

Implementing Marriage: The Issuance of Marriage Licenses in Missouri after *Obergefell*

Jessica Loyet Gracey

Northwest Missouri State University

On June 26, 2015, the U.S. Supreme Court announced their decision in the *Obergefell v. Hodges* case. The 5-4 ruling legalized same-sex marriage throughout the country. Many states had already legalized same-sex marriage, but in thirteen states it was still not legal. Many states had pending court cases that were waiting on the U.S. Supreme Court's decision before taking further action.

In Missouri, same-sex marriage was banned by a constitutional amendment in 2004, with 70.6 percent of the vote.¹ In June 2014, St. Louis Mayor Francis Slay married four same-sex couples at City Hall in an attempt to challenge the state's marriage ban. This prompted Attorney General Chris Koster to sue to uphold the constitutional amendment.² In November 2014, a St. Louis circuit judge ruled that the ban violated the U.S. Constitution's equal protection clause and two days later a federal judge agreed.³ Both decisions were appealed by the attorney general and the federal judge issued a stay on his decision "until the judgment is final."⁴ At this point, Missouri

and many other states were waiting on the U.S. Supreme Court to issue a judgment on the matter. After the Supreme Court's decision in the *Obergefell* was announced, many counties in Missouri were ready to implement the decision and immediately started issuing marriage licenses to same-sex couples. Other counties took much longer to implement the new policy. The last county to start issuing marriage licenses to same-sex couples was Barry County on July 10, fourteen days after the *Obergefell* decision. In this article, several factors will be examined to attempt to explain the differences in amount of time that counties in Missouri took to implement the *Obergefell* ruling.

Most of the research on same-sex marriage has focused on policy adoption, public opinion, or the effects on couples or society. There is a lack of research regarding the implementation of same-sex marriage. Previous research has shown that the adoption of gay rights policies is more likely in communities that are more Democratic,⁵ more educated,⁶ and less religious.⁷ Most of this research compares states, not counties. It is reasonable to expect that the factors that affect state-level adoption of gay rights policies would be relevant on the county level. Indeed, studies that have been conducted on a county level provide evidence that this is the case.⁸

Dr. Jessica Loyet Gracey is an Assistant Professor of Political Science at Northwest Missouri State University in Maryville, Missouri.

¹ Missouri Secretary of State, Official Election Returns, State of Missouri Primary Election, August 3, 2004, <http://s1.sos.mo.gov/CMSImages/ElectionResultsStatistics/AllRacesAugust2004Primary.pdf>.

² Rachel Lippmann, Jason Rosenbaum, and Camille Phillips, "Missouri couples rejoice as U.S. Supreme Court upholds their right to marry," *St. Louis Public Radio*, June 26, 2015, accessed June 25, 2016,

<http://news.stpublicradio.org/post/missouri-couples-rejoice-us-supreme-court-upholds-their-right-marry>.

³ Ibid.

⁴ Doug Moore, "Another gay marriage victory in Missouri, as federal judge in Kansas City strikes down ban," *St. Louis Post-Dispatch*, November 7, 2014, accessed July 17, 2016,

http://www.stltoday.com/news/local/metro/another-gay-marriage-victory-in-missouri-as-federal-judge-in/article_88cf3459-b8d1-5f70-9987-e5acc71c944.html.

⁵ Donald P. Haider-Markel and Kenneth J. Meier, "Legislative Victory, Electoral Uncertainty: Explaining Outcomes in the Battles Over Lesbian and Gay Civil Rights," *Review of Policy Research* 20, no.4 (2003): 671-690.

⁶ Scott Barclay and Shauna Fisher, "The States and the Differing Impetus for Divergent Paths on Same-Sex Marriage, 1990-2001," *The Policy Studies Journal* 31, no. 3 (2003): 331-352.

⁷ Brittany H. Bramlett, "The Cross-Pressures of Religion and Contact with Gays and Lesbians, and Their Impact on Same-Sex Marriage Opinion," *Politics and Policy* 40, no. 1 (2012): 13-42.

⁸ Katie Lofton and Donald P. Haider-Markel, "The Politics of Same-Sex Marriage versus the Politics of Gay Civil Rights: A

However, deciding to adopt a policy and actually implementing are different decisions, made by different actors. Therefore, it is possible that different factors might be important.

Data and Methods

The dependent variable in this analysis is how quickly after the *Obergefell* announcement the county issued marriage licenses to same-sex couples. This is measured in working hours after the decision. The decision was announced at 9:00 a.m. on Friday, June 26, 2015, and a few counties were issuing licenses to same-sex couples immediately – these counties are coded as a 0 since there were no hours between the decision announcement and the issuance of marriage licenses. Many other counties were issuing licenses later that same day. Other counties did not start issuing licenses until the next week, but the hours over the weekend are not counted in this analysis. The data for this variable was gathered from PROMO (Missouri's statewide organization advocating for lesbian, gay, bisexual, and transgender equality) and the Show-Me Marriage organization. Following the decision, PROMO maintained a "Marriage Tracker" on its website.⁹ Currently the Marriage Tracker shows that every county in Missouri is issuing marriage licenses to same-sex couples and shows no further information about when each county started doing so. However, PROMO and Show-Me Marriage often posted this information on Twitter throughout the day and weeks following the decision so that residents would know when they would be able to obtain a

marriage license in their county. The data for this variable comes from the constantly updated maps that were posted to Twitter by these organizations.

Gay rights policies are more likely to be adopted in communities that are more Democratic,¹⁰ more educated,¹¹ and less religious.¹² All of these variables were included in the analysis.

Education was measured as the percentage of county residents 25 years and older with a bachelor's degree or higher. This data was obtained from the Census' American Community Survey. This variable ranged from 6.2 percent in Reynolds County to 47.7 percent in Boone County (home to University of Missouri – Columbia). Individuals who have more education are more likely to be supportive of gay rights.¹³ On an aggregate level, states and communities with a more educated citizenry are more likely to adopt gay rights legislation.¹⁴

Many studies have found that Democratic voters are more likely to support gay rights¹⁵ and that states with higher numbers of Democrats in the state legislature,¹⁶ states with Democrats controlling many of the state institutions,¹⁷ states with higher numbers of registered Democrats,¹⁸ and states with higher vote shares for the Democratic Presidential nominee¹⁹ are more likely to adopt gay rights policies (or less likely to adopt anti-gay rights policies). For decades the Democratic Party has been more supportive of gay rights than the Republican Party. The 2004 Democratic Party platform stated that the party "support[s] full inclusion of gay and lesbian families in the life of our nation and seek equal

Comparison of Public Opinion and State Voting Patterns," in *The Politics of Same-Sex Marriage*, ed. by Craig A. Rimmerman and Clyde Wilcox, 313-340. Chicago: The University of Chicago Press, 2007.

⁹ Marriage Tracker, PROMO. Accessed June 26, 2016, https://promomissouri.cartodb.com/viz/3cadec6a-11b8-11e4-ac46-0e230854a1cb/public_map.

¹⁰ Haider-Markel and Meier, "Legislative Victory, Electoral Uncertainty," 671-690.

¹¹ Barclay and Fisher, "Divergent Paths on Same-Sex Marriage," 331-352.

¹² Brittany H. Bramlett, "The Cross-Pressures of Religion and Contact with Gays and Lesbians, and Their Impact on Same-Sex Marriage Opinion," *Politics and Policy* 40, no. 1 (2012): 13-42.

¹³ Patrick J. Egan and Kenneth Sherrill, *Same-Sex Marriage Initiatives and Lesbian, Gay and Bisexual Voters in the 2006 Elections* (Washington, D.C.: National Gay and Lesbian Task

Force, 2006); Jeni Loftus, "America's Liberalization in Attitudes toward Homosexuality, 1973 to 1998," *American Sociological Review* 66, no. 5 (2001): 762-782.

¹⁴ Barclay and Fisher, "Divergent Paths on Same-Sex Marriage," 331-352.

¹⁵ Darren E. Sherkat et al., "Religion, Politics, and Support for Same-Sex Marriage in the United States, 1988-2008," *Social Science Research* 40 (2011): 167-180.

¹⁶ Donald P. Haider-Markel and Kenneth J. Meier, "The Politics of Gay and Lesbian Rights: Expanding the Scope of the Conflict," *Journal of Politics* 58, no. 2 (1996): 332-349.

¹⁷ 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 (2011): 1097-1126.

¹⁸ Haider-Markel and Meier, "Legislative Victory, Electoral Uncertainty," 671-690.

¹⁹ *Ibid.*

responsibilities, benefits, and protections for these families.”²⁰ While the 2004 Democratic Party platform argued that marriage should continue to be defined at the state level, the 2012 platform included support for marriage equality and the repeal of the Defense of Marriage Act.²¹ In contrast, the 2004²², 2008²³, and 2012²⁴ Republican Party platforms included support for both the Defense of Marriage Act and a federal Constitutional amendment defining marriage as the union of one man and one woman. In this analysis, partisanship is measured by the percent of the county that voted for Obama in 2012. By this measure, the most Democratic county in Missouri is St. Louis City at 83 percent and the least is Osage County at 21 percent.

Membership in an evangelical or fundamentalist denomination is negatively correlated with support for gay rights²⁵ as is identifying as a born-again Christian.²⁶ On an aggregate level, states with fewer born-again Christians or fewer members of evangelical or fundamentalist denominations are more likely to support gay rights.²⁷ Religion is measured here by the percent of the county that identifies as evangelical and was obtained from the Association of Religion Data Archives.

Also included in this analysis is a measure of how many people in the county are employed in service occupations. One of the reasons occasionally cited by proponents of legalizing same-sex marriage was that it would bring more money into the community because there would be more weddings. These weddings would give more business to service occupations, therefore communities that rely on the service industry might be more supportive of the legalization of same-sex marriage.

In Missouri, marriage licenses are issued by the recorder of deeds in each county. Ultimately, the recorder of deeds made the decision of whether or not to issue marriage licenses to same-sex couples following the *Obergefell* decision. The previous variables are likely things that the recorder took into account when making their decision. The individual partisanship of the person occupying that position was also possibly a factor in the decision of when to issue these licenses. Recorder of deeds is a partisan elected position in nearly all counties in Missouri. At the time of the decision, sixty-nine of the county recorders were Republican, forty-four were Democrats, and two were nonpartisan or appointed positions.

Robust regression was used for the model to give less weight to outlying observations that may have affected the analysis. St. Louis City and Barton County were outliers within the data. An analysis was also conducted without those two counties and the results were similar to the results presented below.

Results

Results of the regression are detailed in Table 1 (see page 15). Additional variables were included in previous models but were excluded in the final model for simplicity. These variables measured age, race, population density, same-sex households, and household income. None were found to be statistically significant.

Interestingly, education is the only variable that is a statistically significant predictor of when a county began issuing marriage licenses to same-sex couples. In previous studies, many of these variables have been significant predictors of the adoption of gay rights

²⁰ Democratic National Committee, *Strong at Home, Respected in the World: The 2004 Democratic National Platform for America* (2004).

²¹ *Ibid.*; Democratic National Committee, *Moving America Forward: 2012 Democratic National Platform*, (2012).

²² Republican National Committee, *2004 Republican Party Platform: A Safer World and a More Hopeful America*, (2004).

²³ Republican National Committee, *2008 Republican Platform*, (2008).

²⁴ Republican National Committee, *We Believe in America: 2012 Republican Platform*, (2012).

²⁵ Laura R. Olson, Wendy Cadge, and James T. Harrison, “Religion and Public Opinion about Same-Sex Marriage,” *Social Science Quarterly* 87, no. 2 (2006): 340-360.

²⁶ Donald P. Haider-Markel and Mark R. Joslyn, “Beliefs About the Origins of Homosexuality and Support for Gay Rights: An Empirical Test of Attribution Theory,” *Public Opinion Quarterly* 72, no. 2 (2008):291-310.

²⁷ Brittany H. Bramlett, “The Cross-Pressures of Religion and Contact with Gays and Lesbians, and Their Impact on Same-Sex Marriage Opinion,” *Politics and Policy* 40, no. 1 (2012): 13-42; Lofton and Haider-Markel, “The Politics of Same-Sex Marriage,” 313-340.

policies. However, in this case neither partisanship nor religion were statistically significant predictors of when a county would begin issuing same-sex marriage licenses. The portion of the county employed in service occupations also does not have a statistically significant impact on when marriage licenses were issued.

The decision of when to begin issuing marriage licenses to same-sex couples in each county was essentially up to one person – the county’s recorder of deeds. Therefore, it is very interesting that the partisanship of that person was not a statistically significant factor in when marriage licenses were ultimately issued. Counties where the recorder is a Democrat or nonpartisan did issue licenses first; none of the counties that issued licenses immediately had a Republican recorder. The mean for Republican recorders to begin issuing licenses is slightly longer than that for Democratic recorders at 17.25 hours to 15.62 hours, but this difference is not statistically significant.

Conclusion

Implementation of the *Obergefell* decision was likely a personal decision for each recorder. The factors that swayed them might have been different for each recorder and might not be easy to document and quantify. The recorder of deeds for Schuyler County told the press that she had decided to not issue licenses to same-sex couples because of religious reasons.²⁸ Kim Davis, a county clerk in Kentucky, received a lot of media attention for her continuing refusal to issue marriage licenses to same-sex couples, citing religious reasons.²⁹ Religion is not publicly declared by everyone running for county-level offices and it would be difficult to gather reliable data regarding the religion of each person to hold such an office.

These findings indicate that implementation of marriage policy is different than the adoption of that policy. Numerous studies have been conducted regarding what factors predict whether a community will adopt gay rights policies. However, almost none of the factors that have been found to be predictors of gay rights policy adoption were found to be a significant predictor of when such a policy would be implemented. This is perhaps because the decision to implement was ultimately made by one person in each community rather than multiple decision makers.

²⁸ Peggy Lowe, “Some Missouri Counties Refusing Marriage Licenses to Same-Sex Couples,” *KCUR* (NPR affiliate), July 2, 2015, accessed July 19, 2016, <http://kcur.org/post/some-missouri-counties-refusing-marriage-licenses-same-sex-couples>.

²⁹ Brakkton Booker, “Kentucky Clerk Again Accused of Interfering With County Marriage Licenses,” *NPR*, September

22, 2015, accessed July 19, 2015, <http://www.npr.org/sections/thetwo-way/2015/09/22/440860617/kentucky-clerk-again-accused-of-interfering-with-county-marriage-licenses>.

Table 1. Robust multiple regression on implementation of *Obergefell* ruling

Independent Variables	OLS Coefficient (Standard Error)
Education Levels	-.449** (.140)
Percent Employed in Service Occupations	.176 (.294)
Percent Vote for Obama, 2012	.029 (.131)
Percent Evangelical	.027 (.080)
Party of the Recorder of Deeds	-.994 (.958)
Constant	14.989* (6.930)
N	115

*p < .05 **p < .01 ***p < .001