

MIT Student

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Strategic Policy Efforts for Immigration and Same-Sex Marriage Advocates

In the United States, immigration and same-sex marriage have been prominent issues on the agenda in the past ten to fifteen years. To change policy in these areas, advocates must make calculated and strategic decisions. There are many factors to consider, including what policy outcomes to pursue and when and where to pursue them. These kinds of decisions have differed between immigration and same-sex marriage advocates, yet there are some commonalities between them. The strategic choices made by advocates in recent years have been influenced by public opinion, Obama's involvement in the issue areas, and the feasibility of pursuing change in different political venues.

One of the similarities between immigration and same-sex marriage policy is the influence of public opinion on advocacy efforts. In the case of immigration, a 2013 reform bill proposed in the Senate would probably have failed had it not been for Republicans' responsiveness to public opinion. As Lizza describes, "the 2012 election changed the politics of immigration reform" (2013, pg. 4). During the presidential election, President Obama garnered 71% of Latino voters, leaving Romney in the dust (Pew Research Center, 2012). However, according to polls, almost two-thirds of Latino voters would consider voting Republican if the GOP stopped promoting deportation policies (Vavreck, 2014). Thus, the results of the 2012 election, combined with the importance of immigration to Latino voters, pressured Republicans to take on immigration reform. This political context created an amenable environment for the 2013 Senate bill on immigration. This bill, spearheaded by Republican John McCain of Arizona, came from a bipartisan group of senators dubbed the "Gang of Eight" (Lizza, 2013). The Gang

of Eight's bill supported a pathway to citizenship for undocumented immigrants as well as enhanced border security and a temporary worker program (Lizza, 2013). The fact that four of the leaders on immigration reform policy in the Senate were Republicans reflects the GOP's responsiveness to the opinion of Latino voters.

Likewise, same-sex marriage policymakers have made decisions that rely on public opinion. Public support for same-sex marriage has shifted drastically over the past 10 years, and advocates' are responsive to this change. In 2004, the majority of Americans opposed same-sex marriage, including 61% of Democrats (Murray, 2006). At the time, President Bush pushed for a constitutional amendment banning same-sex marriages (Murray, 2006). While the amendment failed, the fact that Bush found it reasonable to pursue indicates how public opinion can affect policy-making efforts. On the other side of the debate, same-sex marriage proponents have also responded to public opinion. By 2012, "public opinion...shifted rapidly in favor of gay marriage" with 54% of Americans in support (Ball 2). Among other things, this shift justified the pursuit of ballot measures legalizing same-sex marriage in states such as Maine, Maryland, and Washington (Ball 1). While seeking ballot measures would have been illogical in 2004, it made sense in 2012 since support for marriage equality was much higher, especially in these states. Thus, public opinion has played a major role in affecting same-sex marriage policy, just as it has with immigration policy.

Another parallel between immigration and same-sex marriage is the role of the President in affecting policy. On the issue of immigration, President Obama has been intricately tied to the reform process. In 2012, when the Development, Relief, and Education for Alien Minors (DREAM) Act failed to pass Congress, advocates asked Obama to take executive action (Lind, 2014). The DREAM Act would have provided a pathway to citizenship for young unauthorized

immigrants who came to America as children (Lind, 2014). However, when the DREAM Act failed, Obama decided to “bypass congressional gridlock” (Davis, 2014, pg. 1). He issued an executive order called Deferred Action for Childhood Arrivals (DACA), which allowed young unauthorized immigrants who met certain requirements to apply for delayed deportation (Lind, 2014). Yet in 2013, when Obama intended to announce further plans for immigration reform, the Gang of Eight asked Obama to refrain from doing so (Lizza, 2013). The concern was that if it became “Obama’s immigration-reform bill,” it would alienate Republicans (Lizza, 2013, pg. 14). Thus, while he had taken direct action with DACA, Obama strategically held back in 2013. Therefore, in both 2012 and 2013, Obama’s actions (and inaction) were a critical part of strategy for advocates.

While Obama’s involvement in immigration reform has been fairly direct, his relation to same-sex marriage has been more abstract. In 2012, Obama became the first sitting president to openly support same-sex marriage (Sorenson, 2012). While one might view this only as a symbolic gesture, it has impact on policy as well. For example, after Obama’s announcement, there was a “12-point swing toward support for gay marriage” in Maryland. This was mostly a result of an opinion shift among black voters (Sorenson, 2012). It would be reasonable to extrapolate that there were similar shifts in opinion in other states as well. Thus, in both the realms of immigration and same-sex marriage, Obama’s actions affect policy in ways that advocates can utilize.

In addition to Obama’s influence on policy, advocates must also consider where to focus their efforts. Immigration and same-sex marriage differ in this sense. Immigration is primarily a federal issue. Policy is predominantly made in Congress, as was the case with the Senate’s Gang of Eight’s bill. DACA demonstrates that federal approaches to reform can also occur through the

use of executive power. Be it via the legislative or executive branch, however, immigration policy ultimately occurs at a federal level because of the nature of immigration. For example, national security and a pathway to citizenship are issues that are inherently national in scale.

Same-sex marriage is different. According to Hoch, “legal battles over whether homosexual couples can be refused a marriage license have largely played out in the state courts and legislatures” (2004, pg. 3). This has been true for both anti- and pro- same sex marriage policy efforts. Between 1995 and 2003, 40 states issued their own version of the Defense of Marriage Act (DOMA), defining marriage as a relationship between one man and one woman (Graff, 2006). On the pro-same-sex marriage side, Graff describes how, “LGBT organizations are moving staff and funding toward the states” (2006, pg. 4). This is partly in response to the state DOMA laws, and also accounts for the varying feasibility of legalizing same-sex marriage at different levels. Pursuing federal-level legislation was not practical when national public opinion opposed same-sex marriage, but passing state-level laws in liberal states was much more doable.

It is important to note, however, that same-sex marriage efforts have been diverted to the federal courts as well. For example, the Supreme Court case *Perry v. Schwarzenegger* challenged the constitutionality of Proposition 8, a California referendum that overturned a state decision allowing same-sex marriage (Talbot, 2010). Yet, the decision to pursue this case went against the “careful state-by-state strategy that leading gay-rights organizations have championed” (Talbot, 2010, pg. 1). At the time the case was brought forth, only five states allowed same-sex marriage. Many advocates felt this was premature, and believed it would be better to wait until they had secured marriage victories in more states (Talbot, 2010). Thus, while same-sex marriage has

been addressed at the federal level, advocates prefer pursuing state-level policy, in contrast to immigration reform advocates.

Immigration and same-sex marriage advocates' strategic decisions are thus influenced by public opinion, Obama's actions, and the feasibility of pursuing change in different political venues. Despite the many years of effort advocates have already invested, there is a lot left to do in the coming years. For immigration, it is possible that proponents will focus their efforts on expanding DACA through legislation since it has been very successful for immigrants who have already benefited from the executive order (Lind, 2014). Additionally, since the Gang of Eight bill has only passed the Senate, it is likely that efforts will be concentrated on passing a bill in the House. For same-sex marriage, the end goal appears even closer. With increasing momentum, states have gained marriage equality at an accelerating rate. At the moment, thirty-two states have legalized same-sex marriage, and there are court cases in three states pending before federal appeals courts ("Marriage in the Courts", 2014). Unfortunately for advocates, the Sixth Circuit recently upheld marriage bans in four states, but lawyers are in the midst of appealing to the Supreme Court ("Marriage in the Courts", 2014). Future efforts probably include attempts to overturn marriage bans in the remaining state and circuit courts. With continued strategic decision-making, advocates for both immigration and same-sex marriage may be able to create significant change in the coming years.

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