Responsiveness is the term used to describe when government policy aligns with public opinion. An increase in responsiveness occurs when policy more closely matches public opinion. Many factors influence a state's ability to be responsive. Any system or institutional rule that

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<sup>1</sup> Jessica Walthall and Joanna Piacenza, "Attitudes on Same-Sex Marriage in Every State," Public Religion Research Institute, last modified April 20, 2015, <https://www.prii.org/spotlight/map-every-states-opinion-on-same-sex-marriage/>.

<sup>2</sup> Ibid.

<sup>3</sup> Los Angeles Times Staff. "Gay marriage" *Los Angeles Times*, November 30, 2013, <https://timelines.latimes.com/gay-marriage/>

increases the government's ability to adequately respond to public opinion will increase responsiveness. This might be as simple as their ability to use social media accounts, hold public forums, or conduct public opinion surveys. However, this paper will focus primarily on the institutional factors that increase responsiveness.

Same-sex marriage outcomes, both banning it and legalizing it, were directly brought about in three different ways: through court decisions, through legislation, or through direct democracy. These institutions were the only way same-sex marriage policies were able to be enacted, and therefore are of interest. Thus, this paper explores responsiveness to public opinion based on dynamics in these three institutions, and whether states where same-sex marriage public opinion matches the outcome (which I will refer to as states with congruence) have higher responsiveness than states where public opinion does not match the outcome (states without congruence). In this paper I will analyze these institutions' roles in outcomes primarily through finding the difference in the various responsiveness scores between states with congruence and those without. This is done through t-tests, regressions, and difference in marginal effects plots. I find that I am unable to reject the null hypothesis. This may have been due to limitations on the data, or it may have been because these institutional factors that are used to increase responsiveness do not do so on this issue. Perhaps it is because these factors do not increase responsiveness as a whole, or because this issue is one of minority rights. Regardless, the results cannot show that the responsiveness of these institutions had any effect on policy-opinion congruency.

# Literature Review

## The Tyranny of the Majority

The central principle of democratic rule, ‘power of the people,’ is one that can also be problematic. Democracy assumes many things, of which the primary relevant assumption is that the decision the majority makes will be the decision that is ‘best’ for society or ‘best’ for the most people. Proponents of majority rule believe that government will coalesce from the various minority groups contained within society, and that those minorities will punish intolerance through their votes.<sup>4</sup> This perception of democracy implies that in order to be successful, candidates and governments must take into account the needs of the minority because candidates require at least some of these minority groups’ votes. For “any minority, no matter how small, may be large enough to turn the scales in an election.”<sup>5</sup> However, factions can be dangerous.<sup>6</sup> James Madison, in his famous essay *The Federalist 10*, argues that pluralism and competition will protect against factions such that no faction will ever be able to consistently win enough to harm others’ rights.<sup>7</sup>

The protections Madison supplies rely on a plurality of interests instead of a true majority-minority system. However, it is unclear whether this plurality actually exists in the United States’ modern-day political climate. In a situation in which a particular group holds enough power and votes to be influential without consulting other groups, the issues of majority

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<sup>4</sup> Ferdinand A. Hermens, “The ‘Tyranny of the Majority,’” *Social Research* 25, no. 1 (1958): 37-52.

<sup>5</sup> *Ibid.*, 39.

<sup>6</sup> James Madison, “The Federalist No. 10,” ed. Shapiro Ian (Yale University Press, 2009), 47-53.

<sup>7</sup> Madison, “The Federalist No. 10.,” 50-51.

rule become apparent. In this case, democracy's problem is not "its weakness, but rather its irresistible strength" and "the shortage of guarantees against tyranny."<sup>8</sup> The problem is that even though democracy is typically thought to prevent any person from obtaining too much power and being able to abuse it, democracy still places immense power into the hands of the people. And just as one person is able to abuse their power, so is the electorate. There is very little stopping the majority from using its power to infringe on minority rights and oppress marginalized peoples. Even though power is shared among the people as a whole, this does not prevent the people as a whole from abusing it.

This paper looks at whether same-sex marriage policy represents a tyranny of the majority. It looks at institutions that are typically characterized as causing an increase in governmental responsiveness and attempts to ascertain whether the 'more responsive' institutions actually affected whether public opinion matched the same-sex marriage outcome of the state, and if so, whether the opinion of the majority was more likely to lead to a successful outcome or an unsuccessful outcome for the LGBTQ+ community on this issue.

## Does Public Opinion Actually Drive Gay Rights Policy?

Whether or not state same-sex marriage policy aligns with state public opinion has been a debated topic in the past. Researchers Gregory B. Lewis and Seong Soo Oh cite several studies conducted between 1996 and 2006 found little to no evidence that public opinion of same-sex marriage drives state policy.<sup>9</sup> One study, conducted by Donald P. Haider-Markel and Kenneth J.

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<sup>8</sup> Alexis de Tocqueville, *Democracy in America*, (New York, Harper & Row, 1966), 252.

<sup>9</sup> Gregory B. Lewis, and Seong Soo Oh. "Public Opinion and State Action on Same-Sex Marriage." *State & Local Government Review* 40, no. 1 (2008): 42, [www.jstor.org/stable/25469773](http://www.jstor.org/stable/25469773).

Meier, found that queer rights in the states are “determined by interest group resources along with supportive elite attitudes, prior public policies, and perhaps education” and not public opinion.<sup>10</sup>

However, when Lewis and Oh revisited the issue in 2008, they found that this was not the case. This paper found that public opinion had a much stronger link with same-sex marriage outcome than elite attitudes, interest group strength, or state innovativeness. They conclude that the previous studies’ findings were likely due to weak public opinion data.<sup>11</sup>

However, Lewis and Oh note another potential weakness of research failing to find statistically significant relationships between public opinion and same-sex marriage policy. In 2000, Christopher Z. Mooney made the argument that when the federal government imposes policies concerning issues of morality (such as same-sex marriage) in states that disagree with the policy, “policy entrepreneurs can easily exploit” this “policy-opinion incongruence”.<sup>12</sup> Lewis and Oh build upon this, noting that the controversial state supreme court decisions of the 1990’s same-sex marriage movement “provided the impetus for two waves of rapid, widespread legislative action against same-sex marriage, even though they created a potential rather than an actual wedge”.<sup>13</sup> But, they argue, while “[p]olicy entrepreneurs may have driven early legislative action, . . . current policies largely reflect interstate variation in support for same-sex marriage.”<sup>14</sup> Lewis and Oh are referencing some of the major same-sex cases that shocked the public conscience in the late 20th century. One of these shocks was when a Hawaii state court, in 1996,

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<sup>10</sup> Donald P. Haider-Markel and Kenneth J. Meier. "The Politics of Gay and Lesbian Rights: Expanding the Scope of the Conflict." *The Journal of Politics* 58, no. 2 (1996): 332-49. [www.jstor.org/stable/2960229](http://www.jstor.org/stable/2960229).

<sup>11</sup> *Ibid.* 42-53.

<sup>12</sup> Mooney, Christopher Z. "The Decline of Federalism and the Rise of Morality-Policy Conflict in the United States." *Publius* 30, no. 1 (2000): 188, [www.jstor.org/stable/3331127](http://www.jstor.org/stable/3331127).

<sup>13</sup> Lewis and Oh, 51.

<sup>14</sup> *Ibid.*



ruled that the state had no compelling interest in barring same-sex couples from marrying, effectively legalizing same-sex marriage.<sup>15</sup> This case had an impact both on Hawaii as well as the rest of the country. The population realized, for perhaps the first time, that same-sex couples could legally gain the right to marry. Many found the thought of this to be abhorrent.<sup>16</sup> This sudden fear created an opportunity for policy entrepreneurs, as Lewis and Oh noted. Soon, policy entrepreneurs had led the charge on enacting same-sex marriage bans in most states. Because my study concerns 2015, a period far later than the initial backlash, it is past this period in which policy entrepreneurs are able to disproportionately influence policy outcomes, and prior to any backlash that may have occurred after *Obergefell*. Thus, the timing of this research aligns more with Lewis and Oh's conclusions, in which public opinion was tied to outcome, than to previous studies conducted around the time of the aforementioned shocks.

## Responsiveness and Policy Outcomes

The definition for responsiveness that is going to be used in this paper is the government's timely implementation of public opinion's policy preferences. This inherently connects responsiveness to public opinion. The more responsive a government, the faster and more closely it will implement its constituents' interests. This definition adequately describes the phenomenon at issue here, but it is necessary to note that it contains some assumptions.

Responsiveness, itself, is an imperfect ideal. It assumes that the government can adequately discover public opinion's preferences, that the government is able to implement these

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<sup>15</sup> Baehr v. Miike, No. 20371, 1999 Haw. LEXIS 391 (Haw. DEC. 9, 1999)

<sup>16</sup> Law Library, "Baehr v. Miike - Impact." Net Industries, <https://law.jrank.org/pages/24776/Baehr-v-Miike-Impact.html>.

preferences, that the government wants to implement these preferences, and that it is in some way possible to compromise on and reconcile the widely varied preferences within the government's constituency. Ultimately, however, it is unclear whether governmental responsiveness affects all equally. Researchers Marcia Grimes and Peter Esaiasson found that an individual's political resources strongly affected whether their policy preferences were implemented.<sup>17</sup> In the ideal form of responsiveness, all opinions would be equally weighed and have an equal opportunity to be represented. However, Grimes and Esaiasson find that this ideal does not exist; rather that institutions are always more responsive to those with political power. Thus it is important to consider that responsiveness does not directly translate to perfect representation, even though those two are frequently conflated.

Indeed, other studies found a strong link between political participation and socioeconomic status. Organizations representing constituencies of higher socioeconomic status find themselves much more easily represented than organizations representing constituents of lower socioeconomic status.<sup>18</sup> Such inequities consequently mean that most of the voices heard by government are of a higher status. Because it is impossible for a government to be responsive to interests it cannot discover, this results in even perfectly responsive government unable to hear, and thus represent, many interests. This further implies that the ideal represented by responsiveness is truly unattainable.

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<sup>17</sup> Marcia Grimes and Peter Esaiasson, "Government Responsiveness: A Democratic Value with Negative Externalities?" *Political Research Quarterly* 67, no. 4 (2014): 758-68, [www.jstor.org/stable/24371949](http://www.jstor.org/stable/24371949).

<sup>18</sup> Kay Lehman Schlozman, Sidney Verba, and Henry E. Brady. *The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy*. (Princeton: Princeton University Press, 2012), doi:10.2307/j.ctt7sn9z.

## Institutions' Effects on Responsiveness

Whether state policies reflect their constituents' public opinion on same-sex marriage depends on three institutions within a state: its legislature, its direct democracy channels, and its court of last resort, or supreme court. These institutions are the only way to directly enact same-sex marriage policy; while bureaucracy, the executive branch, the media, etc., affect same sex marriage policy indirectly, it still must be enacted through one of these three routes. Thus, I have chosen an aspect of each of these that increases the responsiveness of its institution: the judicial selection process of the state's courts of last resort, whether the state has strong direct democracy channels, and the professionalism of the state's legislature.

### Judicial Elections

The aim of judicial elections is to create accountability and increase the responsiveness of the judicial system to public opinion. In the article titled "Rethinking Judicial Elections" by Kurt E. Scheuerman, Scheuerman states that proponents of judicial elections believe that judicial elections provide the necessary accountability so that citizens' preferences can be accurately and adequately implemented.<sup>19</sup> Judicial elections give the citizens a level of input not seen in other types of judicial appointments. Through a vote to choose between judicial candidates, or a vote on the retention of recently elected judges, constituents can make their preferences known. Many states specifically chose to implement judicial elections because of the increase in responsiveness

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<sup>19</sup> Kurt E. Scheuerman, "Rethinking Judicial Elections," *Oregon Law Review* 72, no. 2 (Summer 1993): 470.

it provides.<sup>20</sup> The opportunity for the electorate to influence the courts places an immense amount of power in the electorate's hands; an unfair or unethical judge can be removed, and no longer will a single person, or small group of people, be able to make decisions that hurt the entire population, without consequences.

However, whether this phenomenon operates as proponents expect it to is dubious.

Phillip L. Dubois, in his book titled *From Ballot to Bench*, argues that four conditions must be satisfied for judicial elections to actually produce accountability.

“First, the electorate must be able to pass judgment upon the performance of elected officials at regular and periodic intervals. Second, the electorate must be provided with the opportunity to express a choice between opposing candidates. . . Third, the voters must be able to identify officials with the policies they have made and, concurrently, to know in a general way what kind of policies the challenger can be expected to promote once in office. Finally, those who win public office by election must behave ‘in accordance with their pre-election attitudes’”.<sup>21</sup>

However, as Dubois notes, these conditions are seldom, if ever, met. The judicial election cycle includes little discussion of issues by candidates, public attention to judicial elections is very low, judicial elections are rarely seriously contested, and judges are rarely ever removed from their positions.<sup>22</sup> From this point of view, judicial elections seem almost indistinguishable from other types of judicial selection.

Yet, judicial elections cannot be as useless as Dubois believes, simply because the process has instances in which it has worked as expected. The most famous and relevant of these

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<sup>20</sup> Jeri Zeder, “Elected vs. Appointed?,” *Harvard Law Today*, July 2012, <https://today.law.harvard.edu/book-review/in-new-book-shugerman-explores-the-history-of-judicial-selection-in-the-u-s/>.

<sup>21</sup> Philip L. Dubois, *From Ballot to Bench: Judicial Elections and the Quest for Accountability*. (Austin, University of Texas Press, 1980), 32.

<sup>22</sup> *Ibid.*, 33.

is from 2010, when three Iowa judges were recalled from their positions because of a ruling they made. In the case *Varnum v Brien*, the Iowa Supreme Court ruled that barring same-sex couples from marrying does not serve any “important government objective” and struck down all one-man-one-woman laws in the state.<sup>23</sup> Subsequently, many prominent religious and conservative groups, both within and outside of the state, launched a campaign to oust the judges responsible. Ultimately, this campaign was successful, and three of the judges lost their retention elections.<sup>24</sup> This is the exact reason states implemented the judicial selection process; the electorate was displeased with the judges’ policy and mobilized a successful campaign against them. The judges were held accountable to the public. Although this outcome is not common, its significance should not be ignored. This recall shows that the accountability judicial elections seeks is at least possible when the issue is salient and threatening enough to a significant number of voters.

## Direct Democracy

Direct democracy allows citizens to directly participate in the lawmaking process. This increases the responsiveness of the government because laws are directly written and voted on by the citizenry. “By circumventing the legislature, initiatives allow citizens to pass policies favored by the majority without obstruction from the legislation or special interests”.<sup>25</sup> In theory, this should mean that laws passed in this way are perfectly responsive to voters. Studies have found this to be true. Research shows that initiatives indeed produce policies that represent the opinions

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<sup>23</sup> *Varnum v. Brien*, 763 N.W.2d 862.

<sup>24</sup> A. G. Sulzberger, “Ouster of Iowa Judges Sends Signal to Bench,” *The New York Times*, November 4, 2010.

<sup>25</sup> Daniel C. Lewis, *Direct Democracy and Minority Rights: A Critical Assessment of the Tyranny of the Majority in the American States*. (New York: Routledge, 2013), 8.

of the majority.<sup>26</sup> However, it is unclear whether this responsiveness results in policies that are oppressive to minorities in society.

Direct democracy gives majority groups access to directly creating laws, which allows the potential that these majority groups will abuse the rights of minority groups. Furthermore, in many states, no checks and balances exist for this lawmaking process, unlike lawmaking in traditional legislatures.<sup>27</sup> This can leave oppressive policies in place until another vote can take place, since the harmful law cannot be removed by the officials elected by the people. For example, in the 2008 general election, a majority of California voters voted yes on Proposition 8 to amend the California constitution to ban same sex marriages from being performed in the state. The proposition passed 52% to 48%, and meant an immense step back in rights for queer couples.<sup>28</sup> Direct democracy contains all of the flaws de Tocqueville worried about in his theory, and also lacks any of the restraints that can protect traditional channels of lawmaking from infringing on the rights of minorities. In his book, *Direct Democracy and Minority Rights*, Daniel C. Lewis explores a series of minority rights that were addressed in state policy through the initiative process. In states with direct democracy, Lewis found that all initiatives that were detrimental to minority rights had an increased possibility of passage. However, when looking at this with policies that positively impact minority rights, the results were mixed. While some initiatives resulted in an increase in minority rights protections, many did not.<sup>29</sup> This is strong evidence that there is some link between direct democracy and the degradation of minority

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<sup>26</sup> Lewis, *Direct Democracy*, 7.

<sup>27</sup> *Ibid.*, 2.

<sup>28</sup> Institute of Governmental Studies. "Proposition 8." University of California, Berkeley, last modified February 26, 2016, <https://igs.berkeley.edu/library/elections/proposition-8>.

<sup>29</sup> Lewis, *Direct Democracy*, 89.

rights, suggesting that this topic should be explored further. If the presence of direct democracy favors majority opinion, and is not strictly anti-minority, then the data should result in the congruence of policy outcome and public opinion.

## Legislative Professionalism

The professionalism of a legislature has also been found to increase its legislators' responsiveness. A legislature's professionalism refers to many factors, such as legislator salary, staff size, and other types of resources. Some states felt that they would rather have part-time legislators, who spent most of their time in the community doing other jobs, whereas other states wanted their legislators to be fully dedicated to their positions.<sup>30</sup> Increased resources in a more professional legislature allows legislators to more easily and accurately discover their constituents' interests.<sup>31</sup> This allows legislators to introduce and support policies that align with the views of their constituents. Representatives from more professional legislatures are more likely to win reelection, which may be a result of the representatives being more responsive to their constituents' interests.<sup>32</sup> This makes intuitive sense; if a representative was able to make the changes that their constituents want, their constituents would affirm this behavior by continuing to vote for this representative. Cherie Maestas finds that “[l]egislatures that attract a high proportion of ambitious members and allow them to devote full-time effort to legislative work

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<sup>30</sup> Thad Kousser, “Introduction” Chapter, In *Term Limits and the Dismantling of State Legislative Professionalism*, (Cambridge: Cambridge University Press, 2004), 3-28.

<sup>31</sup> Cherie Maestas, “Professional Legislatures and Ambitious Politicians: Policy Responsiveness of State Institutions”, *Legislative Studies Quarterly* 25, 4 (2000): 684.

<sup>32</sup> William D. Berry, Michael B. Berkman, and Stuart Schneiderman. “Legislative Professionalism and Incumbent Reelection: The Development of Institutional Boundaries.” *American Political Science Review* 94, no. 4, (2000)doi:10.2307/2586212, 859–74.

are the most responsive, collectively.”<sup>33</sup> The responsiveness that professionalism brings has been established, but it has still not been adequately discovered whether this responsiveness results in negative policy outcomes for minorities. In the same way that accountability in other parts of the government may be dangerous, so could increased responsiveness in a legislature. As legislators are more responsive to their constituents, they will pass laws in accordance with those constituents’ wishes. And, for a salient issue with unsupportive public opinion such as same-sex marriage, this may have increased the likelihood of states with professional legislatures banning same-sex marriage.

My study of same-sex marriage policy is not a unique one; in 2011, Robert J. Hume wrote an article titled, *Comparing Institutional and Policy Explanations for the Adoption of State Constitutional Amendments: The Case of Same-Sex Marriage*. Hume found that the differences in courts between states was connected to whether or not a state passed a constitutional amendment banning same-sex marriage, as well as how court professionalism affected which institutional avenues same-sex marriage advocates chose to pursue. He found that “initial consideration of amendments is driven by policy considerations” but “adoption is also guided by institutional considerations”.<sup>34</sup> Hume’s research ultimately establishes the connection between institutional qualities and same-sex marriage outcomes, which serves as the foundation my theory expands on.

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<sup>33</sup> Berry, Berkman, and Schneiderman, 859–74.

<sup>34</sup> Robert J. Hume, “Comparing Institutional and Policy Explanations for the Adoption of State Constitutional Amendments: The Case of Same-Sex Marriage.” *American Politics Research* 39, no. 6 (November 2011),. doi:10.1177/1532673X11402598, 1097.



# Hypotheses

There are many ways that a government can increase its responsiveness to its constituents' preferences. Same-sex marriage was legalized in three ways: through the court systems, through statutes created by the legislature, and through propositions created through direct democracy. Thus, I have chosen an important element of each of these pathways to test its responsiveness to public opinion in the case of same-sex marriage.

**Hypothesis 1 (H1):** *States that had judicial elections were more likely to have congruence between their state's same-sex marriage policy and the state's majority public opinion of legalizing same-sex marriage.*

Judicial elections seek to hold the judges accountable to the people by requiring them to be reelected or retained through elections. These elections serve as a test of the public's opinion of the judge and their rulings, and if the judge makes decisions against public interests, elections give the public an important way of addressing these rulings. However, this can be detrimental to minority rights when the general public does not support these rights. As mentioned previously, several Iowa judges were voted out of their judicial positions specifically because of a ruling they made protecting same-sex marriage.<sup>35</sup> I expect the presence of judicial elections to be correlated with the state's same-sex marriage outcome.

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<sup>35</sup> Sulzberger, "Ouster of Iowa Judges Sends Signal to Bench".

**Hypothesis 2 (H2):** *The greater the strength of a state's direct democracy, the more likely the state is to have congruence between their state's same-sex marriage policy and the state's majority public opinion of legalizing same-sex marriage.*

I expect to see that states that allow laws to be made through direct democracy will have an outcome closely matching public opinion. Direct democracy takes the key principles of the United States' democratic republic and brings it closer to its roots in true democracy. This increases responsiveness because the people are, quite literally, making laws and amending constitutions in a way that is not present in states without a direct democracy system in place. The stronger the state's system of direct democracy, the easier it is for the public to create laws that align with their interests. I expect that states in which direct democracy exists and it is easier to propose a piece of legislation, the more likely it is that the state will have congruence in its outcome and public opinion.

**Hypothesis 3 (H3):** *The more professional a state's legislature, the more likely the state is to have congruence between their state's same-sex marriage policy and the state's majority public opinion of legalizing same-sex marriage.*

As explained in the previous section, a more professional legislature gives legislators many useful resources with which they can accurately discover and implement their constituents' interests and preferences. This means that a more professional legislature should have better knowledge of its constituents feelings on same sex marriage, and I expect a more professional legislature to be correlated with a congruent outcome and public opinion.

## Research Design

The goal of this project is to discern whether the presence of institutional differences in the judicial selection process, presence of direct democracy, and legislative professionalism, are related to the differences in same-sex marriage policies between states. All of these institutional qualities are ways that citizens can more easily make their preferences known, and those preferences can be acted upon. For example, should citizens disagree with a judicial or legislative decision, in some states they can put their own initiative on the ballot to become law.

## Dependent Variable

The dependent variable for the analysis is the same-sex policy outcome of the state. This refers to whether or not same-sex marriage was legal in the state. These outcomes were produced through different ways, including federal judicial decisions, state judicial decisions, constitutional amendments, propositions, and legislation. And, nearly all states at some point considered all three institutional avenues for deciding same-sex marriage policy.<sup>36 37</sup> Because states achieved these outcomes through different routes across a period of 11 years, the most accurate compilation of this data comes from primary sources. I used the Los Angeles Times to find this data because it contains both an accurate and complete set of same-sex marriage decisions made by all 50 states. This data is coded either as a one or a zero. A one means that the

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<sup>36</sup> Richard Wolf, "Timeline: Same-Sex Marriage through the Years." *USA TODAY*, June 24, 2015, <https://www.usatoday.com/story/news/politics/2015/06/24/same-sex-marriage-timeline/29173703/>.

<sup>37</sup> "Same-Sex Marriage Fast Facts." *CNN*, September 4, 2019. <https://www.cnn.com/2013/05/28/us/same-sex-marriage-fast-facts/index.html>.

state did legalize same-sex marriage and a 0 means it did not legalize same-sex marriage prior to the *Obergefell v Hodges* U.S. Supreme court case.<sup>38</sup>

It is necessary to note that many states tried alternatives to marriage for same-sex couples, specifically civil unions. But, by 2015, much of the narrative surrounding LGBTQ+ rights had shifted from focusing on civil unions to advocating for marriage equality. This made finding credible public opinion data broken down by state on civil unions rather difficult.

My decision not to include civil unions and variation in the outcome also stems from the fact that the allowance of civil unions did not solve many inequality issues for same-sex couples. While civil unions were a step in the correct direction, they still left same-sex couples entirely unprotected and unrecognized under federal law. The label of ‘civil union’ solidified the distinction between homosexual and heterosexual couples, which justified their unequal treatment under the law. It was only once states began giving same-sex relationships the moniker of ‘marriage’ that the court was able to rule that this unequal treatment was unfair in the U.S. Supreme Court case of *United States v Windsor*.<sup>39</sup> Civil unions were an important step forward for the country, but they ultimately were created as an attempt to placate same-sex couples without providing real legal equality. Because civil unions were so far from the equality that same-sex couples fought for, I have chosen to not include civil unions as a successful, or semi-successful, outcome.

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<sup>38</sup> Los Angeles Times Staff, “Gay marriage”.

<sup>39</sup> *United States v. Windsor*, 570 U.S. 744 (2013).

## Public Opinion

Because “polls are usually conducted in individual states only at the height of popular or legislative action around the issue,”<sup>40</sup> and thus “state-level. . . annual estimates of issue specific attitudes are not yet available,”<sup>41</sup> standardized data concerning public opinion of same-sex marriage that were both across this time period and broken down by state were unfortunately not available to me. Thus, I had to settle for data from 2014, instead of 2015. Unfortunately, this could allow a slight change in public opinion to interfere with my results, but as this data is uncommon, this is necessary. This data is on a scale of 0 to 100, where 100 would mean that 100% of people in the state support same-sex marriage, and a score of 0 would mean that 0% of people in the state support same-sex marriage. This data is taken from an analysis done by Jessica Walthall and Joanna Piacenza titled “Attitudes on Same-sex Marriage in Every State”. This data comes from the Public Religion Research Institute, or PRRI, which is a nonprofit that conducts public opinion polls on a variety of topics.<sup>42</sup> The data from this source was recoded to combine the ‘strongly favor’ and ‘favor’ categories, which produces the percent of people within the state that support same-sex marriage.

## Independent Variables

The independent variables relate to the state’s judicial selection process, its direct democracy, and its legislature’s professionalism. The idea is to gain insight into how

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<sup>40</sup> Andrew R Flores and Scott Barclay. “Public Support for Marriage for Same-Sex Couples by State,” (Los Angeles, The Williams Institute, 2013), 2-3.

<sup>41</sup> Lewis, 84

<sup>42</sup> Jessica Walthall and Joanna Piacenza. “Attitudes on Same-sex Marriage in Every State,” *PRRI*, April 20, 2015. <https://www.prii.org/spotlight/map-every-states-opinion-on-same-sex-marriage/>.

governmental responsiveness can negatively impact minority rights, and these three institutional aspects are typically thought to increase responsiveness. Thus, the use of these three variables are adequate to test the theory.

Data about each state's judicial selection process can be found in *Judicial Process in America* by Robert A. Carp, et al., that categorizes each state by the method of judicial selection for its court of last resort. Each state is classified into one of five categories: partisan elections, nonpartisan elections, merit selection, gubernatorial appointment, or legislative appointment. This data is coded as a one or a zero; a one meaning that the state does have judicial elections and a zero meaning the state does not have judicial elections.<sup>43</sup> Partisan elections and nonpartisan elections will be categorized into the same category because ultimately they both provide a way for voters to make their interests known.

Legislative professionalism data can be found in Peverill Squire's work "A Squire Index Update", which contains data from 2015. Squire gives each state a score on a continuous scale between zero and one, based on its legislature's professionalism. This score factors in legislator pay, the number of days in session, and staff per legislator. The U.S. Congress is then used as a baseline to compare each state's legislature against, and the state legislature is given an overall score of its professionalism as compared to Congress. A score of one would be exactly as professional as the U.S. Congress, and as the score decreases, the state legislature's

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<sup>43</sup> Robert A. Carp et. al, *Judicial Process in America*, (Thousand Oaks: CQ Press, 2017), 94.

professionalism decreases.<sup>44</sup> The Squire Index is a widely used and generally accepted measure of professionalism in state legislatures.<sup>45</sup>

Lastly, data about a state's direct democracy can be found in "Measuring the Effect of Direct Democracy on State Policy: Not All Initiatives Are Created Equal" by Shaun Bowler and Todd Donovan. This paper has given states with direct democracy a score based on how difficult it is for initiatives to qualify to be put on the ballot. This is calculated by summing all the "formal provisions that increase the difficulty of qualifying a measure for the ballot, giving special weight to a state's petition signature requirements".<sup>46</sup> The scores range from zero to six, with the higher numbers indicating a higher difficulty to put initiatives on the ballot. These variables have been re-coded to fall between 0 and 1, and this was done by multiplying all of Bowler and Donovan's values by  $\frac{1}{6}$ .<sup>47</sup>

## Controls

It is necessary to consider several controls that are likely to interfere. Each control was chosen because it is demonstrably relevant, and together they encompass many factors that are related to my question.

The first control is a rate of anti-gay hate crimes per capita. This is used as a proxy for how visible gay people may be, as well as how they are treated. It makes intuitive sense that the

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<sup>44</sup> Peverill Squire, "Measuring State Legislative Professionalism: The Squire Index Revisited," *State Politics & Policy Quarterly* 7, no. 2 (2007): 220-221.

<sup>45</sup> Alan Rosenthal, "State Legislative Development: Observations from Three Perspectives," *Legislative Studies Quarterly* 21, no. 2 (1996): 174..

<sup>46</sup> Shaun Bowler, and Todd Donovan. "Measuring the Effect of Direct Democracy on State Policy: Not All Initiatives Are Created Equal." *State Politics & Policy Quarterly* 4, no. 3 (2004): 349

<sup>47</sup> Analysis was also done with this variable re-coded as 1 and 0, whether the state had direct democracy channels or not. This resulted in no significant changes to my findings.

more gay people an individual sees or knows, the more likely they are to support gay marriage.<sup>48</sup> This variable was found by dividing the number of anti-gay hate crimes in a state by the state's population. Each year, the FBI collects data on hate crimes, which is available on their website. The data, from 2015, is broken down both by motivation, and by state.<sup>49</sup> Even though this cannot account for hate crimes that are not reported, it is ultimately the closest I can get. Population estimates for each state in 2015 are from the U.S. Census Bureau.<sup>50</sup> The per capita rate for each state was thus found by dividing the number of anti-gay hate crimes in a state by the state's population.

Another relevant control is race. The Pew Research Center found that there was a difference in opinion in different racial categories, with white participants being more likely to be in favor of gay marriage than African American participants. To take this into account, this variable was found by identifying the percentage of each state's population that is white. This data was retrieved from the Kaiser Family Foundation, who assembled it from Census Bureau data.<sup>51</sup>

The Pew Research Center found a small relationship between income and opinion on same-sex marriage. As income increases, so does the percentage of people who support same-sex

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<sup>48</sup> I was unable to find data on this, but this control is important nonetheless. Instead, I use hate crimes as a proxy for increased visibility, as well as the treatment of gay people.

<sup>49</sup> Federal Bureau of Investigation, Criminal Justice Information Services Division, "2015 Hate Crime Statistics," <https://ucr.fbi.gov/hate-crime/2015>.

<sup>50</sup> Governing, "State Population By Race, Ethnicity Data," e.Republic California Residents, <https://www.governing.com/gov-data/census/state-minority-population-data-estimates.html>

<sup>51</sup> Ibid.



marriage.<sup>52</sup> Therefore, median income and poverty rate are other important controls to factor in. Data for both of these variables in 2015 were retrieved from the Census Bureau.<sup>53 54</sup>

Gallup Polling found a consistent relationship between religiosity and opinion on same-sex marriage. The stronger an individual's religiosity, the more likely they are to oppose same-sex marriage.<sup>55</sup> The variable I chose to represent this is the percent of the population within the state that identified as highly religious. The Pew Research Center has this data, broken down by state.<sup>56</sup>

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<sup>52</sup> "Same-Sex Marriage Detailed Tables, 2017." Pew Research Center - U.S. Politics & Policy, June 26, 2017, <https://www.people-press.org/2017/06/26/same-sex-marriage-detailed-tables-2017/>.

<sup>53</sup> Gloria G. Guzman, "Household Income: 2016," U.S. Department of Commerce, 2017, <https://www.census.gov/content/dam/Census/library/publications/2017/acs/acsbr16-02.pdf>, 3.

<sup>54</sup> Alemayehu Bishaw and Craig Benson, "Poverty: 2015 and 2016," U.S. Department of Commerce, 2017, <https://www.census.gov/content/dam/Census/library/publications/2017/acs/acsbr16-01.pdf>

<sup>55</sup> Frank Newport, "Religion, Race and Same-Sex Marriage." *Gallup*, May 1, 2015. <https://news.gallup.com/opinion/polling-matters/182978/religion-race-sex-marriage.aspx>.

<sup>56</sup> Michael Lipka and Benjamin Wormald, "How religious is your state?," Pew Research Center, February 29, 2016, <https://www.pewresearch.org/fact-tank/2016/02/29/how-religious-is-your-state/>.

# Results

Immediately prior to the *Obergefell* case, state same-sex marriage outcomes did not perfectly match the opinion of the public. As is seen in Figure 1, 5 states had a majority in favor of the legalization of same-sex marriage, but it was not legalized; 8 states had a majority opinion against the legalization of same-sex marriage, and 37 states had their public opinion match their

**Table 1: States Categorized by Same-Sex Marriage Outcome and Public Opinion**

	Majority in Favor	Majority Opposed
Legalized Same Sex Marriage	Alaska Arizona California Colorado Connecticut Delaware Florida Hawaii Idaho Illinois Iowa Maine Maryland Massachusetts Minnesota Nevada New Hampshire New Jersey New Mexico New York Oklahoma Pennsylvania Rhode Island Vermont Virginia Washington Wisconsin	Indiana Montana North Carolina Oregon South Carolina Utah West Virginia Wyoming
Non-Legalized Same Sex Marriage	Kansas Michigan Nebraska North Dakota Ohio	Alabama Arkansas Georgia Kentucky Louisiana Mississippi Missouri South Dakota Tennessee Texas

same-sex marriage outcome.<sup>57</sup> To test if the chosen responsiveness factors affected whether the state had a congruent outcome and public opinion, I calculated the mean institutional responsiveness score within each category, for each of the three variables. Figure 1 shows the mean direct democracy score of each category, Figure 2 shows the mean judicial selection score of each category, and Figure 3 shows the mean legislative professionalism score of each category. To determine the significance and difference between these means, I conducted a series of t-tests, also shown in Figures 1, 2, and 3.

If these institutional responsiveness factors were actually related to producing a congruent outcome, then the states with congruence should have higher responsiveness scores than the states without congruence. However, this is not shown by the data. Firstly, there is no pattern to which category has higher responsiveness scores. Instead of the congruence boxes scoring higher than the non-congruent boxes, the responsiveness scores are erratically higher and lower. Second, only one of the t-tests is statistically significant. The only p-value to show statistical significance is for one of the difference in legislative professionalism means of the states with same-sex marriage legalized. Within the groups of states that did/didn't legalize same-sex marriage, all other institutional factors have a similar influence on outcome regardless of whether majority public opinion is unsupportive of legalization. Likewise, within the groups of states that have majority opinion in favor/opposed, the institutional factors had a similar influence on outcome. Ultimately, this suggests that I cannot reject the null hypothesis.

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<sup>57</sup> Los Angeles Times Staff, "Gay marriage".

**Figure 1: Mean Judicial Selection Score, 2014**

	Majority in Favor	Majority Opposed	T-Test
Legalized Same Sex Marriage	0.2963	0.5	t = -0.97407, p-value = 0.3522
Non-Legalized Same Sex Marriage	0.6	0.7	t = -0.34641, p-value = 0.7389
T-Test	t = 0.40432, p-value = 0.7004	t = -0.28562, p-value = 0.7797	

**Figure 2: Mean Direct Democracy Score, 2014**

	Majority in Favor	Majority Opposed	T-Test
Legalized Same Sex Marriage	0.228395062	0.25	t = -0.14897, p-value = 0.8847
Non-Legalized Same Sex Marriage	0.3	0.2	t = 0.69437, p-value = 0.5041
T-Test	t = -1.645, p-value = 0.2955	t = -0.82305, p-value = 0.4239	

**Figure 3: Mean Legislative Professionalism Score, 2014**

	Majority in Favor	Majority Opposed	T-Test
Legalized Same Sex Marriage	0.24633	0.12888	t = 3.4713, p-value = 0.001609
Non-Legalized Same Sex Marriage	0.22	0.1358	t = 1.3871, p-value = 0.231
T-Test	t = -0.57702, p-value = 0.584	t = 0.30787, p-value = 0.7631	

## Regressions

I then ran a series of regressions including and excluding various values for various regressions and have displayed their values in Table 2. Each column is a separate regression and includes the variables with listed coefficients. The table is split in pairs of regressions; each pair is largely the same regression, but the second of the two in each pair includes control variables (See Appendix A for complete list). The control variable of anti-LGBTQ+ hate crimes per capita produced a statistically significant coefficient in all four models, and the control variable of a state's percentage that identify as highly religious produced a significant coefficient in Model d assessing responsiveness via judicial elections. The negative coefficient on hate crimes per capita and percent highly religious shows that, at a 99% confidence interval, as these two variables increase, there is a decrease in the likelihood that same-sex marriage will be legalized. Aside from those two controls, the only statistically significant variable is public opinion in the Direct Democracy regression (Model e). In states without institutional factors that increase responsiveness, public opinion has no statistically significant influence on legalization, which aligns with my theory. However, even in states with responsive institutions, public opinion still does not have a statistically significant influence. That is, seemingly supportive majority public opinion does not appear to lead to legalized same-sex marriage. This further supports that I cannot reject the null hypothesis.

**Table 2: Series of Regressions Table**

	(a) Full Regression	(b) Full- With Controls	(c) Judicial Selection	(d) Judicial- With Controls	(e) Direct Democracy	(f) DD- With Controls	(g) LP	(h) LP- With Controls
Intercept	0.133462	2.446e+00	-0.148639	1.405e+00	-0.621344 .	1.639e+00	-0.31771	1.886e+00
Judicial Elections	-0.849673	-1.257e+00	-0.754824	-9.655e-01				
Direct Democracy	0.278759	-7.985e-01			0.224545	-7.896e-01		
Legislative Professionalism	-2.337204	-3.952e+00					-1.84251	-2.349e+00
Public Opinion	0.012479	-9.432e-03	0.017083*	4.376e-03	0.024561***	6.227e-03	0.01975.	3.206e-03
Judicial Selection*Public Opinion	0.014882	2.265e-02	0.012625	1.674e-02				
DD*Public Opinion	-0.005733	1.339e-02			-0.003207	1.528e-02		
LP* Public Opinion	0.038481	6.927e-02					0.03001	4.296e-02
% Highly Religious		-2.038e+00		-2.277e+00 .		-1.911e+00		-1.938e+00
Hate Crimes per Capita		-5.891e+01*		-4.972e+01*		-4.803e+01*		-4.717e+01*
% White		-3.827e-02		-7.259e-02		-2.540e-01		-2.481e-01
Median Income		5.349e-06		7.094e-06		4.439e-06		3.839e-06
Poverty Rate		2.171e+00		3.088e+00		-2.781e-01		8.110e-02

Signif. codes: 0 '\*\*\*' 0.001 '\*\*' 0.01 '\*' 0.05 '.' 0.1 ' ' 1

## Marginal Effects

Lastly, I created a series of marginal effects plots to further determine the effects of these institutional factors. For each institutional dynamic, a regression was used to create a marginal effects plot, shown in Figures 4, 5, and 6. These Figures are based off of the regressions shown in Table 2; Figure 4 corresponds with Model c, Figure 5 corresponds with Model e, and Figure 6 corresponds with Model g. Plots were also run both with Model a as well as including the various controls, Models b, d, f, and h, but there was no significant change to the results (See Appendix B, C, and D for plots). All of these other graphs are extremely similar to each other, with no substantive changes to their conclusions.

I hypothesized that institutions with greater ability to be responsive would exhibit greater responsiveness to majority public opinion on same-sex marriage legalization. In theory, states with direct democracy, judicial elections, and professional legislators would be more likely to legalize same-sex marriage when majority public opinion within the state is supportive of same-sex marriage. And, states with similar institutional dynamics would be less likely to legalize same-sex marriage when majority public opinion within the state is not supportive of same-sex marriage. Evidence confirming these expectations is present in the marginal effects plots *if* in states with favorable majority public opinion there is a positive, statistically significant difference in the legalization of same-sex marriage in states with the most ability to be responsive compared to states without the ability to be responsive.

The results displayed in Figures 4 through 6 fail to confirm the expectations. An institution’s ability to be responsive appears to have no statistically significant influence on the legalization of same-sex marriage, regardless of the percentage of constituents in a state who are supportive of legalizing same-sex marriage.

Figure 4: Judicial Selection Marginal Effects Plot, Based on Model c

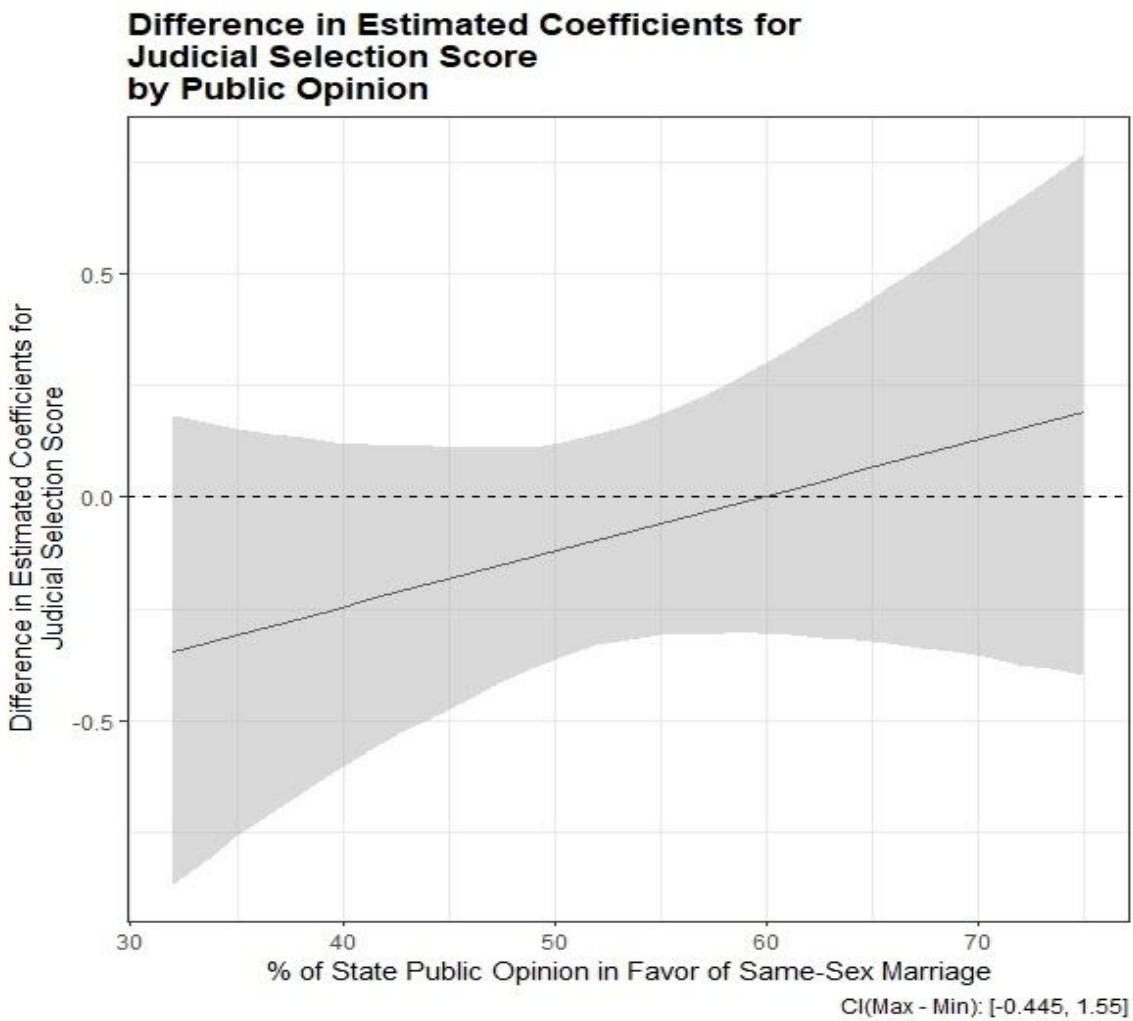




Figure 5: Direct Democracy Marginal Effects Plot, Based on Model e

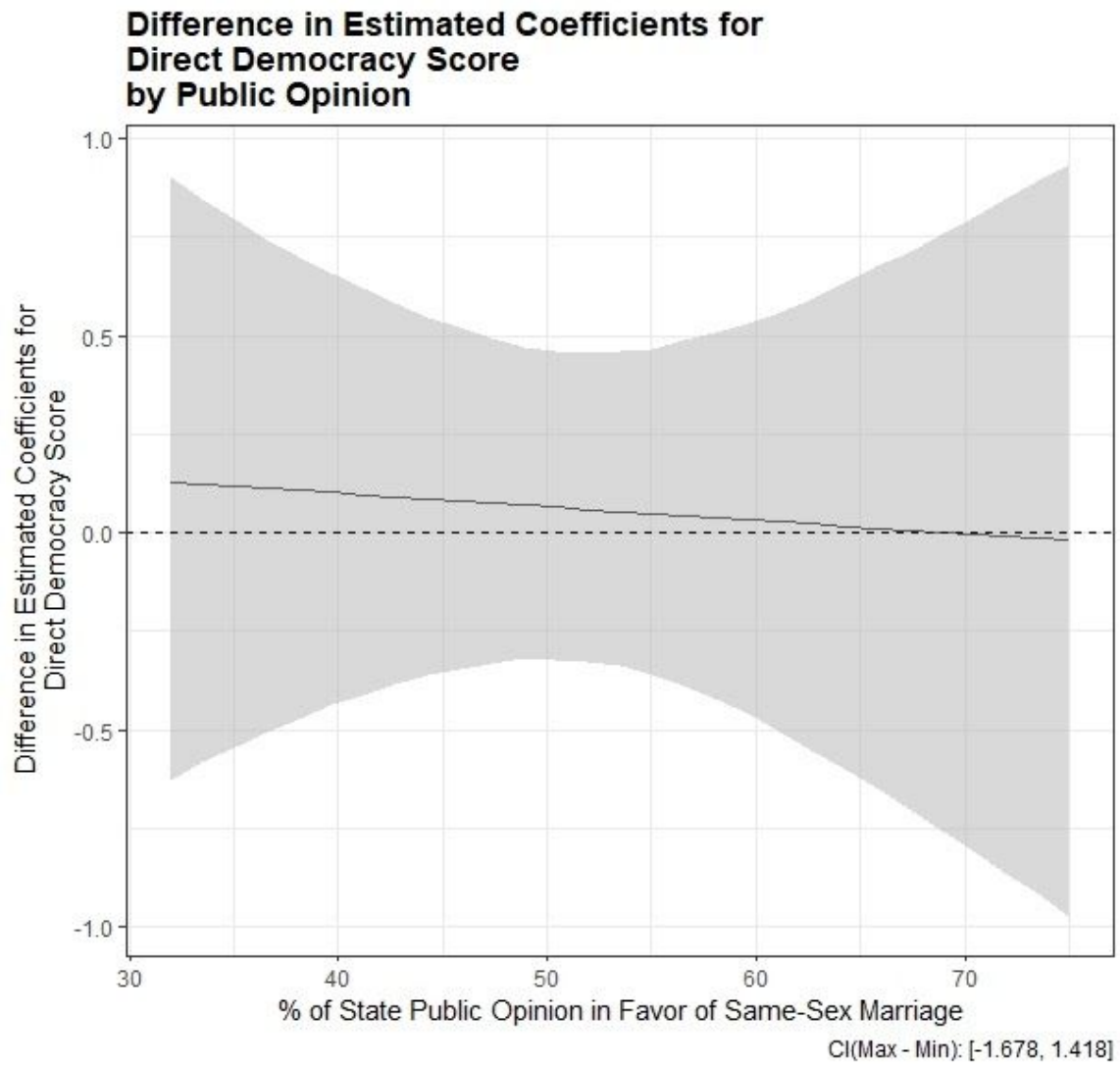
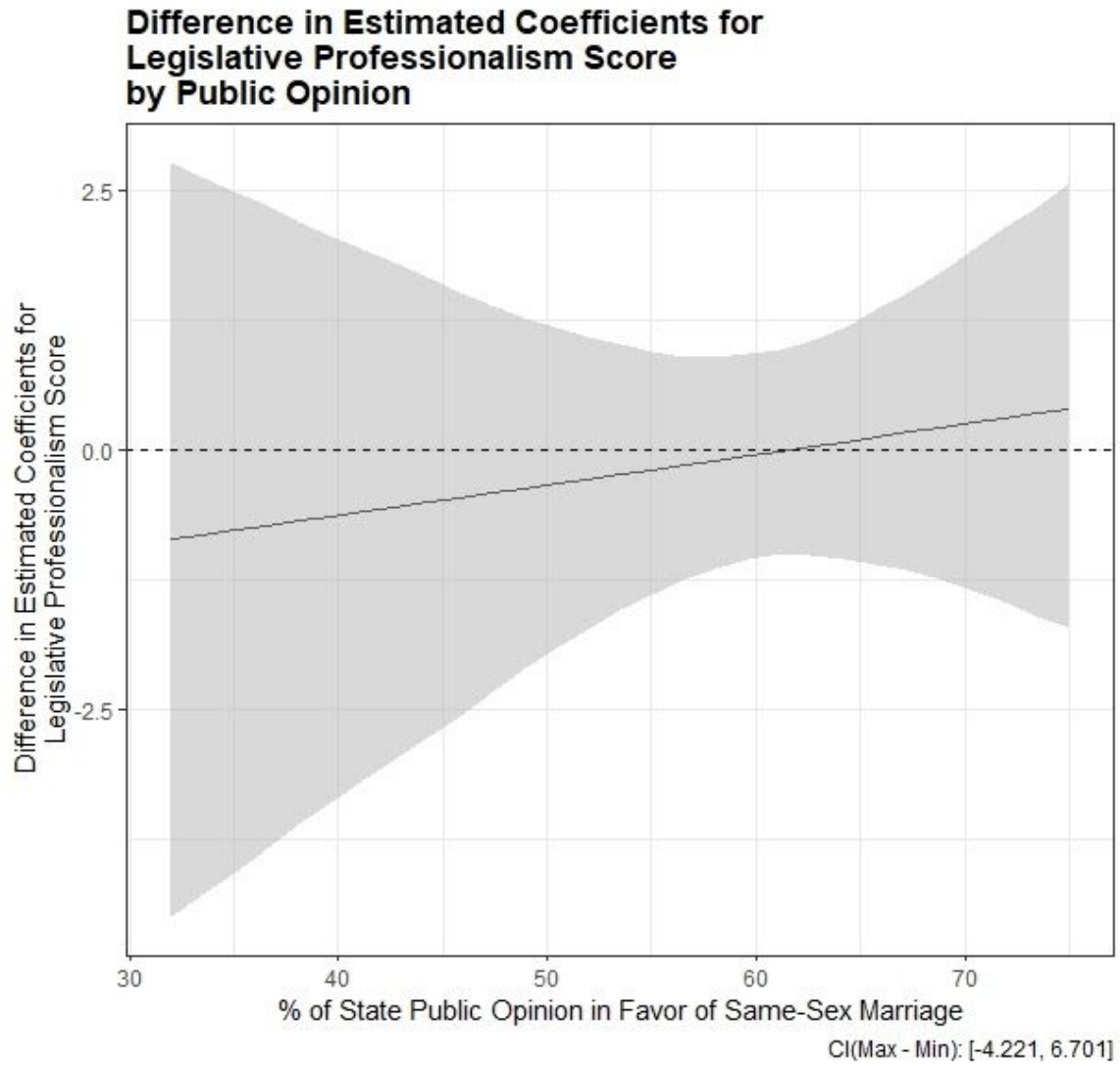


Figure 6: Legislative Professionalism Marginal Effects Plot, Based on Model g



## Discussion

While my hypotheses appear to be intuitively correct, the analyses led to the same result: I am unable to reject the null hypothesis. I propose that there may be many reasons for this.

### The Non-Responsiveness of Judicial Elections

As previously discussed, it is dubious whether judicial elections actually increase responsiveness as expected. Phillip L. Dubois put forward four criteria for responsiveness to be possible in the context of judicial elections, each posing a challenge to judicial elections' effectiveness.

The first relevant criterion that must be met is that voters must be able to pass judgment on the judge at regular and periodic intervals. However, only a handful of state supreme courts require that judges participate in a retention election, and even fewer require participation in subsequent elections. And, many of those subsequent terms are for 10 or more years. This hardly qualifies as regular or periodic, and it seems rather unlikely that voters would strongly remember decisions made 10 years prior. Additionally, judges are ethically prohibited from discussing their potential future rulings, further decreasing voters' chances of accurately discerning a judge's views.

The other relevant criterion is that the judge must continue with the behavior that voters expect from them. However, there is no procedure in place to do so. The process of removing a judge is difficult, and requires a complex impeachment process proving gross misconduct, malfeasance, or similar behavior. Only two state judges, in the entire country, have been

impeached in the last 20 years.<sup>58</sup> Judges, once seated, have immense power and no reason to hold to their pre-election promises.

Judicial elections, in order to be genuinely responsive, needed to satisfy all four criteria. In most states, the judicial selection process does not satisfy at least two. For these reasons, it is not surprising that the presence of judicial elections has no bearing on whether or not same-sex marriage policy was congruent with public opinion.

## Direct Democracy and the Degradation of Minority Rights

The theory showed that same-sex marriage along with other minority rights, are often threatened by direct democracy channels. Lewis found that minority rights were diminished more often than they were bolstered. If this was because of simple majoritarian reasons, then the data should have shown that increased direct democracy was linked with increased congruence across outcomes. But, this is not what the data shows. I was unable to conclude that the degree of, or presence of, direct democracy had any effect on congruence. Coupled with Lewis's findings, the absence of a majoritarian conclusion suggests that the degradation Lewis observed may indeed be exclusive to minority rights, echoing the Tyranny of the Majority theory.

## The Role of the Federal Government

Another confounding factor may be the way in which some states acquired same-sex marriage legalization. Although marriage is typically a state issue, cases closer to 2015 began to be fought in federal courts. Because federal district courts' decisions cross state lines, this meant

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<sup>58</sup> "Methods of Removing State Judges." American Judicature Society.  
[https://web.archive.org/web/20130115105653/https://ajs.org/ethics/eth\\_impeachment.asp](https://web.archive.org/web/20130115105653/https://ajs.org/ethics/eth_impeachment.asp).

that a judge in one state could decide same-sex marriage legal precedent in other states. For example, the 9th Circuit Court, located in California, decided in 2014 that discrimination based on sexual orientation should be held to heightened scrutiny, a much higher standard than previously established.<sup>59</sup> Such a decision set precedent for how the district courts across all states in the 9th Circuit were to consider such discrimination claims, which certainly influenced subsequent rulings.

But, such interstate rulings override one of the core assumptions in my analysis: that each state's outcome is independent from all other states'. The presence of interstate rulings by the federal government proposes a unique problem to the question asked in this paper, one that would require an entirely distinct approach, if it is at all possible to account for such things.

## Data Limitations

The time period preceding *Obergefell* was a period of significant change regarding opinions on same-sex marriage. From 1999, 27% of the population believed that same-sex marriage should be legal, but by 2015, 60% of the population believed that same-sex marriage should be legal. During that same time period, the number of states in which same-sex marriages were legal went from 0 to 37. It is evident that this was a period of change, and it is possible that this rapid change could have influenced my results. Taking a countrywide average of the outcomes and public opinion in the years 2012 and 2014 illustrates this well. From 2012 to 2014, public opinion jumped from 43% to 53% in favor of same sex marriage, but over this same period, states with legalized same sex marriage jumped from 18% to 70%. Time is an important

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<sup>59</sup> *Smithkline Beecham Corporation v. Abbott Laboratories* (2014) United States Appellate Court, 9th Circuit.

factor in this problem, and the fact that I was unable to incorporate it into my analysis likely affected my results. The idea of responsiveness itself includes time. A government is not responsive to its constituents' interests if the government does not represent those interests within a reasonable time frame. Ideally, I could have included exactly how quickly the states were able to respond, but this would require an intensive, in-depth analysis of each state's circumstances, change in public opinion, and governmental response. A case study along this train of thought would be a useful expansion of this topic.

As previously mentioned, an individual's political resources strongly affect whether their policy preferences are implemented.<sup>60</sup> The data I used, from 2014, was collected through stratified, single-stage, random-digit-dialing of landline telephone households and randomly generated cell phone numbers.<sup>61</sup> If responsiveness is just for those of higher socioeconomic status, then there would be no reason for outcomes to be linked to public opinion sampling the entire state's population.

My public opinion data also does not discriminate between those who are eligible or ineligible to vote, or who do or do not vote. All three institutional variables are affected by this on some level; nonvoters cannot participate in judicial elections or direct democracy, and legislators often do not focus on nonvoters. On the other hand, however, representatives are very likely to be more in tune with their constituents who vote than their constituents who do not vote, for the simple fact that the representative wishes to keep their job. A sampling of the entire population therefore may have produced a different result than a sampling of the voting population. Thus, a government may have been perfectly responsive to their voting constituents,

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<sup>60</sup> Grimes and Esaiasson, "Government Responsiveness," 758-68.

<sup>61</sup> Walthall and Piacenza. "Attitudes on Same-sex Marriage in Every State".

but they were not responsive to their state's population as a whole; I was testing for the latter but the former is not necessarily less responsive, it is just responsive in a different sense. However, there is a statistically significant correlation between my public opinion data and the policy outcomes, which suggests that the public opinion I have is not the issue.

Lastly, the choice to not include civil unions as a 'successful' outcome may have affected results. Many people during this time had extremely strong beliefs, and thus civil unions may have been an attempt to placate parties on both sides. Therefore, institutional responsiveness may have appeared in the form of civil unions instead of equal marriage. And, by excluding it, I may be missing many instances of these institutions' responsiveness.

## Conclusion

All in all, I could not prove that whether a state has judicial elections, the professionalism of its legislature, nor how easily policy can be made through its direct democracy channels actually increased the responsiveness of the government to same-sex marriage in 2015. It may be that these institutions are simply not as responsive as we perceive them to be, or it may be that my data had limitations I was unable to overcome. However, the results produced were still in the expected direction, which implies that there may still be some truth to the theory.

An analysis in such a way as I did in this paper, may just inherently be wrong to consider this issue. Much of this paper was built off the assumption that public opinion changed same-sex marriage policy, and not the other way around. But, as gay marriages become legal and the legal visibility of queer people skyrockets, it would not be implausible that this affects, on a large scale, how people think of queer issues such as same-sex marriage.

The fact remains that over this period, public opinion and outcomes changed, and both in the same direction. There is an undeniable connection between these two when you observe the changes across decades. Such an enormous change likely has extensive causes and is affected by innumerable factors.



# Appendices

## Appendix A: Regressions shown in Table 2

**Model (a)**- Outcome= Judicial Elections+Direct Democracy+Legislative Professionalism+Public Opinion\*Judicial Selection+Public Opinion\*Direct Democracy+Public Opinion\*Legislative Professionalism

**Model (b)**- Outcome= Judicial Elections+Direct Democracy+Legislative Professionalism+Public Opinion\*Judicial Selection+Public Opinion\*Direct Democracy+Public Opinion\*Legislative Professionalism+Hate Crimes Per Capita+Median Income+Poverty Rate+% White+% Highly Religious

**Model (c)**- Outcome= Judicial Elections+Public Opinion\*Judicial Selection

**Model (d)**- Outcome= Judicial Elections+Public Opinion\*Judicial Selection+Hate Crimes Per Capita+Median Income+Poverty Rate+% White+% Highly Religious

**Model (e)**- Outcome=Direct Democracy+Public Opinion\*Direct Democracy

**Model (f)**- Outcome=Direct Democracy+Public Opinion\*Direct Democracy+Hate Crimes Per Capita+Median Income+Poverty Rate+% White+% Highly Religious

**Model (g)**- Outcome=+Legislative Professionalism+Public Opinion\*Legislative Professionalism

**Model (h)**- Outcome=+Legislative Professionalism+Public Opinion\*Legislative Professionalism+Hate Crimes Per Capita+Median Income+Poverty Rate+% White+% Highly Religious

## Appendix B: Marginal Effects Plots With Full Regression

Figure 7: Judicial Selection Marginal Effects Plot, Based on Model a

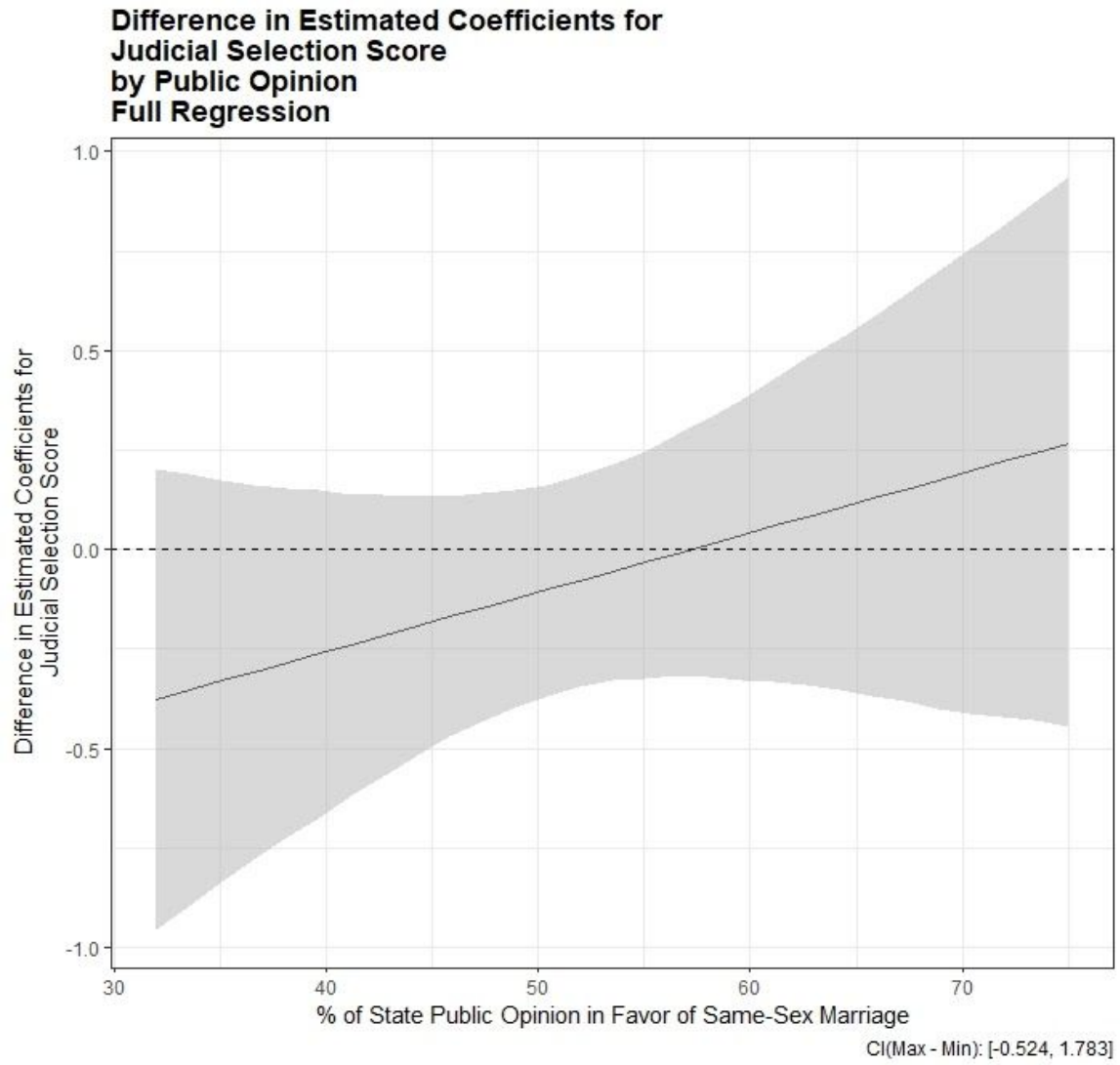


Figure 8: Direct Democracy Marginal Effects Plot, Based on Model a

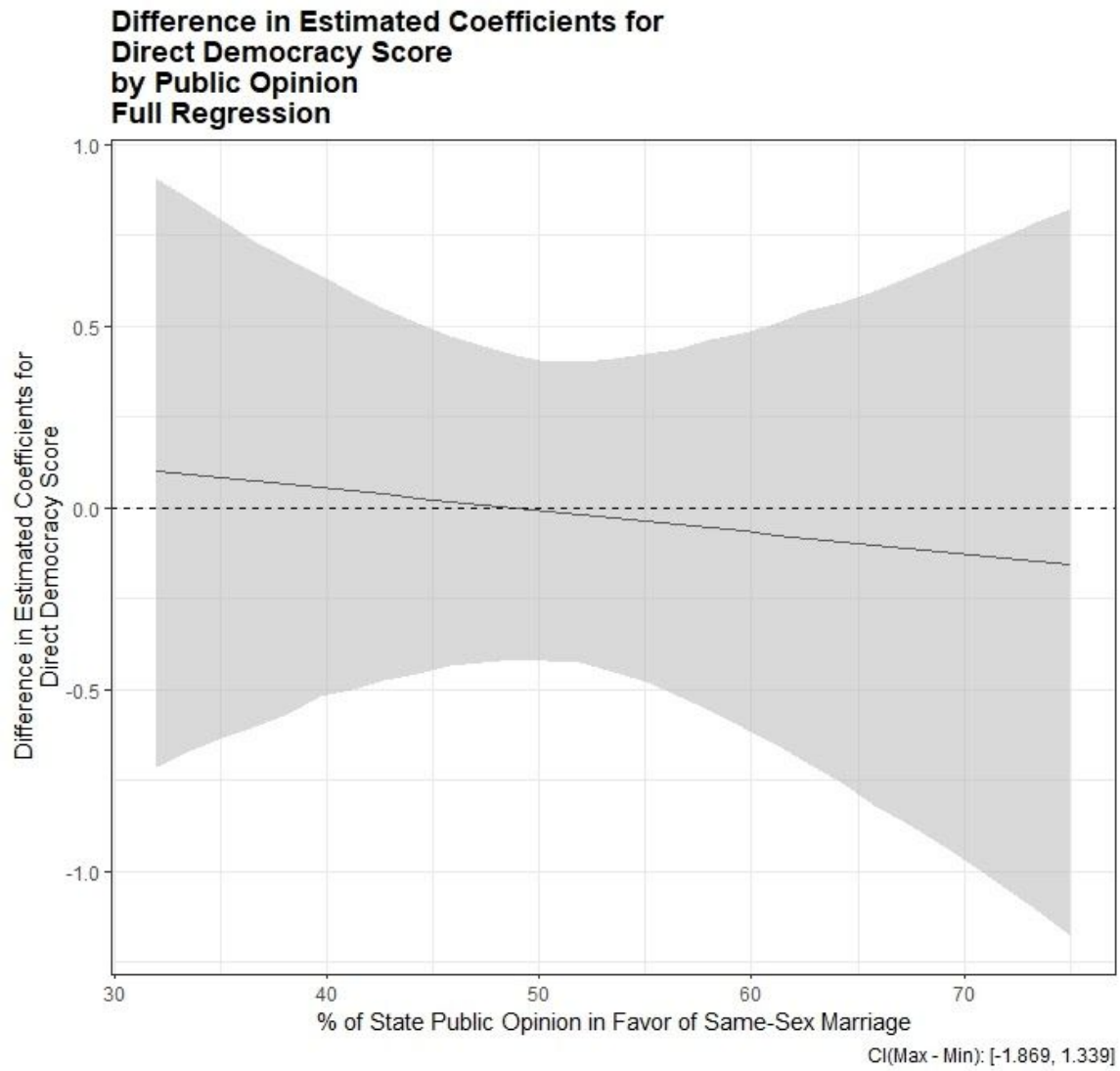
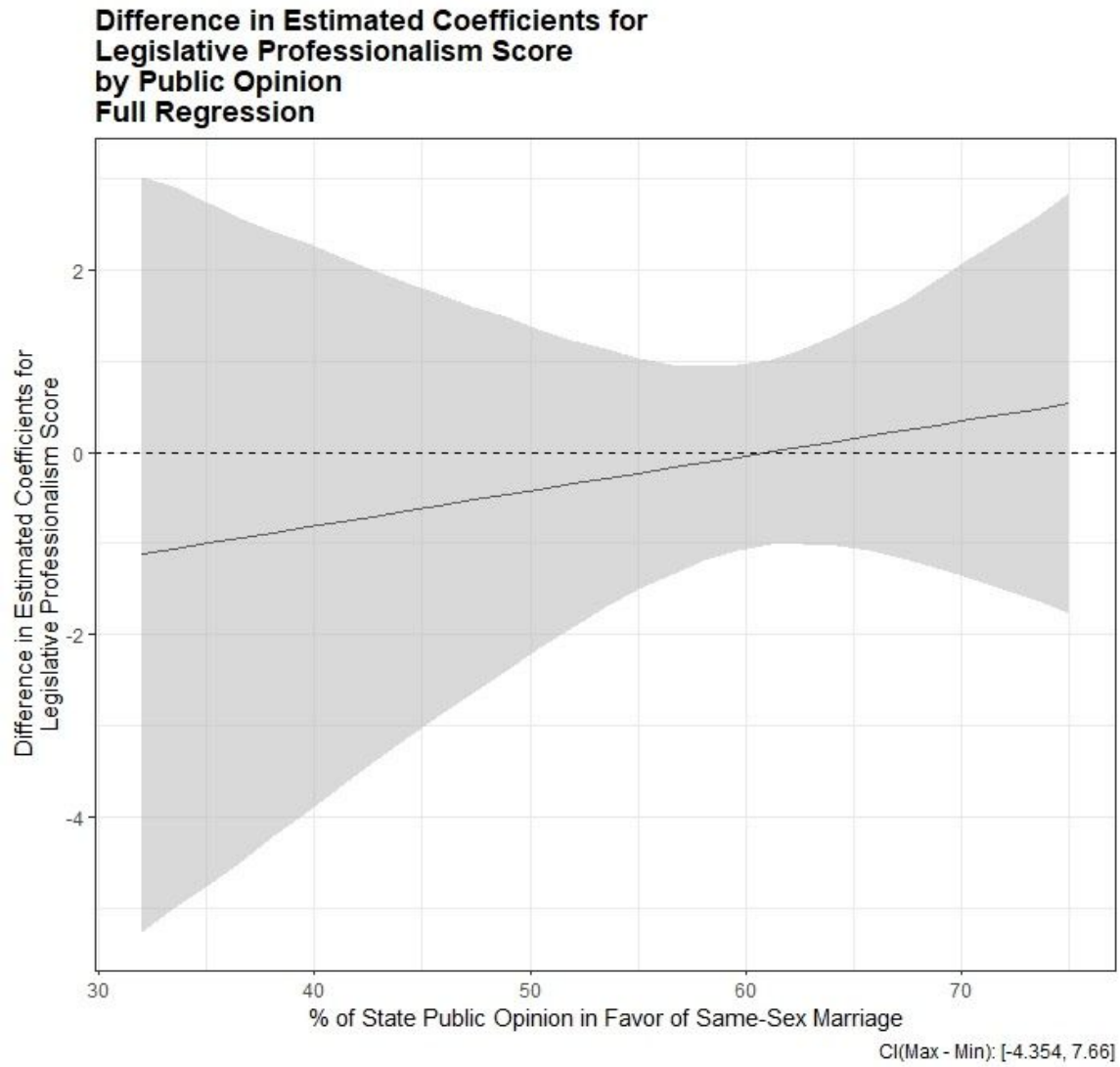


Figure 9: Legislative Professionalism Marginal Effects Plot, Based on Model a



## Appendix C: Marginal Effects Plots with Controls

Figure 10: Judicial Selection Marginal Effects Plot, Based on Model c

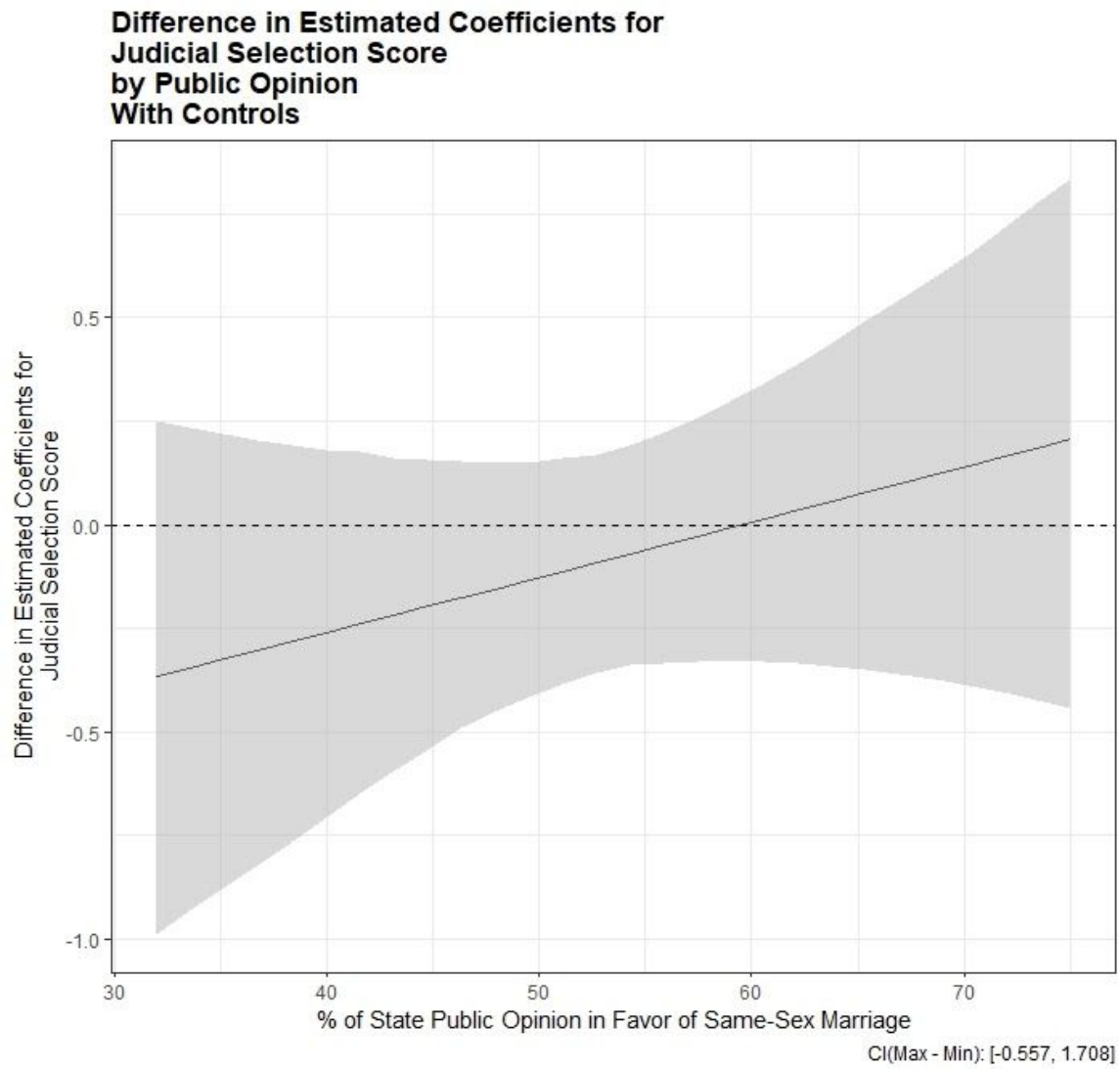


Figure 11: Direct Democracy Marginal Effects Plot, Based on Model f

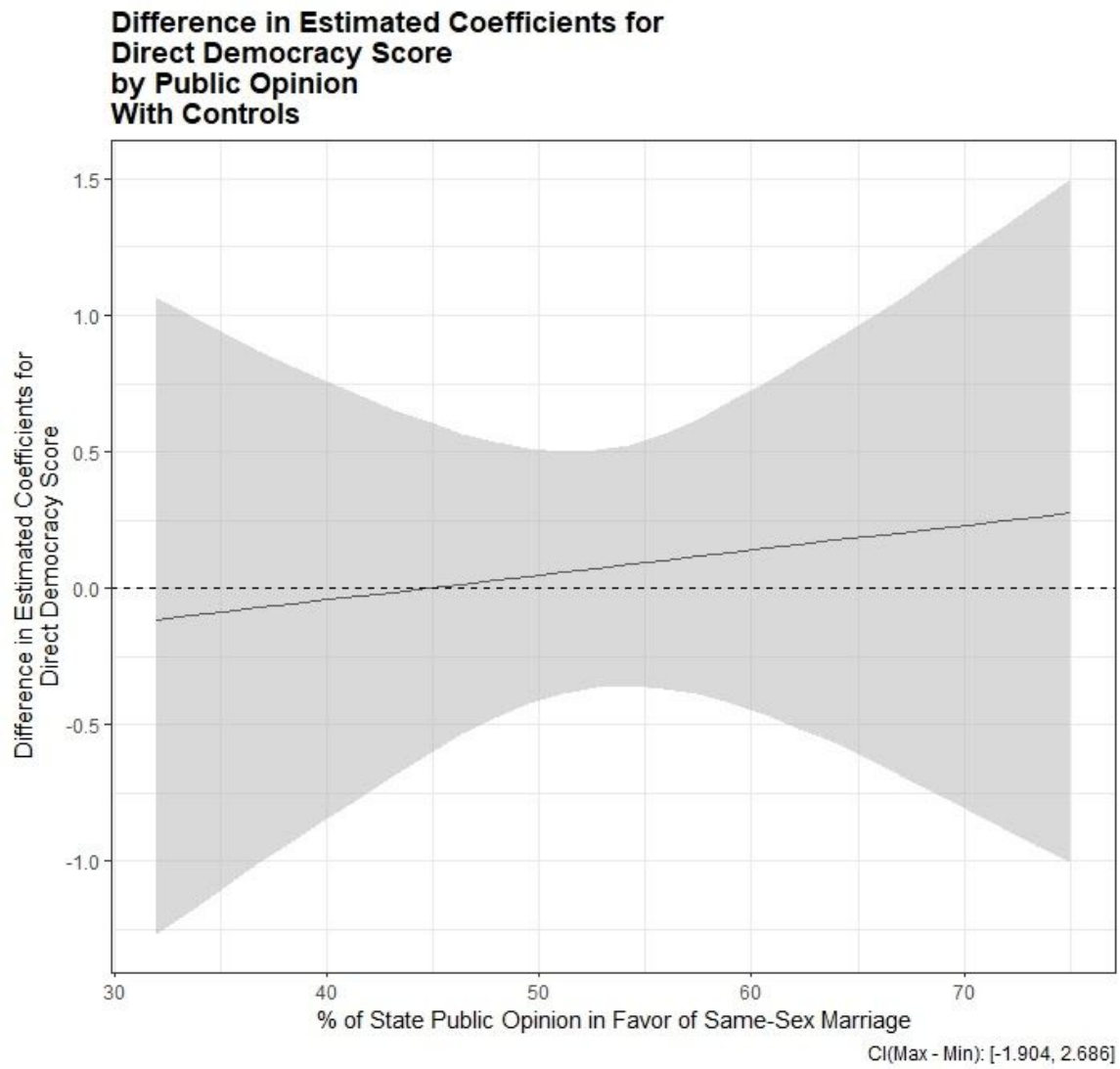
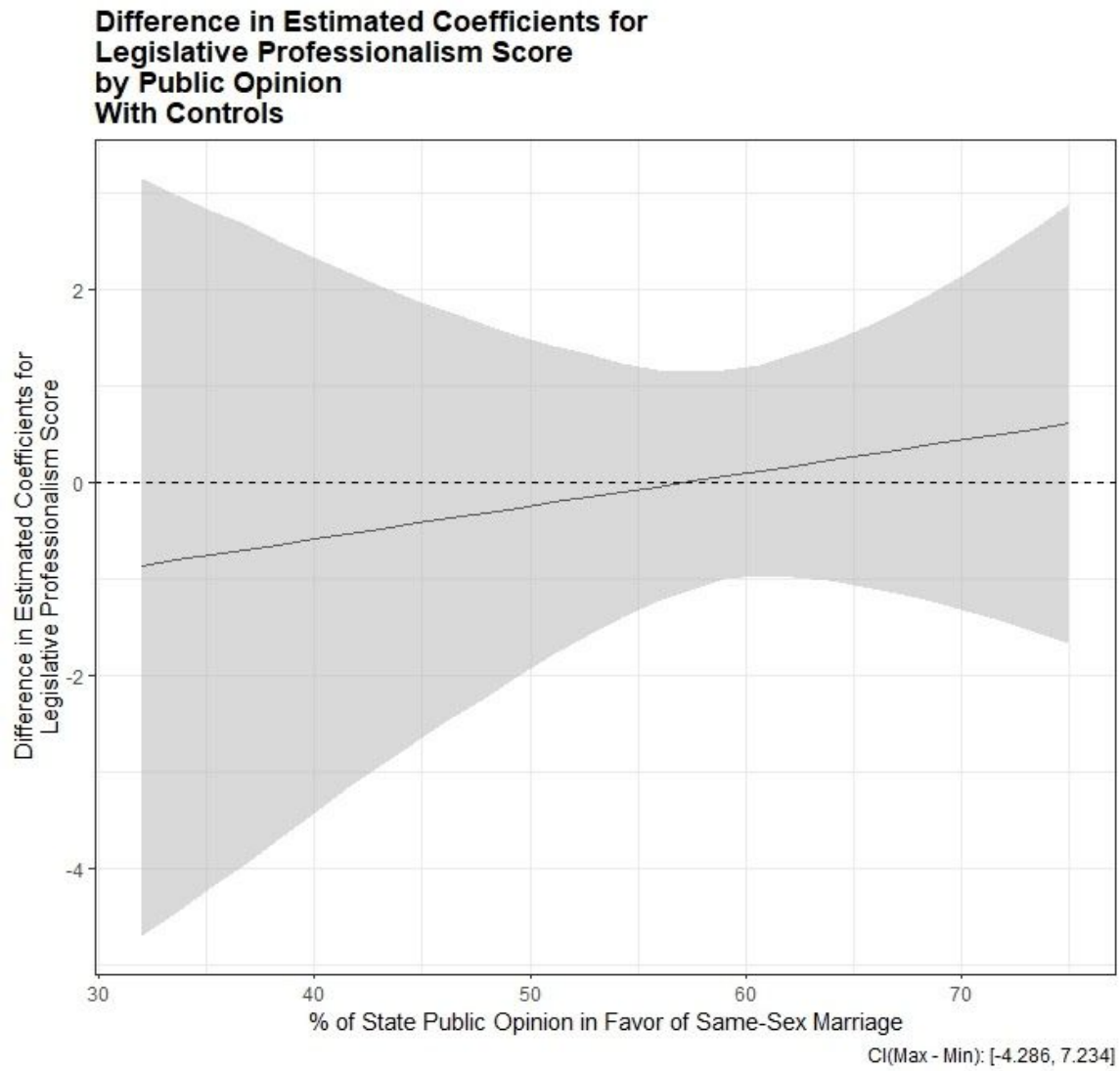


Figure 12: Legislative Professionalism Marginal Effects Plot, Based on Model h



## Appendix D: Marginal Effects Plots with Full Regression and Controls

Figure 13: Judicial Selection Marginal Effects Plot, Based on Model b

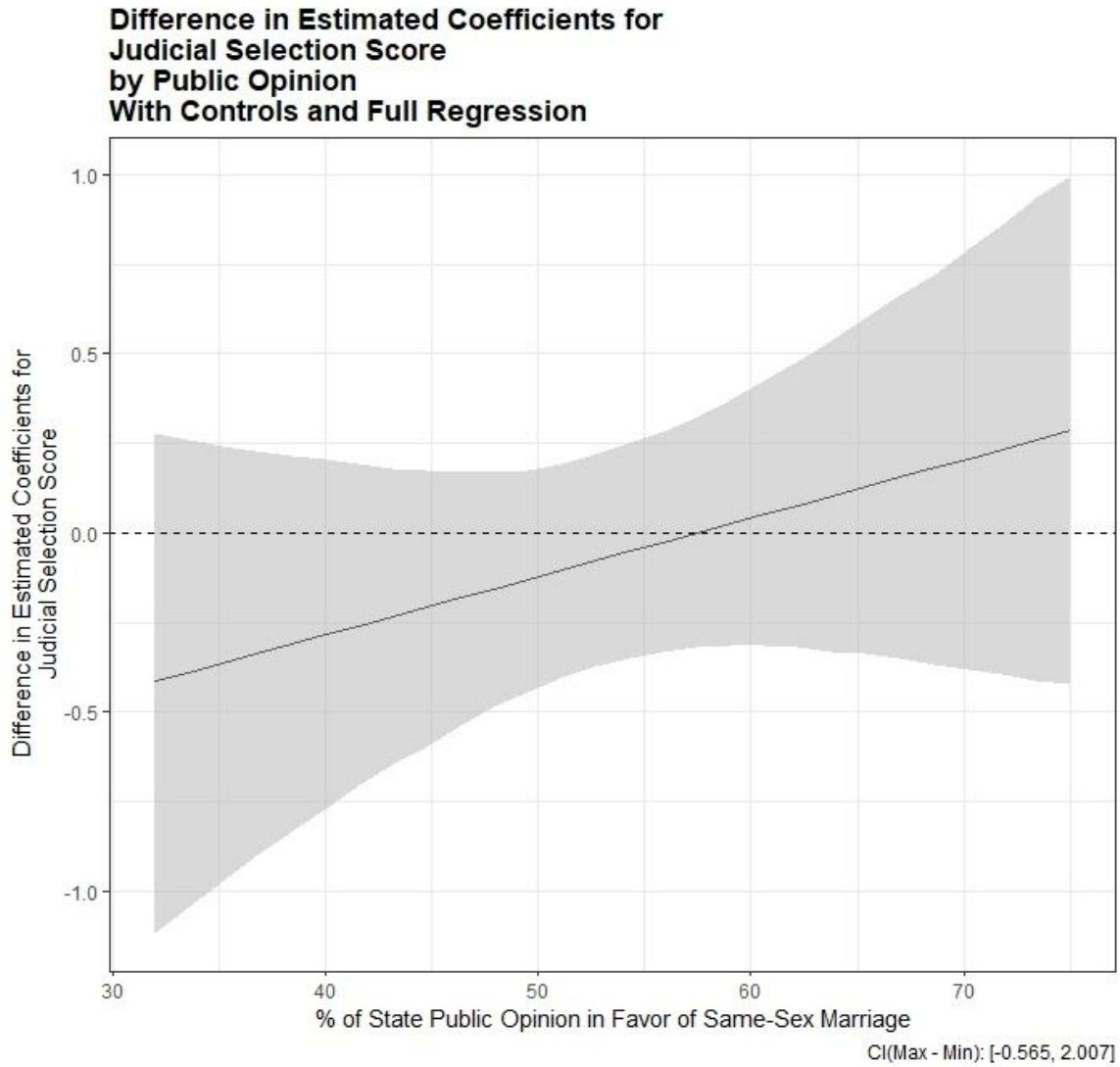




Figure 14: Direct Democracy Marginal Effects Plot, Based on Model b

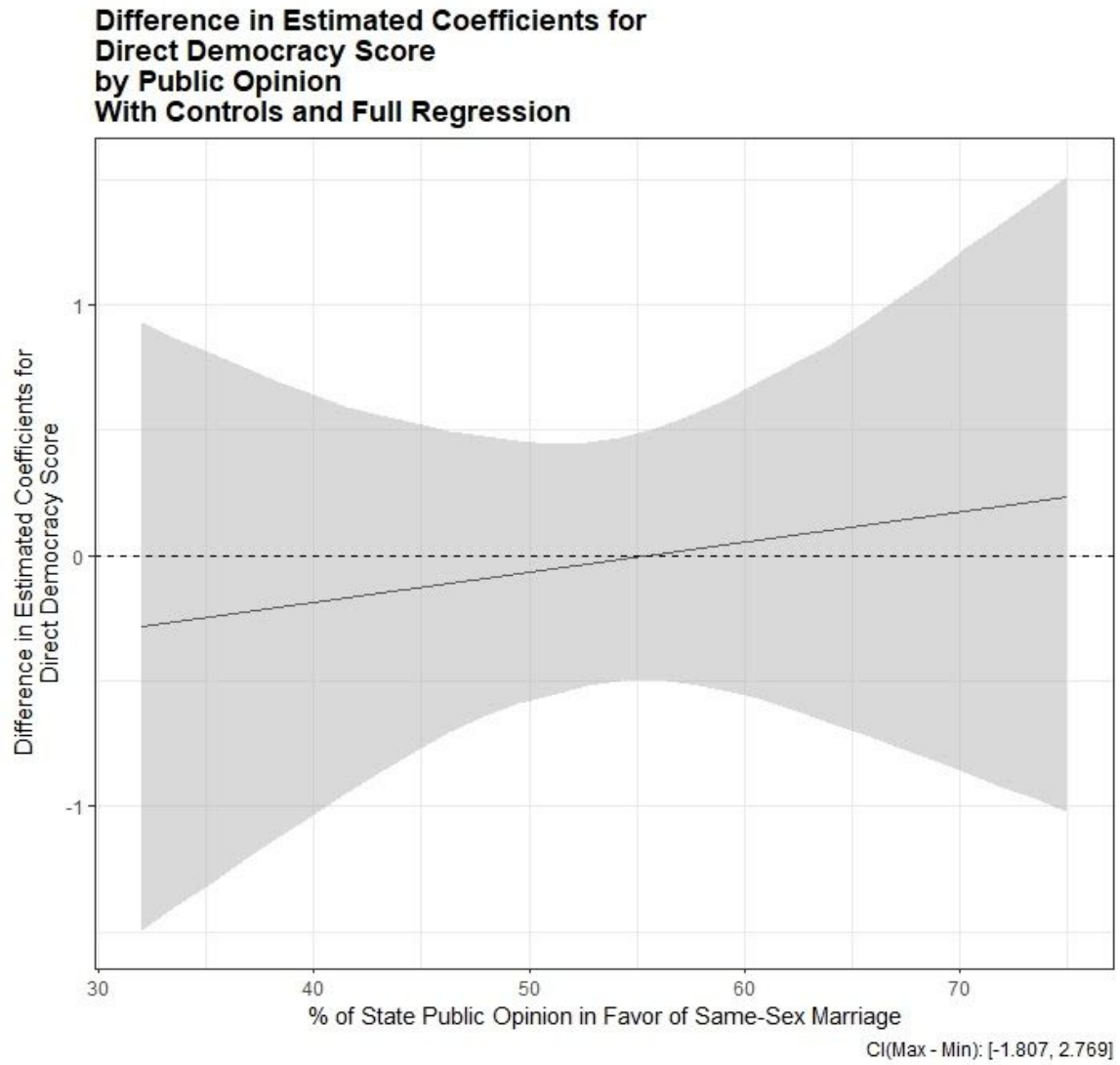
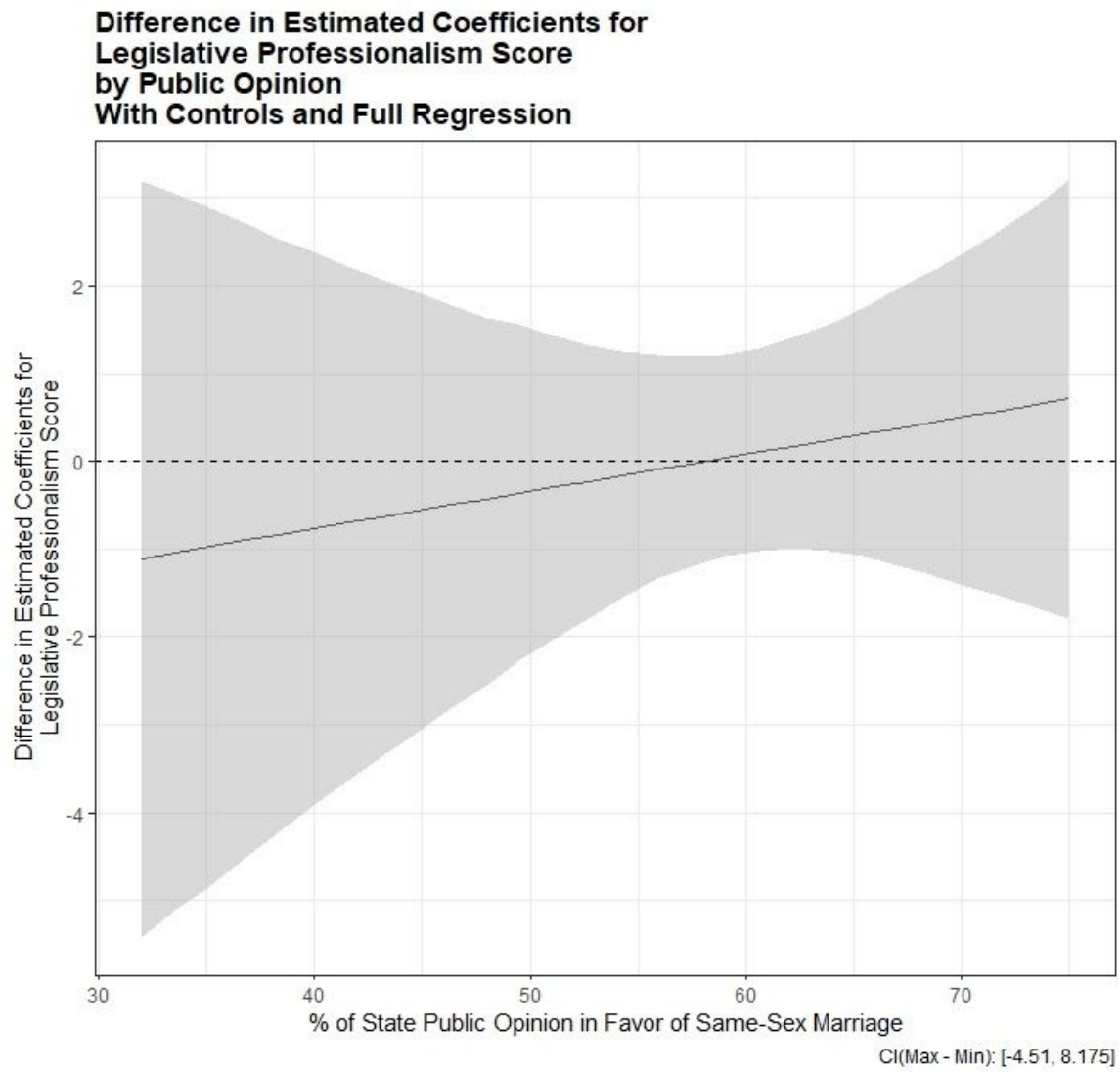


Figure 15: Legislative Professionalism Marginal Effects Plot, Based on Model b



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