

## ABSTRACT

Title of Document: NATIONAL PARTISANSHIP AND STATE  
POLICY DIFFUSION: THE IMPACT OF  
POLARIZED PARTIES ON STATE POLICY  
DECISIONS

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This project is an examination of patterns of state policy adoption, and provides a new theory for policy diffusion research. While traditional policy diffusion research focuses on geographic proximity as the main mechanism for policy adoption, I argue that states are more likely to rely on partisan proximity and adopt policy from partisan neighbors. This is, primarily, a result of heightened polarization nationally. In the absence of national policymaking, states will feel both more pressure to create more policy as well as leeway to enact more partisan policies. In order to test this theory, I look at three cases: same-sex marriage, right-to-work, and state lottery adoption. I utilize interviews with state lawmakers and interest group staff as well as quantitative methods to show the relationship between partisanship and policy

diffusion. Overall, this work adds an important element to a vast and well-established literature and provides a new way of understanding the policy creation in the American states.

NATIONAL PARTISANSHIP AND STATE POLICY DIFFUSION: THE IMPACT  
OF POLARIZED PARTIES ON STATE POLICY DECISIONS

By

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## Dedication

To Mom and Dad.

## Acknowledgements

I could not have written this dissertation without the help and support of a great many people. First and foremost, I would like to thank Dr. Irwin Morris, my dissertation committee chair, for believing in this project and working diligently to help me finish this research. His keen insights, wit, and unwavering support were invaluable for me as I worked to complete this project. Many meetings and emails later, I can safely say that I wouldn't be here without Irwin's guidance. Thanks also to my entire dissertation committee. Dr. Karen Kaufmann, Dr. Michael Hanmer, Dr. Christopher Foreman, and Dr. Stella Rouse all provided vital comments and suggestions that made the finished product a success. Additionally, I could not have completed this project (or my graduate career) without the support of the University of Maryland's Government and Politics staff. Specifically, I would like to thank Ann Marie Clark, Cissy Roberts, Mike Mansfield, and Apitchaya Pimpawathin. Ann Marie, in particular, was a godsend, without whom I wouldn't have known how to fill out graduation forms, much less actually graduate.

I also want to acknowledge Carrie Evans, Representative Doug Geiss, Senator Hoon-Young Hopgood, Kristin Jones, Delegate Wade Kach, Greg Mourad, Jeremy Pittman, Representative Mike Shirkey, and Representative Jerry Torr for agreeing to be interviewed for this project. Their perspective on state policy diffusion was an important part of my analysis, and the interviews added depth and important insight to my findings.

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## Chapter 1: Introduction

Shortly after his election as governor in 2005, Mitch Daniels of Indiana signed Executive Order 05-14, which ended collective bargaining for public sector unions in the state. He did this on his first day in office, and argued that collective bargaining for public employees hindered his ability to make important decisions, particularly in how he proposed to re-shape Indiana's state government. The order was intended as an austerity measure that would both limit government spending on union wages and pension plans as well as provide flexibility in hiring and firing public workers. Daniels argued that the rollback of collective bargaining rights for public sector workers was a necessary step in order to reign in state spending. The order met with opposition from labor and progressive groups, who argued that it was an attack against organized labor.

In 2011, Wisconsin and Ohio made similar attempts to curb collective bargaining for public sector unions, with each state passing legislation that largely emulated Daniels' order. In a statement following the passage of legislation in Wisconsin, a Daniels spokesperson argued, "The most powerful special interests in America today are the government unions...I think what Scott Walker is trying to do is in the public interest. Other states are catching up to what Governor Daniels has already done, and we're continuing to aim higher."<sup>1</sup> The last point, here, is the most interesting. While it is not necessarily clear that Daniels' executive order was

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<sup>1</sup> The spokesperson's statement appeared in Politico article, "Daniels on Wisconsin: 'Been There, Done That,'" February 23, 2011. [http://www.politico.com/blogs/bensmith/0211/Daniels\\_on\\_Wisconsin\\_Been\\_there\\_done\\_that.html](http://www.politico.com/blogs/bensmith/0211/Daniels_on_Wisconsin_Been_there_done_that.html)

intended as a template for future action by other states, Daniels was quick to claim credit for having started a potentially national trend.

Though the ban on collective bargaining was passed by the Republican state legislatures in both states, local and national protests erupted over what was perceived as a dramatic blow to longstanding workers' rights. Polls indicated that, both nationally and in Wisconsin and Ohio, the ban was perceived quite negatively, with 61% of respondents in a national USA Today/Gallup poll opposing ending collective bargaining rights for public workers.<sup>2</sup> The backlash was so intense that voters in Ohio voted to repeal the measure. Even more dramatically, Wisconsin Governor Scott Walker, a major champion of the ban, faced a recall election as the result of his support for ending collective bargaining for public employees.

While Ohio and Wisconsin followed the example set by Indiana, the results were quite different. Perhaps this is the case because Wisconsin and Ohio pursued a legislative solution rather than using an executive order, or that Republicans in both states misread public opinion regarding workers' rights in the public sector. Regardless, it is clear that both states in some way followed Indiana's example. The benefits to state government, in terms of economics, are compelling. Ending collective bargaining certainly frees both state legislatures and governors to pursue an agenda without needing to take collectively bargained contracts into account. Additionally, states can cut costs by freeing themselves of larger salaries and more demanding pension plans that public sector union workers enjoy.

Of course, reducing spending is a consideration for any government. States have clear incentives to cut costs where they can, in order to provide the service that

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<sup>2</sup> [http://www.usatoday.com/news/nation/2011-02-22-poll-public-unions-wisconsin\\_N.htm](http://www.usatoday.com/news/nation/2011-02-22-poll-public-unions-wisconsin_N.htm)

voters expect and demand. Ending collective bargaining, however, was clearly a controversial policy choice. While the policy may have the benefit of saving money and cutting through red tape, the policy resulted in massive backlash in both Wisconsin and Ohio. Both states had spending reduction needs, but the question remains: Why would states pursue such controversial avenues for cutting spending?

One could certainly make the argument that there are less polarizing ways to cut a state's budget, ways that are less likely to be repealed by voters or force a recall election for the governor. While this is never an easy or desirable task, states often need to make such choices. There are many policy areas in which the desirable policy is (or at least can be) clear. Cutting budgets, however, will always leave states in a difficult position. No matter where a state legislature or governor chooses to make cuts, or to raise taxes, some constituency will feel aggrieved. Ending collective bargaining for public sector workers, however, is certainly one of the more controversial and potentially politically deadly ways to go about cutting costs. Indeed, while Mitch Daniels was able to avoid political disaster, the same cannot be said for the Republican governors in Ohio and Wisconsin who attempted to follow in Daniels' footsteps.

Regardless of the political difficulties involved, Daniels' solution to a budget crisis was an innovative one. In terms of public policy scholarship, innovation in states is a vital process for the diffusion of those policies. Policy diffusion can be thought of as a contagion; one state gets "sick" and "infects" other states. Put in policy terms, a state creates a policy, the policy works, and other states adopt the policy for themselves. Innovative state programs are often adopted by other states;

indeed, Berry and Berry (2007) argue that most states seek shortcuts in policy-making. With finite resources and varying amounts of time that state legislatures are actually in session, it often makes little sense for states to invent new policy when effective policy already exists. Additionally, states tend to compete with one another when policy innovations occur, so as not to be left behind. A classic example of this is reforming welfare benefits, a structure that creates little incentive for states to have more comprehensive benefits than states in their region (Francis, 1998; Rom et al., 1998; Figlio et al., 1999; Arsenault, 2000; Brueckner, 2000; Barrileaux et al., 2002; Volden, 2002; Berry et al., 2003). Additionally, if one state has created innovative policy, there is little reason for others to re-invent the wheel when it comes to dealing with similar issues.

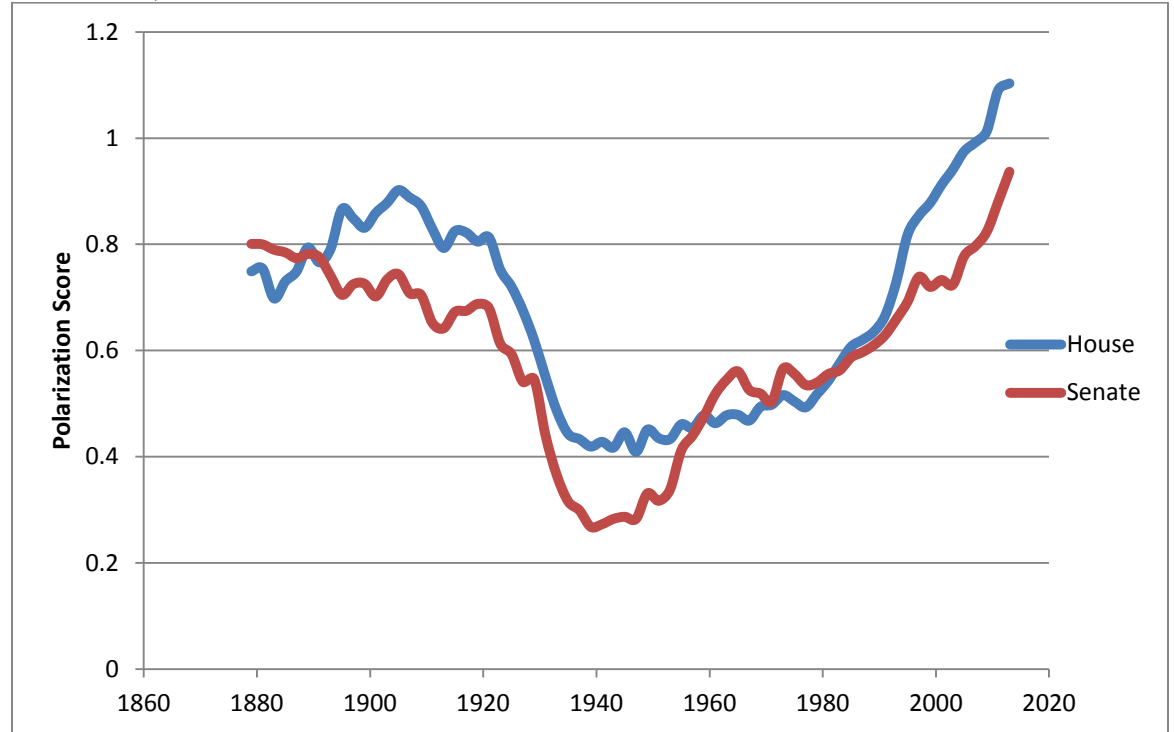
Public policy is complex and lawmakers have to deal with multiple contentious issues at once. If austerity measures are successfully adopted in a state, which by nature is politically difficult, a blueprint can be provided for other states looking to craft similar policy. Politics play an important role when states attempt to cut their budgets, and this was played out in both Wisconsin and Ohio. Each state passed bills limiting collective bargaining rights, and each faced ferocious challenges in the aftermath of the bills' passage, both through repeal efforts and also attempted recall of the politicians responsible. The primary reason for this, of course, is that the decision to end collective bargaining was seen as partisan. Indiana, Wisconsin, and Ohio all had Republican governors try to roll back labor rights, long a bastion of Democratic power.

It is this intersection of partisanship and policy diffusion that this analysis seeks to understand. While the traditional conception of diffusion focuses on geography, I examine the impact of partisanship on state policy diffusion, focusing primarily on legislative policymaking. The collective bargaining example in this chapter looks at executive decision making, as it was the overall inspiration for this analysis. Traditional diffusion research, however, focuses primarily on legislative action, though executive policymaking and ballot initiatives/state referenda are important to the overall field of research as well. Rather than understanding diffusion as only amongst geographic neighbors, I look at “partisan” neighbors. While Utah and Alabama share few geographic similarities, they may be interested in similar policies because of shared partisanship. Rather than looking to states in their own region, partisan considerations can also drive diffusion.

Additionally, the overall political climate in America has changed. National political parties have become increasingly polarized. Figure 1.1 shows the levels of partisan polarization in Congress over time. Specifically, it looks at the distance between the parties on the first NOMINATE dimension. We can see that the distance between the parties in both the House and Senate begins to grow dramatically in the 1990’s and has risen even higher than what existed during Reconstruction. The nadir of partisan polarization occurs after World War II, but there is a steady increase in the decades leading up to the Clinton Administration.

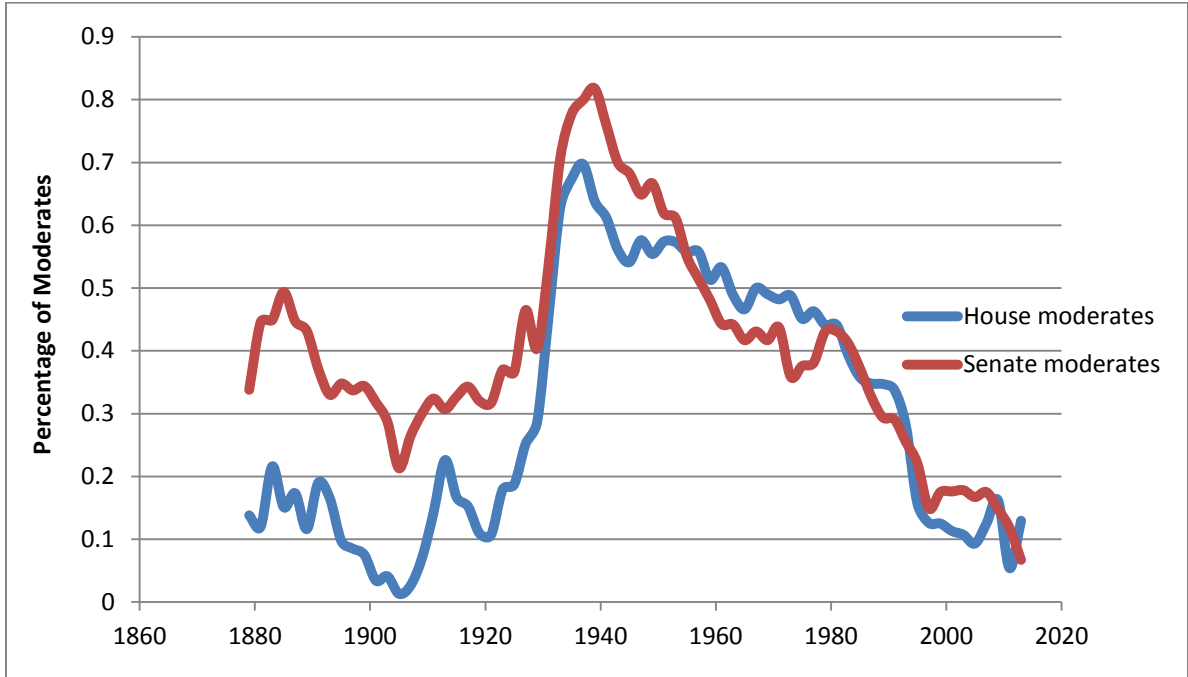


**Figure 1.1: Party Polarization in Congress on First NOMINATE Dimension, 1879-2013**

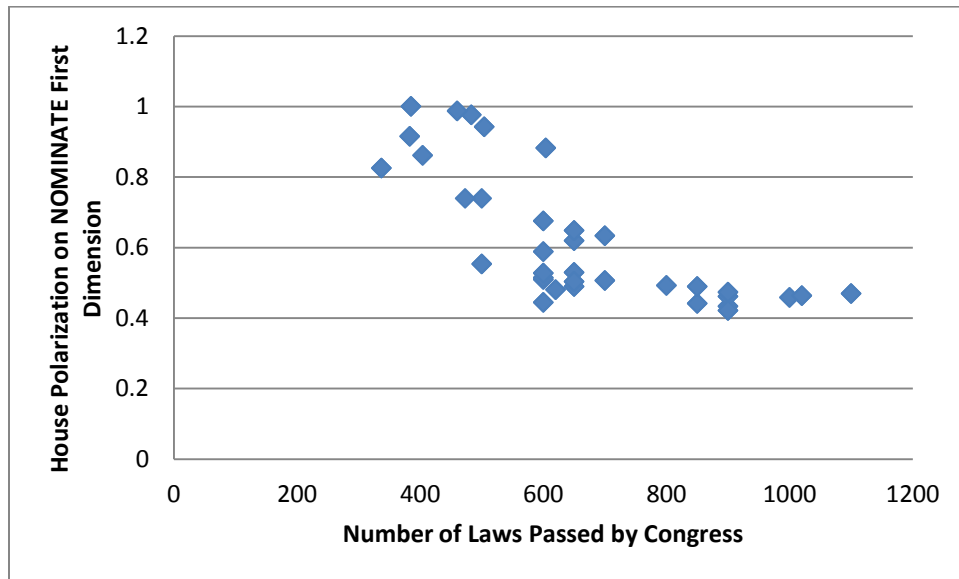


While partisan distance in the Senate has not reached the level of that in the House, it is still striking when compared to the even the Reagan years. Figure 1.2 illustrates this concept in a similar way. We can see that the percentage of moderates in both chambers has cratered in the past twenty years. Fewer than 15% of both Houses, as of 2013, are comprised of moderates. This, in and of itself, does not necessarily equate to partisan gridlock, it does map well with the rising tide of polarization shown in Figure 1.1. In fact, Figure 1.2 is even more striking, in that it shows how little room there likely is for compromise in Washington. With so few moderates, and the parties moving further and further away in terms of policy preferences, it is no surprise that policymaking has become increasingly difficult at the national level.

**Figure 1.2: Percentage of Moderates per Chamber, 1879-2013**



**Figure 1.3: House Polarization and Congressional Lawmaking**



Legislative productivity has also declined dramatically over time, at least in terms of the Congressional lawmaking. In the 1950's and into the 1960's, each

Congress consistently passed 800-1000 laws. During the 2000's, however, national lawmaking has fallen off a cliff, with recent Congresses passing fewer than 400 public laws. Congress scholars are somewhat divided as to whether the total number of bills passed is the absolute best measure of productivity, but it is clear that Congress is passing far fewer laws than it once did. One of the likely culprits for this lack of productivity is likely high levels of polarization. Figure 1.3 shows the relationship between House polarization and the total number of bills passed by Congress.<sup>3</sup>

We can see a negative relationship between House chamber polarization and congressional lawmaking. When House polarization is at its highest, congressional productivity plummeted. Though significant legislation can still be passed during periods of intense polarization, overall policymaking takes a severe hit. While there are many possible consequences of a lack of congressional policymaking, the impact on state legislation needs to be examined. This analysis looks at this issue through the lens of diffusion, and argues that the polarization that has affected national government at an increasing rate has had an effect on state level polarization. As a result, states are more likely to look to their partisan neighbors when attempting to adopt policies from other states.

This study contributes to the literature on policy development and diffusion. While I believe that geography has an important role to play for many policies, the partisan component that this work considers builds on a burgeoning area of research that looks beyond traditional conceptions of policy diffusion to how partisan

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<sup>3</sup> Senate and House polarization are closely correlated, and a graph of the Senate scores show a similar relationship.

considerations drive state policy choice (Dolowitz and Marsh, 1996; Spill, et al. 2001; Grossback et al., 2004; Volden, 2006; Karch, 2007; Marsh and Sharman, 2009). It also adds the dimension of national polarization and examines those effects on state policy adoption. This analysis starts to take a larger view of policy diffusion, and even more broadly, the relationship between state and federal policymaking.

This study's main contribution is proving a causal mechanism for understanding how partisan policy diffuses amongst states. Rising political polarization nationally has influenced state level polarization, which in turn helps facilitate partisan diffusion. In a polarized era, parties have more defined policy positions, and states can use partisan cues in order to determine where they should look for new policies. Partisan neighbors act similarly to geographic neighbors in terms of diffusion, because similarly partisan states have similar political considerations. If a Republican state finds an effective, "Republican" solution to a public policy issue, Republican neighbors may consider adopting the policy as well.

### *Study overview*

This analysis takes a case study approach to partisan policy diffusion. Specifically, it looks at the effect of partisan polarization on three policies: same-sex marriage, right to work, and state lottery adoption. Geographic proximity is the traditional way in which scholars have looked at diffusion. States share geographic and demographic similarities and therefore have incentives to adopt innovative policies created by their regional neighbors. This, however, is not the case for all policies. Partisan diffusion is not bound by geography, but rather involves cleavages

between the parties on a particular issue. There are, of course, issues that have both geographic and partisan components.

It is important, here, to distinguish between partisanship and polarization. Though closely related, they are separate concepts that should not be thought of as interchangeable. Partisanship is simply the party identification of a state legislature or a particular policy, like same-sex marriage. A policy can be “partisan” if the parties have clear positions on the issue and if those positions are at odds. The two policies examined in depth in this analysis, same-sex marriage and right to work, fit into this category. Many policies can have some sort of partisan element, and this analysis begins to grapple with the implications of these elements for diffusion research.

Polarization, on the other hand, is a measure of the parties’ overall distance from each other. For much of the analysis on national polarization, I look at NOMINATE scores for members of Congress to determine the overall level of polarization at the national level. Polarization can lead to a reduction in policy creation, as we saw in Figure 1.3, and allows for partisans to more clearly identify one another in terms of policy positions. During times of low polarization, the parties did not offer much of a choice to voters. The Democratic Party dominated the South for decades, yet southern Democrats were, politically, far out of step with their northern, liberal co-partisans. Knowing that a state was “Democratic” would not necessarily tell one much about the policy positions of that state. During times of high polarization, however, this should change. While, certainly, there will always be variation amongst states that share partisanship, co-partisans are politically much

closer when polarization in general is high. Indeed, I argue that national polarization influences state polarization primarily because it helps codify the distinctions between the parties. Partisan diffusion, then, takes both of these concepts into account. It measures whether the policy itself would appeal to one party or the other, and polarization can drive states to adopt policies that have also been adopted by their partisan neighbors.

One of the ways I explain these concepts more thoroughly is through the use of qualitative interviews with state legislators and interest group staff to understand how those involved in the policy process perceive the role of partisan polarization in policy adoption. The interviewees were involved in policy decisions in Maryland and Michigan, dealing with same-sex marriage (SSM) and right to work (RTW), respectively. They were chosen for their particular roles in the debate, the uniqueness of their perspective, and to add detail to the case study information and quantitative results that I present. The interviews were semi open-ended, and relied on the interviewees describing their role in the policy debate, their opinions on how much state partisanship and/or geography affected passage of the policy, and whether they perceive national polarization as playing a role in state policy battles. The interviews give insight into the ways that people on both sides of the policy debate understand the impact of policy diffusion on their issues, and I believe that their voices are important in our understanding of how partisan policy diffusion occurs. I include a list of the interviewees in the Appendix, as well as more information about the interview process.

Chapter 2 lays out my theory for partisan diffusion at the state level. I review the existing literature on policy diffusion, and make the case that, while geographic diffusion still occurs, there is a need in the literature for a more thorough examination of how partisan polarization at the state level affects policy diffusion. Additionally, I add a case study on state lottery adoption. Lottery adoption is chosen because it has been a staple in diffusion literature, and is in many ways the prototypical geographic diffusion case.

Chapter 3 examines the case of same-sex marriage diffusion, both in terms of adoption SSM and banning the policy. I regard SSM as a prototypical example of partisan policy diffusion, as the parties have distinct and opposing viewpoints on whether same-sex couples should be allowed to marry. The policy has not diffused to only one area of the country, and the diffusion has broken down along partisan lines. The chapter also looks at Maryland's adoption of the policy in depth, utilizing interviews to understand the context of policy debate as well as the strategy and tactics employed to pass the policy. Finally, I look at SSM utilizing quantitative models and estimating the impact of state partisanship and national polarization on the adoption of the policy.

Chapter 4 follows a similar template by analyzing right to work legislation. RTW is a policy on which the parties disagree, but there is a geographic component as well. The policy has an economic impact, and states that have adopted the policy can paint neighboring states as "bad for business," thus putting pressure on those states to adopt RTW as well. RTW is also a partisan issue, with the Republican Party currently much more supportive of adoption than the Democrats (though this actually

the opposite for much of the policy's history). For the case study, Chapter 5 looks at Michigan's stunning 2012 RTW adoption, following closely in Indiana's footsteps. This adoption was stunning because of Michigan's centrality in labor movement history, as well as in light of the fierce partisan battle that erupted in Indiana just months earlier. I also estimate models that look at RTW diffusion from both a partisan perspective.

Finally, Chapter 5 reflects on the analysis presented and proposes new avenues of research in light of the changing circumstances for state policy diffusion. In particular, it poses two questions about the future of state policy diffusion research. If partisan polarization at the national level does have an effect on state policy creation, how wide ranging is that effect? Certainly, continued systematic study of state policy diffusion from a partisan perspective must grapple with the changing partisan dynamics in America and what could be seen as congressional abdication of its legislative priorities.



## Chapter 2: State Partisanship and Policy Diffusion

How is public policy created? This is about as broad a question as we can ask about government and politics. Still, it is a vital question that has no easy answers, particularly since public policy itself is difficult to define. As a result, the study of public policy has often been difficult for political scientists. While the field is very adept in developing theories related to political institutions and behavior, both at the individual and the aggregate level, policy scholars have been somewhat less successful. The biggest obstacle to creating adequate theories for explaining and predicting the dynamics of the policy process and outcomes that it produces is the inherent complexity of the policy process itself (Hofferbert, 1974; Van Meter and Van Horn, 1975; Page and Shapiro, 1983; Sabatier, 1986; Lester et al., 1987; Sabatier, 1991; Bennett and Howlett, 1992; Dowding, 1995; Dolowitz and Marsh, 1996; Parsons, 1996; Schlager and Blomquist, 1996; Zahariadis, 2003; Sabatier, 2007; Kingdon, 2010).

The number of policy actors and governmental units involved, the time span for any given policy, and the lack of agreement over solutions to policy problems makes creating grand theories in public policy research difficult (Sabatier, 2007). Of course, this does not mean that political scientists should not strive to create sound public policy theories. On the contrary, political scientists must strive to develop predictive theories that can explain not only government processes but outputs as well.

One of the most widely studied theories of public policy is that of policy innovation and diffusion. The basic idea behind policy diffusion theory is that one state innovates and adopts a policy, and that innovation spreads to other states. In particular, much of the policy diffusion literature focuses on geographic diffusion; neighboring states adopt policies as a result of regional economic competition, federal grant allocation, etc. In particular, regional economic competition is a major impetus for geographic diffusion. If bordering states have innovative economic policies, it puts pressure on other states in the reason to adopt them. Not wanting to fall behind your neighbors is a key impetus in geographic diffusion research, as is simply adopting policy that has been proven to work elsewhere.

Geographic diffusion has been a fruitful and important line of research, primarily because it analyzes and models a process that makes sense intuitively and has some basis in real world policy development. It is important to note, however, that diffusion is a complex process that has many facets, with geography being just one (though, in certain cases, a vital one). Karch (2007) makes this point clear, and argues that policy diffusion is a complex process that involves a host of factors, including state demographics, legislative professionalism, etc. Much of this work focuses on the ways in which these disparate factors foster or inhibit geographic diffusion.

This analysis focuses on partisanship at the state level as an important part of the story. In particular, I focus on the role of the rise in partisan polarization on state-level policy diffusion. Polarization has risen dramatically in the past several decades, at both the state and national level, and there is no doubt that it has impacted policy

output. The question, however, for this research is whether partisan polarization has affected state policy diffusion. I argue that it has, and that shifting priorities for state policymaking have played a major role. These shifts, primarily, come from increased state partisan polarization.

State politics have become increasingly polarized, much like the national government (Barrileaux et al, 2002; Jenkins, 2006; Coffey, 2011, Enns and Koch, 2013). An important part of this study is understanding the ways in which those involved in the policy process understand and deal with rising partisanship and polarization in state government. We can understand the policy diffusion process from a theoretical and empirical viewpoint by looking at it through the lens of those actually involved in policymaking can provide new and important insights. This analysis relies on interviews from state legislators and interest group staff that have had a direct hand in recent (and controversial) policy decisions.

In a state like Maryland, partisan polarization has become much more pronounced in recent years than in the past. While Democratic politics dominate the state, there are many issues on which the parties disagree. Kristin Jones, the Chief of Staff for Maryland's Speaker of the House Michael Busch, sees partisanship as an issue in Maryland, though her position as an important player in Maryland's power structure that is dominated by Democrats certainly has an influence on her view of partisanship in Annapolis:

I think to a certain extent Maryland has become a more partisan place. Governor Ehrlich was our first Republican governor in 30 years and he came from Capitol Hill. He came out of the Gingrich Contract with America. For better or worse, depending on what side of this you stand on, I think that the dynamic became more partisan. I don't think we approach the partisanship you see on Capitol Hill. There are still a lot of issues that are dealt with

collaboratively and our majorities are such that we can prevent gridlock...I think we benefit from a less partisan atmosphere.

On the other side of the aisle, Republican state delegate Wade Kach sees the Democratic dominance of the Maryland legislature as enabling Washington-style partisan politics to take over the policy process in the state:

I think that [partisanship] has [grown in Maryland]. I think it arrived here ten years ago and has grown steadily...The Democrats that have been elected in Annapolis are more and more liberal. The Democrats being the majority party by 2:1...you're expected, on the Democrat side, to vote the way the leadership wants you to unless you want to lose your subcommittee chairmanship or whatever leadership position you have. So it's in Maryland, it's here, and each year it gets more and more intense. It is not subsiding one bit.

For both Democrats and Republicans, it is clear that partisanship is more of an issue in Maryland than ever before. Democrats may feel that partisanship less than Republicans, but there is no doubt that politics in Annapolis has a particularly partisan flavor.

Partisan polarization is a clear issue in state politics, much as it is at the federal level. The question becomes, however, to what extent does partisan polarization affect state policy diffusion. This chapter will begin to lay out a theoretical approach to this issue by focusing on fellow partisan states as “neighbors” in a similar fashion to geographic neighbors. Rather than arguing that partisanship plays a small role in the “supporting cast” of factors that foster or inhibit geographic diffusion, I argue that in our polarized era, there is a new diffusion dynamic with state-level partisanship at its core.

This is primarily the case in an era of polarization, when party labels mean a great deal more. Republican states generally understand what other Republican states

stand for in terms of policy priorities, and thus are likely to look to their partisan neighbors for policy innovations. There has been some recognition of partisan attachments affecting diffusion in the literature, but there needs to be a greater focus on grouping states as partisan neighbors as well as looking at groups of states as geographic units. Partisan neighbors will be discussed in greater detail later in this chapter, but the concept of a partisan neighbor are groups of states that share party control of state legislatures, and the extent of that control. So, one could certainly say that a state controlled by the Republican Party is a neighbor to any other Republican state. It would make more sense, however, to compare levels of control. A 51/49 party split in a state legislature will likely not yield the same partisan policies as a state with 60/40 control, nor will the first state look as frequently to the second state as it might with states that have similar levels of control. In my case study chapters, I utilize both these variables.

This study makes a unique contribution to the diffusion literature by examining the impact of national partisan polarization on state politics. My theory is that rising polarization nationally has influenced state polarization, and thus facilitated partisan diffusion. When states are highly polarized, and current research shows that this is largely the case, policies with a distinct partisan dimension should become more likely to diffuse amongst partisan neighbors, This will be explored in greater detail later in this chapter, but it is important to introduce this idea here. With state polarization on the rise, and with the parties themselves much more distinct in terms of policy positions than they had been in the past, national polarization is a force that has not been studied in terms of policy diffusion. While national activity is

an important part of Karch's (2007) work, in that he evaluates the impact of federalism and devolution on state diffusion, but does not take national polarization into account. This is an important piece of the diffusion story, and this analysis will explore its impact.

National polarization may not have a direct impact on state policymaking, but the hardening of the parties' positions on a host of issues have, I argue, filtered down to state politics. As a result, policy diffusion scholars may need to take large-scale political trends into account when studying how state policy diffuses. Though we would not necessarily expect partisan polarization to matter on every state issue, it should certainly matter on issues with a distinct partisan focus.

### *Policy Diffusion and Innovation*

While scholars and political observers can look simply at the end result of politics as policy, this does not give us a complete picture of how the process works. Though complicated, understanding the mechanisms for policy creation is as important as studying policy outputs. Context matters greatly in the study of public policy and looking at policy outputs without a sense of the process that created them is unsatisfying. Any attempt to systematically understand policy outputs must incorporate an examination of how those outputs were created.

The main question for this analysis is this: how much do partisan attachments and polarization, both at the state and national level, affect the diffusion of public policy from state to state? The general diffusion model of public policy is one of the most widely studied in the field of public policy research (Walker, 1969; Gray, 1973;

Eyestone, 1977; Foster, 1978; Welch and Thompson, 1980; Berry and Berry, 1990 Mintrom, 1997; Mooney, 2001; Wejnert, 2002; Shipan and Volden 2006; Berry and Berry, 2007; Karch, 2007a; Karch, 2007b; Sabatier, 2007, Boushey, 2010; Shipan and Volden, 2012). In its most basic form, policy diffusion models look at the ways in which governments influence each other in the creation of new public policy. Karch (2007b) succinctly defines the concept of policy diffusion when he notes:

Diffusion occurs...when the likelihood that an innovation will be adopted in jurisdiction A is significantly affected by the existence of that innovation in jurisdiction B. Diffusion does not occur when officials in multiple jurisdictions adopt the same innovation completely independently, nor does it occur when later adopters are unaware of the existence of the innovation elsewhere (p. 3).

This underscores the core of the policy diffusion literature: there needs to be a conscious effort on behalf of states to adopt innovations that were created elsewhere. States simultaneously developing similar policies to respond to a problem is certainly an interesting phenomenon. The innovation and diffusion model, however, provides a causal mechanism that can explain why states create similar policies over a period of time. Berry and Berry (1990) show that the time bound nature of diffusion is key; the probability that a state will adopt an innovation created in another state is particularly interesting if it occurs within a particular period. In general, however, much of the research on innovation and diffusion rests on regional foundations, meaning that states will adopt policies that are effective in neighboring states.

So, for example, if Virginia creates a welfare-to-work policy that increases employment and lowers the state's monetary commitment to an entitlement program, North Carolina, Maryland, and West Virginia may all seek to emulate the successful program. Policies can be adopted by other states once they are proven effective, and

then conceivably by the national government as well (Schram, 1998). Innovative state programs are often co-opted by other states, and most states seek shortcuts when attempting to create new policies (Eyestone, 1977; Mintrom, 1997; Mintrom and Vergari, 1998; Boehmke and Whitmer, 2004; Berry and Berry, 2007; Shipan and Volden, 2008). That is, states look to avoid starting from scratch when they are creating policy and look to borrow from policies that have worked for other states.

Again, however, it is important to note that geography is just one chapter in the overall diffusion story. Indeed, Karch (2007) argues that there are political processes at work that facilitate policy diffusion, and he looks at diffusion primarily as a function of process. Time constraints, legislative professionalization, and the overall information generation process that occurs when states create policies that then diffuse to other states. This analysis, however, focuses on state partisanship as a key explanatory variable for diffusion. It does not deny that geography, or the other policy processes that the diffusion literature has focused on, do not have an impact on state policy diffusion, or that partisanship is key for all policy diffusion. Rather, I posit that when the parties have policy disagreements and there is an innovation in one of those policy areas, the diffusion of those policies should be strongly related to state partisanship.

As Karch would note, however, the existence of innovations does not necessarily imply the existence of diffusion. The causal mechanisms for diffusion are often unclear or complex. Policymakers need to both understand that innovations have occurred and believe that those policies are effective or useful enough to be adopted in their state. The nature of the policy process dictates that complex



problems often need to be solved with limited amounts of time, energy, resources, and expertise (Lindblom, 1959). In a perfect world, lawmakers would have all possible information and the time to use that information to craft productive policy that improves the lives of citizens. Of course, Lindblom realized this. The policy process is difficult to navigate and the outcomes are, at best, unclear. The phrase “muddling through” is a good way to describe how policymakers need to operate: there are problems, the problems must be solved, we lack the ability, time, or funds to completely solve the problem, so we do what we can with the materials we have.

This is the biggest reason that policy diffusion is an attractive way to create policy. If an innovation exists elsewhere and others have put in the time and effort necessary to create it, why not borrow from them? It makes a good deal of sense, given these constraints, for political actors to look toward the efforts of policy entrepreneurs that have already created innovative policy elsewhere. There is little reason for states to “reinvent the wheel.” While this is not necessarily the case for all policies or policy types, when there are highly technical policies or ones that do not necessarily have high public salience, it is likely preferable for state legislators (many of whom are part-time) to use templates provided by other states to solve policy issues. Of course, policy borrowing can also be helpful on controversial or high profile policies, as states can see what has worked elsewhere and use that as part of an argument for adoption. The process of policy diffusion relies upon innovations that are widely followed and, ultimately, copied to fit a particular set of needs in a given political context.

Though geography is not the only important variable for studying policy diffusion, it is certainly one that has generated a good deal of research, and for good reason. States physically close to each other have incentives to adopt similar policies. Rather than creating a new solution to a policy problem shared by its neighbors, states can simply look to what those neighbors have done. Geographically similar states may be forced to compete with one another as well. If taxes are low on corporations in a particular state, their neighbors may feel pressure to lower corporate tax rates to compete. I spoke with Indiana State Representative Jerry Torr, who sponsored Indiana's right to work (RTW) law that was passed in 2012. He made a clear economic argument for the state's adoption of the policy.

A study I relied on looked at the effect of manufacturing jobs 25, 50, 75 and 100 miles out, each direction, from a border where on one side it was RTW and on the other it was not. And the data spoke for itself. Manufacturers, where it was close and they could choose either side, chose to operate in the RTW states. With Indiana being the crossroads of America and not having a single border state that's not RTW, I just thought the effects would be dramatically amplified.

While the debate over the economic impact of RTW laws is not settled, clearly one of the main reasons for the policy's adoption was an argument based on economic competitiveness. For the supporters of RTW (a policy which will be explored in much more depth in Chapter 4), economics and geography are often touted as the most important benefits of RTW.

States are often thought of as "laboratories of democracy"; taken quite literally, they have the ability to experiment. With a smaller scale and less attention on a state legislature than Congress there is more opportunity for new policy to be created at the state level. Experimentation with innovative policy solutions that may

be impossible for the larger and more intractable federal is more likely to occur at the state level. (Volden, 2006; Karch, 2007). Indeed, experimentation on innovative or controversial policies may not be feasible on the national level, as it has become increasingly difficult to get even non-controversial legislation enacted. Innovation has long been at the center of diffusion scholarship, and for good reason. Innovative state programs are often copied by other states; Berry and Berry (2007) argue that most states seek shortcuts in policy-making. With finite resources and varying amounts of time that state legislatures are actually in session, it often makes little sense for states to invent new policy when effective policy already exists.

States also tend to compete with one another when policy innovations occur, so as not to be left behind. A classic example of this is reforming welfare benefits, a structure that creates little incentive for states to have more comprehensive benefits than states in their region (Francis, 1998; Rom et al., 1998; Figlio et al., 1999; Arsenault, 2000; Brueckner, 2000; Barrileaux et al., 2002; Volden, 2002; Berry et al., 2003). Additionally, if one state has created innovative policy, there are incentives for other states to adopt similar policies that deal with an issue. Public policy is complex and lawmakers have to deal with multiple contentious issues at once. If austerity measures are successfully adopted in a state, which by nature is politically difficult, a blueprint can be provided for other states looking to craft similar policy.

It is difficult for states to create entirely new policy. Gray (1973) described innovation as being a law “new to the state adopting it,” and I see innovation as the beginning of a policy diffusion “chain.” That is, State A adopts a new policy for a given problem and states B-F adopt (and likely adapt) the policy for their states.

Adaptation is likely a prerequisite to the diffusion of policy primarily because, even regionally, no two states are completely alike. Since there are often marked differences amongst states, we would expect to see policy changed at least somewhat before it can be widely adopted. This, however, does not dilute the original innovation because the adopting states may never have been able to create a certain policy on their own.

Indeed, adopting and adapting previously created policy is likely preferable for most states because the cost is far lower than creating something new. Cost can be measured both in political and resource outlays. In terms of resources, researching and creating new bills is time consuming and difficult. Most state legislators do not have large staffs or year-round legislative sessions during which they can create new policy ideas. Rather, legislative sessions are often hurried affairs in which there is barely enough time to pass budgets and deal with pressing issues. If ready-made solutions exist to a commonly shared problem, states have a great deal of incentive to adapt that solution to their needs.

Political issues are also present for states attempting to create innovative policies. Not all states can or want to be innovators. Indeed, the process of creating innovative policy is difficult and potentially problematic politically. Trying out an untested idea or implementing a new procedure is difficult in any line of work, including creating new theories in political science, but particularly so in politics where high profile setbacks can cost you an election. Additionally, once states create innovations and adopt them, followers can see the ways in which a policy did or did not work and adjust accordingly (Weissert and Miller, 2005). Of course, there are

also first-mover advantages for states that can create innovative policy because if the policy diffuses, the original innovator can claim a great deal of credit. Politics cannot be separate from policy creation. While we can imagine a scenario wherein legislators create policy simply to benefit their state, there is little doubt that politicians also want to win elections and continue being politicians. Indeed, Mayhew (2004) argues that this is the most pressing goal for any member of a legislature. As such, creating innovative policy that diffuses to other states could be a boon for a legislature's reelection efforts. Of course, the most important result for any innovation is that it work in the state in which it originated.

### *State Legislative Professionalism*

From a state government perspective, adopting innovative laws that have been adopted in other states makes a good deal of sense. State legislatures vary widely in terms of overall makeup. Many states have citizen-legislatures, in which the members of the legislature often have other careers and are part-time lawmakers, while other states have highly professionalized legislatures that look more similar to Congress. This change took place largely since the 1970's, as state legislatures began holding longer sessions, hiring more staff, and providing more resource to legislators to create policy (Moncrief et al, 1996; Rosenthal, 1996; Meinke and Hasecke, 2003). While there has been some homogenization of the makeup of state legislatures, there is still a gap between the highly professionalized legislature of, say, California and the citizen legislature of Montana.<sup>4</sup>

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<sup>4</sup> Data on the level of professionalization in state legislatures is compiled by the National Conference of State Legislatures

If other states have already made an innovative policy that effectively solves a public policy problem, it is quite logical to suggest that other states will adopt similar policies, as a result of the varying degrees of resources, experience, and professionalization available. In addition to these pressures, however, the level of professionalism within a state legislature can have an effect on producing innovative legislation. Tolbert et al (2008) show that states with high levels of professionalism, institutional capacity, and technological prowess are more likely to create innovations and to keep doing so than are other states. States without these advantages may be able to create innovative policy, of course, but it is much more likely to come from states with greater resources. The policy will then diffuse amongst states that did not have the resources or ability to create it themselves.

This has been shown in the policy diffusion literature, with scholars arguing that states with more capacity to create policy drive innovation and diffusion, and that the state originating the policies may be able to create more complex policies than their followers (Walker, 1969; Downs and Mohr, 1979; Clark, 1985; Mooney and Lee, 1995; Rogers 2003; Weissert and Miller, 2005). Squire's (2003) index of professionalism in state legislatures is also illuminating. Squire looks at levels of institutional support, pay for legislators, and staffing all improve legislative professionalism, and the study notes that there are electoral consequences for professionalism, particularly in terms of incumbent re-election. While more professional legislatures have lower turnover rates, there has also been an increase in electoral challenges in states as well as the quality of campaigns run, particularly for open seats (Hogan, 2001; Abbe and Herrnson, 2003; Hogan, 2004).

As states become more professionalized, then, they also have a greater lawmaking capacity. The policies examined in this study, though not necessarily highly technical, are controversial, and will likely require a legislature that can hold together a coalition in the face of opposition, both from the other state party as well as powerful, national interest groups. This will be explored in the next section, as well as later in this chapter.

### *Punctuated Equilibrium and Windows of Opportunity*

Policy diffusion has a distinct place in public policy research, but it is helpful to look at multiple, and related, policy theories in order to fully understand how and why diffusion occurs. This section looks at how the punctuated equilibrium approach explains the rapid diffusion of policy and how policy entrepreneurs can influence diffusion. Policy diffusion often takes place quite rapidly and widely, with a majority of states adopting policies within a relatively short period of time (Savage, 1985; Boushey, 2010). In this way, policy diffusion research can also be informed by looking at the punctuated equilibrium perspective (Baumgartner and Jones, 1993; Jones et al, 1998; Robinson, 2004; Breunig and Kosky, 2006; Repetto, 2006; Givel, 2010). Punctuated equilibrium theory ties in nicely with diffusion, because diffusion is based on temporal events. Diffusion is time-bound, particularly diffusion based on ideological or partisan issues.

Events drive policy creation as much as any long term trends, and events are obviously difficult to predict. This is one of the central problems in studying policy creation, because context is often king. Control of state governments can change,

public opinion can shift, or the conversation can move to different issues. When diffusion occurs, it often occurs rapidly, which is why punctuated equilibrium makes sense as a tool to understand policy diffusion. Policy may not change and new policy may not be created for a long period of time. If circumstances change, however, policy can be created quickly. Events matter in policy creation, which the punctuated equilibrium perspective makes clear. While events can cause policy to be created without much precedence shifting political circumstances can also make previously unpalatable or irrelevant policy that existed elsewhere suddenly attractive.

Gun control legislation provides a good case in point here. In December 2012, a gunman named Adam Lanza opened fire at schoolchildren and teachers at Newtown Elementary School in Connecticut. In the aftermath of these murders came a flurry of state and federal action (primarily on the part of President Barack Obama and not from Congress) aimed at prevention of these types of mass murder. Gun control had been a simmering issue in the aftermath of several high-profile incidents including the attempted murder of Congresswoman Gabrielle Giffords in 2011 and a mass shooting at a movie theater in a Colorado movie theater in July 2012, but the Newtown shooting provided a boiling point for the issue. While this is just one example of events helping to create policy, it is illustrative in the sense that events caused enough pressure (or at least perceived pressure) on lawmakers to do something to fix a particular problem.

In this case, of course, partisanship played a key role. There are multiple ways to address the issue of mass shootings with gun control being one favored by Democrats rather than Republicans. Democrats could, and did, argue that gun control



is an effective solution to this problem: if there is less access to guns that can be used in mass shootings there will be fewer mass shootings. This is not necessarily a bad argument but it is also not the only conceivable solution. Increased security at schools, strengthening the nation's mental health system, or tougher enforcement of existing gun laws are all reasonable responses to the issue, but there is no denying that any policy involving guns is politically and ideologically charged.

While not all issues have the level of public scrutiny and partisan attachments that gun control does, the overall diffusion process can apply to any number of issues, as long as certain variables are accounted for. Studying diffusion can mean looking at many different perspectives on public policy creation. Many political actors are active in the agenda-setting and formulation stages of the policy process. In terms of policy frameworks, policy entrepreneurs and innovation and diffusion approaches to the policy process argue that are many potential policy actors that can seize upon events or a need for a policy and attempt to set the agenda (Cohen, March, and Olsen, 1972; Kingdon, 2010; Snare, 1995; Zahariadis, 2007). Policy entrepreneurs create innovations at all levels of government, and have the ability to raise the probability of legislative action on these innovations (Mintrom and Vergari, 1996; Mintrom, 1997). The ability for these actors to set the policy agenda has vital consequences for policy diffusion.

Policy entrepreneurs do not necessarily have to be legislators; indeed, they are often individuals with technical expertise or ideological ambitions. They do, however, need politicians to enact the policies they prefer (Roberts and King, 1991). In this sense, policy entrepreneurs can exist regardless of a particular framework. In

terms of innovation and diffusion, these types of actors can be a catalyst that helps create innovations. While state governments can (and do) create innovative policy solutions, there is also a good deal of outside influence on this process. Boushey (2010) argues this point persuasively, “Whereas policymakers may have a sincere interest in evaluating the costs and benefits of a particular policy innovation,...interest-group activists have issue-specific agendas and will look to capitalize on a window of opportunity to galvanize public support for policy change” (p. 30).

The question the issue of gun violence and the possible policy solutions to the problem, and others like it, poses is whether federal inaction led to the adoption of stricter gun laws at a state level or if these laws would be put in place regardless of any federal legislation. It is clear that events often necessitate policy; governments may well simply wish to avoid the kind of mass murders that assault style weapons can facilitate (though the banning of these types of weapons has been difficult at the state level even in the aftermath of the Sandy Hook shooting). Governments also may wish to be seen as “doing something” in response to a particularly high-profile tragedy or other such event.

While one could argue that the presence of assault-style weapons always have the potential to be used in a mass killing, making the case that such weapons need to be banned is even more difficult in the absence of some sort of galvanizing event. Tragedies like the Deepwater Horizon oil spill in the Gulf of Mexico in 2010 led to action to make offshore oilrigs safer, but it took a particularly high profile event in order for such regulations to be put into place. This is not to suggest that

governments often or always fall on the job and are unable to anticipate problems with policy solutions, but events have a way of clarifying issues and making them salient to lawmakers and the public alike.

Traumatic or galvanizing events, then, open the windows of opportunity that political entrepreneurs can use to create policy change. Recent scholarship, particularly Boushey's (2010) work, argues that policy diffusion has in large measure been melded with the punctuated equilibrium framework. That is, policy changes incrementally (or not at all) for a long period, then suddenly moves very quickly (e.g., Lindblom 1959; Givel, 2006; Mintrom and Norman, 2009). These so-called "policy outbreaks" lead to rapid diffusion across states. Boushey cites Amber alerts, term limits, and re-adoption of the death penalty as examples of policies that have diffused in this manner.

Windows of opportunity, however, do not have to open only when there are high-profile events to catalyze policy change. Rather, in an era of polarized politics, I argue that windows of opportunity for state policy creation are open far more often than not. Boushey's analysis of policy outbreaks is compelling and gives a reasonably clear picture of policy diffusion has changed. This analysis goes a step further, and makes the case that partisan polarization opens windows of opportunity and keeps them open.

For this study, I argue that windows of opportunity can be opened, and stay opened for certain policies, as the result of increased polarization at both the state and national level. With the parties' distinctiveness becoming ever more pronounced, they may no longer need galvanizing events or rely on just one policy outbreak to

have policies continually diffuse. Rather, because the parties can rely on their shared partisanship as a way to determine which states they should look to when adopting new policy, and which policies are best suited to their states politically, windows of opportunity can remain open for longer than may have previously been considered.

### *Partisan Proximity*

Before continuing with the overall discussion regarding partisan polarization and policy diffusion, it is important to define the important terms in the discussion. Geographic proximity, as mentioned, is often used as an important explanatory variable in policy diffusion research. Neighboring states share characteristics, and policies diffuse as a result of similar policy concerns. For many policies, this makes a good deal of sense, though there will always be other factors at work in order for policies to diffuse from one state to another. Geographic proximity, however, may be less important for the diffusion of policies with a partisan dimension than what I call *partisan proximity*. Partisan proximity can be defined as simply the partisan control of a particular state, i.e. Republicans control the state legislature, or with more complex measures such as the proportion of control in a given state. As an example, in 2014, Democrats controlled both Maryland and Minnesota's state legislatures. The proportion of that control, however, varied significantly. In Maryland, Democrats held 76% of the seats in the state Senate and 69% of the seats in the House. By contrast, Minnesota Democrats controlled 58% and 54% of seats, respectively. Both states can be considered Democratic, but we could certainly say that Maryland is "more" Democratic.

I believe that both measures of state partisanship can provide information regarding partisan policy diffusion. While perhaps Maryland may have an easier time passing a piece of legislation that is strongly associated with Democratic politics, my theory suggests that both states would be interested in the policy. If polarization does drive the diffusion of policies that are primarily partisan in nature, the partisan control of a state legislature should have a major impact on whether that state adopts such a policy. Additionally, with party distinctiveness, in terms of issue position, as high as it has been in decades states can use those cues and determine policies that may fit with their partisan affiliations. With these lower overall policy learning costs, then, states do not need to border each other to borrow policy. Indeed, from a partisan diffusion perspective, they need only share similar partisan goals.

In addition to state partisan proximity, I rely on measures of national polarization to help make the case that states can perceive who their partisan neighbors are and whether they should adopt certain policies. This will be discussed in greater detail in the next section, but state partisanship and party identification has undergone a dramatic shift over time. Party issue placement in states is more clear than in the past, and I attribute this to rising partisan polarization nationally. There are multiple ways to define polarization at the national level, and Chapter 1 introduced the party NOMINATE scores as evidence that polarization in Congress has increased over time. Additionally, congressional output (or lack thereof) can be an indication of polarization, as the parties are often unable to compromise on a host of issues. These measures, however, likely only show an indirect impact on state policy diffusion. It is almost certainly the case that state legislators are unaware of

the specific NOMINATE scores for members of Congress, or exactly how many laws Congress passes. They may, however, perceive an overall trend of partisan polarization at the national level which may help drive polarization in the states. While empirically showing this relationship will be left to future research, it is important to introduce this concept as part of the theoretical underpinnings of this analysis.

### *National and State Polarization*

So far, I have examined the roots of how policy diffusion operates (including the importance of geography), the impact of state legislative professionalism, and how events and policy trends can impact state adoption decisions. I have also defined the terms that are most important to the analysis overall. This discussion is important, and these variables have all been considered in previous research. This analysis, however, examines policy diffusion primarily as a function of partisanship, and specifically partisan polarization. States have, along with national government, become more polarized. Indeed, state party ideological scores map closely with those states' congressional scores (Shor et al, 2010). State polarization, however, is not particularly easy to quantify. Overall, there has been a lack of systematic study of state roll call voting patterns, primarily due to data limitations.

There is no doubt that polarization has grown dramatically at the national level over the past several decades, both in terms of public opinion and in government generally (Bartels, 2000; Hetherington, 2001; Fiorina, 2002; Evans, 2003; Green et al, 2004; Brewer, 2005; Abramowitz and Saunders, 2006; Lee, 2009; Hartog and

Monroe, 2011). While partisan polarization in Congress has wide ranging impacts on national policymaking and the political process in general, this study is particularly interested in whether polarization has an effect on state policymaking. If polarization has created more distinct parties, and it is safe to say that those phenomena are related, then states may be able to more easily identify their partisan neighbors and determine which policies they should borrow.

Shor and McCarty (2011) look at all state roll call voting since the 1990's and map the ideological ideal points for all state legislatures. They show that state polarization has risen over the past decade and a half. This is not true for every state, but there are 15 states, according to their measures, that are actually *more* polarized than Congress. While, again, not all states exhibit the polarization levels at the national level, it is clear that polarization is an issue that scholars must wrestle with when studying state policymaking. Indeed, scholars have begun to treat state governments similar to the national government in terms of their partisan makeup.

Aldrich and Battista (2002) apply the concept of conditional party government to states, and argue that competitive party systems lead to polarization in states. Lee and Hinchliffe (2014) expand on this work and systematically show that state party competition is highly correlated with higher levels of state polarization. Party competition is measured by looking at multiple factors, including electoral competitiveness and the ratio of each party in a given legislature. I utilize variations on these measures when testing my theory of partisan diffusion, and Lee and Hinchliffe make the case that increased party cohesiveness has led to an increase in state competition over issues. This helps build the argument that state parties are more

aware of what party labels mean and that states can look to their partisan neighbors for policy inspiration.

Additionally, state party line voting has become more pronounced over time (Carroll and Eichorst, 2013). Party line voting is interesting, as it shows the cohesiveness of state parties. While there will always be variation amongst state legislators in terms of their party allegiance, rising polarization may be one of the reasons we also see a rise in more party control in the states. Once again, however, interparty competition is an important part of this story. One of the central characteristics of conditional party government is that the parties should organize themselves around developing a coherent “party record.” In this conception of party organization, party leaders must craft a party strategy, both electorally and legislatively, and rally their members around it. If members can run (and win) on a party’s overall record, there will be more incentive to vote the party line.

While this analysis is not about party organization specifically, it is the “party reputation” aspect that is of most use to partisan diffusion theory. With party polarization, most states and voters understand what the parties tend to support in terms of policy. Republicans in Texas may differ from Republicans in Ohio, for example, on some issues but there is broad party agreement overall. Shor and McCarty (2011) do show that there is variance in terms of individual legislators, and there are more, say, liberal Republicans in state legislatures than there are in Congress. With this caveat in mind, however, we can safely say that the parties’ positions, particularly at the national level, have become much more homogeneous over time, and this manifests itself both in the actions of party elites and the



preferences of voters (Garner and Palmer, 2011; Druckman et al, 2013; Jacobson, 2013). If, indeed, states are becoming as polarized as the national parties, it makes sense that state partisan attachments should be similar as well.

In the 1950's, Massachusetts and Mississippi were Democratic states, though one would be hard-pressed to find a policy area on which the Democrats in those states agreed. Indeed, at the time, Democrats electorally dominated the South, though their policy positions, particularly on civil rights issues, were wildly divergent from their northern, more liberal counterparts. At that time, knowing a state, or individual legislator, was a Democrat would likely not have been enough to discern their position on any given issue. The lack of overall party cohesiveness was identified by the American Political Science Association's Committee on Political Parties, which argued that the parties did not provide enough of a choice for voters on important issues. While that may have been the case at the time, however, it is clear that the parties are currently much more distinct.

I argue that, as a result of national polarization, there is an indirect effect on state polarization. With clearer distinctions between the parties on a host of issues, states can look to their partisan neighbors for policy inspiration. This partisan proximity is the main contribution of this analysis. If states with similar partisanship, as well as similar proportions of partisan control, adopt a policy, I argue that their partisan neighbors will be more likely to do so as well. The causal mechanism for diffusion, then, is the partisan proximity between states.

This is not to say, of course, that partisan diffusion is the only way in which policies diffuse amongst states. This analysis recognizes that there are multiple

causal mechanisms for diffusion. As mentioned, one of the most widely studied diffusion models is based on geography. I believe that this type of diffusion (and others) almost certainly occurs, but the overall literature has yet to fully incorporate the role of partisanship and polarization in determining whether states will adopt certain policies. Karch (2007) makes this particularly clear in a review essay on the prevailing theme in the diffusion literature and argues that the focus on regional diffusion needs to change.

Most diffusion research relies on a theoretically unsatisfying explanation that focuses on the potential impact of geographic proximity. Certainly, there is reason to question whether geography continues to exercise an important influence on policy diffusion in light of recent technological changes and the emergence of national communication networks... But more important, geography does not provide a clear explanation of why policies diffuse among the states. To develop a compelling explanation for policy diffusion, scholars must broaden their horizons beyond the default assumption that it is driven by geography (p. 63)

Again, Karch recognizes that while geography certainly can have an impact on whether policies diffuse amongst the states it is certainly not the only, or even the best, explanation. Partisan affiliation can provide additional information for states looking to create new policy (Dolowitz and Marsh, 1996; Spill, et al. 2001; Grossback et al., 2004; Volden, 2006; Marsh and Sharman, 2009). Rather than changing innovative policies to match up with their neighbors, states attempt to decide whether adopting an innovative policy will move them too far away from their ideal policy point based on partisanship. This is a far cry from simply adopting the policies of your geographic neighbors. Instead, states will try to find policies that fit with the prevailing opinion in the state overall.

As we have seen, part of the difficulty in studying the impact of partisanship on state policy adoption has to do with data limitations, especially when the measurement relies on political actors to intuit where their state exists on an partisan spectrum as a comparison point to other states (Nice, 1982; Wright et al., 1985; Wright et al., 1986; Holbrook-Provow and Poe, 1987; Erikson et al., 1993; Berry et al., 1998; Brace et al., 2004; Berry et al., 2007). Additionally, partisan diffusion may not refer to the position of a state generally, but rather its position on a particular issue. Adoption of education policy may have no connection to a state's level of progressivism (or conservatism) on welfare or civil rights laws (Gray, 1974). It is also conceivable that innovation does not occur within one model of state behavior, but rather that there are several forces at work when policies migrate from state to state (Eyestone, 1977). Of course, not every policy is partisan. While states may be sending signals concerning their partisanship when they adopt a certain policy, it may also be the case that the policy is simply a particularly good fit for a state regardless of partisanship.

Same-sex marriage, for example, is not limited to one part of the country, and states in favor of same-sex marriage could look to innovators of that policy wherever it may have originated. While geographic neighbors can also be partisan neighbors, the crux of partisan policy diffusion is that it is not reliant on geographic proximity. A Republican state next door to an innovator of progressive or liberal policy should have no greater interest in that policy than any other Republican state. While, certainly, states can be more or less partisan and therefore willing to look at partisan innovators under particular circumstances, geography is not a driving force for the

diffusion of partisan policy. Far-flung partisan neighbors have the same incentives to utilize innovations that geographic neighbors do: the work has been done, it (may) have been shown to be effective, and the policy can be adapted to fit their particular state and circumstances.

If a state controlled by Democrats has no geographic relationship with an original policy innovator, it is unlikely they would even look at that state for policy guidance if their circumstances are different. As Maryland legislative staff member Kristin Jones argued to me in our interview:

We aren't exactly surrounded by blue states...We're likely to look at states that share our policy values. Certainly on a lot of health policy we've followed New England states...I think we look to progressive states [when making certain policies].

Similarly, Republican Delegate Wade Kach, in response to how Maryland acts and how he acts when deciding what type of policy to promote, told me:

A lot of what happened [in the 2012 session] was more because other states that are liberal were doing and then we had to [do it]...I would assume that if you go to a Southern state or a more Republican state you would find a solution that has less government involvement. I think there are different ways to approach a problem. If a Massachusetts solution was big government involvement and it improved the situation by 40% and whereas in South Carolina there was a lot less government and it improved the situation by 35%, I would choose the South Carolina [solution] simply because government is not going to be as involved.

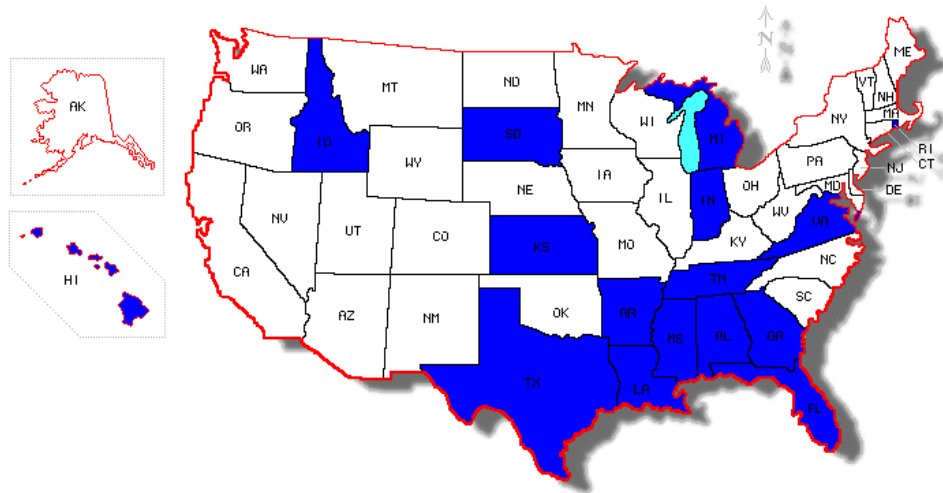
Jones and Kach certainly come from different partisan and ideological perspectives, but partisan considerations have influence on crafting policy. Kach even goes so far as to say he would take a small decrease in effectiveness (admittedly, a very small one in this scenario) in order to achieve a policy priority. In this case, of course, the argument could be that while a program might be marginally more

successful with more government involvement, added costs or taxes may result and therefore, from the perspective of a Republican, cancel out any benefits. This may be the case when polarization is at lower levels, as well.

With the parties becoming more distinct on many issues, it may be that state legislators will begin to default to adopting policies created by partisan neighbors on a host of issues. Jones' take on the issue is similar and argues that Maryland is not particularly like any of the states that surround it in terms of partisanship. Under this reality, Maryland has no choice but to look outside its region to find policy inspiration. While not explicitly noted by Jones, this inevitably brings up the question of whether partisan policy diffusion has a larger reach than even this analysis postulates. If a firmly Democratic state like Maryland has no partisan peers in its geographic vicinity, the state may indeed be likely to look outside its regional borders for more than solutions to hot-button partisan issues.

Some states are more or less partisan than others of course, and a moderate Republican state may be willing to look at a Democratic innovation (or vice versa), but that type of policy congruence is likely not the norm when dealing with partisan issues. Voter ID laws are a good illustration of this. There is wide variety of in how states choose to make voters show proof of identification at the polls. The majority of states require some form of ID, but an increasingly controversial provision of requiring a photo ID in order to cast a ballot has taken hold across the country. Figure 2.1 shows the states that have this provision as of 2014.

**Figure 2.1: Voter ID Laws by State as of 2014**



Source: djmaps.net (c)

Of the states that require a photo ID, all currently have Republican control of both houses of the legislature. In contrast, there is wide variety amongst legislatures that have not enacted any form of voter ID. This could indicate that not all partisan neighbors agree with this particular innovation or that it simply has not diffused yet. Regardless, there is no geographic pattern to requirement of a photo ID to vote, but as Figure 2.2 shows, there is a distinct partisan pattern. The shaded states represent those that have any type of photo ID as of 2014, but there is variation amongst those states in terms of voting procedures if a voter does not have an acceptable ID. Tennessee requires that voters cast a provisional ballot that will not be counted unless

the voter can produce an ID within two days of the election, which may be difficult if the voter does not have ID in the first place. Most other states allow the voter to sign an affidavit certifying their identity. While this is just one example of a partisan policy, it does show that innovation and adaptation exist for partisan as well as regional neighbors.

Michigan state Representative Mike Shirkey, a Republican, was an influential and an avid supporter of a right-to-work law in Michigan, was fairly blunt when asked about the effect of polarization and inaction in Washington on state policymaking.

It does have an effect overall; the federal government is so large, and has grown in power. A state cannot pass policy in a vacuum, so I think states have to be aware of what is going on in Washington.

In general, states need to be aware of what is happening at the federal level for many reasons, not least of which is the need for states to implement federal programs. Additionally, and germane to Rep. Shirkey's point, the policy climate created in Washington can move state policy as well. Kristin Jones, the Chief of Staff for Maryland's House of Delegates Speaker Michael Busch, also made this argument regarding Maryland's frustration with federal inaction on prescription drug benefits. Though Maryland's legislation was successful, it likely cannot have the same impact on the lives of senior citizens than more wide-ranging and better-funded federal legislation could. She elaborated on this point as well, including other types of policies in her critique of federal intransigence.

On the drug program, it was up to states to figure out drugs for seniors unless you could attach it to your Medicaid program because the feds weren't gonna put any Medicare money towards that. So, again, imperfect solution because you couldn't cover everyone, you had to sort of narrow it down according to income eligibility and try to cover as many people as you could, financially speaking. I think the same thing happens with transportation policy. So, it's

become frustrating and I think it's frustrating for a lot of people on the Hill who are trying to get things done and it's frustrating for people on the state level and I think it does drive policy down at the state level as well.

The frustration felt by states when being forced to deal with federal inaction is clear from Jones's critique. Maryland's ability to pass legislation is somewhat unique, in that uniformly Democratic control lowers the costs of passing legislation favored by the majority, but there is still a limit on what states alone can pass.

Jones provides a contrast to Shirkey's point. Jones works for a Democratic member of the Maryland House of Delegates, and sees federal inaction as a negative that has forced Maryland to create its own programs. States may be willing to cede legislative control to the federal government when dealing with complicated programs, like Medicare or transportation policy. Shirkey, while not specifically arguing that the federal government has no role in policymaking, does it make it clear that states need to be aware of a large, and growing larger, federal government. While this would suggest, of course, that the federal government should be contributing more in terms of actual policy, we have seen that policy outputs have declined dramatically. This analysis, instead, posits that polarization at the national level, partially embodied by a lack of congressional policy action, influences partisan policy diffusion.

### *Interest Groups and Diffusion*

Interest groups have always been a part of the policy discussion in political science, though their presence and importance has certainly grown over time. In particular, the rise of highly partisan groups has changed the policymaking dynamic



greatly. In the case of this analysis, partisan interest groups exert a great deal of influence on many policies that are considered by states. Greg Mourad, Director of Legislation at the National Right to Work Committee, spoke with me about his group's approach to state policymaking.

We are a grassroots, membership based organization, people dedicated to that proposition. What we do is try to pass RTW laws both at the state level, and we'd love to pass a national RTW law one day. We bring pressure to bear from the grassroots to the politicians, pressuring them to pass RTW laws whenever the opportunity is presented to them. So, that means mobilizing their constituents, asking their constituents to contact them, through postcards, phone calls, emails now, petitions online. What we do is mobilize constituents to put pressure on politicians.

The sophistication of interest groups on all types of policies is an important consideration when we look at how diffusion occurs. State policymakers are no more immune to this influence than their national counterparts, and legislative battles play out just as fiercely in state legislatures as they do on Capitol Hill.

Of course, the study of interest groups and their effect on public policy is not new. The pluralist vision of America has had many adherents and has informed much of the discussion in the interest group literature in political science. Two classic, and opposing, views on pluralism come primarily from Dahl (1961) and Lowi (1979). Dahl argues in the tradition of Madison concerning group dynamics of power. Madison's great concern, particularly in *Federalist 10*, was checking the influence of both the public and factions whose passions may overwhelm the proper course of government. Dahl's pluralism expands on this notion in his study on New Haven, Connecticut. Dahl argues that the public can identify their policy preferences,

coalesce into interest groups, and pressure lawmakers. For Dahl, power is spread out across the political system and multiple groups can hold power.

The system works primarily because no one group has inordinate amounts of power and various interests can be represented in policymaking. No doubt, this is an idealized world that does not, and possibly did not, exist, but Dahl's work is an important starting point in understand the ways in which interest groups act and the reasons behind their formation. While New Haven doesn't look much like modern America, there is certainly a kernel of truth today in Dahl's study. Interest groups still form around issues that are important to them, but the national scope and monetary influence that the largest groups possess seem to fly in the face's of Dahl's idyllic form of pluralism.

Lowi's (1979) work recognizes this and sees power in the policy process quite differently. Granted, his study came later than Dahl's and had the benefit of seeing the changes in interest group power occurring and his insight is particularly compelling when we examine how interest groups function on a national level. His concept of interest-group liberalism argues that those who should be making policy, particularly Congress, have abdicated their responsibilities for lawmaking to bureaucracies and particularized groups. Importantly, and as a contrast to Dahl, he questions whether public membership in these groups actually leads to competition and better policy outputs. Public membership in a group can be a boon for the organization, particularly at a grassroots level, but it does not necessarily imply that the public has a particularly important say in how the interest group itself is run.

Olson's (1965) seminal study on the topic of interest groups and collective action comes to a similar conclusion in that larger groups generally have problems providing for the collective good, and that more privileged members of the group will derive greater benefits from its work. Large scale interest group work is problematic for its members and potentially for the policy process, as Lowi also contends that the large number of interest groups in the system lead to gridlock within the policy process. This makes sense in the modern context as well. Large, well-funded interest groups certainly exist on both sides of the partisan divide and add a layer of complexity to the policy process through political organizing and donations.

As mentioned, many interest groups are partisan and create policy networks of their own, similarly to how policy entrepreneurs create policy networks amongst state actors. National interest groups work not only with state legislators and power players to advance their policy goals, but also with state-based groups that share a similar agenda. Jeremy Pittman, the Deputy Field Director for Human Rights Campaign (HRC), spoke with me about how HRC interacts with its state partners on issues of equality for LGBT Americans.

I think those are the main things we talk about. We talk about people, we talk about dollars, and then we have strategic expertise as well that we put on the ground. We have state legislative director that's a lawyer and we have a team of lawyers here who can draft legislation and actually have been involved in many, many states in drafting their civil unions bills or their marriage bills. We will provide talking points to legislators as well as to advocates. We will help prepare testifiers for public hearings, those sorts of things we do. HRC is a well-known, well-funded interest group that provides a great deal of state support for its issues along with lobbying Congress on legislation ranging from Don't Ask, Don't Tell (DADT) to the Employment Non-Discrimination Act (ENDA).

The grassroots, as these groups are called, can provide lobbying support and illustrate that the interest group has a national presence. On many issues, local grassroots are utilized by national groups to advance a national advocacy (Kollman, 1998; Rosenthal, 2001; Walker, 2009; Wolack et al, 2011; Djupe and Conger, 2012). In other words, battles that may not be able to be fought in Congress can be fought at the state level. Equality Maryland is an organization dedicated to equal rights for LGBT citizens, and I spoke with Executive Director Carrie Evans about their role as a grassroots arm of the national gay rights movement.

You can imagine having a small organization trying to move a mountain for so many years. Finally when the coalition came together and we all came as equal partners to the table, I mean that really transformed everything because we were doing things in concert, there were more resources at the table, all the in-kind staff HRC provided. We wouldn't have done it without that. Plus, they were able then to leverage their membership and have fundraisers jointly, when the governor was traveling for his duties with the National Governor's Association, in places like New Mexico and spend an extra day and do a fundraiser for the campaign. So, that was really good because all the other national funders had pulled out of Maryland except HRC, so they became the lifeline of the campaign. Half the campaign staff was in-kind, our communications director, our political director, most of our field organizers, our faith people were all HRC folks.

This is not to say, of course, that all grassroots organizations are indebted to or even always interested in working with national groups. It is the case, however, that creating coalitions of grassroots organizations in states, along with the fundraising and organizing capabilities of national groups, that leads to policy change and, potentially, policy diffusion.

Additionally, the growth of technology has allowed grassroots groups to more effectively lobby for their preferred policy positions. While lobbying policymakers was once an expensive and time-intensive process, technology has opened up the

process and allowed for groups to lobby while incurring lower costs to their organizations and members (Bergan, 2009). When interest groups can create large list serves and enlist their members to contact legislators by email (rather than in person or on the phone), or sign an internet petition, or donate money to the organization online, the policy process can become much more open and accessible.

Of course, this often necessarily leads to partisan outcomes (Koger et al, 2009). Policymaking is often less about the merits of a given bill, but rather the organized interests and partisan rhetoric surrounding legislation. This is not to say that partisan policies cannot have merit, but that there is an increasing amount of partisanship surrounding bill passage.

Human Rights Campaign (HRC) is one of the most influential national interest groups operating in Washington DC. HRC's focus is on ensuring equality for LGBT Americans, with a recent emphasis on marriage equality and ending workplace discrimination. And, of course, HRC is a largely partisan organization that has an important lobbying presence towards Democrats (in particular) on Capitol Hill. In addition to HRC's national presence, however, the organization also works closely with local partners in the efforts to influence policy at the state level as well as nationally. Pittman also spoke with me about mobilizing support for HRC's cause at the state level.

We mobilize our members and supporters, so when there's an opportunity to engage people to take action, we do that. Sometimes we lead those efforts. Often we are working in coalition with local partners and other national partners, sometimes in a bilateral fashion with a state group...Mobilizing our members is something we do when issues of equality are on a state ballot or in front of a state legislature as a matter of course. That's the number one thing we do: we mobilize our members.

Mobilizing support has become both more important and more realistic for large scale interest groups. Technological changes have made it increasingly possible for interest groups to target certain legislators or agencies and make a coordinated effort with grassroots support to lobby those targets (Bergan, 2009). With a lower bar on both ends, national staff and grassroots, the process of connecting with state-level groups who in turn lobby lawmakers has become more seamless.

Interest groups exist around nearly every political issue, and often have both federal and state presences. While interest groups certainly spend a great deal of time and effort attempting to influence federal policy, there are gains to be made at the state level as well. Grassroots groups are able to form coalitions and work with national groups, and national groups can create their own state coalitions around their preferred issue. In light of the difficult circumstances surrounding federal inaction of any wide-ranging or controversial policy, new tactics are required if interest groups are to be successful. Pittman continues:

We have increased focus on state-level work over time as it's become clear that it is difficult to make advances in Congress...We are doing a lot of work on the federal level and it's our core focus...but about 10-12 years ago when George W. Bush was in the White House and Republicans controlled both Houses of Congress we were battling against federal marriage amendments...At that point when it was difficult to see how we would make progress in Congress, HRC grew the emphasis on state level work and public education work...There was a recognition that growth wasn't going to happen in Congress [exclusively].

State-level activism by interest groups is not new. What is new, however, is the mobilization of state groups to assist national groups in lobbying state legislators or creating ballot referenda.

In the absence of innovation at the federal level—whether through constitutional or statutory restrictions of federal power or the inability of the national government to legislate due to inter-partisan conflict in a polarized era—I argue that states will do so, where possible, instead. While this may only be the case for high-profile issues such as RTW, future research into this topic could be very beneficial in terms of understanding how to break gridlock in Congress. Rather than a top-down approach, perhaps policymaking could eventually benefit from a bottom-up process.

The partisan nature of interest groups has been studied, but it is not entirely clear how the ideology of these groups may affect policy diffusion (Haider-Markel and Meier, 1996; Roh and Haider-Markel, 2003; Gerber and Phillips, 2003; Jones and Baumgartner, 2005; Grossman and Dominguez, 2009). Interest groups respond to federal action or national policies debates and begin to ramp up state lobbying in order to advance their agenda. So, while national debates drive interest group activity, much of that activity is manifested in state policies (Baumgartner et al., 2009). For diffusion, this matters a great deal. While interest groups cannot force states to adopt a policy, they certainly can have an important impact.

State legislators who are inundated with appeals from groups all over the country on a particular issue may be more persuadable than those in Congress who deal with that sort of pressure on a daily basis. And, even if we grant the premise that state politics have become more polarized than they have been in the past, there is little doubt that with fewer professional legislatures, lower electoral stakes, and much less media coverage, states are a more fruitful opportunity for interest groups to influence policymaking.

Changes in technology and in the political process in general have made the learning process for states much simpler and the geographic restrictions for policy diffusion less relevant. Information costs are far lower in the modern era for states looking to emulate innovative policies. Technology itself contributes to this, but new forms of policy entrepreneurship exist than did so in the past. As mentioned, policy entrepreneurship, broadly understood, is the concept that interested parties take advantage of “windows of opportunity” to create new policy that addresses some urgent need (Kingdon, 1995). Certainly, this type of activity still exists and has been well-documented by policy diffusion scholars, particularly when dealing with effective or relatively non-controversial policies (Knoke, 1990; Roberts and King, 1991; Mintrom and Vargari, 1998; Mintrom and Norman, 2009). Access to policy knowledge has only become more accessible for states, as the information costs faced by policy entrepreneurs are greatly lessened by both technology and the explosion of national special interest groups. This is relevant to the study of policy diffusion, particularly because many controversial or partisan movements in state government come from groups with a national, partisan focus.

Policy knowledge, of course, includes knowledge of outcomes, which is one of the reasons that diffusion is particularly attractive at the state level. States have limited time and resources, and understanding policy outcomes is important when deciding to adopt or adapt a policy from another state. Partisan diffusion, however, is a bit different in the sense that many partisan or controversial issues have clearer effects; same-sex marriage is unlikely to have wide ranging economic impacts, for example. These types of policies accomplish partisan goals on which politicians can



campaign and do the will of their constituents. While this may sound a bit cynical, it is also the case that the parties have ideological considerations that go beyond politics and into the realm of principle. While not all partisan diffusion policies follow this blueprint, it is certainly the case that the policy knowledge for partisan diffusion is almost always going to be clearer than for more complex policy. The organized interests that have increasingly sprung up around these partisan issues make the consequences all the more obvious.

The impact of interest groups on policy diffusion, then, is a particularly fruitful area for further study. Interest groups with a partisan focus understand the realities of policy creation at the federal level: for the foreseeable future, not much is likely to occur. States, then, provide an avenue for partisan interest groups to enact their agenda. With rising state polarization lowering learning costs for both states and interest groups, the potential is there for interest groups to exert a great deal of influence over policy diffusion by facilitating the opening of windows of opportunity, and lending states their specific policy expertise.

#### *Case Study: State Lottery Adoption*

State lottery adoption is a classic case of geographic diffusion. Lotteries are ubiquitous, with 44 states running some form of lottery in 2014. Every state in the continental United States either has a lottery or shares a border with a state that does. Berry and Berry (1990) provided one of the seminal studies of geographic diffusion by examining the importance of both internal state characteristics and regional diffusion patterns. This was before lottery adoption became nearly universal, yet the

results were clear: the number of states that adopted lotteries as well as the influence of neighboring states had a positive effect on state adoption of a lottery. Additionally, Berry and Berry found that internal state characteristics make them more or less likely to create innovative policy. If states are in poor fiscal health or if it is in an election year, they found that the state was more likely to adopt a lottery.

One of the reasons this work is so compelling is the nature of state lottery adoption itself. Lotteries are, in many ways, a perfect test case for geographic diffusion. If a neighboring state runs a lottery, that state can gain huge benefits in multiple ways. First, of course, is an overall upgrade in revenues at a relatively low cost. Indeed, many state lotteries argue that revenue enhancement is the first and only goal (Garrett, 2001). Lotteries do not provide a service, per se, but their revenues are used to fund many state program, including expensive propositions like public schools. Once the lottery is implemented, the only the main cost incurred by a state is if someone happens to win. Lotteries, then, are in many ways an obvious choice for states that are in need of revenue enhancements. While the overall economic benefits for a state are clear, there is also an economic downside. Lottery ticket sales are correlated with poverty rates, which has led many to characterize lotteries as a “poor tax.” Despite a very low likelihood of winning, lower-income individuals make up a significant percentage of lottery players (Blaylock et al, 2007).

The second, and most compelling reason to study lotteries as a mechanism for policy diffusion, is the pressure that states face to implement it. If a neighboring state is reaping the benefits of a lottery, a state will be hard pressed to ignore them. Not only does that state miss out on untapped revenue, its citizens will also go across state

borders to buy tickets (Knight and Schiff, 2012). In addition to losing revenue, states without lotteries are also *assisting* neighboring states that have lotteries by “forcing” its citizens to go elsewhere. If a state without a lottery is bordered by a state with one, it is quite likely that individuals living near the border (or perhaps further away) will take their business out of state. This is a legitimate concern for states, and the main reason the concern exists is geography. Certainly, the vast majority of people would not travel multiple states to buy a lottery ticket. While there may be exceptions to this rule, it is unlikely that states need to worry about other, geographically unconnected states running lotteries. A state may, however, feel pressure to adopt a lottery if neighboring states are essentially taking revenue that might otherwise stay home.

Clearly, then, geography matters when studying state lottery diffusion. This analysis, however, is primarily interested in partisan polarization and its relationship to state policy diffusion. Lottery adoption, however, does not have an obvious partisan component. While there is a moral issue to consider, it is an issue that can cut right or left, depending on point of view. Those on the left may decry the regressive nature of the lottery as a poor tax, while those on the right may cite morality concerns. Of course, these generalizations are fairly interchangeable, and left-leaning individuals could also see the lottery as a moral danger, as well.

Table 2.1 shows the adoption of state lotteries, taking into account the partisan control of the state legislature at the time the policy was adopted. What is most interesting from Table 2.1 is the fact that the majority of lottery adoptions occurred during a time of divided state government control. This would indicate that lottery

adoption may be a relatively non-partisan issue. If states can make decisions about a fairly significant policy and revenue stream when partisan power in the state is divided, that speaks volumes about the political calculus involved in adopting a state lottery.

Table 2.1 also shows the adoption rate for states with Democratic and Republican control. We can see several interesting trends. Democratic states adopted lotteries at a lower rate than states with divided government and at nearly the same rate as Republican states (2% of observations, and 2.9%, respectively).

**Table 2.1: State Government Control and Lottery Adoption, 1964-2010**

	Democrat		Divided		Republican	
	(Adopt)	(Not Adopt)	(Adopt)	(Not Adopt)	(Adopt)	(Not Adopt)
Lottery Adoption	12	463	24	599	5	169
Total <sup>5</sup>		475		623		174

In terms of divided government, states adopted lotteries in 4% of the observations. So, while Republican controlled states adopt fewer lotteries during this time period, the difference in terms of the rate of adoption is minimal. We also see the relatively few instances in which the Republican Party controlled state legislatures during this time period, but again, the rate of diffusion is nearly identical for all three categories.

State lottery diffusion is a classic case of geography playing a vital role in the expansion of the policy. Lotteries are a clear example of a policy where geography is the most important explanatory variable; it creates competition and incentives for

<sup>5</sup> Total refers to the number of years in which state either were Democratic, Republican, or divided.

neighboring states. While partisan neighbors are arguably able to ignore innovations based on partisan proximity, it is very difficult for a neighboring state to ignore a lottery on its doorstep. As any diffusion scholar would recognize, however, not all policies are as neat and clean as lotteries in terms of a pattern of diffusion. There are many variables, including partisanship, that can be causal mechanisms in diffusion. This discussion, however, highlights the ways in which scholars have looked at diffusion in the past. It is fairly well established that geography matters, but one of the goals of this analysis is to demonstrate that partisan neighbors can operate similarly to geographic ones. Exploring the dominant mode of diffusion research is important in understanding where that research can, and should, be going.

### *Conclusions*

This chapter laid out a theoretical outline for how states decide to adopt policies with a partisan dimension, and introduced the concept of partisan proximity as a causal mechanism for policy diffusion. Partisan polarization has brightened the lines between the parties, and thus has had an indirect effect on state policymaking. If Republicans in Montana are largely the same as Republicans in South Carolina, states can draw all sorts of cues from their fellow partisans in terms of what policies they should adopt. In the following chapters, I analyze two policies from a partisan diffusion perspective: same-sex marriage and right to work. I argue that diffusion of partisan policies should occur amongst partisan neighbors, and that these policies are a first effort in showing the impact of partisan polarization on policy diffusion.

## Chapter 3: Same-Sex Marriage and Partisan Diffusion

S 3. The domestic relations law is amended by adding two new sections 10-a and 10-b to read as follows:

S 10-A. PARTIES TO A MARRIAGE. 1. A MARRIAGE THAT IS OTHERWISE VALID SHALL BE VALID REGARDLESS OF WHETHER THE PARTIES TO THE MARRIAGE ARE OF THE SAME OR DIFFERENT SEX.

2. NO GOVERNMENT TREATMENT OR LEGAL STATUS, EFFECT, RIGHT, BENEFIT, PRIVILEGE, PROTECTION OR RESPONSIBILITY RELATING TO MARRIAGE, WHETHER DERIVING FROM STATUTE, ADMINISTRATIVE OR COURT RULE, PUBLIC POLICY, COMMON LAW OR ANY OTHER SOURCE OF LAW, SHALL DIFFER BASED ON THE PARTIES TO THE MARRIAGE BEING OR HAVING BEEN OF THE SAME SEX RATHER THAN A DIFFERENT SEX. WHEN NECESSARY TO IMPLEMENT THE RIGHTS AND RESPONSIBILITIES OF SPOUSES UNDER THE LAW, ALL GENDER-SPECIFIC LANGUAGE OR TERMS SHALL BE CONSTRUED IN A GENDER-NEUTRAL MANNER IN ALL SUCH SOURCES OF LAW.

*New York Marriage Equality Act (Passed June 24, 2011)*

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

(A) THIS SECTION MAY NOT BE CONSTRUED TO INVALIDATE ANY OTHER PROVISION OF THIS TITLE.

(B) Only a marriage between [a man and a woman] TWO INDIVIDUALS WHO ARE NOT OTHERWISE PROHIBITED FROM MARRYING is valid in this State.

(a) Any marriage performed in this State that is prohibited by this section is void.

*Maryland Civil Marriage Protection Act (Enacted March 1, 2012)*

Sec. 2. RCW 26.04.010 and 1998 c 1 s 3 are each amended to read as follows:

(1) Marriage is a civil contract between ((a male and a female)) two persons who have each attained the age of eighteen years, and who are otherwise capable.

(2) Every marriage entered into in which either ((the husband or the wife)) person has not attained the age of seventeen years is void except where this section has been waived by a superior court judge of the county in which one of the parties resides on a showing of necessity. (3) Where necessary to implement the rights and responsibilities of spouses under the law, gender specific terms such as husband and wife used in any statute, rule, or other law must be construed to be gender neutral and applicable to spouses of the same sex.

*Washington Senate Bill 6239 (Enacted February 13, 2012)*

Amendment 774

(a) This amendment shall be known and may be cited as the Sanctity of Marriage Amendment.

(b) Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting this unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

(c) Marriage is a sacred covenant, solemnized between a man and a woman, which, when the legal capacity and consent of both parties is present, establishes their relationship as husband and wife, and which is recognized by the state as a civil contract.

(d) No marriage license shall be issued in the State of Alabama to parties of the same sex.

(e) The State of Alabama shall not recognize as valid any marriage of parties of the same sex that occurred or was alleged to have occurred as a result of the law of any jurisdiction regardless of whether a marriage license was issued.

(f) The State of Alabama shall not recognize as valid any common law marriage of parties of the same sex.

(g) A union replicating marriage of or between persons of the same sex in the State of Alabama or in any other jurisdiction shall be considered and treated in all respects as having no legal force or effect in this state and shall not be recognized by this state as a marriage or other union replicating marriage.

*Alabama Sanctity of Marriage Amendment (November 7, 2006)*

§ 16: Marriage.

(a) The marriage contract is to be considered in law as a civil contract. Marriage shall be constituted by one man and one woman only. All other marriages are declared to be contrary to the public policy of this state and are void.

(b) No relationship, other than a marriage, shall be recognized by the state as entitling the parties to the rights or incidents of marriage.

*Article 15, Section 16 Kansas State Constitution (Adopted April 5, 2005)*

The ability for same-sex couples to be granted legal status has, for the most part, rested under the purview of state governments. Throughout the 1990's and into the early 2000's, there was a concerted effort by many states to restrict or discourage the establishment of civil unions or marriages for same-sex couples, often through amendments to state constitutions. In the last decade, there has been a gradual but

decided shift towards legal recognition of same-sex couples, with momentum building both nationally and at the state level. A Washington Post/ABC poll in March 2013 found that acceptance of same-sex marriage in particular had undergone a dramatic shift in a matter of a decade. In 2003, just 37% of Americans supported gay marriage, with 55% opposed. By 2013, those figures had flipped, with 58% in favor of same-sex marriage with 36% saying it should be illegal.<sup>6</sup> In a period in American politics in which social issues often took a back seat to the economy and foreign policy, it is striking that a policy once viewed negatively by most Americans has become one that is widely accepted.

The obvious question is: what changed? While there are many possible answers, an important consideration is the relatively rapid diffusion of pro same-sex legislation at the state level. In just over half a decade, fourteen states recognized same-sex marriage as a right in their state when before no such legislation existed. While a small minority of states currently recognize marriage between same-sex couples as legal, it is likely that, at the least, more states will continue to agitate for the policy in the near future. State legitimization of same-sex marriage, in particular, has replaced what may be considered the stopgap notion of civil unions or domestic partnerships. While these types of relationships had been the focus of LGBT allies and organizers, and even a third way for moderates in both parties, it seems the tide has begun to shift inexorably in the direction of same-sex marriage (SSM).

This, of course, has been a dramatic shift. Throughout the 1990's, and as far back as the 1970's, states had been steadfast in their opposition to SSM and other

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<sup>6</sup> Cohen, John. "Gay Marriage Support Hits New High in Post/ABC Poll." *The Washington Post*. March 18, 2013.



same-sex domestic partnerships. Many states enshrined a ban on the institution in state constitutions, making it much more difficult for supporters of SSM to create new legislation in those states. The federal government also had a role in attempting to limit same-sex partnerships, passing the Defense of Marriage Act in 1996 and President Clinton implementing Don't Ask, Don't Tell Policy in the military. It is clear that SSM was on the minds of many in the 1990's, but most of the action taken was to prevent same-sex couples from marrying or accruing the benefits to which opposite-sex partners were entitled. While there is no doubt that SSM in particular has become much more widely accepted nationwide, the shift has occurred in less than two decades.

Recall that partisan diffusion depends on the type of policy being considered and the partisanship of the state in which that policy is considered. This chapter will analyze the previous literature on SSM, with an emphasis on state policy diffusion, and will make the case for SSM as a policy that fits under partisan diffusion. It will also explore a specific case of SSM adoption in Maryland in 2012, utilizing interviews with state policymakers and interest group leaders that detailed their role in the legislation's passage. It will conclude with an empirical study of SSM and partisan policy diffusion over time.

### *Partisan Diffusion*

Same-sex partnerships have certainly been a focal point for many when considering issues regarding LGBT Americans, but this is relatively new in terms of policy creation. In the nascent years of the gay rights movement, pro-LGBT groups

set their sights primarily on anti-discrimination ordinances. Studies particularly focused on geographic and demographic circumstances in determining whether the policies would pass (Wald et al, 1996). Additionally, issue salience and morality politics were studied as catalysts for the creation of anti-discrimination policies (Haider-Markel and Meier, 1996; Haider-Markel and Meier, 2003). Morality policies are distinctive, primarily because they do not easily lend themselves to compromise, they generate conflicts of basic values, and are simple to understand and widely salient (Mooney and Schuldt, 2008).

Viewed in this light, it is clear that SSM is a morality policy. It is not overly technical; SSM is simply, though not without controversy, about allowing couples of any sex to marry and have the same rights as heterosexual couples. It creates fissures on a basic value level; SSM is viewed as a basic right by its supporters and as (at worst) a moral evil by its detractors. It is particularly unlikely that opponents or proponents will be swayed by arguments made by the other side, as both sides see the issue less as public policy as more as an issue of fundamental moral importance. Indeed, SSM can certainly be seen as the quintessential morality policy facing policymakers at the moment. Indeed, the shift in public opinion on the issue certainly creates pressure, on both sides, to advocate for their position.

While SSM can be viewed as a morality policy, it is also a partisan policy in contemporary terms. While Karol (2012) argues that this has not always been the case, that in fact SSM was a largely apolitical issue during the 1970's-1990's, I argue that this is no longer the case. While certainly there are some Republicans in favor of SSM and some Democrats in opposition, the party platforms are clear on the issue.

For the 2012 presidential conventions, each party made an explicit declaration of its stance on SSM, with the Democrats supporting the issue for the first time. The

Democrats, though, certainly left room for dissent on religious grounds:

We support marriage equality and support the movement to secure equal treatment under the law for same-sex couples. We also support the freedom of churches and religious entities to decide how to administer marriage as a religious sacrament without government interference.<sup>7</sup>

Republicans, on the other hand, made it clear that the party is not in favor of a move towards marriage for same-sex couples:

We reaffirm our support for a Constitutional amendment defining marriage as the union of one man and one woman. We applaud the citizens of the majority of States which have enshrined in their constitutions the traditional concept of marriage, and we support the campaigns underway in several states to do so.<sup>8</sup>

There is very little ambiguity in either of these statements on the ways in which the parties view marriage. While Democrats recognized the freedom of religious organizations to sanction marriage as they see fit, the party also supports marriage equality as a legal right. The Republican platform was, perhaps, even more strongly worded in its defense of traditional marriage. In addition to clearly stating the party's belief in the concept of marriage, the platform's text also criticized the Obama Administration's declaration that the Justice Department would not continue to enforce the provisions relating to the Defense of Marriage Act. Indeed, the issue of marriage appears in multiple sections of the party platform, indicating the importance with which Republicans view the issue.

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<sup>7</sup> 2012 Democratic Party Platform

<sup>8</sup> 2012 Republican Party Platform

The line of demarcation between the parties on the issue of SSM could not be clearer: One party opposes the creation of SSM and the other favors it. Layman and Carsey (2002) may argue that this is an example of conflict extension; that is, elite attitudes can polarize party identifier attitudes. One would likely be very hard pressed to find a culturally conservative voter supporting SSM (and likely same-sex right in general), with the reverse being true for a social liberal. As such, this issue is a particularly good one to analyze in terms of the impact of partisanship on the diffusion of the policy amongst states. SSM policy diffusion should follow the partisan policy process as described in Chapter 2. Recall that effective policy may be adopted by geographic neighbors regardless of the prevailing partisanship within a given states. Partisan policy, on the other hand, may not diffuse regionally but can transcend geographic borders and diffuse on the basis of partisanship. This chapter will make the case that, in addition to state partisanship, national partisanship drives the creation and adoption of partisan policies such as SSM.

### *Literature Review and History of Same-Sex Marriage in the States*

As we have seen, SSM is an important policy politically and from a value-based perspective. While many tend to think of SSM as “the” gay rights issue, the reality is a bit more complex. Relationship recognition is not the only issue in which the LGBT rights movement is invested, nor is it often the type of policy that states are most prepared to enact. Jeremy Pittman, the Deputy Field Director at Human Rights Campaign (HRC), presents the timeline that HRC and LGBT allies generally pursue.

I don't think marriage equality is the highest calling of the gay rights movement, I wouldn't say it that way, but there historically has been a

progression in how we make progress for LGBT Americans. In most places, the first piece of pro-equality legislation is a bill that will prohibit discrimination on the basis of sexual orientation or gender identity. Somewhere along there, maybe before or after, we can work on anti-bullying legislation, because who wants to see kids bullied? So this is something that has broad appeal. So this is the first thing. And then, somewhere along this time frame, you see hate crimes protections as well. And then you start to move into relationship recognition. After we've made it safe for people to come out, they know that they're not going to lose their jobs or their housing because they come out, then people start to see them as real people, as people with families, and then we can start talking about relationship recognition.

This progression not only set the stage for a more radical shift in favor of gay rights (marriage), but also highlighted LGBT issues as civil rights (anti-discrimination laws). One of the most interesting features of this approach was the notion of "putting civil rights on the ballot;" that is, allowing states to create or deny protections based on referenda or ballot initiatives (Gamble, 1997). LGBT rights were not the only civil or social issues to be placed on the ballot, but the prevalence of this approach does have interesting implications for policy diffusion theory. I will explore the ballot initiative process later in this chapter in a discussion about SSM legislation in 2012, specifically in Maryland, but legislating through ballot initiative has become a major feature in terms of SSM policy. It not only creates challenges for interest groups such as HRC, but also new issues for state legislatures to consider. If, as in Maryland and Maine in 2012, legislative action is not the final word on the issue and passage then leads to a referendum on Election Day, legislatures may be more willing to pass controversial legislation like SSM and allow the voters the final say.

As noted, SSM and other relationship recognition policies are not considered only in terms of creating these rights, but also restricting them. There were efforts in the 1990's to ban or limit the possibility of same-sex unions in many states, but these

efforts were not primarily geographic nor were they monolithic in their opposition to same-sex partnerships (Barclay and Fisher, 2003). Legislation regarding same-sex couples is not limited to one part of the country, and states in favor of expanding or limiting these partnerships could look to innovators of that policy wherever it may have originated.

In studying the wave of anti- same-sex legislation in the 1990's, Haider-Markel (2001) found that it was internal state characteristics and the actions of national, conservative interest groups that drove adoption and not necessarily traditional diffusion patterns. Additionally, SSM bans diffused quite rapidly, more so than most other policies that diffusion scholars traditionally study. This cannot be attributed to primarily to geography; states from Hawaii to Nebraska to Alaska banned SSM in the late 1990's into the 2000's. Clearly, other processes were at work than those that are generally associated with geographic diffusion. This analysis posits that state partisanship is the key feature in the diffusion of SSM policy.

Opponents of SSM continued their strategy into the 2000's with bans on the ballot in 28 states from 2000 to 2008 (McVeigh, 2009). This process occurred concurrently with the wave of pro-SSM legislation, however, creating an interesting diffusion dynamic. This, however, does not necessarily eliminate the learning process; states may simply rely on different sources in order to consider adopting new policies. There is little doubt that national interest groups have partisan agendas, and the pattern of same-sex marriage diffusion argues that partisanship plays an important role in adopting these policies. These findings lend credence to the overall argument of this analysis. For many issues, regional concerns are simply not as important as

they once were when studying policy diffusion. With policy learning much more widespread and accessible than ever before, relying solely on geographic neighbors for innovative policy is potentially counterproductive. That is, of course, unless the issue has regional significance that does not exist elsewhere.

SSM bans were also influential in terms of national politics. The 2004 presidential election, in particular, was impacted by the rapid diffusion of ballot initiatives banning SSM. Smith et al (2006) examine voter turnout in swing states, Ohio and Michigan, and argue that the presence of SSM on the ballot increased voter turnout overall. The study is particularly interesting from a diffusion standpoint because Michigan and Ohio are regional neighbors. The results show some support for the notion that the ballot fight drove up turnout, but that the presence of SSM only helped President Bush in Ohio. In both states, however, support for banning SSM correlated strongly with voting for the President, even after taking voting patterns from 2000 into account. Additionally, Republicans were able to utilize SSM as a vehicle to reach religious voters and mobilize them to come out in support of President Bush (Campbell and Monson, 2008). On the other side of the issue, since 2012, six states have adopted SSM, whereas opponents have had a much more difficult time in the last half decade. In 2013, the Supreme Court struck down part of the 1996 Defense of Marriage Act and, as we have seen, polls consistently show national support growing for same-sex marriage (Bowling and Pickerill, 2013).

The 2004 election, then, is a good example of how national politics can affect state policymaking, and vice versa. With SSM on the ballot in two states, opponents were motivated to come out and vote against the measure and also (likely) for

President Bush. While, as we will see, SSM was once an issue that did not have a major partisan component, the rise in pro-SSM ballot initiatives and legislation in the early 2000's may have injected a partisan dimension into the debate. When public opinion was firmly against SSM and most of the policy being created around the issue involved banning it, there was little political upside in arguing for expansion of gay marriage rights. Additionally, partisan polarization was lower during the 1990's in general, but the rising tide of polarization coincided with the parties carving out distinct positions on the issue.

This is not a new phenomenon in American political history, at least in terms of the parties shifting and coalescing around new, dominant issues. LGBT rights issues were, however, not necessarily considered an example of party realignment, as the public did not see these issues as particularly important (Lindaman and Haider-Markel 2002). This work was not able to take into account, however, the sudden increase in both elite level interest in LGBT rights, particularly regarding marriage, and the salience of the issue to the public. It is this salience that helps create party realignment on certain issues (Carmines and Wagner, 2006). Once again, conflict extension can help make sense of this shift. In this conception of partisan change, party activists drive change on issues (Layman et al, 2006). Recall from Chapter 3 that partisan interest groups have gained a great deal of influence in the policymaking process as well as creating new electoral considerations for policymakers. With greater sophistication in grassroots mobilization and the increasingly loud voice of each party's ideological base, it makes sense that base issues have become even more important in a polarized era. Jeremy Pittman, Deputy Field Director at the Human



Rights Campaign, described the sophistication that is required to mobilize grassroots across the country.

We have field organizers that we put on the ground that help mobilize people and help organize in the LGBT community, as well as communities of faith and the general public and all sorts of ways that we mobilize people. We are everywhere around the country. We operate with 30 volunteer communities at HRC; these are not state-based, they're city-based, so we have strong volunteer communities in 30 cities around the country. And so, because we have volunteer leaders in all these communities, they have excellent relationships with state lawmakers already and so as folks begin to think about how do we advance equality, those conversations are happening and we're part of those conversations because our volunteers are part of those conversations or because our paid staff are part of those conversations, or both.

Conflict extension, then, is a compelling explanation for the sudden shifts around SSM, both in terms of public opinion and party activity. Particularly in the Democratic Party, elites and the grassroots made the issue more salient as an important and salient Democratic issue. The Republicans, of course, already opposed the issue and continued that opposition even as the Democrats shifted towards creating pro-SSM policy at the state level.

Though same-sex marriage may not have been a purely partisan issue in the 1990's, primarily because Democrats had not completely evolved towards acceptance of the issue, it has certainly become one. Indeed, the primary partisan shift that has occurred around same-sex rights has come from within the Democratic Party. Unlike many issues that have shifted their partisan positioning, such as race and trade policy, the parties' stance on LGBT rights has remained distinctive (Karol, 2012). Though Democrats have only recently begun to advocate strongly for expansion of LGBT rights, including but not limited to same-sex marriage, Democrats as a whole have

also never advocated against these rights. This is, of course, unlike the civil rights movement that saw ardent opposition from inside the conservative Dixiecrat wing of the Democratic Party in the South.

While Democrats were relatively slow to embrace the gay rights movement, conservatives in the Republican Party largely prevented the cause of LGBT rights from becoming a bipartisan issue, and by extension, SSM as well. Social and religious conservatives are much less likely to support the establishment of same-sex marriage. While there has been a marked shift in many demographic and political groups on the subject in the last several decades, evangelicals and conservative Republicans have not substantially changed their views even as acceptance generally has risen (Olson et al, 2006; Sherkat et al, 2011). Race also plays a role in approval of SSM, with African American Democrats more opposed than Democrats generally (Lewis and Gossett, 2008). Secular considerations, such as partisanship, also seem to matter less to African Americans than moral or religious considerations on this particular issue (Sherkat et al, 2010).

While Democrats are now broadly considered supportive of LGBT rights and SSM, the party has evolved on the issue. This is certainly not a new occurrence in American politics. Both parties have evolved in issues over time, and there is a large literature devoted to studying these shifts, including shifts on cultural and “morality” policy (see Carmines and Stimson, 1989; Adams, 1997; Wolbrecht, 2000; Lindaman and Haider-Markel, 2002; Karol, 2009; Carmines et al, 2010). It is certainly not an easy or especially fast process for parties to evolve on any issue, but cultural issues in particular are thorny for the parties to navigate. Civil rights, as the obvious example,

took nearly 100 years after the end of the Civil War and went from a *cause celebre* of the Republican Party to a central tenet of Democratic policy. Of course, not all morality issues switch party allegiances as radically or publically as civil rights, and neither did LGBT rights or SSM. That being said, however, the Democratic adoption of LGBT rights has been fairly dramatic as we saw earlier in this chapter.

Karol (2012) illustrates that SSM had largely been an apolitical issue; while liberals were quick to embrace LGBT rights in the 1970's and 1980's the Democratic Party as a whole resisted embracing the movement until well into the 1990's. In addition to the increasing acceptance of LGBT rights by the public, the more progressive wing of the party created pressure on elected Democrats. As a result, Democrats in general have become more supportive of SSM over the past several decades, and liberals in particular exhibit high levels of support for the policy (Lewis and Gossett, 2008; Baunach 2011). This is of particular interest when looking at diffusion policy. SSM and LGBT rights, once a fringe and controversial issue even within the Democratic Party, has now achieved wide-ranging support nationwide. Democratic states, then, have much more political capital to spend on this issue, and the rapid diffusion of the policy amongst Democratic states speaks to the clear change in Democratic priorities.

There is no doubt that gay rights are not only the province of the Democrats, nor is it the case that all Democratic legislators or states share the same views. There is a small but vocal minority in the Republican Party that has begun to advocate for gay rights (Log Cabin Republicans come to mind) and are more focused on economic issues than conservative stances on social problems. Of course, these views are truly

in the minority for Republicans, as conservative voters are the most rigid in their opposition to SSM. Indeed, groups like GOProud and Log Cabin Republicans, who support gay rights and a “big tent” philosophy within the GOP, were conspicuously absent from the Conservative Political Action Conference (CPAC) held in 2013.

Despite calls from moderates within the party to distance Republicanism from its historically conservative stance on LGBT rights and SSM in the wake of the 2012 election, conservatives within the party seemed particularly loathe to abandon what has become a key part of their particular governing philosophy.<sup>9</sup> Though SSM is not the only policy that separates these more moderate groups from the Tea Party and conservative wing of the GOP, this fissure illustrates the clearly shifting priorities of many within the Republican Party. While Democratic states have been clearly moving in a direction of adoption, Republican and conservative states have either stayed firm in their opposition or have moved in the opposite direction through legislation or ballot initiative.

There are political considerations that surround controversial policy like SSM, but there are also there are structural issues at work in terms of the ways in which different levels of government act and respond to one another. The federal structure in the US, particularly on morality issues, allows for states to consider policies on a case-by-case basis, but the federal government has increasingly become more involved in these types of issues (Mooney, 2000). Policies such as DOMA and Don't Ask, Don't Tell in the 1990's were created while a wave of states voted on whether to ban SSM and enshrine the ban in their constitutions. While it would not necessarily

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<sup>9</sup> Stein, Sam and Amanda Terkel. “GOProud, Log Cabin Republicans Won't Participate in CPAC This Year.” *The Huffington Post*, February 20, 2013.

be correct to say that the federal policies were created at the behest of states, there is little doubt that the prevailing policy wind in the 1990's focused on limiting marriage rights for same-sex couples.

In addition to federal legislation, gay rights have been at issue on the federal level primarily in the courts and the executive branch in the last decade, and there has been a basic understanding that the definition of marriage is and has been primarily a state issue. Indeed, this has also been the case with other controversial policies, such as medical marijuana (Pickerill and Chen, 2008). Congress, then, has had little direct influence over SSM since the passage of DOMA, and has since seen part of that law struck down by the Supreme Court. This does not necessarily mean, however, that Congress has no effect on whether states choose to consider SSM policies. Indeed, my theory argues that polarization in Congress and the lack of action on controversial policies like SSM will spur states to take up the issue.

Same-sex partnerships, from both a pro and con perspective, could offer a compelling example of partisan diffusion. SSM would not be considered geographic in the sense that neighboring states would need to compete with each other if one of their neighbors adopted it. While there could be some small scale economic impact of legalizing same-sex partnerships, causing people to move across state boundaries to accrue benefits, regional neighbors would be unlikely to compete with one another to provide more (or fewer) rights for LGBT couples. At the same time, however, there is a clear partisan impetus to enact same-sex policies. As we have seen, the parties have made their positions perfectly clear on the policy, and this clarity has filtered down to the states. As we will see later in this chapter, there is a clear line of

demarcation for accepting or rejecting SSM at the state level on the basis of the prevailing partisanship in the state.

Although national opinion is trending towards acceptance of same-sex unions, it is far from settled at any level of government. Indeed, with many state constitutions defining marriage as the union between one man and one woman, changing the policy in those states (even if there was a high level of interest in doing so) would be no small task. An additional variable, and one that this study does not specifically examine, is that SSM is also subject to the rulings of courts. This is certainly an important consideration, and a good deal of work has been done on this subject (i.e., Liu and Macedo, 2005; Sack 2005; Stoutenborough et al, 2006; D'Emilio, 2007; Klarman, 2013). There is no doubt that the courts exert a large amount of influence over the SSM debate, and could affect whether states decide to consider and/or enact SSM policy, pro or con. States still do, however, take up the issue legislatively or on the ballot, and so it remains a policy that is ripe for study and placement in the policy diffusion literature, despite the fact that the courts play a key role in deciding whether such policies are constitutional. What happens to the policy after the fact is, in some ways, random; the courts in a particular state can only rule (or decide to rule) on SSM policy if the case is brought before them. So, while it is important to acknowledge the role of the courts, in terms of policy diffusion I do not consider this influence to be a key variable in whether states decide to take up the issue of SSM.

States as a whole have an interesting and convoluted role in the history of the debate over SSM. Much scholarship and punditry has been devoted to studying what

has long been a particularly thorny public policy concern. In the next section, I examine the case of one particular state, Maryland, which has itself had a long history with the issue. Maryland passed SSM legislation in 2012 after several years of debate, though the issue was not settled in the legislative session, but rather at the ballot box. I spoke with a number of individuals involved in the debate, and their insights give an interesting and important viewpoint into that debate. In the next section I will examine Maryland's SSM debate in 2012 and place it in the context of the overall policy diffusion process.

#### *Case Study: Maryland and Same-Sex Marriage*

2012 was a watershed year for same-sex marriage recognition in the states. Maryland, Washington, and New York all passed legislation permitting same-sex marriage, a federal appeals court overturned California's ban on same-sex marriage, Maine's voters passed a referendum to allow gay marriage, and Republican New Jersey Governor Chris Christie was presented with, and ultimately vetoed, a marriage equality bill.<sup>10</sup> Maryland has long been at the forefront of the same-sex marriage debate at the state level. It became the first state to pass legislation banning same-sex marriage in 1973, and in 2012 became the sixth state to legalize the institution. On

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<sup>10</sup> In 2013, New Jersey Superior Court Judge Mary Jacobson, utilizing the Supreme Court's decision in *United States v. Windsor*, ruled for the plaintiffs in *Garden State Equality v. Dow*. The plaintiffs argued in the suit that that same-sex marriage is distinct from civil unions and that the state's ban on same-sex marriage was a violation of the plaintiffs equal protection rights. The Christie Administration had threatened to challenge the ruling in higher court, but subsequently dropped the appeal and the state began performing same-sex marriages on October 21, 2013. The New Jersey State Senate had begun contemplating a veto override and may still do so regardless of the court's ruling.

February 17, 2012, Maryland's lower chamber in the General Assembly, the House of Delegates, narrowly passed a marriage equality bill 72-67, the same bill it had failed to pass a year earlier. Less than a week later, the state Senate passed the bill 25-22.

The years leading up to 2012 saw a concerted effort by Democrats in the state legislature and liberal interest groups to force the topic into the statewide conversation. The bill passed the state Senate in 2011 before failing in the House of Delegates, and much of the conversation leading up to the 2012 General Assembly session was consumed by the debate over whether the entire legislature would vote to legalize same-sex marriage. With the strident support of the state's Democratic governor (and 2016 presidential hopeful) Martin O'Malley, the bill passed through the General Assembly and was signed by O'Malley on February 23.

Maryland itself was in a unique position to create SSM legislation. While not necessarily the most liberal state in America, Maryland is undoubtedly one of the most staunchly Democratic. A Republican has not won Maryland's presidential electoral vote since 1988 (and have won the state only three times since 1960). Only five times since the turn of the 20<sup>th</sup> century has Maryland elected a Republican governor. Since the end of the Civil War, Republicans have held the House of Delegates only three times, and the Senate just *once* (Smith and Willis, 2012). Clearly, the issue for most legislation in Maryland is not whether Democrats can agree with Republicans, but if Democrats can agree with other Democrats. Carrie Evans, the Executive Director of Equality Maryland, spoke with me about the composition of a winning coalition and the challenges faced by marriage equality supporters.



We knew we didn't need any Republican votes to pass the bill. We certainly wanted Republican votes to pass the bill, but we knew it wasn't necessary. The real problem was the conservative Democrats, and even moderate Democrats who were supporting civil unions and not marriage. That was the chasm up until 2012, even with the governor. Even until November 2011 he was all for civil unions, as was some of the LGBT caucus. So that was always the battle. We ended up with three really great Republicans voting for the bill, but that mostly had to do with personal relationships.

One of those Republicans was Wade Kach, a Delegate from Baltimore County, a relatively more Republican and conservative area of the state. Kach voted for the Civil Marriage Protection Act in 2012 after having opposed the measure in previous legislative sessions. Kach told me that he had a change of heart on the issue, particularly after speaking with same-sex parents and their children who testified before the House of Delegates in support of the bill and who spoke about the ways in which denial of marriage benefits affected their families.

I've never had an issue with how people conduct their lives. I'm more or less a libertarian when it comes to issues like [same-sex marriage]...I'd always been opposed to it, had come to the conclusion that maybe civil unions was the way to go...Seeing the commitment between the people who were witnesses and the child support issue, by the next day I'd decided I'd had enough of this, I was just going to vote for it.

While some Republicans like Kach had decided to vote for a bill sponsored and championed by Democrats, the Democrats themselves could not rally their entire caucus around passage. Socially conservative Democrats, particularly African American delegates in Baltimore City and Prince George's County, were unhappy with the legislation and joined with Republicans in an attempt to defeat the measure. Of the 67 "nay" votes, 26 came from Democrats, nearly enough to defeat the measure

on the House floor.<sup>11</sup> So, while partisanship was crucial to the bill's passage, it is of course not the case that partisanship, even in a place like Maryland, always acts monolithically. Indeed, ideological fissures can exist on controversial issues like SSM, which may contribute to the fact that not all states with Democratic leadership have passed SSM legislation.

The Senate passed the legislation in 2011, and did so again in 2012 with the House following suit. One of the provisions of passage, however, was that SSM was subject to a ballot initiative to be voted on by Maryland's citizens on Election Day in November. The petition quickly gained more than enough support and Question 6 immediately became the center of the debate. Prior to 2012, SSM had never been successful at the ballot box. This may be due to a host of factors, not least of which is that pro-SSM diffusion did not really begin until 2006. Prior to that date, SSM had not won in a legislature, and indeed the opposite position had been enshrined in many states. Maryland's ballot initiative, then, faced a number of historical and logistical issues. Jeremy Pittman, Deputy Field Director at Human Rights Campaign (HRC), a pro-LGBT interest group in Washington D.C., explained the difficulties in working on ballot campaigns in the past.

Ballot campaigns are very expensive propositions....We're talking \$5 or \$6 million into a ballot campaign, and if you have three or four of these on the ballot in any given year it's a lot of resources you're talking about having to raise. The other thing to think about is that it's only very recently that we have gone to the ballot proactively to pass pro-equality legislation. Historically, we, the LGBT community, have faced ballot initiatives because our opponents have put us in that position...When we were being attacked at the ballot, we long said that civil rights shouldn't be on the ballot! [laughs] We messaged that for years and years, but now we're gonna have to go back to the ballot and going from a position of this shouldn't be on the ballot to

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<sup>11</sup> Wagner, John. "Same-sex marriage bill passes House of Delegates." *The Washington Post*, February 17, 2012

now having to put this issue on the ballot. So that's a messaging challenge and a tough place to be in.

Ballot campaigns involve a statewide effort in which individual legislators are not the targets of influence but rather the voting public. These campaigns are neither easy nor cheap. The Washington Post estimated that, in 2012 and 2013 alone, nearly \$1 billion in 11 states on ballot initiatives.<sup>12</sup> While this certainly tracks with the increase in spending on political campaigns generally, it also makes these campaigns of even greater importance for the groups involved. The \$1 billion spent in 2012 and 2013 is only likely to grow, as ballot initiatives and referenda become an even greater part of the state policymaking process.

The question, of course, is the extent to which ballot initiatives, as well as state referenda, affect partisan policy diffusion. While many of the issues brought up in ballot initiatives are of a partisan nature, others are certainly less clearly partisan. One can imagine geography mattering a great deal when looking at ballot initiatives, and partisan national groups can also be very influential in both getting policy onto the ballot and getting it passed. While a pro-LGBT rights group like HRC clearly has a disincentive to bring up ballot initiatives around SSM and instead work through state legislatures, the 2012 fight involved the voters deciding the issue, including two meant to ratify a legislative vote. The ballot process is often subject to greater scrutiny than the legislative one, presumably because there are more potential voters to reach than the ones that reside for part of the year in the statehouse. In Maryland, the ballot campaign was subject to millions in advertising dollars from a host of

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<sup>12</sup> Wilson, Reid. "Initiative spending booms past \$1 billion as corporations sponsor their own proposals." *The Washington Post*, November 8, 2013.

interest groups, both for and against the initiative's outcome of legalized gay marriage.

Clearly, there was great interest in and action around the issue, perhaps not coincidentally because 2012 was a presidential election year and SSM was an issue in the presidential race. As we have seen, the presence of SSM on the ballot in 2004 impacted turnout in the presidential race in key swing states. In May, after several years of hedging on the issue, President Barack Obama, a Democrat, endorsed the concept of SSM during a speech in Albany.<sup>13</sup> Obama, who had long maintained that his views were evolving on the issue of marriage equality, faced a great deal of pressure to come out in favor of the policy after his Vice President, Joe Biden, made a statement in support of SSM.

Obama's pronouncement came several months after Maryland and Washington had passed legislation, and less than a year after New York had done so. National polling suggested that voters were increasingly in favor of SSM, and Obama was ramping up an election campaign and reaching out to the base of the Democratic Party. We cannot be certain whether Obama's change of heart over the issue was directly related to state activity on SSM, and we can surely point to shifting national opinion on the issue as a catalyst for Obama's conversion. While it is significant that Obama supported SSM in a year in which two legislatures had passed legislation creating the institutions in their states, it is important to note that both Washington and Maryland's debate over SSM legislation was not decided only in the statehouse.

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<sup>13</sup> Calmes, Jackie and Peter Baker. "Obama Says Same-Sex Marriage Should be Legal." *The New York Times*, May 9, 2012.

Both legislative victories were tempered by the fact that, in order for SSM to become law, the voters would decide through a referendum on Election Day in November.

As with many controversial, high profile issues, interest groups played a major role in the legislative process. Carrie Evans, articulated Equality Maryland's strategy for mobilizing votes in support of SSM in Maryland.

How we did leverage it was saying "This is gonna happen. The momentum is there. It may not happen this year, it may not happen next year, but we're going to have marriage equality, so let's just do it and get it over with." There was this air of inevitability.

There is little doubt that, in a state like Maryland, the inevitability of same-sex marriage recognition must have strong appeal for many legislators. While not necessarily the most liberal state in the nation, Maryland is certainly one of the most staunchly Democratic.

The partisan composition of the state, then, had an outsize impact on the likelihood of passing same-sex marriage. This dynamic also makes Maryland an interesting case in terms of partisan policy diffusion. There are few states as Democratic as Maryland, though to be sure New York and Washington are Democratic states in their own right. Recall that this analysis is primarily based around partisanship and not ideology; partisanship is more readily understood than ideology, and partisan politics is the driving force behind partisan policy diffusion. Democrats in Maryland may have agreed with marriage equality from an ideological perspective, but partisan political considerations ultimately held the most sway over passage of the bill in the General Assembly.

Maryland, of course, did not pass same-sex marriage recognition in a vacuum. While it was only the sixth state to uphold marriage recognition for gay couples, other state, and the District of Columbia, were working on the issue around the same time as Maryland. Kristin Jones explains the importance of this work, including both geography and partisanship.

I think it helped us that DC was doing actual marriage, because to the extent that they are so close you have Maryland residents driving 15 minutes from their homes and getting married across the border in DC and they weren't able to do that in their own state. So I think that helped. We weren't exactly in great big company when we did it, there were six states at the time, and then three of us fell at once: Maine, Maryland, and Washington, we all went in the same year.

Though partisan diffusion is distinct from geography, it is not the case that geography has no relevance to partisan diffusion. Indeed, having a partisan *and* geographic create a policy that is attractive to your state is certainly better than the alternative. In the case of Maryland and Washington, D.C., there is a clear partisan attachment as well as geographic. The influence of D.C. on Maryland is ingrained in places like Montgomery and Prince George's counties, in which many residents work in the District. This example serves to illustrate the point that while it is certainly easier to think of partisan and geographic diffusion as mutually exclusive, the reality is likely a bit murkier.

Additionally, Maryland passed SSM legislation during a clear window of opportunity. Recall from Chapter 3 that windows of opportunity for policy creation are exploited by policy entrepreneurs who use extant factors to push policy change. Organizers like Carrie Evans and Jeremy Pittman (and their counterparts on the right) are not necessarily influential or powerful enough to create windows of opportunity

or force states to make decisions on policy. They are skilled, however, at recognizing an opening for policy creation and creating campaigns to help ensure that their preferred policy is enacted. Evans says:

New York was very instrumental.... What we gained from other states is the messaging that was working, sharing the materials, those kinds of resources that they were using to win votes is what we used the most. Particularly messaging and focus groups and all of that.

Sharing information, creating coalitions, and refining tactics is one of the main reasons that partisan diffusion can effectively occur without geographic considerations. While certainly physical proximity has its advantages, many of those advantages matter less given recent technological advancement.

Maryland is a recent, and compelling, example of the partisan dynamic of state policy diffusion. State legislators and staff as well as interest group leaders acknowledged that Maryland was influenced by other states that had passed the legislation. The General Assembly had also rejected SSM in previous years, lending credence to the notion that Maryland was unable to pass the legislation without other states providing a window of opportunity. Those involved in the debate acknowledge that partisanship was an important factor in the state's adoption of SSM, and that the influence of partisanship on picking which policies to pursue in Maryland is growing. There was also a recognition that national politics affect what Maryland chooses to do, and that Capitol Hill-style partisanship has filtered down to the state level.

Certainly, Maryland is not a representative state in terms of partisanship. As mentioned, it is one of the most staunchly Democratic states in terms of state and national level voting, and Democrats particularly have a stranglehold on state

legislative politics. That said, this analysis shows how partisanship, more so than geography, impacts the policies states elect to pursue. Despite its strong Democratic majority, Maryland relied on other Democratic states to sanction SSM before doing so itself.

2012 was, undoubtedly, the year in which SSM turned a corner, both in terms of public opinion and legislatively. As we have seen, the politics around SSM have changed at the national level, though states have been a somewhat different matter, with states utilizing different processes for enacting or banning. SSM This section looked specifically at Maryland's fight to enact the legislation and the history of SSM in Maryland. In the next section, I look at how SSM, both enactments and bans, have spread nationwide. Using this descriptive data, I also will posit empirical hypotheses that test the impact of national and state partisanship on the diffusion of SSM policy over time.

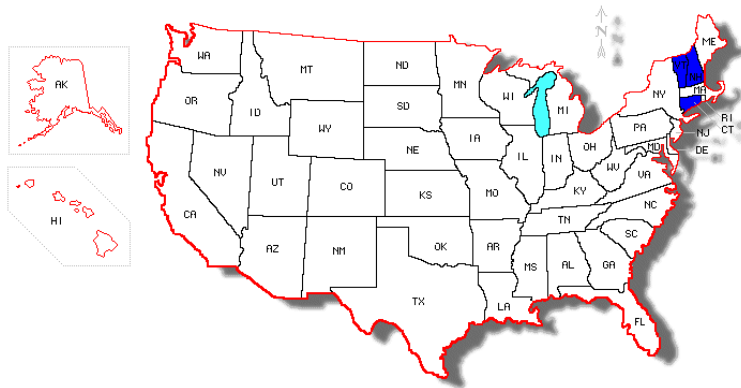
### *Same-Sex Marriage and Partisan Diffusion*

Enshrining SSM in state law is a relatively new phenomenon. Earlier in this chapter, we saw that, while SSM has been a topic of political conversation for decades, the push to legalize marriage equality really occurred during the last decade. Though the courts have been involved in determining whether states must perform marriages between couples of the same sex, this analysis focuses on legislative success for SSM enactments and bans, using partisanship as a key variable in determining if states are likely to pass such a law. In order to determine whether partisanship outweighs geography, however, it is first helpful to look at the spread of



SSM across the country<sup>14</sup>. Figure 3.1 shows this progression, highlighting the states that allowed for SSM through legislative vote by 2009, and Figure 4.2 from 2010 to 2013.<sup>15</sup> The rapidity with which the policy diffused, as well as the pattern of diffusion, is somewhat striking.

**Figure 3.1: Legalized Same-Sex Partnerships in States by 2009**



<sup>14</sup> Oregon, Nevada, Wisconsin and Colorado have, as of 2014, laws allowing for civil unions and domestic partnerships, but not marriage.

<sup>15</sup> SSM is also legal in Massachusetts, California, Connecticut, Iowa, New Jersey, and New Mexico as a result of court rulings, but are not included in this analysis. As mentioned, the courts have an interest in SSM policy, but the diffusion of this type of action is almost certainly going to be different than state legislative diffusion. While the backdrop of legal action is always present in these type of debates, for the purposes of studying the impact of partisanship on SSM diffusion, for this study, I have left legal action for future research.

**Figure 3.2: Legalized Same-Sex Partnerships in States by 2013**

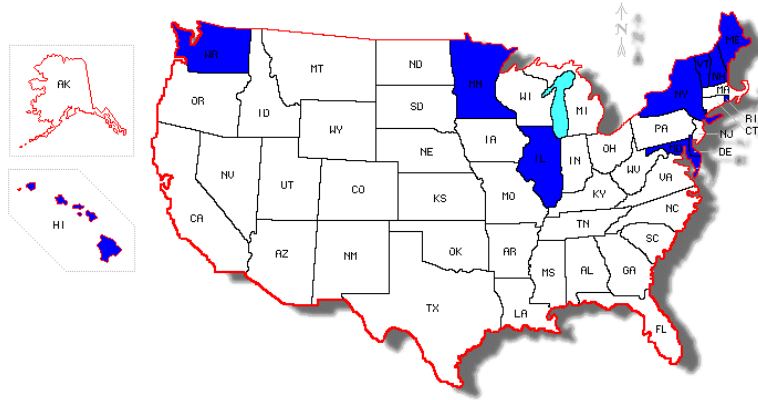


Figure 3.1 shows the very small number of states that legalized SSM through statute. At first glance, of course, there may be some support for a geographic argument. Connecticut, Vermont, and New Hampshire are all states in the Northeast, and have arguably similar populations and cultural values. They also, of course, share partisanship. Figure 3.2 tells a different, and quite interesting, story about the diffusion of SSM. States across the country adopted the policy within four years of the original three, which gives credence to the notion of windows of opportunity discussed in Chapter 2. Of course, the pockets of states that have enacted SSM protections are geographically concentrated to a certain degree. No southern states have enacted laws that enable SSM, nor is it legal in the plains states or the Mountain West. Rather, SSM is concentrated in the Northeast, West Coast, and upper Midwest, with Hawaii serving as an obvious outlier in any geographic discussion.

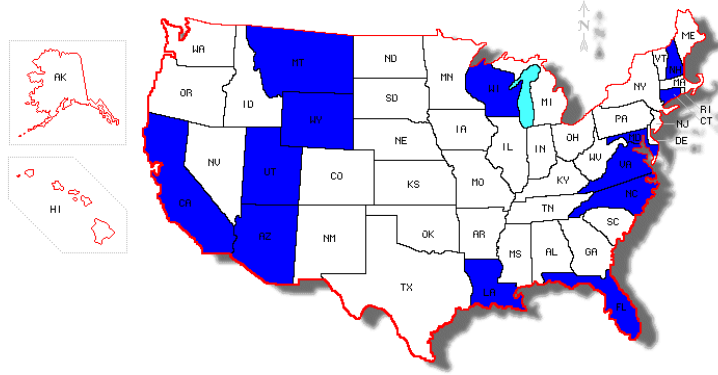
Geography is an unavoidable feature for policy diffusion research. If one is studying states, it needs to be acknowledged that states exist as geographic as well as political entities. Indeed, as we have seen, geography is often looked at as the central feature of policy diffusion research. This chapter, and analysis in general, seeks to determine whether partisanship matters to a greater extent than geography in the diffusion of SSM policy. In addition to enactment of SSM policy, it is also important to consider states that have explicitly prohibited SSM, either through constitutional or statutory provisions within state law. Over time, many states that have banned SSM have moved from a law prohibiting SSM to amending their state constitutions to legally allow marriage only between one man and one woman.<sup>16</sup> Figures 3.3 and 3.4 look at the progression of these enactments from 1995-2000.

It is clear from Figures 3.3 and 3.4 that bans on SSM spread incredibly rapidly across the country. In just five years, 42 states banned SSM either through legislative statute or constitutional amendment. The latter became even more widespread in the early 2000's, with many states that had already banned SSM through the legislature deciding to add the prohibition to their constitutions. By 2013, 29 states had constitutional bans on SSM.

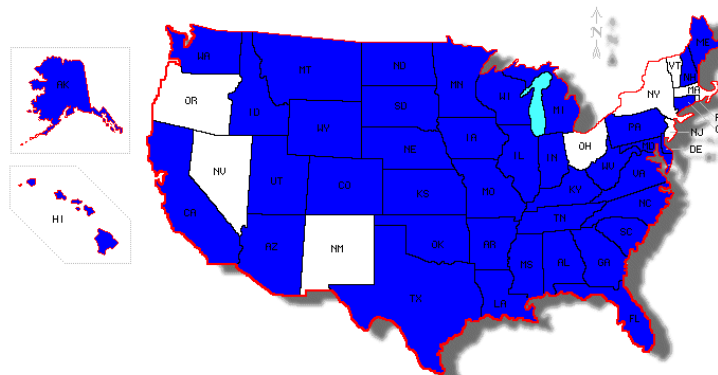
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<sup>16</sup> Pew Research Center Religion and Public Life Project, <http://features.pewforum.org/same-sex-marriage-state-by-state/>

**Figure 3.3: SSM Bans in States by 1995**



**Figure 3.4: SSM Bans in States by 2000**



While anti-SSM policy cut across state partisan lines, this analysis is also interested in whether national partisanship and gridlock affect the spread of controversial policies such as SSM. Figure 3.3 looks at the states that had banned SSM by 1995, and this is not simply a random date. While one can argue about the exact date of the onset of hyper-partisanship in Washington, the 1994 midterm elections are a reasonable starting point. 1994 was a true wave election; Republicans gained 52 seats in the House and control of the chamber for the first time in over 40 years, 8 Senate seats, and 15 state legislatures (Brady et al, 1996). It was seen, from a political science perspective, not only as a Republican victory, but also as a partisan realignment among the electorate that began during the Reagan Administration and culminated in 1994 (Jacobson, 1995; Abramowitz and Saunders, 1998).

In light of this, then, I have chosen 1994 as a cutoff point in terms of national polarization. For SSM adoption, all policy came after this point, but bans occurred as far back as 1973. This, then, should serve as an important test of national polarization on the adoption of SSM policy. The descriptive statistics presented in this section give us an indication that, particularly for pro-SSM policy, state partisanship is a driver of policy diffusion. While it is less clear for anti-SSM policy, in that many states adopted the policy in the 1990's regardless of partisanship or geography, I still expect that national partisanship and polarization are significant drivers of the rapidity with which anti-SSM policy diffused during that time period. In the next section, I lay out my theoretical expectations and describe the data and methods used to test those hypotheses.

### *Hypotheses and Data*

This analysis in general is focused on the impact of partisanship on policy diffusion, and this chapter specifically looks at the effects of partisanship on same-sex marriage policy. In particular, the interest lies in whether state partisanship and national polarization have a positive effect on the diffusion of SSM. Chapter 2 examined this theoretical notion in more detail, but the basic argument is that rising polarization results in state looking to their partisan neighbors when adopting policies with a partisan dimension.

My dependent variable measures the adoption of SSM policy. If a state adopted or banned SSM in a given year, the variable is coded as “1” and coded as a “0” if the policy was not adopted. I expect that both state and national partisanship variables will positively impact SSM diffusion, and make two hypotheses about SSM diffusion.

*Hypothesis 1: State partisanship variables, including policy diffusion and partisan proximity, will lead to same-sex marriage adoption in similarly partisan states.*

Partisan proximity, here, is measured by two variables: state legislative control and the proportion of Democrats in a state. Legislative control is coded with a 1 when Democrats control the legislature and 0 when a legislature is under Republican control. For pro-SSM, I expect both of these variables to be positive, as pro-SSM policy is associated with Democratic states, and negative for SSM bans.

Additionally, I utilize a variable that measures partisan diffusion. This variable is

coded as 1 if a state with similar partisan control adopts SSM policy within two years of a partisan neighbor. Given my theory, this variable should positively correlate with higher rates of policy adoption. Additionally, I add a measure of the total number of SSM laws passed (Democratic laws for pro, Republican for anti), and argue that the more partisan neighbors that have adopted the policy, the more others are likely to adopt it as well. I also include measures of electoral competition for state legislative seats as a proxy measure for the level of state professionalism, and measures of ideology for both state legislatures and state citizens.

These states have their own increasingly polarized politics, and partisanship affects the types of policies states are likely to consider. More than that, of course, is whether other similarly partisan states have enacted SSM policy. The focus of this analysis is on diffusion, and specifically diffusion amongst states that share partisanship. The citizen ideology variable is a revised version of Berry et al's (1998) measure and captures more recent data, and correlates state citizen ideology to interest group ratings, ADA and COPE, for their members of Congress. The state ideology variable is the NOMINATE measure of state government ideology which utilizes Common-Space congressional ideology scores to construct the measure and is similar to the citizen ideology measure (Berry et. al. 2010).

In addition to state level factors, national partisan polarization should have an impact, though likely an indirect one, on SSM diffusion. While SSM adoption has occurred exclusively in an era of heightened polarization, SSM bans were adopted during relatively low periods. Still, I expect that polarization, which is coded as 0

prior to 1994 and 1 after, should have an effect on the SSM bans that occurred rapidly during the 1990's and 2000's, leading to my second hypothesis.

*Hypothesis 2: National polarization will have a positive effect on SSM bans.*

Polarization, however, can also be looked at as more than a binary state. Therefore, Figure 3.5 shows consideration of same-sex partnership policy given polarization levels in the House and Senate.<sup>17</sup> The box and whisker plots depict the passage and non-passage of SSM legislation, with the Y-axis showing House and Senate polarization levels from 1994-2012. We can see that states are more likely to pass these policies when both chambers are at high levels of polarization. House polarization is higher in general than Senate polarization, but Figure 3.5 shows that the consideration rates in states are similarly affected by House and Senate polarization. Clearly, however, the spread of not passing the legislation is far greater than that of passage. This is, primarily, because there are far more instances of states that take no action on same-sex policies during my time frame than states that do consider it.

Figure 3.6 looks at the relationship between House and Senate polarization and laws seeking to limit SSM. This relationship paints a slightly different picture. "Not pass" in both graphs is at a higher level than consideration for anti-SS policy. There are two possible explanations for this. First, many of these policies were considered and enacted during the 1990's and early 2000's, when polarization (while

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<sup>17</sup> Variables created by VoteView using DW-NOMINATE scores. They can be found at [http://voteview.com/political\\_polarization.asp](http://voteview.com/political_polarization.asp)



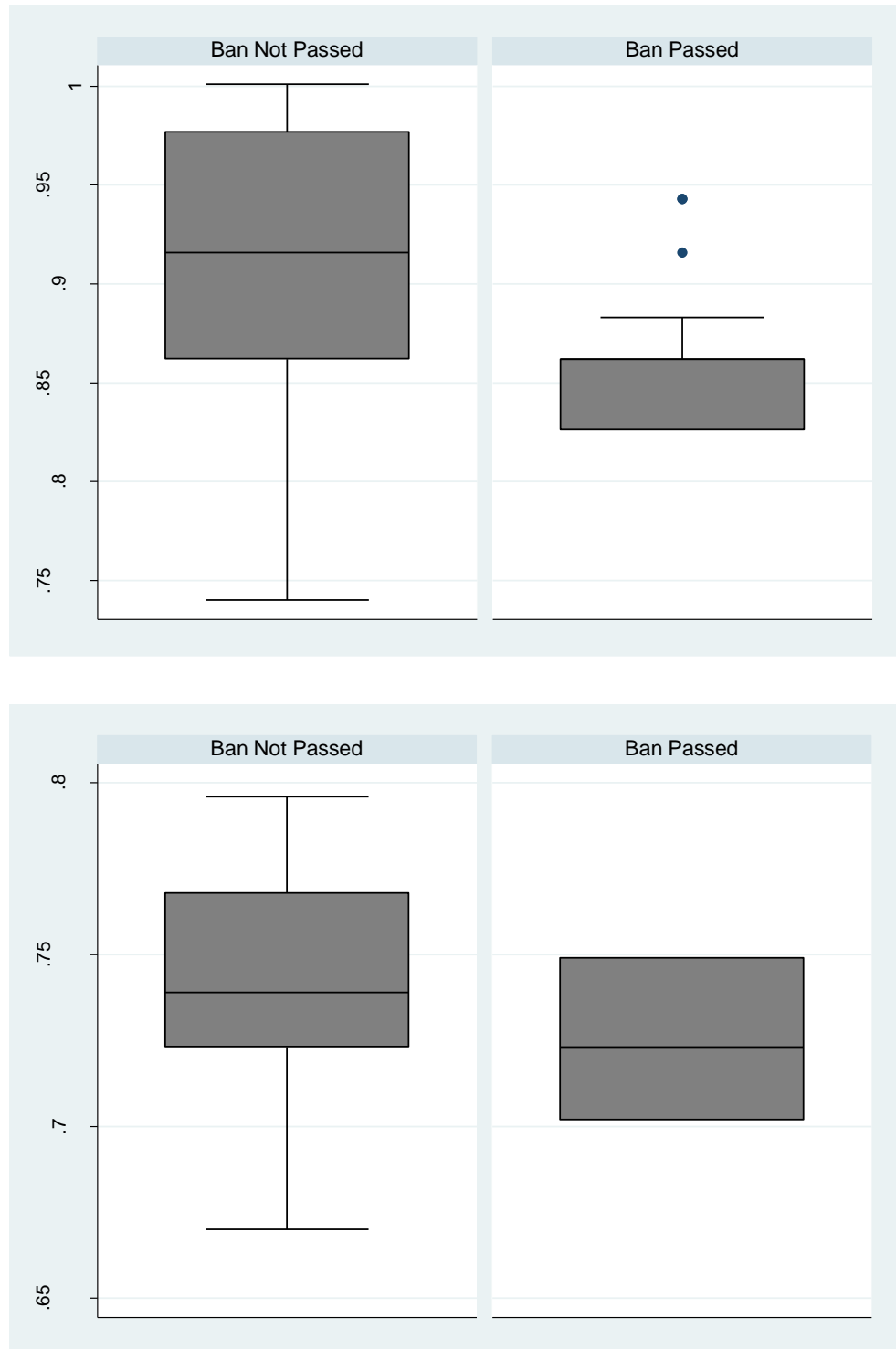
high) was not as high as it became in the latter years of the Bush administration and into the Obama administration. So, while the relative level of polarization in both Figure 3.5 and Figure 3.6 is similar, it may be the case that states that considered anti-SS policy were able to accomplish their policy goals before polarization reached astonishingly high levels.

Second, it may also be the case that legislation seeking to limit same-sex marriages are affected by partisan polarization differently than pro-legislation. Certainly, overall approval of same-sex rights in general were at a far lower level in the 1990's, and public opinion has changed dramatically in the two decades since same-sex partnerships became an important part of American public policy. While, again, levels of polarization are high for both "pass" and "not pass," polarization simply may not have the same impact on policies that seek to prohibit SSM.

**Figure 3.5: House and Senate Polarization and Pro-SSM Policy**



**Figure 3.6: House and Senate Polarization and SSM Bans**



Presidential and midterm election years are added to my models as control variables. While elections do not inherently lead to polarization, the existence of

high-profile elections may exert influence on the types of policies states consider. Not all states use the federal election calendar, but there may also be more incentive to act on issues that are important to a particular party's base during an election season in which the legislature is under increased scrutiny. Additionally, the partisan atmosphere at the national level is certainly greater during election season. As a result of the two-party system, elections are often about drawing lines of distinction between Democrats and Republicans. Particularly in midterms, in which voter turnout is reduced and often driven by the parties' base, partisanship at the national level is heightened. There is certainly a relationship between elections and polarization, but this analysis is primarily interested in legislative action as opposed to elections or public opinion.

Finally, time is an important consideration when studying policy diffusion. Policies like SSM may diffuse rapidly, but a time component is crucial. My unit of analysis is state year, which captures whether a state passed SSM legislation in any year. Once a state adopts or bans SSM, they drop from that particular data set. The logic, here, is that marriage represents the end-point of the SSM debate. While states can pass any number of restrictions, in the case of SSM bans, on same-sex relationships, banning marriage constitutes the end of the debate from the "ban" standpoint. Of course, states that have banned SSM could certainly reverse course, but from the standpoint of banning SSM (or adopting it), the states drop out of the dataset, following the method utilized in Chapter 2.

## *Results*

Since the outcomes of my dependent variables are binary I utilize probit regression models. I run two models, one for pro-SSM diffusion and the other for SSM bans. In effect, this model is an event history analysis, and follows in Berry and Berry's (1990) footsteps. My dataset contains every state adoption of SSM policy from 1973 through 2013. Importantly, in the model I control for time, with states dropping out of the dataset once they create a lottery. So, for each state year in which SSM is not adopted, that state receives a "0." If SSM policy is adopted, the state receives a "1" and is dropped from the dataset. The results from the pro-diffusion model are displayed in Table 3.1.

The results show mixed support in terms of my expectations for partisan policy diffusion. The partisan diffusion variable does reach statistical significance, but the predicted effect shows that, substantively, we cannot say much about the impact of this variable on SSM adoption. The number of SSM adoptions by Democratic states does have a large substantive impact, but its coefficient does not reach traditional levels of statistical significance. Achen (1982) argues that models with relatively few numbers of observations may call for a relaxation of statistical significance rules, but in this case it may not apply. It does, however, apply to the legislative control variable, which nearly reaches traditional significance levels. Having Democrats control the state legislature does have a positive effect on the likelihood of adoption, but once again the substantive impact is relatively small. None of the other state level variables reach statistical significance for the model, nor do the time or election variables.

**Table 3.1: Partisan Diffusion of Same-Sex Marriage Adoption**

Variables	Adopt	P	Predicted Effect
Partisan Diffusion	1.229 (0.738)	0.096	0.039
Number of Democratic Laws	0.618 (0.473)	0.192	0.745
Legislature Control	0.572 (0.354)	0.106	0.027
Electoral Competition	1.386 (1.532)	0.366	0.009
Percent Democrat in Legislature	-0.973 (1.112)	0.382	-0.006
State Citizen Ideology	0.003 (0.010)	0.741	-0.002
State Legislative Ideology	0.006 (0.008)	0.493	-0.005
Time	0.196 (0.372)	0.598	0.183
Time2	-0.035 (0.036)	0.329	0.142
Presidential Election	0.244 (0.310)	0.432	0.011
Midterm Election	0.348 (0.558)	0.533	0.016
Constant	-4.450 (1.839)	0.015	
Log Likelihood	-57.984		
Pseudo R2	0.209		
N	740		

Standard errors in parentheses

Some of this may be due to the relatively limited number of states in my dataset that have adopted SSM. Since SSM adoption is a fairly new policy, particularly in terms of legislative adoption, it may simply be that the patterns of diffusion are not yet fully defined. Future research into this policy, then, is likely needed to determine whether SSM adoption can be predicted by state level partisan variables.

Table 3.2 shows the results from the anti-SSM model. In this case, we see a clear impact of partisan diffusion, along with a hugely substantive effect. SSM bans diffused quite quickly amongst partisan neighbors in the mid-1990's, which may explain this effect, but the impact of partisanship on SSM ban diffusion is quite pronounced in comparison with the pro-SSM model. Curiously, however, legislative control does not reach statistical significance. This may be because both Democratic and Republican states adopted the policy throughout its history, and thus does not have the clear-cut Democratic dominance inherent in SSM adoption. The other state level variables, similar to model 1, do not reach statistically or substantively significant levels.

Hypothesis 2, however, does receive support in this model, as the polarization variable has both a statistically and substantively significant effect on SSM bans. While 1994 is not an absolute marker of national partisan polarization, it was a monumental year in the development of partisan rancor at the national level. That a polarized era led to a rapid diffusion of SSM bans that had previously been a relatively rare occurrence should not be surprising, given my overall theory. The partisan nature of SSM had begun to take shape in the 1990's and has absolutely

**Table 3.2 Partisan Diffusion of Same-Sex Marriage Bans**

Variables	Adopt	P	Predicted Effect
Partisan Diffusion	3.364 (0.605)	0.000	0.755
Legislative Control	0.284 (0.531)	0.593	0.008
Number of Bans	0.017 (0.031)	0.569	-0.008
Polarization	1.716 (0.510)	0.001	0.146
Time	0.012 (0.051)	0.808	-0.007
Time2	-0.002 (0.001)	0.164	0.002
Electoral Competition	0.317 (1.062)	0.764	0.004
Percent Democrat in Legislature	-0.837 (1.025)	0.414	-0.004
Presidential Election	0.056 (0.245)	0.819	0.001
Midterm Election	-0.222 (0.307)	0.470	-0.005
State Citizen Ideology	-0.007 (0.008)	0.394	0.002
State Legislative Ideology	-0.006 (0.009)	0.510	0.002
Constant	-1.685 (1.113)	0.130	
Log Likelihood	-77.318		
Pseudo R2	0.457		
Observations	1,294		

Standard errors in parentheses



persisted two decades later. There is almost no expectation that a Republican controlled state would, in 2014, legislatively adopt SSM, nor would a Democratic state ban it. While legislative action is not the only way to legalize or ban SSM in states, it is the clearest signal for partisan diffusion.

Overall, we see that partisanship at the state level does have some effect on SSM policy diffusion, though the effects are not as statistically or substantively significant as my hypotheses expected.. The descriptive analysis shows a clear trend: partisanship at the state level is of great importance to the passage of SSM legislation, and more states consider passing such legislation during times of high partisan polarization. What is necessary, however, is to acknowledge the relative newness of SSM adoptions (in particular), and the somewhat idiosyncratic nature of legislative SSM bans. Future research, then, would be well-served by taking the rapidity of SSM adoption into consideration during this undeniably polarized age.

### *Conclusions*

This chapter provides insight into the ways that partisan polarization affects policy diffusion and a starting point to understand the specific case of SSM. SSM policy is, in 2014, one of the most hotly debated topics in American politics. While we have seen that public opinion has shifted regarding gay rights nationwide, there are still fierce battles around SSM in states and in courts across the country. There is an explicitly partisan dimension to the states that have chosen to adopt SSM policy in the last decade, and there is little reason to believe that this will not continue to be the case in the near future. Many states, interest groups, and citizens have a social,

religious, or political stake in the future of SSM policy, both for and against, and is such ripe for continued study. The dynamics of SSM diffusion are clearly quite complex, but this chapter begins to provide answers concerning what drives SSM diffusion.

Chapter 2 analyzed the foundations of my theory of partisan policy diffusion. This chapter looked at one example of a policy that could be considered explicitly partisan. Chapter 4 will delve into right to work policy, and examine it from a slightly different angle than SSM. Indeed, right to work has both economic and political concerns, which can be viewed separately or linked. While it differs from SSM policy in key ways, it is also a politically contentious issue on which there is little agreement among parties. Chapter 4, then, provides another angle on the impact of partisanship and political polarization on controversial policy choices.

## Chapter 4: Right to Work and Partisan Policy Diffusion

It shall be unlawful for any person, firm or corporation to make or enter into any agreement, either oral or in writing, by the terms of which any employee of such person, firm or corporation, or any person about to enter the employ of such person, firm or corporation, as a condition for continuing or obtaining such employment, shall be required not to become or continue a member of any labor organization, or shall be required to become or continue a member of any labor organization.

Title 53 Labor and Industrial Relations, Chapter 613 Employment Practices  
Nevada State Code, Enacted 1911, Amended 1967

**§ 40.1-58. Policy of article.** -- It is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization. (Enacted 1947; amended 1970.)

Article 3, Virginia State Code, Enacted 1947, Amended 1970

**§ 41-7-10. Denial of right to work for membership or nonmembership in labor organization declared to be against public policy.**

It is hereby declared to be the public policy of this State that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization.

Title 41, Chapter 7  
South Carolina State Code, Enacted 1954

**Agreements between employer and union; prohibitions; court jurisdiction; violation; penalty; civil action; appropriation.**

Sec. 14.

(1) An individual shall not be required as a condition of obtaining or continuing employment to do any of the following:

(a) Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization.

(b) Become or remain a member of a labor organization.

(c) Pay any dues, fees, assessments, or other charges or expenses of any kind or amount or provide anything of value to a labor organization.

(d) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or employees represented by a labor organization.

Section 423.14, Michigan State Code, Enacted 2012

Organized labor represents one of the more significant social movements in American history. The labor movement was able to change the paradigm for working Americans by advocating (and agitating) for 40-hour work weeks, increased safety on the job, and in general increasing the power of workers. Of course, there is also little doubt that labor has made serious missteps in its history, notably with ties to organized crime, and has come under fire in recent years for its inflexibility, perceived or otherwise, in terms of re-working contracts and pension plans. Many blame the influence of unions for creating untenable economic situations for manufacturers, and resulting outsourcing of jobs and increased importation of manufactured goods, as well as putting unionized industries at a disadvantage.

Of course, the dispute between labor and management is as old as capitalism, and has been a major part of American public policy for the better part of a century. While unions existed prior to the New Deal, President Franklin Roosevelt pushed to make labor reform a central part of the New Deal. The National Labor Relations Act of 1935 (also known as the Wagner Act) was a key plank of FDR's economic agenda. It guaranteed the rights of workers to organize, collectively bargain, and strike (Skopcal, Finegold, and Goldfield, 1990; Katznelson, 2013). Of course, this was met with heavy resistance, both from business interests and Republicans. Some twelve

years later, those groups would push back against the New Deal reforms in the form of the Labor Management Relations Act of 1947, or Taft-Hartley Act, that significantly restricted the gains that the unions had achieved under FDR.<sup>18</sup> In effect, Taft-Hartley signified a shift away from the bargaining advantages unions had enjoyed to a system in which the employer had a good deal more power. The introduction to the Act itself makes this fairly explicit.

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.<sup>19</sup>

Taft-Hartley rolled back quite a few of the provisions the Wagner Act had guaranteed, specifically relating to the ability for unions to strike and also outlawing closed shops. It is the closed shop provision that is of particular interest to this analysis. A closed shop was an agreement amongst an employer and a union that the employer hire only union employees; essentially, it guaranteed that all workers in a particular business would be part of the bargaining unit. Eliminating the closed shop did not end the ability for unions to collectively bargain, but did allow more leeway

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<sup>18</sup> President Truman vetoed the legislation, but the veto was overridden. As part of his reasoning for vetoing the bill, Truman said, “I would have signed a bill with some doubtful features if, taken as a whole, it had been a good bill. But the Taft-Hartley bill is a shocking piece of legislation. It is unfair to the working people of this country. It clearly abuses the right, which millions of our citizens now enjoy, to join together and bargain with their employers for fair wages and fair working conditions. Under no circumstances could I have signed this bill.”

Source: Miller Center, University of Virginia, <http://millercenter.org/president/speeches/detail/3344>

<sup>19</sup> Title 29, Chapter 7, Subchapter 1, Section 141, United States Code.

for employers to hire workers and allowed those workers to be exempt from paying union dues.

This chapter focuses on one of the most significant effects of Taft-Hartley: right to work (RTW) legislation in states. RTW is a simple concept: While unions can exist in any workplace, no employee must be compelled to join the union. While this seemingly duplicated Taft-Hartley's provisions, it is actually a feature of the bill. The federal legislation allowed for states to do away with "agency fees." Under Taft-Hartley, employees in a union shop had to pay union dues, but only those dues that went directly to the costs of collective bargaining. Under RTW, any employee has the right to pay no union dues while still being covered by the union contract. Of course, the intended effect of these laws is clearly to limit union workplaces in a given state (Jacobs and Dixon, 2006; Milkman, 2013). If a state believes union workplaces hinder job growth or a state's ability to attract industry, RTW is an attractive alternative. From a labor perspective, why form a union with all its associated costs and not have the ability to compel workers to join that union? While unions certainly exist in many RTW states, there is little doubt that one of the main goals of RTW legislation is to diminish the ability of unions to impact the workplace (Ellwood and Fine, 1987; Canack and Miller, 1989; Reynolds et al, 1997; Dixon, 2008).

The Taft-Hartley reforms had an immediate impact: Within eleven years, 18 states had RTW laws on their books.<sup>20</sup> While RTW laws were created across the country, there was a clear geographic component in that nearly every state in the

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<sup>20</sup> Texas, Arkansas, Florida, Nebraska, and South Dakota had all passed RTW legislation prior to congressional passage of Taft-Hartley.

Deep South had passed a RTW law by 1958. Indeed, if one were to look at RTW's early history, one could easily come to the conclusion that it is a classic case of geographic diffusion. This chapter, however, will examine this claim and look at RTW from both a geographic and partisan perspective. There is little doubt that the politics of the labor movement are calcified by partisanship. As a general rule, unions are seen as inherently supportive of the Democratic Party while having an adversarial relationship with Republicans. Greg Mourad, of the National Right to Work Committee (NRWC), spoke to me about this issue.

Historically, we used to have a very small handful of Democrat supporters, now there are none, and the ones that did tend to become Republicans. At the moment, I can't think of any Democrat in Congress who would be considered a supporter or even an unknown. The unions pretty thoroughly control the Democrat Party on our issues. I understand on some other conservative issues there are pro-life Democrats, there are pro-gun Democrats, but on the RTW issue it is very rare these days to find a pro-RTW Democrat. The consequences of the Democrat primaries are just too severe in terms of what the unions will do to them.

This chapter provides an overview of the literature on RTW legislation and examines the extent to which RTW legislation followed a pattern of partisan policy diffusion. It includes a recent case study of Michigan's passage of the legislation and delve into the issues surrounding Michigan's adoption of RTW and the political and economic arguments made both for and against it. Finally, as in Chapter 4, I present an empirical model that estimates the impact of partisan polarization on RTW diffusion.

### *Literature Review*

RTW laws have been in effect even before the Taft-Hartley provisions (and subsequent state actions) in the 1940's. Nevada had legislation that allowed for workers to opt out of joining a union as early as 1911. There are, ostensibly, two rationales for creating RTW laws. First, states argue that RTW will increase job creation and attract new industry to a state. If employers have to deal with less powerful unions than they might have otherwise, the argument goes, a state will be more attractive in terms of its business climate. Secondly, and related, RTW limits the bargaining power of unions. It is this second claim that creates much of the political backlash to RTW; unions and employers see RTW as dangerous and necessary, respectively, and wage (often) public battles around the issue (Moore, 1998). Indeed, business interests widely view RTW legislation as a powerful weapon to mitigate union influence (Reynolds et al, 1997).

While there has never been true harmony between management and unions in United States history, the World War II consensus that existed began to crumble, not least as a result of Taft-Hartley and the wave of state RTW legislation that followed in its wake. Many states became invested in the labor/management dispute, often siding with employers (Jacobs, 1978; Jacobs and Dixon, 2006). With the at least perceived benefits of creating RTW legislation, this shift makes sense. Given that there was a dramatic push in Congress to roll back the labor movement by passing the Taft-Hartley Act over a presidential veto, states may have felt emboldened to create RTW legislation. In the case of early RTW legislation, then, it is likely that congressional action, rather than inaction, had an impact on state creation of RTW



policy. In the decades since, however, there has been little done on this issue at the federal level. While there has been a great deal of labor policy created by Congress, RTW is now firmly in the hands of state legislatures.

Much of the research on RTW legislation focuses on the economic impact of the legislation on states. One of the main arguments in favor of RTW is that states will see economic growth and will be able to attract industries that were historically unionized. While this an empirical claim, the evidence for this argument in the literature is mixed. Moore (1998) argues that there are positive benefits of RTW laws in of state industrial development (i.e. manufacturing), but that these effects are relatively short lived. Essentially, RTW laws help states attract new businesses in the aftermath of passing the legislation, but that effect diminishes over time.

Of course, RTW is not meant only to attract new business, but to ensure that existing businesses have fewer restraints in terms of union organizing. Ellwood and Fine (1987) show that, indeed, RTW has a dramatic effect on union organizing. In RTW states, they found that organizing decreased by nearly 50% in the five years after states passed RTW, and that the decrease steadily continued over time. Other, studies found similar effects (Davis and Huston, 1995; Holmes, 1998; Hogler, et al, 2004; Stevans, 2009). This expanded and refuted earlier scholarly work on RTW, which painted a mixed picture in terms of how much RTW benefitted the economy of a given state. Lumsden and Peterson (1975) argued that the impetus for state adoption was actually due to the demographics of the state itself; that is, workers with less inclination to join unions were more likely to live in RTW states. They argue

that the impact of the law itself was actually relatively low, but that unionism itself was less desirable to the workers in states that had adopted the legislation.

Weber and Shaffer (1972) also found that public opinion was predictive of whether states had pursued RTW legislation, and argued that scholars should look more seriously at the ways in which politics, rather than simply socio-economic need, affect policymaking on non-revenue policies. Interestingly, interest group activity was also of importance, though largely to discourage RTW from being enacted. The AFL-CIO, still a powerful organization in its own right, exerted quite a bit more influence in the late 1960's and early 1970's, which may account for this particular finding. Of course, unions are still a powerful force, particularly in Democratic politics. While there is little doubt that the labor movement's influence has declined over time, it is still the case that Democrats see labor as an important base of support. Highly unionized states and congressional districts elect Democrats at a much higher rate than Republicans, despite union membership declining across the country (Francia, 2006). In terms of policy, however, labor has had less success in pushing back against more conservative leaning legislation like RTW. As we will see, this is evident in the recent RTW legislative fights in Indiana and Michigan.

While there is some evidence to suggest that RTW encourages business growth, there is scholarly resistance to this idea as well. Moore and Newman (1985) argue that the effects of RTW are more symbolic than substantive; states attempt to appear business-friendly by passing the legislation, but there is no guarantee that industry will necessarily stay in or relocate to such a state. Additionally, the early research suggesting that RTW legislation is contingent on state-level factors has also

garnered support. Kalenkoskie and Lacombe (2006) argue that, while there may be some small effect of RTW in terms of manufacturing job creation, the effect is almost insignificant once omitted variable such as geography, state public opinion, and natural resources are taken into account.

While the effect of RTW on creating new jobs is somewhat difficult to discern, there is no difficulty in determining the impact of RTW on unions, both in terms of the number of workers represented by unions and wage differences. The “free rider” problem that was discussed by Olson (1965) in reference to collective action problems is on full-display in RTW states. Workers in these states have the choice of whether to join a union, but are covered by the union contract regardless. The wages of non-union workers are consistently lower than those covered by union contracts, and workers are able to reap the benefits of union contracts without paying the associated costs (Sobel, 1995; Schumacher, 1999).

With the problem of free-riders, the incentives for unions to form are reduced. Bargaining for contract concessions, better pensions, etc. is considerably more difficult if a good proportion of employees are not invested in the union itself. Of course, with unions less and less likely to form in states that allow RTW, there is also the adverse problem for potential free riders in that there will be no union to free ride on. While union membership and wage structure are not the focus of this analysis, it is important to understanding the impetus behind RTW legislation in general. Much of the research on the impact of RTW on wages and unionization rates, however, is compromised by the endogeneity issues mentioned previously. State level variables,

such as existing wage levels and rates of unionization, matter in terms of understanding the effects of RTW (Moore, 1980; Reed, 2003).

This analysis is interested both in the economic impacts of RTW, which are murky, and the political impetus for crafting RTW, which is less so. In the next section, I look at RTW policy diffusion from a theoretical standpoint, and argue that the policy has elements of both geographic and partisan diffusion, and should be considered as a hybrid of the two. Hybrid legislation is an interesting challenge when studying policy diffusion. RTW is a policy with both partisan and geographic connotations. It is much more attractive to Republican-controlled states, due to the level of influence labor exerts on the Democratic Party, but also has an economic component that can stretch across state geographic boundaries. States without RTW but with neighbors who have adopted RTW can be portrayed as anti-business, independently of a state's partisan control.

### *Partisan Diffusion*

In Chapter 3, I introduced same-sex marriage as a policy that has a clear partisan component. The parties have staked out clear positions on the issue and there is a great deal of partisan intensity surrounding it. RTW has some similar partisan dynamics, but also deals with economic and geographic issues are absent when states are looking to enact SSM legislation. While there may be fringe economic concerns with SSM (tax incentives, for example), the thrust of that policy is not economic. RTW, however, has a clear economic component. Regardless of the true economic impact of RTW, which as we have seen is difficult to show, one of the

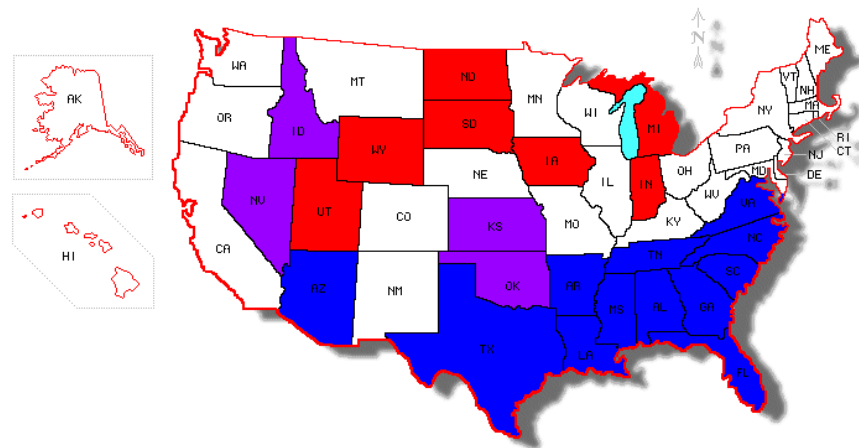
arguments for adopting the legislation is economic. The basic argument is this: If a neighboring state has a RTW law on the books, companies are more willing to locate or stay there because they will not have to grapple (as much) with employees attempting to organize. This is, without question, a potentially powerful concern. If states wish to maximize job creation and create a “pro-business” atmosphere, this type of argument could be quite persuasive.

There is also some evidence that companies attempt to put economic pressure on non-RTW states to adopt the policy. Rao et al (2011) show that Wal-Mart, the largest retailer in the country, strategically places new stores on the border of RTW states to entice non-RTW states to adopt the legislation. With the huge financial pull of a company like Wal-Mart, states at least need to consider whether their policies are conducive to attracting that type of business. Of course, it is worth noting that Wal-Mart is routinely seen as one of the more militant retailers in the country in terms of its negative stance towards unions, so it is possible that looking at an employer like that specifically may not be generalizable. Again, however, the perception that states have about the economic impact of RTW, even if that perception is not entirely correct, could lead them to adopt the policy in order to “keep up” with its neighbors.

RTW adoption, from a standpoint of time, is a fairly skewed event. Most states that currently have the law adopted it within ten years (on either end) of Taft-Hartley becoming law. Indeed, since the late 1950’s, the policy has diffused quite slowly. Additionally, the partisan dynamics of RTW have been fluid. In the 1940’s through 1960’s, of course, most of the South was dominated by the Democratic Party. The Solid South represented what was, then, a fairly conservative Democratic

platform, which included RTW at the state level. Figure 4.1 shows a map of RTW adoption with state partisan control as it was when the policy was adopted.<sup>21</sup> Blue states are Democratically controlled, red states are Republican controlled, and purple states are divided control.

**Figure 4.1: Right to Work States by Partisanship. 1943-2010**



Source: diymaps.net (c)

Simply at first glance, there is a clear partisan and geographic pattern of RTW diffusion. Figure 4.1 does not account for time, but is presented to underscore the changing dynamics of RTW legislation. Every state in the Deep South, when it adopted RTW, was controlled by a Democratic state legislature. Meanwhile, every

<sup>21</sup> In terms of time, state adoption of RTW is as follows, by year.  
 1943: Texas; 1944: Arkansas, Florida; 1946: Arizona, Nebraska, South Dakota  
 1947: Georgia, Iowa, North Carolina, Tennessee, Virginia; 1948: North Dakota; 1952: Nevada  
 1953: Alabama; 1954: Mississippi, South Carolina; 1958: Kansas; 1963: Wyoming; 1976: Louisiana;  
 1985: Idaho; 2001: Oklahoma; 2012: Indiana, Michigan.

state outside of the Deep South was controlled either by a Republican legislature or had divided government, other than Arizona. Of course, the Dixiecrats that dominated the South in the years after World War II are a far cry from the current Democratic Party. The last Democratic state to adopt RTW was Louisiana in 1976, and Democrats have clearly changed their stance on the issue. So, while obviously we cannot know if diffusion would have occurred similarly if the South had been solidly Republican in 1940's and 1950's, it is also important to note that the partisan diffusion that occurred early is a bit different than what we would think of as Democratic policy today.

Of course, there is also little doubt that RTW has a partisan component today. Michigan State Representative Doug Geiss, a Democrat, succinctly explained his view on RTW.

It's an extremely partisan issue, and it's a direct attack on Democratic supporters.

Michigan Democrats were highly opposed to RTW creation in their state, as we will see below, and painted it as primarily a partisan issue being exploited by Republicans. On the other hand, Republicans like State Representative Jerry Torr of Indiana saw Democratic opposition to the legislation as a consequence of the labor movement's clear identification with the Democratic Party.

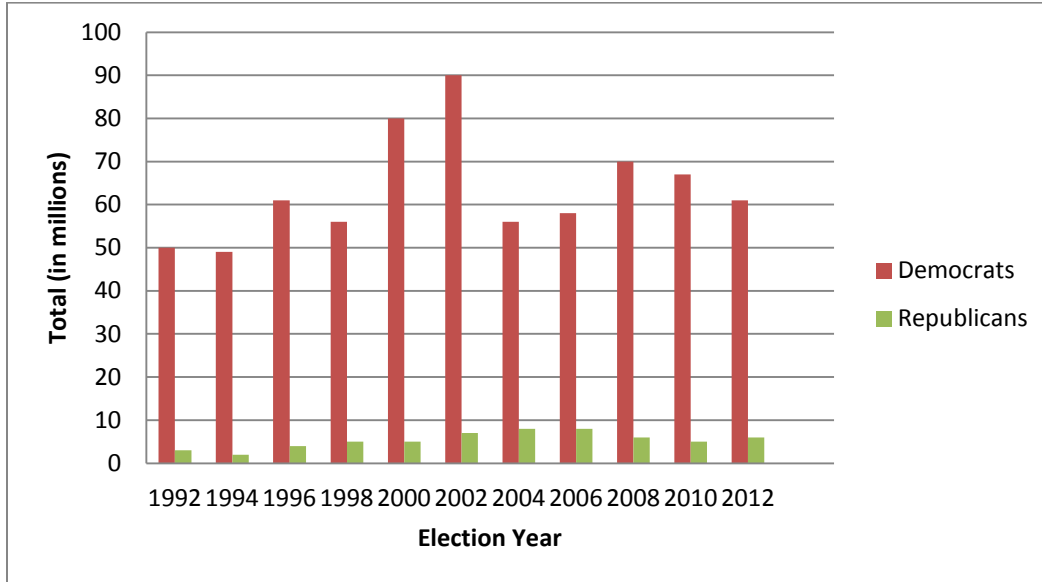
It's interesting; the issue was extremely partisan in Indiana. There were a couple of Republicans that voted against it because they serve in heavily unionized areas, but of course all the Democrats opposed it. There's a very tight synergy between the Democratic caucus in Indiana and the labor unions

While Republicans who support the legislation obviously have legitimate reasons to couch RTW legislation in terms of its economic benefits for a state, it is also clear that both parties see RTW as a partisan battle. While the influence of unions has waxed and waned over time (mostly waned), there is no doubt that the labor movement is closely associated with the Democratic Party, in the same way that big business is usually associated with Republicans, though not to the same extent. Indeed, unions generally target Democrats, and particularly Democrats who work directly on the issues that are associated with labor (Endersby and Munger, 1995). Figure 4.2 shows the amount of money that the labor movement as a whole has donated to each political party since 1990. The gulf between Democrats and Republicans is clear.

In every election cycle, contributions to Democrats have dwarfed contributions to Republicans. Even in 2006, when labor donated \$8.3 million to Republican candidates (the most in this time frame), Democrats received \$58.3 million.



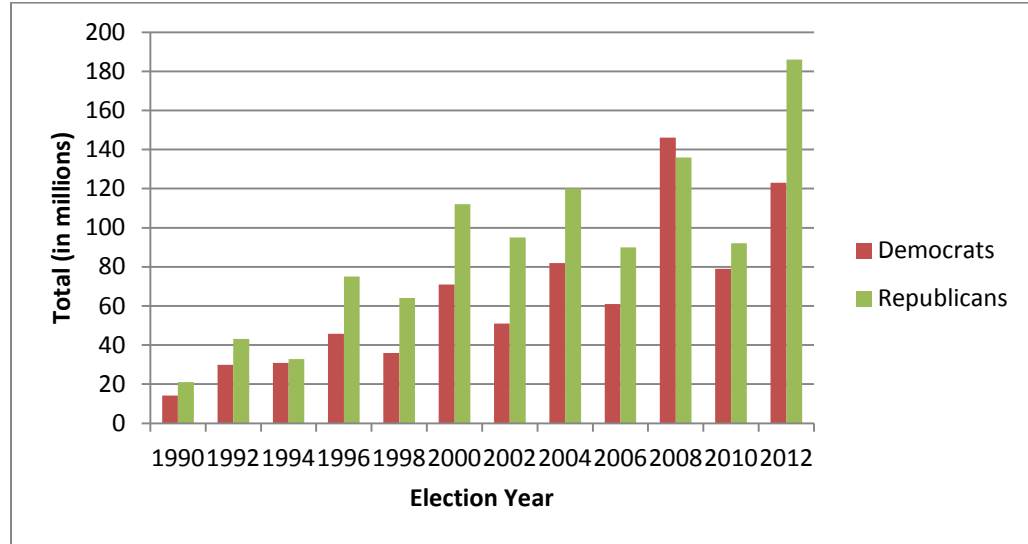
**Figure 4.2: Labor Contributions to Political Parties, 1990-2012**



Source: The Center for Responsive Politics, Opensecrets.org

On the other side of spectrum, business interests are generally seen as more closely tied to Republicans. Figure 4.3 displays the contributions of the business sector (including manufacturing, retail, industry, etc.) to Democrats and Republicans. While we can see that the relative difference between contributions to the parties are much lower than for labor contributions (with Democrats actually receiving more from business in the 2008 election cycle, it is still clear that business generally favors Republican candidates over Democrats.

**Figure 4.3: Business Sector Contributions to Political Parties, 1990-2012**



Source: The Center for Responsive Politics, Opensecrets.org

The splits in Figure 4.2 make a good deal of sense. While the labor movement is certainly predicated on economics, it is also political. Not all business interests, on the other hand, have a distinct political ideology. It makes sense that, given a diverse array of industries, Democrats will also receive contributions from the business sector. It is clear, however, that business contributes a massive sum of money to the Republican Party.

While the figures above relate to national level candidates, they are meant to illustrate that the two sides of the RTW issue, business and labor, are fairly distinct in terms of their political allies. RTW is an economic concern, to be sure, but it is also a political football that can be used for partisan reasons. There is also a considerable literature on the ways in which interest groups affect policy, particularly in a climate where interest groups are becoming more partisan (Haider-Markel, 1999; Brunell, 2005; Roscoe and Jenkins, 2005; Grossman and Dominguez, 2009). While, again,

much of the research in this area focuses on national politics as opposed to state work, this focus is important to my analysis. If it is the case that labor and business are interests are attempting to influence Congress, either by directly donating to campaigns or by the cumulative effect of more members of their preferred party, they are also likely to want policy outcomes.

Of course, there are any number of policies that labor or business would want. The issue in terms of RTW, however, is that there is nothing imminent at the national level in terms of creating a nationwide RTW law. Greg Mourad, while hoping for such a law, also argues that RTW advocates currently focus on state victories.

For us, state politics drives national politics. Places where we are active at the state level, we have raised the profile of the issue significantly in that state and that tends to have an impact on where the federal candidates are. Candidates for Congress in places we are actively pushing a state RTW law have a need to take a stand on the issue as well and makes it harder for them to ignore the issue. We find it easier to get support from politicians in non RTW states where we are trying to pass a RTW versus non RTW where we're not.

This analysis argues that there is a link between federal inaction and state policymaking, and Mourad makes it clear that the two are certainly connected. While it is not necessarily the case that any policy enacted at the state level and then diffused to other similarly partisan states has to be a prelude to national action, the key point is that states are forced to act when Congress is unable to do so. While RTW is not solely a partisan issue, it has a clear partisan component. It is not a morality policy in the same way as SSM, but it is a policy with relatively simple partisan explanations. From a Republican standpoint, RTW helps create jobs and frees workers from the burdens of being forced to join a union. From a Democratic perspective, RTW limits the ability of workers to organize and collectively bargain

and drives down wages and business standards. While both of these explanations have some level of truth, the reason the policy can be considered partisan is that the policy itself is rather simple. Much like morality policy, most citizens can at least understand the implications of RTW, even if their basis for understanding those implications is flawed. It is not highly technical, but RTW does have more technical aspects than something like SSM.

Overall, then, we would expect that both partisanship and geography have some effect on RTW diffusion. In the next section, I look at Michigan's passage of RTW legislation in 2012, and examine the partisan and economic tensions that led to its passage, as well as Indiana's. With the states in close geographic proximity and passing the legislation months apart, Michigan was a particularly compelling case to delve into a state's motivation for adopting RTW and how partisan polarization has affected policy diffusion.

#### *Case Study: Michigan and Right to Work*

Of the states associated with the labor movement in America, Michigan is historically one of the most influential. As Democratic State Senator Hoon-Yung Hopgood told me,

To understand how RTW is a controversial issue in many respects in Michigan, we're the birthplace of the modern labor movement. When you have a lot of history around people organizing for worker rights, and this goes back to the auto industry and other industries in Michigan. The auto industry is the bedrock, and has carried Michigan over many decades. We credit the labor movement and unions in Michigan for establishing a broad middle class.

Michigan has been a fulcrum union intensity for decades, and was at the forefront of the labor movement's successes during the Great Depression. In 1937, auto workers

in Flint won a sit-down strike against General Motors, striking a major blow in the fight to unionize America's autoworkers. The strike itself was controversial. The American Federation of Labor (AFL) was considerably less militant than the Congress of Industrial Organizations (CIO), to which the autoworkers belonged, and many in the labor movement itself were uncomfortable with the tactics utilized to air the workers' grievances (Fine, 1966; Pope, 2006).

The ability to win concessions, regardless of tactics, was a hugely important step in changing the worker-management relationship in the auto industry in Michigan. The sit down strike, and subsequent recognition of the United Auto Workers (UAW) as an important cog in the American labor movement led to Michigan's standing as one of the state leaders in terms of unionization. Indeed, Michigan workers have consistently unionized at a higher rate than the rest of the United States, and the United Auto Workers (founded and housed in Detroit) has long been a political and economic force in the state and nationally.<sup>22</sup>

Of course, labor unions have struggled mightily over the past several decades, with the nadir of union power and influence coming in 2013. In 2013, the Bureau of Labor Statistics (BLS) reported that unionized workers made up just 11.3% of the private workforce in America, the lowest total in 97 years.<sup>23</sup> The BLS attributed this to changing employment patterns as well as state action that focused on limiting union membership in 2012. Michigan was one of these states. This, while surprising given Michigan's history of labor activism and power, should not have come as a complete shock to anyone following the labor movement closely. The financial crisis

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<sup>22</sup> Bureau of Labor Statistics, <http://www.bls.gov/ro5/unionmi.htm>

<sup>23</sup> Greenhouse, Steven. "Share of the Workforce in a Union Falls to 97-Year Low, 11.3%." *The New York Times*, January 23, 2013.

of 2008 had a dramatic impact on unionized workers in Michigan. General Motors, Ford, and Chrysler were all bailed out with federal money, and there was a great amount of pressure on the autoworkers in particular to scale back their pension plans, compensation, and benefits. Even after the unions were forced to make concessions to Detroit and thousands of their members lost their jobs or pensions, however, Michigan workers remained unionized at a high rate compared to the national average. The current picture of the labor movement in Michigan, though, has become quite grim for labor supporters. In 2005, over 20% of Michigan's workers were members of a union. In 2012, that number had declined to just over 15%. Even more striking, in 1990 more than 25% of Michigan workers were unionized, a drop of nearly ten percentage points in just two decades.

While Senator Hopgood's argument that Michigan's middle class relied heavily on unions in the past may have been true, it is clear that this reality has shifted dramatically. Perhaps not coincidentally, as unions have declined in membership, Republicans have begun to exert much more influence and control over Michigan politics. After decades of primarily Democratic control, both in the state legislature and the governor's mansion, the Republican Party has become the dominant force in Michigan state politics.

This Republican resurgence came to a head in 2010. That November, Rick Snyder, a Republican and former businessman, won the race for governor after two terms for Jennifer Granholm, a Democrat. Far more dramatically, the Republican Party won 21 seats in the Michigan House to wrest the majority from the Democrats, and expanded its Senate majority to 14 seats. Though the Republicans lost 5 of those

House seats in 2012, the stage was set for a sea change in policy, particularly regarding organized labor.

Unions and their supporters recognized that this change might be coming. Indiana passed RTW in February 2012, and there had been attempts by Republican governors in Wisconsin and Ohio to limit collective bargaining for public sector unions. Organized labor, in an attempt to ensure Michigan would avoid this route, pushed a state referendum that would protect collective bargaining rights in the state's constitution. The measure, however, was defeated at the ballot box by a 58 to 42 percent margin.<sup>24</sup> While, given the electoral climate, one can certainly question the wisdom of urging such a fight, the repudiation of the measure sent a signal to policymakers on both sides of the aisle. It was clear, in late 2012, that organized labor in Michigan was on its heels. Indeed, as Senator Hopgood explains, the time was right for the new Republican majority to press its advantage on collective bargaining issues.

There was some speculation that RTW may be on the governor's agenda, but he consistently said it was not on his agenda and he called it "too divisive." He said, "It doesn't bring people together, it doesn't help move us forward." Meanwhile, members of the legislature introduced different versions of RTW, including ones that said there would be RTW zones and limited physical spaces where you would have RTW and all this, but nothing ever moved forward... . The governor continued to say RTW was not on his agenda, we get to the lame-duck session in December, and at the last possible moment he switched his position. So, from there, the legislation moved very quickly, in the quickest amount of time that it could, through the legislature and to the governor's desk.

Clearly, Hopgood's assessed the situation from a partisan perspective. The Democrats who spoke with me were incensed at the fact that Snyder seemingly

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<sup>24</sup> Greenhouse, Steven. "In Michigan, a Setback for Unions." *The New York Times*, November 8, 2012.

indicated RTW was not a priority, and then supported the bill during a lame duck session. Regardless of partisan concerns, however, it is the case that less than a month later after the election and the pro-collective bargaining ballot initiative fight, Snyder and the Republican majority in the legislature put the bill up for a vote. The sudden spike in interest left Democrats scrambling to attempt to defeat the measure. Supporters and opponents flocked to the Capitol building, with opponents primarily mobilized by organized labor. Inside the Michigan House, many Democrats were concerned about the process of the vote. Democratic Representative Doug Geiss, one of the main opponents of the legislation, made his displeasure with the vote clear when he spoke with me.

It was rammed through the legislature, so it did not have any committee hearings in either the House or the Senate. Within about two legislative days it was pushed through the House... [There was] limited debate, it did not follow the normal process. They didn't want to have any hearings, didn't want to have any delay, and they circumvented the entire legislative process. In this case, I think many felt it was retaliation for the failed proposal on the ballot to block such attempts. Many felt it was retaliation from the Republican majority.

The opponents of the bill were largely convinced that, in fact, RTW in Michigan was as much about political retaliation as it was about producing economic gains for the state. This dispute is at the heart of the RTW issue in terms of policy diffusion. Opponents of RTW legislation often cast the issue in terms of partisanship, an attack on unions that have long been the base of support for the Democratic Party. Supporters, however, are often able to tout both the tangible policy benefits of RTW as well as their ideological stance on unionism in general. Republican Representative Mike Shirkey argued RTW is an important piece of legislation from a principled perspective.



I firmly believe that all people should have the right to choose whether or not to join a group. Also, the SEIU (Service Employees International Union) pushed a ballot drive on many labor issues in Michigan in the last election cycle. Those were defeated, and I was for labor freedom regardless, but it put labor issues in the limelight and ripe for policy debate.

Labor freedom, from the point of view of a proponent of RTW, focuses on the ability of a worker to opt out of joining a union or paying union dues. As we have seen, this not only makes unionizing a workplace less likely, but also potentially frees employers from having to collectively bargain with their workforce. Shirkey makes the case that RTW is primarily about worker choice, specifically the choice to form a union, but also makes it clear that organized labor's campaign to enshrine collective bargaining rights in the Michigan constitution was a major factor in bringing about RTW. This is not particularly surprising on either side. Given the focus on labor rights, and collective bargaining specifically, in many states surrounding Michigan, organized labor certainly felt pressure to stem the tide and cement collective bargaining rights in a state with a long and proud history of labor activism. Once the ballot measure failed, however, there was a clear window of opportunity for supporters of RTW. Recall from Chapter 4 that policy entrepreneurs utilized a window of opportunity to pass SSM legislation in Maryland. Michigan's passage of RTW relied on similar effort from groups with a partisan interest in RTW legislation. I spoke with Greg Mourad, Director of Legislation at the National Right to Work Committee (NRWC), who explained the process behind Michigan's decision to take up the legislation in 2012.

The unions had put a proposition on the ballot to amend Michigan's constitution to say that it could never become a RTW state. The voters of Michigan rejected that measure by I think 16%. It was pretty resounding.

What that did was send a message to all the politicians in Michigan that supporting RTW was the safe thing to do electorally. And so we saw a very sudden spike in interest from some of the legislators and the governor.

The NRWC, of course, is committed to passing RTW at both the state and national level, and has been involved in nearly all the RTW fights over the past decade. As of this writing, there is little reason to believe that a national RTW law is forthcoming, but Mourad made it clear when speaking to me that his organization will continue to press for more legislation at the state level that is similar to what was accomplished in Michigan.

In terms of passage of a national law in the near future, I don't see that coming. But what we'd like to see and what we're asking for is a roll-call vote in both chambers on a RTW law, and that would allow us to start holding politicians accountable.

Mourad's description of where his organization expects to be active is quite interesting, primarily given the geographic differences of those states, but also their political makeup as well. Pennsylvania, for example, is similar to Michigan in terms of partisan loyalty, and is usually considered a swing states. I described Michigan's passage of RTW in 2012 as supporters taking advantage of a window of opportunity, which may certainly have been the case in that particular situation. That being said, however, it is also possible that there has been an overall shift in the direction of RTW legislation. This analysis looks at the history of RTW and the impact of partisan polarization on the policy. Future research, however, will be well served by determining whether the policy will diffuse even more rapidly than it already has.

In this climate, then, RTW passage in Michigan is not as shocking as it might once have been. In addition to concessions the unions made in the wake of the

financial crisis in 2008 and the federal bailout of the Detroit automakers that weakened their overall political and economic power, the 2010 election results made Michigan a prime target for new RTW legislation. Additionally, RTW has become a fixture for many state legislative debates. 19 states debated new RTW laws or strengthening RTW provisions in 2012, and 21 did so in 2013, with a total of 5 states passing new or strengthened laws. From this perspective, then, Michigan's consideration of such a law, while once difficult to imagine, fits into the current trend of RTW legislation nationwide.

This analysis, of course, is interested in the causes of state policy diffusion. The modal research question in the policy diffusion literature focuses on regional or geographic diffusion. While I dispute that this is always the primary reason for policy diffusion, there is a greater case to be made for a policy like RTW than for same-sex marriage. Earlier in this chapter, I make the case that RTW is a hybrid policy that has both partisan and geographic interests at play. Michigan is a particularly good test case for this notion. In February, 2012, neighboring Indiana passed a RTW law, less than a year before Michigan's lame duck session.<sup>25</sup> Indiana was the first Upper Midwest state since Iowa (in 1947) to pass a RTW law. As a result, it would certainly be tempting to conclude that Indiana's geographic proximity to Michigan, and the short time frame, had a major impact on Michigan's consideration of RTW legislation. Those I spoke with, however, offered a mixed reaction to the notion that Indiana's influence was primarily geographic.

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<sup>25</sup> In 2013, the law was struck down by an Indiana state court, with Judge John Sedia ruling the legislation unconstitutional. As of this writing the case is pending in the Indiana Supreme Court, but was state law when Michigan passed RTW legislation in December 2012.

Sen. Hopgood:

I don't think Indiana's adoption was terribly important, I don't think Indiana is in any position to steal a bunch of heavy manufacturing jobs. I think it was in many ways a cover story to explain why we need to do this. This was payback for the unions. I don't think there's a real strong economic argument, unless your model for economic growth is to pay your workers as little as possible and somehow that will bring jobs about.

Rep. Geiss:

Indiana had already passed this legislation. In reality it was more a strike against the ability for the unions to raise money and support Democrats. It really comes down to dollars and cents, not any type of philosophy that this will lead to increased job growth.

Rep. Shirkey:

[There was] little primary effect [of Indiana's passage]. I view this first and foremost as a worker freedom issue, labor freedom.

Greg Mourad:

Geography has an impact only to the extent that geographical region is a factor on the economic situation. For example, Kentucky is now almost completely surrounded by RTW states. That puts more economic pressure on the state and anybody looking to be in that part of the country is looking at a RTW state across their borders, so that puts more pressure on them. But we don't look at it, we don't say that state is almost surrounded therefore we push there next. We say, oh, there's intense pressure on this state because of its geography, but that's not the determinative factor. Indiana, when we passed it there, was pretty much an island by itself. We look for places where the politics are right and we try.

It is clear that Indiana's passage was at least on the minds of the people involved in the RTW fight in Michigan, but the extent to which it actually affected consideration or voting in Michigan is unclear from my interviews. There is, however, a clear theme of partisanship that pervades most of the comments. The Democratic legislators I spoke with were fairly convinced that RTW was a political maneuver by the Republican majority and as a measure of retaliation for the 2012

collective bargaining ballot initiative. While it seems unlikely that those on the Republican side would admit to this if it were true, the perception is certainly that economic concerns took a back seat to politics.

Less than a year before Michigan surprisingly passed RTW legislation, Indiana passed RTW after years of trying and failing to do so. I spoke with Indiana Representative Jerry Torr, who had sponsored the bill for years prior to its 2012 passage, about the process by which his state adopted the legislation.

By the time [the Republicans] got the majority back in 2011, RTW did have enough momentum going to at least get a committee hearing. That's the year that the Democrats actually left to deny us a quorum. Went to Illinois, and were holed up in a hotel over there for like six weeks or something, denying us a quorum. Then the next year, in 2012, during the summer the Speaker became convinced it was important to the state, so he and the Senate pro temp pronounced that it would be a priority for the legislative session. So, we passed it in 2012 and it was signed by the governor on February 1, 2012.

As Rep. Torr explained, Indiana's passage of RTW was even more dramatic than Michigan's. While Michigan Democrats argued that Republicans abused the legislative process by fast tracking RTW, Indiana's Democrats took a much more aggressive stance against RTW and actually left the state. One could certainly argue that this was largely a stunt, but it was also a clear indication that there was a great amount of partisan disagreement on the RTW issue.

Michigan Democrats did not go to the same extent, obviously, but there was also a good deal of partisan rancor regarding the issue. Democrats walked off the floor of the House during the vote, and protestors were arrested during the debate.<sup>26</sup> The legislation passed, however, and Michigan became one of the more surprising RTW states in America. The question for this analysis, of course, is whether policy

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<sup>26</sup> [http://www.huffingtonpost.com/2012/12/06/michigan-gop-right-to-work\\_n\\_2253975.html](http://www.huffingtonpost.com/2012/12/06/michigan-gop-right-to-work_n_2253975.html)

diffusion was at the root of Michigan's adoption, and whether that diffusion was driven by politics or geography. Torr argued that the issue was about both worker freedom and economic security for Indiana, which mirrors most of the pro-RTW arguments.

I always said there were two valid reasons to make Indiana a RTW state, and I thought both were equally valid and compelling enough to do it on their own. The first was just to provide the freedom for an individual worker to decide if he or she wanted to participate in the union, and that individual freedom really resonated with the citizens of Indiana. I also always thought it would help bring employers to Indiana, and we've seen that that's been the case. We have anecdotal evidence, we know specifically employers that have said "Hey, you weren't on our radar screens before you were a RTW state, but now you are and now we'd like to come to your state."

This is the important difference between SSM and RTW. As we saw in Chapter 4, the arguments for SSM adoption are not centered on geography. There is little reason for states to either adopt or ban SSM if neighboring states have done so. If Republicans control a state, the Democratic state next-door adopting SSM is likely to have no effect on whether the Republican state adopts the policy. RTW, on the other hand, has an undeniable economic component. In addition to the obvious partisan differences surrounding unions and their role in the workforce, there are actual economic pressures that come with adopting RTW legislation. While Michigan Democrats downplayed the significance of neighboring Indiana adopting the policy, there is little doubt that the economic angle of the policy had at least some effect on Michigan.

Of course, Michigan did not pass the legislation in a bi-partisan way. No Democrats voted for the bill, in either the House or the Senate, nor did any Democrats in Indiana. Not all Republicans in either state voted for the bill, but the legislation

was passed in both Indiana and Michigan primarily as a result of Republicans controlling the state legislatures. In Michigan, this control came largely as a result of the national Republican wave election in 2010. This is not necessarily surprising, as state legislatures that are controlled by the president's party often lose seats in a midterm year (Campbell, 1986). While many predicted that Republicans would gain ground in terms of state legislatures in 2010, not many predicted that the party would gain control of *twenty-one* (Klarner, 2011). Though it is difficult to directly determine how much of an effect the congressional midterm elections had on the composition of state legislatures, there is no doubt that high levels of Republican voter intensity helped create the Republican wave at the state level.

The divide between the parties at the national level, then, likely made the conditions for Michigan to pass RTW legislation much more optimal. Of course, part of my theory is that partisan polarization in Congress drives policy-making at the state level. Senator Hopgood argued that, indeed, the polarized politics in Washington were a driving force behind Governor Snyder's about-face on RTW, and the adoption of the policy itself.

I think that there's a feeling that things are broken in Washington...It seems like there are folks like the Tea Party and that whole dynamic, which has increased its influence in Michigan politics in the last couple years, I think that's the more interesting dynamic that's allowed for these conservative policies to get through in Michigan. I think the governor's being stretched between the middle and the far right.

Hopgood recognizes the impact of national interests on state policy decisions, and also, interestingly, acknowledges Snyder's difficult position. While Snyder was largely seen as a fairly moderate Republican upon election, the possible influence of

conservative interest groups and national policy concerns may have led to Snyder's acceptance of the RTW issue. From Greg Mourad's comments to me about the NRWC's activities at the both the state and national level, it seems clear that national politics had, at the very least, some influence in Michigan's decision to become a RTW state.

If it is the case that national politics exerts influence on state legislative outcomes, it may also be that national concerns become state concerns as well. It is worth noting that, as in Congress, party control plays a major role in the type of legislation that is considered at the state level (Cox, Kousser, and McCubbins, 2011). With a newly elected Republican-controlled legislature, along with a relatively conservative Republican governor, Michigan was certainly primed to adopt (and possibly innovate) highly partisan policy. While, as I have noted, RTW exhibits characteristics of both partisan and geographic policy diffusion, Michigan Democrats clearly saw the legislation as partisan in nature. While disagreeing with RTW on its merits, Democrats felt that the policy was adopted primarily as a result of political retribution. There are many laws a legislature could pass that deal with job creation or attracting industry, but Michigan (and more to the point, Michigan Republicans) chose to adopt RTW legislation that had proven controversial in states across the country.

It is this final point that is particularly interesting when looking at policy diffusion from a partisan perspective. Recall the discussion from Chapter 1 concerning the fight in Wisconsin and Ohio over public sector collective bargaining reform. States have options when they decide to adopt policy, regardless of whether



that policy exists elsewhere or not. In terms of diffusion policy, states can see the effects of policy on other states and then act with more information than they might otherwise have. If a policy works in a state, it makes sense for a neighboring state, with similar demographics and policy needs, to adopt that policy. While state boundaries are real, it is not the case that going from Virginia to Maryland is like transitioning to another planet. Unless, of course, one is concerned about the state's partisan politics. It is here that partisan diffusion departs from traditional explanations of policy diffusion.

Michigan legislators had to know that adopting RTW legislation would be controversial. In addition to strong Democratic opposition, Michigan has long been identified with union labor. The fact that Michigan adopted the legislation despite these hurdles speaks to both the ability for majority parties to affect policy change in the states, and the intensity with which Michigan Republicans wanted the legislation to pass. While they could have chosen any number of policies that their regional neighbor had adopted to spur job growth, they decided to adopt one that only one "Rust Belt" state (Indiana) had ever adopted. In the end, then, though the motivations for RTW may have been economic, there is no doubt that partisanship played an important role as well.

### *Hypotheses and Data*

This analysis is primarily interested in the effects of partisanship on RTW legislation. As we have seen, however, it is also the case that RTW has a geographic component that needs to be taken into account when analyzing the diffusion of RTW

policy. My dependent variable measures the adoption of RTW policy. If a state adopted RTW in a given year, the variable is coded as “1” and coded as a “0” if the policy was not adopted. I utilize variables similar to those in Chapter 3, but also add a measure of geographic diffusion.<sup>27</sup> This is similar to the partisan diffusion measure, with a state year being coded as 1 if a geographic neighbor adopted RTW within two years, a 0 if not. I also include both the number of Republican and Democratic laws, as the partisan attachments of RTW have shifted over time.

I include a measure of partisan polarization, coded as 0 prior to 1994 and 1 after as I do in Chapter 3, and it remains an important part of this analysis. It must be noted, however, that much RTW legislation was created during low levels of partisan polarization. So, while it may be the case that partisan polarization did not play a large role in the initial creation of RTW policy, it should have an impact on recent and future state adoption. Additionally, as we have seen, RTW in the states was given a major boost by federal legislation. Taft-Hartley was passed over President Truman’s veto indicating that, while absolute levels of polarization were low in the late 1940’s and early 1950’s, there was some partisan cleavage on the issue.

In light of the preceding discussion, then, I make three hypotheses regarding RTW diffusion.

*Hypothesis 1: Partisan proximity will have a positive impact on RTW policy diffusion.*

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<sup>27</sup> The model presented in this chapter does not utilize the measures of state legislative and citizen ideology that were present in Chapter 3, as those data are only available for about half of the RTW data set.

Hypothesis 1 deals with the state partisanship aspect of RTW policy diffusion. States with similar partisanship that have adopted RTW policy should have a positive influence on their partisan neighbors, who will adopt the policy as a result of their shared partisanship. . I also expect national polarization to affect RTW diffusion.

*Hypothesis 2: National polarization will have a positive effect on RTW policy diffusion.*

Hypothesis 2 describes the relationship between national partisanship and RTW diffusion. Again, while RTW is a policy that has both geographic and partisan components, I expect national polarization to play a role in the policy's diffusion. Similar to the SSM discussion, states will look to create more and more legislation in the absence of national policymaking and will be influenced by national polarization to adopt partisan policies. RTW certainly has geographic importance, but it is also a policy that has clear partisan cleavages.

Of course, geography also plays a role in RTW diffusion. The research on RTW suggests that geographic considerations play a role in the RTW debate, as states can feel pressure to adopt the policy and make themselves appear more business-friendly. When a geographic neighbor has already adopted the policy, this pressure mounts. Hypothesis 3 explains this expectation, with my geographic proximity variable as the main variable of interest.

*Hypothesis 3: Geographic proximity will have a positive impact on RTW policy diffusion.*

RTW is an interesting policy to study through the lens of partisan diffusion because it has distinct geographic and partisan dimensions. While, in general, this analysis is not interested in geographic diffusion per se, it is important to model for geography with a policy that may follow the traditional conception of geographic diffusion. Table 4.1 shows descriptive statistics for the adoption of RTW policy in states. In this table, I look at the circumstances under which states adopted RTW. It seems clear that partisanship plays an important role in the diffusion of RTW policy. Of the 23 states that have adopted RTW, 14 did so immediately after a partisan neighbor passed the policy as well. The story is reversed for geographic diffusion. While there is no doubt that geography matters in terms of RTW diffusion, only 9 states adopted the policy in the year following their geographic neighbors. This is similar for states that are both partisan and geographic neighbors, as we can see in the third column.

**Table 4.1: Diffusion of Right to Work Policy**

	Geographic		Partisan		Geography & Partisan	
	Diffuse	Not Diffuse	Diffuse	Not Diffuse	Diffuse	Not Diffuse
Lottery Adoption	9	14	14	9	8	15

I also account for time. The time variable measures the number of years a state has been in the dataset. The states drop out of the data once diffusion has occurred because they are no longer “at risk” of adopting the policy (Berry and Berry, 1990). This, again, follows the convention in the literature. Time is, it should be noted, an interesting part of the diffusion story. As discussed, diffusion may rely on windows of opportunity, and these windows are often only open for a short period of time. As such, the longer a state goes without adopting the policy, *ceteris paribus*, the less likely it is to adopt RTW. There needs to be some impetus for the policy diffuse, which can occur if a new window of opportunity opens, which may be the case as of 2014. With traditionally strong union states like Michigan and Indiana passing RTW legislation, it may be the case that a new window has opened and that more states could follow in Michigan and Indiana’s footsteps, which would impact the expectation I have for time as a factor in diffusion. I expect time, then, to have a negative effect on RTW diffusion.

### *Results*

My model examines the diffusion of RTW legislation from 1943-2010, utilizing a probit estimation. Table 4.2 shows the results for the partisan diffusion model. In terms of state-level factors, both partisan and geographic proximity have a positive and statistically significant effect on RTW diffusion, as well as substantively significant predicted effects. As with SSM diffusion, we can see that partisan neighbors adopting RTW has an important impact on adoption. This makes sense given my theory that there is a distinct partisan aspect to RTW diffusion. Geography,

however, also positively effects RTW adoption. This also makes sense, as RTW cannot be considered a purely partisan policy. In this case, as is likely true with many policies, one needs to be careful not to understate the impact of variables other than partisanship on diffusion. As I have noted throughout this analysis, I do not believe that partisanship and polarization are the only causal mechanisms that create partisan policy diffusion, though I do view them as the most important. Policy diffusion, however, is a complex process that can never be fully captured with just one or two explanatory variables, and the results of my model show this clearly.

Interestingly, the number of Republican laws passed has a positive impact on RTW adoption. While many of the early states that adopted RTW were controlled by Democrats, the policy diffused quite rapidly. Over time, the politics shifted and RTW became a largely Republican issue, and so more and more Republican states began to adopt the policy. The model, then, largely satisfies Hypotheses 1 and 3.

In terms of Hypothesis 2, however, this model does not meet my expectations. National polarization is not significant in the model, which makes some sense given the makeup of RTW data. Since much of the legislation diffused in the wake of Taft-Hartley (and during a period of low partisan polarization), this result makes sense in a historical context. This may be changing, however, given recent adoptions in places like Michigan and Indiana. In the current climate, polarization may have a greater effect on RTW adoption than it has in the past. So, while the empirical results presented here are not consistent with the notion that polarization has mattered in terms of RTW adoption, the qualitative portion of this chapter casts doubt on whether this is still the case.

**Table 4.2: Partisan Diffusion of Right to Work Policy**

Independent Variables	Adopt	P	Predicted Effect
Partisan Diffusion	3.570 (0.618)	0.001	0.739
Geographic Diffusion	2.331 (0.909)	0.010	0.113
Polarization	0.617 (0.668)	0.356	0.111
Legislature Control	-0.725 (0.499)	0.147	-0.009
Number of Democratic Laws	-0.112 (0.142)	0.433	-0.015
Number of Republican Laws	0.464 (0.231)	0.044	0.169
Electoral Competition	-1.103 (1.247)	0.377	0.006
Percent Democrat in Legislature	1.435 (1.133)	0.206	-0.002
Time	-0.124 (0.088)	0.162	0.188
Time2	0.003 (0.003)	0.233	-0.485
Midterm Election	-0.023 (0.320)	0.942	0.000
Presidential Election	-0.149 (0.326)	0.648	0.001
Constant	-1.922 (1.320)	0.125	
Log Likelihood	-49.662		
Pseudo R2	0.609		
N	2,135		

Standard errors in parentheses

## *Conclusions*

The empirical results presented in this chapter shed light on the causal mechanisms of RTW diffusion. It looks at both partisan and geographic proximity in RTW diffusion, and shows that state-level partisanship and geography have a positive effect on the diffusion of RTW policy. On the other hand, the national level results are less satisfying. In the case of RTW, of course, this may be expected. Indeed, with partisan polarization in Congress at relatively low levels during the adoption of most RTW policy, it may be the case that national polarization was not important in the past.

That is not to say, however, that RTW diffusion is not currently affected by national politics. In my discussion of Michigan's RTW adoption, it was clear from the individuals to whom I spoke that national politics played an important role in Michigan's eventually adoption of the process. This was particularly true in the case of national interest groups that sought to influence the outcome in Michigan. This goes to the discussion in Chapter 4 about conflict extension. RTW is a compelling example of conflict extension, though extending from states to Washington, rather than the other way around. Creating RTW policy in states may put pressure on national legislators to push for a national RTW law. Of course, with what would certainly be strong Democratic opposition, that law is unlikely to be passed in the short term. In that case, then, states may continue to pass the legislation through the partisan diffusion process.

Michigan and Indiana were unlikely candidates for RTW legislation, yet each passed their own versions in 2012. They were the first Rust Belt states to do so, and



engaged in a controversial policy fight nearly ten years after the last state to adopt RTW. There were clearly, especially in Indiana, no real geographic concerns, though there was partisanship to consider. While Democratic states were the harbingers of RTW, the issue has shifted to the Republicans. The study of RTW diffusion, then, necessitates a discussion of the partisanship inherent in the issue, and this chapter begins that discussion. By examining Michigan's adoption of the policy in detail, it highlights the changing policy diffusion dynamics that exist even for policies that could be considered geographic in nature. As we have seen throughout this analysis, it is crucial to go beyond simply assuming that policies diffuse as a result of geography only. Partisanship at all levels plays an important role. What is to be decided is whether the window of opportunity opened by Michigan and Indiana will stay that way.

## Chapter 5: Conclusions

Party politics are as important in America today as they have ever been. The rancor and discord present between the parties manifests itself on nearly every major issue; indeed, congressional productivity is at a low-water mark in 2014, despite major issues facing the nation. While, not quite so long ago, one of the biggest issues in terms of partisanship was that there was no clear choice for the voters, the pendulum has swung entirely in the opposite direction. The lines of distinction between Democrats and Republicans have become bright and stark, and compromise on nearly any issue has become remarkably difficult to achieve. In state legislatures and in Washington, partisan polarization has become a fact of American political life.

### *State Policy Diffusion Revisited*

Rising polarization was the main inspiration for this analysis. How, in an era in which intransigence is the norm rather than the exception, can policy be created? It is not as though policy creation has ever been easy; the policy process is complex and difficult to navigate in the best of times. Charles Lindblom recognized this in 1959, at one of the lowest points for partisan polarization in American history. In his seminal work on “muddling through,” Lindblom describes two versions of policy creation. In an ideal world, policymakers would have all the information necessary, would outline the steps needed to make the policy a reality, and then actually create the policy. In the second version, also known as the real world, policymakers can do almost none of these things, and

settle for hopefully achieving part of their goals. Indeed, he argues that the first approach “assumes intellectual capacities and sources of information that men simply do not possess, and it is even more absurd as an approach to policy when the time and money that can be allocated to a policy problem is limited, as is always the case.”

Lindblom’s explanation for limitations placed on policymakers is both interesting and true. Making policy is difficult. There are any number of constituencies that policymakers must consider, and none of whom will be completely satisfied by the result. Dealing with interest groups, budget concerns, electoral concerns, and any of the other demands on policymakers can derail the process at any time. There is a reason why making laws is often equated with making sausage, after all. Add to this extreme partisan polarization, and the process can become exponentially harder. In Lindblom’s time, there was (perhaps) at least an expectation that those on the other side of the aisle would be willing to compromise, or at least not decide that a policy created by a partisan rival was dead the moment it was introduced. In the hyper-polarized climate in America in 2014, however, this expectation is not often met.

Kristin Jones works as the chief of staff for Maryland’s Speaker of the House, and expressed frustration about the lack of federal action on a host of issues, thus forcing states to create policy on their own.

I think [federal inaction] is often part of the conversation. I go back all the way, for instance, access to prescription drugs for seniors. I mean, how often did the feds try to attach a drug benefit to Medicare and seem completely incapable of making that happen or bringing it to fruition? The states started getting involved, and we developed our program in 90 days. That was when Maryland provided drug benefits

for seniors. And again, these are imperfect solutions because there are so many consequences to not having action on the federal level.

Jones' point about "imperfect solutions" is particularly interesting. Jones makes it clear that Maryland pursued the policy primarily because the federal government had tried and failed to do so. In Maryland, however, frustration is not equally felt, depending on an individual's party affiliation. In a state dominated by Democratic politics, many conservative or Republican viewpoints are underrepresented (if at all). Democrats can create nearly any policy they choose, assuming solidarity within the caucus, but even Democrats express frustration with the inability for Congress to create viable policy.

Republicans in a state like Maryland face their own form of frustration, which is certainly on a level of magnitude higher than what some Democrats may face. Republicans are, in many ways, marginalized in Maryland, in the same way that Democrats may feel marginalized in a very conservative or Republican-dominated state, and it is important to understand that mindset. Maryland State Delegate Wade Kach spoke with me about how he sees polarization affecting policymaking both in Congress and in the states.

To bring up partisanship and the big problem with it, in both Annapolis and Washington, is the polarization...The parties during this period have drawn all these super-Democrat [congressional] districts or super-Republican districts, and there are about 30 or 35 districts that are competitive. So you have to be super-liberal to win in the Democrat districts or super-conservative to win in the Republican districts, so I don't see much movement, because there are some issues on which there is no compromise.

Kach's last point is of great interest, not only to this analysis but for policy creation in general. In an era when partisan polarization is high, compromise becomes almost

impossible. The question is, does this apply mainly to issues on which there are clear partisan divisions, or has polarization become so deeply ingrained in the American political system that nearly every issue creates unwillingness to compromise.

Indeed, on nearly every issue one could find a partisan dimension. Nearly any policy issue will have some sort of environmental impact, or social question, or a need to raise or lower revenue, or a call for more regulation. No matter what the issue is, ideological divisions could derail nearly any piece of legislation. This assumes, of course, that polarization truly does permeate every aspect of policymaking. If we look at how Congress has acted over the last decade, we may be tempted to believe this is true. What is important for the future of state policy diffusion to research is to begin to examine whether this is the case for state policymaking as well.

This analysis has sought to understand these dynamics as they relate to state policy diffusion. I argue that national polarization has impacted state polarization, primarily through increasing party cohesiveness on many issues, which in turn has an impact on how policies diffuse. In a polarized era, states will look to partisan neighbors for innovative policy. The concept of “neighbors” is important in understanding state policy diffusion in general. Since creating policy is, as we have seen, difficult, states necessarily rely on other states for policy inspiration.

Of course, this was not always the case. Not only has polarization not always been nearly as high as it has been in the last two decades, the parties themselves were not particularly cohesive. In the 1950’s, Democrats in Alabama had almost nothing in common with northern liberals from somewhere like Massachusetts. Partisan

labels, at that time, were not nearly as descriptive as they are now. One could not identify what a “Democrat” stood for, because the Democratic Party’s platform changed depending on where you happened to be. Today, if someone identifies as a member of a party, their beliefs and policy preferences are likely similar to their fellow partisans, and in opposition to the other party. This dynamic exists in terms of state partisanship as well. While Republican legislators in Mississippi are not going to be identical to Republicans in Wyoming, they will almost certainly share core beliefs.

Party labels, then, provide an important shortcut in terms of policy diffusion, and gives states informational cues concerning where to look for policy innovation. Policy innovation is, in some ways, less desirable than policy adoption. Coming up with a new policy solution, creating that solution, and then getting that solution passed is an arduous process. To avoid going through this is, for state legislators, ultimately desirable. Chapter 2 laid out the difficulties facing state legislators, including professionalization levels and part time legislative sessions, so having policy templates available is invaluable. From the perspective of this analysis, policy templates do not need to come from nearby states, but rather from fellow partisans.

States must deal with the lack of national policymaking and the ways in which national issues filter down to the state level. Chapter 3 discussed conflict extension as a basis for same-sex marriage diffusion, in which elite level discourse polarizes party identifier attitudes. This idea can be expanded when we look at the ways in which state policy diffuses. If elites at the national level are polarized, it makes sense

that state legislators and activists will become polarized as well. The more polarized state government, the more likely it is that increasingly partisan policies will diffuse.

### *Further Research*

This analysis is a first step in understanding the ways partisanship and partisan polarization affect state policy diffusion. It is, of course, an examination of only a few policies, but those policies are instructive in terms of the larger work that can eventually be accomplished in this field. When thinking about policies that can be affected by partisan polarization at all levels of government, one must indeed think broadly. This analysis looked at three policies in some depth: lottery adoption, same-sex marriage, and right to work. These policies, however, cannot give an overall picture of how partisan diffusion works. They are important examples, and provide a good baseline for understanding the processes involved in partisan diffusion, but they should serve as a starting point.

In terms of the overall partisan diffusion project, then, one of the most important next steps is to analyze trends for partisan policies. This may be morality policy, like same-sex marriage, or something more complex like voter ID laws. Additionally, scholars must grapple with policies that have multiple facets for diffusion, such as RTW. Immigration and environmental policies may be fruitful examples of policies that combine partisan considerations with other important variables related to diffusion.

Legislation, of course, is not the only facet of policy creation that is interesting for diffusion scholars. Rather, the entire process that surrounds policy

creation also largely depends on partisan polarization. The rise of hyper-partisan interest groups has also been an important cog in the partisan policymaking machine. I spoke with interest group staff who made it clear that they are interested in state policy and that they understand the impact that partisanship is vital to passing the policies they prefer. The need to understand the impact of partisan political groups is vital in understanding how partisan policy diffuses. With policymaking in Congress increasingly difficult, interest groups may begin to focus even more on state policymaking. Additionally, moving beyond studying state legislative action and into direct democracy actions like state referenda and ballot initiatives is another important concern for partisan policy diffusion research.

Berry and Berry (1990) make the case that one of the major difficulties in studying public policy diffusion is the relatively low number of cases of adoption for a given policy. Most of the time, states do nothing on a given policy. For something like same-sex marriage, for example, states did not even begin to consider adopting marriage for same-sex couples until just over a decade ago, and even then most states have not adopted the policy. This does not mean that looking at a policy like SSM cannot give us insight into the partisan diffusion process, or that scholars should look only at one policy as an example of diffusion. My overall theory, however, is not dependent upon just one or two policies.

It is also important to continue to utilize qualitative methodology as well. Even looking at larger studies in terms of the number of policies considered cannot avoid the relative lack of observations inherent in state policy diffusion studies. Tapping into the viewpoints of people actually involved in the policy process can be



very enlightening, particularly when attempting to understand the underlying processes of policy diffusion. One of the points that I continued coming back to in this analysis was the notion of perception; if policy elites have the perception that partisan polarization is a problem, it may not matter if polarization actually exerts an outsized influence on policy diffusion. Understanding the motivations of the people involved in the policy process is important, because it gives context to the quantitative results that political science is particularly adept at achieving. When dealing with issues of small sample size like state policy adoption, however, it is not always possible to get a clear view of what is happening at the state level. In continuing this work, I plan to delve more deeply into the mindset of policymakers and give a broader view of how partisanship is perceived by those in power.

### *Concluding Thoughts*

Understanding the role that partisan polarization plays in American politics is, to me, one of the most important endeavors facing political science. Partisan considerations exist in nearly every policy that is considered at any level of government. With an ever-widening gulf between the parties on fundamental beliefs as to how government should function, understanding the role that partisanship plays in policymaking is vital to understanding the policy process itself. Perhaps Republicans in Wisconsin and Ohio miscalculated the response to ending public sector collective bargaining, but Governors Walker and Kasich chose a course of action that was clearly dictated by ideological concerns to an essentially non-partisan

issue of a budget shortfall. Understanding why those states chose to adopt such a controversial policy is at the heart of this analysis.

While the scholarly understanding of partisan policy diffusion needs to continue to grow, this analysis presents a theory for how states decide which policies to adopt in an era of high partisan polarization. It expands upon foundational literature and opens up new avenues of scholarship for policy diffusion in general. Polarization is a fact of American political life, and its influence is not confined to the Capitol.

## Appendix

This study draws on interviews conducted with state legislators and national interest group staffers to help understand the role that state partisanship and national polarization play in the policy diffusion process. These interviews were conducted with approval from the University of Maryland’s Institutional Review Board (IRB). Information on the approval of these interviews can be obtained from IRB, and the project number for this study is 409987-2.

**Table A-1: Interviewee Details**

Interviewee	Legislator/IG	State/Organization	Issue
Carrie Evans	Interest Group	Equality Maryland	Same-sex Marriage
Doug Geiss	Legislator	Michigan	Right to Work
Hoon-Young Hopgood	Legislator	Michigan	Right to Work
Kristin Jones	Legislative Staff	Maryland	Same-sex Marriage
Wade Kach	Legislator	Maryland	Same-sex Marriage
Greg Mourad	Interest Group	National RTW Committee	Right to Work
Jeremy Pittman	Interest Group	Human Rights Campaign	Same-sex Marriage
Mike Shirkey	Legislator	Michigan	Right to Work
Jerry Torr	Legislator	Indiana	Right to Work

Information on the interviewees is presented in Table A-1. All the interviewees consented to be named in this study. The interviews were conducted over a period from March 2013-February 2014. All interviewees were contacted by

email using the same message, changed slightly depending on if they worked for an interest group or as a state legislator, and the emails are presented below.

**State Legislators:**

My name is Joe Wantz, and I am a graduate student at the University of Maryland, College Park pursuing my PhD in Political Science. Specifically, I am interested in American state politics and the ways in which states choose to adopt certain policies. My research depends on both a large scale analysis of policy and on firsthand accounts of how policy decisions are made.

Your role in the passage of (insert policy) is particularly interesting for my research. (This policy) is one that I will specifically examine in terms of how its adoption was influenced, and can have influence, on past and future policy.

I would like to set up a short interview with you to discuss this issue at your convenience, if at all possible. I am very flexible in terms of times and location. Please let me know if you are interested, and I can provide more detail on my project.

Thank you.

**Interest Groups:**

My name is Joe Wantz, and I am a graduate student at the University of Maryland, College Park pursuing my PhD in Political Science. Specifically, I am interested in American state politics and the ways in which states choose to adopt certain policies. My research depends on both a large scale analysis of policy and on firsthand accounts of how policy decisions are made.

Your organization's role in the passage of (insert policy) is particularly interesting for my research. (This policy) is one that I will specifically examine in terms of how its adoption was influenced, and can have influence, on past and future policy.

I would like to set up a short interview with you to discuss this issue at your convenience, if at all possible. I am very flexible in terms of times and location. Please let me know if you are interested, and I can provide more detail on my project.

Thank you.

Once the interviewee agreed to speak with me, I sent an outline that provided an overview of the interview. The outline of questions for each group is below.

State legislators

1. Could you describe your role in the state legislature?
2. What areas of policy are of particular interest to you?
3. How did you get involved in the creation of this policy, and what do you see as its primary benefit to your state?

4. Does the existence of a particular policy in other states have any effect on whether you would support it?
  - a. Would you be more/less likely to support a policy that has been adopted by a neighboring state?
  - b. Would you be more/less likely to support a policy that has been adopted by a state that has a similar partisan or ideological makeup?
5. This policy exists elsewhere. Did that have an effect on your decision to support it in your state?
6. Do national politics in general have an effect on policymaking in your state, and did it in this case?
7. How much does growing polarization in Washington effect policymaking at a state level? Do you think that had any influence on the passage of this policy in particular?

#### Interest Groups

1. Could you describe your role at (organization)?
2. How important is it for your organization to focus on state policy?
3. When lobbying state legislatures to support policy, how much of your argument depends on the existence of the policy in other states?
4. Does the partisan makeup of a state impact the likelihood of your organization to support policy creation?
5. Does national partisanship and gridlock create opportunities for state-based policy supported by your organization?

The interviews themselves were not quite this structured, as I asked follow-up questions and/or explored digressions made by the interviewee. I was particularly interested in their overall thoughts about how partisan polarization affects policymaking, as well as about the specifics of policy diffusion. Obviously, the subject of the interview changed the nature of the discussion, as state legislators could speak to the inner workings of state politics and interest group staff speaking primarily about their group's legislative goals.

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