Acts of defiance: local policy innovation and diffusion in same-sex marriage

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ACTS OF DEFIANCE: LOCAL POLICY INNOVATION AND
DIFFUSION IN SAME-SEX MARRIAGE POLICY

by

Karyn Teressa Andrade

A Dissertation
Submitted to the University at Albany, State University of New York
in Partial Fulfillment of
the Requirements for the Degree of
Doctor of Philosophy

College of Arts & Sciences
Department of Public Policy and Administration
2012
ACTS OF DEFIANCE: POLICY INNOVATION AND DIFFUSION IN SAME-SEX MARRIAGE POLICY

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Karyn Teressa Andrade

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ACKNOWLEDGEMENTS

In the writing of this dissertation I have been supported by a number of wonderfully astute individuals—married and unmarried—who provided insight, direction, and many hours of conversation. It is to you that I dedicate this work.

A special thanks to my wife, mentor, and muse, Janet. Thank you for your patience, understanding and encouragement. Because of you, I have come to understand the importance of, and the true meaning of marriage. Most of all thank you for our daughter, she is the light in my life and you are my breath of air.

A warm and fond thank you to my dissertation committee. In particular, I would like to thank Sue Faerman. Your editing pen kept me focused and motivated me to complete the work. I would not have been able to do this without your guidance.

I am enormously grateful and indebted to the community of LGBT scholars who have paved the way for research such as this. Without your efforts our voice would be silent.
ABSTRACT

Like many other controversial social issues, same-sex marriage has followed the ebb and flow of the political stream for almost 30 years in the United States. What pulled this policy issue out of the policy stream and placed it front and center in the public’s mind were the actions of a handful of local officials who, in the winter of 2004, acted against the status quo and instituted public policies in favor of same-sex marriage. This research provides a case study analysis of the six localities whose officials acted in defiance of law and social custom, and began issuing marriage licenses and marrying gay and lesbian couples despite the fact that such policies went against the status quo and were not favored in most localities and states in the nation at the time. The intent of this study is to help us comprehend what were the major determinants influencing these policy entrepreneurs to act in favor of same-sex marriage and to explore how their actions diffused throughout the policy and political system. To elicit data for the case study, personal interviews were conducted with the officials who were identified as the primary instigators in creating and instituting the innovative policy action that challenged State and federal law. The following work hopes to enlighten and present a new perspective on the same-sex marriage debate in The United States by looking at same-sex marriage as a complex moral issue that encompasses facets of social movement, diffusion, and morality theory. This research explores how ideas, policies and actions regarding modern marriage, and same-sex marriage in particular, diffuse across the spectrum of politics to create social change. In doing so, it tests assumptions about the relationship between same-sex marriage and civil rights, and it draws attention to local policy entrepreneurs involved in instigating positive change in the same-sex marriage policy dispute. Because it is a dynamic subject the study focuses on the policy issue through 2011.
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CHAPTER ONE

INTRODUCTION: WAVES OF PROTEST

“A person who enters into an intimate, exclusive union with another of the same sex is arbitrarily deprived of membership in one of our community's most rewarding and cherished institutions. That exclusion is incompatible with the constitutional principles of respect for individual autonomy and equality under law.”

Massachusetts’ Supreme Court of the Commonwealth¹

INTRODUCTION

San Francisco is a city known for being politically and socially progressive. It therefore, was not surprising when San Franciscans woke up on the morning of February 12, 2004 to headlines stating that their newly elected mayor, Gavin Newsom, had ordered the county clerk to do the unthinkable—to issue marriage licenses to same-sex couples in clear defiance of Proposition 22.² In a letter sent to Nancy Alfara, Newsom stated, “I request that you determine what changes should be made to the forms and documents used to apply for and issue marriage licenses in order to provide marriage licenses on a nondiscriminatory basis, without regard to gender or sexual orientation” (see Appendix A). His move was hailed by the Lesbian, Gay, Bisexual and Transgender (LGBT) community, which had helped elect him to office, as a bold step for civil rights.

Within days of his actions, local officials in other communities around the nation followed suit and began to institute similar innovative policy actions. A little known County Clerk in Sandoval, New Mexico, Victoria Dunlap, started issuing marriage licenses to same-sex couples in her small community on February 20, 2004 (Lisotta 2004). Then, on February 27th, another newly elected mayor, Jason West, went against the wishes of the Ulster County Clerk and, without marriage licenses, began to preside over marriage ceremonies of same-sex couples on the steps of the Village Hall in New
Paltz, New York (Crampton 2004b; Fox News 2004b). West’s actions were soon followed by another newly elected Mayor in upstate New York, Carolyn Petersen, who allowed same-sex couples to apply for marriage licenses in her city, which she in turn forwarded to the New York Department of Health for approval (Crampton and York 2004). On March 3, 2004, in an unprecedented and politically controversial move, Diane Linn, Chairwoman of the Board of Supervisors for Multnomah County, Oregon, under the advice of the County’s legal counsel, instructed her county clerk to issue marriage licenses to same-sex couples and began marrying gay and lesbian couples in Portland (CNN 2004d). Linn’s decision to legalize same-sex marriage in Portland at the time was unprecedented, not because it mirrored the actions of Newsom’s bold policy initiative, but because it was done without informing the lone conservative board member on the County Board. This violation of protocol unleashed a political firestorm beyond that associated with issuance of marriage licenses to gays and lesbians. Finally, the Deputy Mayor of Asbury Park, New Jersey, James Bruno, and the Assistant County Clerk Dawn Tomek married a gay couple on March 8, 2004 in the small seaside town (Haney and Mansnerus 2004), bringing to an end the same-sex marriage spree that had gripped the country for almost two months.

The actions of these local officials were met with swift responses and actions by the higher political machines in the states in which they resided. Within hours of Victoria Dunlap issuing marriage licenses to gay and lesbian couples in her small town, the Attorney General of New Mexico issued an opinion stating that same-sex marriage was illegal in New Mexico (Reid 2004). The New Jersey State Attorney General issued an injunction against Deputy Mayor Bruno and Assistant County Clerk Dawn Tomek to
prevent them from marrying any more couples (Haney and Mansnerus 2004). Mayor Jason West was charged with 19 counts of marrying couples without proper licenses and threatened with fines and jail time (Fox News 2004b; Goodman 2004). Justice E. Michael Kavanagh of the State Supreme Court in Ulster County issued a permanent restraining order against West to ensure that he did not conduct any more gay or lesbian weddings (Crampton 2004c, 2004d). State courts in both California (Nieves 2004) and Oregon (Oregon Health Authority 2010) shut down the efforts of Newsom and Linn, respectively, to achieve equality for gay and lesbian couples in their localities. The more than 4,000 marriages that had taken place in San Francisco between February and March of 2004 and the 3,000 marriages in Oregon were allowed to stand until their constitutionality could be decided by the State Supreme Courts, but no more marriages were allowed.

Arguably sensational at the time, the policy actions of these local authorities reflected the culminating effects of an emotionally charged policy issue to recognize the rights of gay and lesbian couples to marry that had been raging for over 30 years in the United States. The actions of these officials in 2004 would later set the stage for a Supreme Court battle over the public’s right to regulate, in the twenty-first century, who has the right to marry in this country—a battle the Supreme Court has not had to address since the heydays of the civil rights movement in the 1960s.

**Evolution of Same-Sex Marriage Policy**

Same-sex marriage as a policy issue is not a new phenomenon in the United States. History shows us that since the rise of the Lesbian, Gay, Bisexual, and
Transgender movement in this country over 40 years ago there have been efforts by individuals and small factions within the movement, at one time or another, to address the rights of gay and lesbian citizens to marry in this country (Chauncey 2004; Koppelman 2007; and Sullivan 2004). Those who advocated for marriage early in the movement’s history did so under a banner of assimilation, and advocated for conformity and normalization of practices, attitudes, and behaviors of the LGBT community (D'Emilio 1983; Rimmerman 2008) so that homosexuals could fit into the institutions and social norms of the dominant culture. Today, Marriage Equality, a national organization founded in the late 1990s, continues that tradition as it seeks to normalize the relationships of LGBT citizens by politically advocating for the legalization of same-sex marriage based on the premise that LGBT relationships are “just like” heterosexual relationships and should be afforded equality under the law.

Though social and political efforts to have homosexual relationships\textsuperscript{3} legitimated in both the eyes of the law and the public have been around since the inception of the movement, what distinguishes efforts to change public policy as it pertains to same-sex marriage in the past from modern day efforts is the introduction of locally elected officials into the political and social fray. The infusion of these local officials into the conflict helped transform it from being a public policy debate primarily between special interests groups (i.e., conservatives and the religious right on one side and liberals and civil rights advocates on the other) to a debate about “home rule,” as these locally elected officials\textsuperscript{4} brought the governmental institutions and offices over which they presided to the front and center of the conflict.
Though their numbers were few, many credit the efforts and actions of the aforementioned handful of local officials with helping to change the course and direction of same-sex marriage policy in the United States. The role these officials played in pushing same-sex marriage to the forefront of state and national politics, during what I argue was a turning point in the policy debate, will be explored in the following comparative case study of the six cities and counties where these officials challenged the status quo and, in some cases, state law, when they began to issue marriage licenses to same-sex couples and perform wedding ceremonies in their respective localities. However, before we can examine whether the actions of these local officials influenced the social, political, and policy efforts related to same-sex marriage, we must first place their efforts in the historical context of same-sex marriage as a policy issue in the United States in order to better understand how same-sex marriage came to be one of the most contentious policy issues facing all levels of government in the United States today.

**Waves of Protest: 1971-2011**

Same-sex marriage is only one aspect of a social and cultural war that has been raging between ultra conservatives and the religious right, on one hand, and the LGBT community and civil rights liberals, on the other, for decades. As Chauncey (2004), Koppelman (2006) and Sullivan (2004) note, the question of same-sex marriage is not a particularly new phenomenon. Like other controversial social issues, same-sex marriage has followed the ebb and flow of the political stream for almost 30 years, coming in three distinct waves.

*First Wave (1971-1989).* The first set of policy challenges demanding the rights
of gay men and lesbians to marry emerged right after the heyday of the civil rights movement. Empowered by the success of blacks to create and bring about social change through public policy and the courts, other marginalized groups, namely women and homosexuals also sought to achieve equal status and rights through activist movements (Chauncey 2004; Warner 2000). The birth of the gay and lesbian movement in the late 1960s led members of the group to seek the same marriage rights as heterosexual couples. Starting in the 1970s, a number of same-sex couples seeking to marry brought challenges in a variety of state jurisdictions (Coleman 2003). Richard Baker and Jack McConnell are credited with being the first same-sex couple in the United States to seek legal sanction of their relationship. In 1971, Baker filed suit against the state of Minnesota when county clerks refused to issue his partner and him a marriage license. Baker v. Nelson eventually made it to the Supreme Court of Minnesota, which essentially stated that because marriage was traditionally seen as a union between a man and a woman for the sake of procreation, homosexuals had no legal right to marry. The ability of the state court to render this decision was later supported by the Supreme Court of the United States in 1972, which held that the denial of a marriage license to same-sex couples was a state issue and did not present a substantial federal question (Coleman 2003). As such, the issue of same-sex marriage was deemed the province of the states.

A number of other challenges to state laws by same-sex couples\(^5\) soon followed the Baker case. Between 1971 and 1989, 8 cases filed by 13 couples in 7 different jurisdictions challenged the right of the State to deny marriage licenses to same-sex couples (see Appendix B for a list of cases) and, like the Baker case, they all failed. The efforts of these gay and lesbian couples may have gone unnoticed by the public if it were
not for the fact that *Life* magazine featured Baker and his partner on its front cover with the headline, “The New American Family.” In response to this proclamation, 15 state legislatures quickly passed laws defining marriage as a union between a man and a woman (Koppelman 2007) to prevent this new family from becoming a reality within their borders.

**Second Wave (1990-2000).** The second wave of same-sex marriage litigation and legislation occurred almost 20 years later. Gay and lesbian marriage had quietly faded back into the policy stream and ceased to be a policy issue for both pro-LGBT rights advocates and for their conservative religious counterparts. As a consequence, both groups were caught off guard in 1991 when three couples—Genora Dancel and Ninia Baehr, Joseph Melillo and Pat Lagon, and Tammy Rodrigues and Antoinette Pregil—filed suit in Hawaii for the right to marry, stating that Hawaii’s refusal to grant them marriage licenses violated the State’s constitution. Because the case came on the heels of Denmark legalizing same-sex marriage in 1989, many believed that the couples were motivated by Europe’s efforts to grant gay and lesbian couples equal marriage rights, and their efforts were an attempt to reinvigorate the issue in the United States (Eskridge and Spedale 2006). The 1991, *Baehr v. Lewin* (74 Haw. 530. 852 P.2d 44 [1993]) case and the subsequent decision by the Hawaii Supreme Court in favor of the plaintiffs’ right to proceed with the case in 1993, and affirming their right to marry in 1998, catapulted the issue of same-sex marriage out of the realm of state politics and into the forefront of national politics.

National LGBT rights organizations were particularly caught off guard by the actions of the three couples and the Hawaiian courts because marriage per se was not part
of the movement’s strategic planning (Chauncey 2004; Warner 2000). The fact that the three couples filed suit even after they were denied any political and/or legal assistance by major LGBT political advocacy and civil rights organizations (i.e., Lambda Legal, ACLU, and the National Gay and Lesbian Task Force) was a blow to the national organizations because it forced them to respond to an issue they felt was not appropriate for the times (Chauncey 2004, Eskridge and Spedale 2006). Unfortunately for LGBT leaders and the organizations that they represented, letting the Hawaiian case fall off their radar because they had little belief in its ability to make it through the system, let alone become a landmark case, left the movement ill-prepared for the political and social ramifications that followed.

 Working outside of the realm of movement politics, the actions of these individuals, and not those of any LGBT organization, helped bring the issue out of the policy stream, where it had lingered for 20 years, and once again placed it on the front pages of every major newspaper in America. Arguably, the timing of these couples to advocate and fight for the rights of gay men and lesbians to marry could not have been worse; political conservatives had just seized control of Congress, and the mood of the country had shifted from open acceptance of civil rights to one that was starting to question if maybe civil rights had gone too far (Chauncey, 2004). Once news of the Hawaiian case hit the mainland, it was only a matter of time before protecting and saving marriage from “radical homosexuals” (Sekulow 1996) became a rallying call for conservatives and the religious right.

 While conservatives rallied their troops and began an organized and concerted effort to stop federal recognition of homosexual marriages, another state, Alaska also
found itself enmeshed in a civil rights issue regarding same-sex marriage. Like the 
couples in Hawaii, Jay Brause and Gene Dugan challenged the constitutionality of 
Alaskan law to prohibit them from attaining a marriage license (Brause v. Bureau of Vital 
Statistics 3AN-95-6562 CI, WL 88743 Alaska Super. Ct. [1998]). And also like the 
Hawaiian courts, the Alaskan courts felt that current state law violated the right to equal 
protection under the law and ruled in favor of the plaintiffs. Unfortunately for the 
plaintiffs, and the LGBT community, by the time that each of these cases came to fruition 
in the late 1990s, Congress had already passed the Defense of Marriage Act (DOMA), 
setting in motion a national backlash against state courts and same-sex marriage that 
advocates feel to this day.

*Introduction of the Defense of Marriage Act (DOMA):* On Monday, July 29, 
1996, Senator Don Nickels (R-OK) introduced a bill in the U.S. Senate that would have 
far reaching and long-term effects on the rights of American citizens to marry in the 
United States. The bill, the Defense of Marriage Act, sought to prevent the recognition of 
homosexual marriages at the federal level, and to deny same-sex couples any and all of 
the 1,138 federal benefits that are granted to married heterosexual couples (Government 
Accounting Office [GAO] 2004) in this nation. In his opening statement to the 
Committee on the Judiciary, Senator Nickels stated,

> This bill is a simple bill. It is based on common understandings rooted in 
> our nation's history. It merely reaffirms what each Congress and every 
> executive agency have meant for 200 years when using the words 
> "marriage" and "spouse". That is, that a marriage is the legal union of a 
> man and a woman as husband and wife, and a spouse is a person of the 
> opposite sex who is a husband or a wife. The current United States Code 
> does not contain a definition of marriage, presumably because most 
> Americans know what it means (Senate Congressional Record, July 29, 
> 1996).
Though he credited the bill with being a simple reification of a social norm, the fact that the federal government took the unprecedented act of legally codifying the meaning of marriage was significant because federal action on this policy issue greatly influenced state action in the area. In fact, within 10 years from the date of his testimony before the Committee, 45 of the 50 states had implemented statutes and/or constitutional amendments using the exact or similar wording of the DOMA legislation. Because of their modeling after this federal legislation, these state policies have come to be known as mini-DOMAs.

Two months prior to Senator Nickel’s impassioned speech on the Senate floor to save marriage, Congressman Robert Barr (R-GA) had introduced H.R. 3396: To Define and Protect the Institution of Marriage. The intent and purpose of the bill was to curtail what many conservative politicians believed was a threat by state courts to determine the meaning of marriage in the United States. Though the federal government had rarely intervened in a state’s right to determine family law, this issue became salient at a time when a new conservative politic was gripping the nation. The House and Senate had just been taken over by a Republican majority who partly owed their rise to power to the support of a strong ultra conservative coalition (Campbell 2006; Dionne 2006) that had been in a culture war with the LGBT community for over 30 years. The notion that a state could possibly legally sanction and legitimize homosexual marriage was seen as an affront to the traditional values of this coalition and many of the members of Congress they helped get elected.

What Congressman Barr and his supporters feared and argued was that if same-sex marriages were recognized in Hawaii, other states would be required to recognize
those marriages under the full faith and credit clause (Article VI Section 1) of the United States Constitution, which states, “Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.” Doubtful of a state’s ability to protect itself from recognizing same-sex marriages due to this clause, Barr argued that there was a federal need to involve itself in the marriage issue in order to protect the sanctity of marriage for this and future generations. Proponents of the measure asserted that homosexuals who lived in California but married in Hawaii would be able to demand that their home state recognize their marriage even if state policy did not warrant it. Therefore, Congress not only had the duty to protect the sanctity of marriage, it also had to protect the rights of the states to deny recognition of these marriages (Koppelman 2007).

Though extreme at the time, the assertions being made by the conservative Congressman and his supporters may not have been far from the truth, especially if we consider the public statements being made by such pro-gay marriage advocates as Laura McBride, Executive Director of the Lobby for Freedom and Equality, a LGBT group based in Sacramento, California. McBride commented that, “California is going to have literally thousands of couples who are going to come back from Hawaii expecting their marriages to be treated with the respect and dignity given to every other marriage” (quoted by Sekulow 1996). Statements such as these, made to the press by same-sex marriage advocates, only served to fuel the fear among politicians and the public that the states and the public in general would be forced to recognize same-sex marriages as legitimate even if they did not approve. Though McBride’s statement, like the assertions of Congressman Barr, may have been overstated at the time, the possible threat posed to
“traditional marriage” and thus to the status quo by the Alaskan and, later, the Hawaiian court decision was enough to foster public and bipartisan support for the bill.

Since the issue was presented as a simple bill for the purpose of maintaining the status quo (Nickels 1996), the bill had a large number of supporters on both sides of the political aisle. As such, attempts to change the wording or direction of the bill were met with stiff rebuttal, as exemplified by comments to the roll dated July 12, 1996, in which members of the House continually rejected attempts by Senator Barney Frank, Senator Ted Kennedy, and others to amend the legislation; “House rejected the Frank of Massachusetts amendment that sought to suspend the Federal definition of marriage when a state through its normal democratic process determines a definition different than that which is provided in the measure, by a recorded vote of 103 yeas, 311 nays, 19 not voting” (Roll No. 314: 142 Congressional Record H7501). Four months after the legislation was introduced in the House, and two months after it reached the floor of the Senate, the “Defense of Marriage Act” was passed with overwhelming bipartisan support; the House passed the bill with a 342-67 vote, followed later by the Senate, which passed it with an 85-14 vote on the same day that the trial court in Hawaii began hearings on the legality of same-sex marriage (Chauncey 2004). With great fanfare, the bill was readily signed into law by President Clinton just in time for his bid for reelection to office.

The Bill: Essentially, the Defense of Marriage Act (Pub. L. 104-199, Sept. 21, 1996, 110 Stat. 2419) created a dual system of marriage. According to Koppelman (2006), it created a set of second-class marriages, which are valid under state law but void for all federal purposes. The Act contains two substantive provisions. The first provision, Section 2, declares that no state is required to give “full faith and credit” to
same-sex marriages performed in another state, noting that “no State…shall be required to give effect to any public act, record, or judicial proceeding of any other State…respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State.” The second provision, Section 7, defines marriage and spouse and places this definition into the U.S. Code. The bill states that “the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.” In effect, what these two simple provisions do is to bar same-sex couples who marry from receiving any and all federal benefits traditionally given to married couples. Given the broad range of federal laws to which marital status is relevant, as noted in the Government Accounting Offices (GAO) 1996 and 2004 reports to Congress, the definitional provision of the act:

- Prohibits same-sex couples from filing joint tax returns
- Excludes same-sex spouses from the Federal Employees Health Benefits program, the Federal Employees Group Life insurance program, and the Federal Employees Compensation Act, which compensates the widow or widower of an employee killed in the performance of duty
- Prohibits same-sex spouses from having automatic ownership rights in a copyrighted work after the author dies
- Denies same-sex couples the benefit of the Family Leave and Medical Act of 1993
- Prevents same-sex spouses from receiving benefits under the Social Security Act’s Old Age, Survivors, and Disability Insurance Program
- Denies same-sex spouses preferential treatment under the immigration law. Therefore, same-sex spouses are the only legally married spouses of American citizens who face deportation (Koppelman 2007).

These and over 1,100 other rights and benefits afforded heterosexual couples (GAO 2004) are denied to same-sex couples. Of the two provisions, the second provision, which defines and codifies the definition of marriage, is considered to be the most legally sound and likely to withstand any constitutional challenge (Koppelman 2007).
The passage of DOMA had a significant impact on how the policy debate over same-sex marriage would play out over the next 10 years. As more and more states rallied around DOMA, those in the LGBT community and their advocates who supported same-sex marriage once again felt as if the rights of LGBT citizens to have equal protections under the law were becoming more elusive. The birth of the mini-DOMAs during this time period was significant because state statutes replicated the federal laws not only in words but also in deed (Chauncey 2004; Koppelman 2007). Though this was not the first time Congress intervened in policy issues regarding marriage (Haider-Markel and Joslyn 2005), it appeared to be the first time in the history of the United States that federalism seemed to be losing out to a universal doctrine that controlled marriage across the states without having, or being supported by, a mandate from the Supreme Court (Koppelman 2007).

Although states worried about their autonomy and their ability to define marriage as they saw fit, the rapid willingness of so many states to adopt DOMA legislation as their own state law actually seemed to limit the states’ abilities to act independently from the federal government (Koppelman 2007). It was not until the third wave that a few states began to stand up for their rights as autonomous entities, and to challenge DOMA and define marriage as they saw fit. And there, to grasp this reversal of fortune was a handful of little known policy entrepreneurs who would shift the focus of the policy and political conflict to the local level, where issues of home rule and the rights of local entities to challenge the status quo came into question for this controversial policy issue.

**Third Wave (2004 to the Present).** In February 2004, the Supreme Judicial Court of the Commonwealth of Massachusetts reaffirmed an earlier court decision that
specified that “only marriage rights—not civil unions would provide equal protection under the state constitution” (Vestal 2007) to same-sex couples living in the state of Massachusetts. The decision reverberated across the nation. With the decision of the Massachusetts court in the winter of 2004, same-sex marriage entered the third wave of litigation and legislation.

In response to the Massachusetts court decision, conservative members of Congress once again took up arms to defend the sanctity of marriage. In the summer of 2004, the House of Representatives passed an amendment that sought to limit the Federal Courts’ jurisdiction over DOMA. Though the bill passed along party lines, it failed to gain the support of the Senate. This attempt to protect DOMA was followed by President Bush calling for a constitutional amendment banning same-sex marriage. The amendment bill was introduced in the House by Congresswoman Marilyn Musgrove (R-CO), who had testified in favor of DOMA in 1996 and was now the Chairwoman of the House Judiciary Subcommittee on the Constitution. Even though the bill would eventually fail in 2005 (many believed that the policy window had closed), the symbolic meaning would not be lost on the voters during the 2004 election. President Bush, with the support of the Christian Right, successfully used same-sex marriage as a wedge issue to garner support for his candidacy and his conservative political agenda (Green, Rozell and Wilcox 2007). As LGBT rights advocates watched in dismay, 26 states passed constitutional amendments defining marriage as between a man and a woman.9 Seventeen of these states also included language that restricted civil unions and domestic partnerships within their states.

While conservatives seemed to have all the momentum and were winning the
policy war, pro-gay marriage advocates launched a massive litigation campaign at both the state and local levels to fight for same-sex marriage. Between 2004 and 2005, almost 100 same-sex couples in concert with 20 national and state organizations and local entities (see Appendix B) filed 14 suits in 9 states, challenging the constitutionality of state laws barring same-sex couples from marrying. The move from legal challenges by individual couples to legal challenges instigated and supported by local governments against the state would forever change the nature of the conflict, and bring in a new voice that had been absent in the previous two waves of protest.

Local Intervention: By the time the Massachusetts Supreme Court had rendered its decision to legalize same-sex marriage in the Commonwealth, 19 states had already passed statutes or constitutional amendments barring same-sex couples from marrying in their jurisdictions and refusing to recognize same-sex marriages performed in other jurisdictions. The nation was thus shocked when the Supreme Judicial Court of the Commonwealth of Massachusetts challenged the status quo by specifying that only marriage, not civil unions, would provide equal protection under the state constitution (Vestal 2009) to same-sex couples living in the state of Massachusetts. It can be reasonably argued that the Massachusetts decision to place homosexual relationships on par with heterosexual relationships had a profound effect on the nation. First, it motivated the religious right and ultra conservatives to work to secure ballot measures in 26 states to amend constitutions to bar same-sex marriages. Second, it seemed to act as a catalyst for local politicians. In particular, six local entities in the states of California, Washington, New Mexico, New Jersey, and New York took up arms to challenge the status quo.
Almost as soon as the Massachusetts court’s decision was announced, Gavin Newsom, the newly elected mayor of San Francisco, ordered city officials to start issuing marriage licenses to same-sex couples in clear violation of California law. Local officials in other states seemed to follow Newsom’s lead. The newly elected mayor of New Paltz, New York began officiating at same-sex weddings in his small town; the county clerks in Sandoval, New Mexico, and Commissioners in Multnomah County, Oregon also began issuing licenses to same-sex couples in their communities. These “daring” or “rogue” (depending on which side you were on) local politicians married over 7,000 same-sex couples within a month’s time, before state courts intervened and stayed their actions. All of this occurred before the first couple in Massachusetts ever wed.

The actions of these local politicians and state workers became symbolic to a progressive movement that was reeling at the hands of a national conservative agenda. Yet, the question of what spurred these individuals to launch political and social challenges to DOMA and mini-DOMAs have not been ascertained. Did the Massachusetts decision motivate them, or was it simply “the right time,” as Mayor Newsom later stated? Did the actions of this handful of locally elected officials, with their open political challenges to the DOMA laws, strike at some visceral nerve of the nation, forcing Congress to take up the issue once again? And did local politicians give state politicians the motivation to stand in defiance of federal law? Before we can get to the heart of these and other questions, we first need to understand what led a handful of local officials to challenge the status quo and act in open violation of state law and social custom by issuing marriage licenses and performing marriage ceremonies for same-sex couples in 2004. Additionally, we need to explore the political and social implications
and consequences of their actions, and contemplate whether their efforts as policy entrepreneurs influenced the shifting of the policy tide, and if their efforts helped motivate state and other local politicians to take up the cause for same-sex marriage.

**Developing the Study**

The following research seeks to expand academic knowledge as it pertains to the creation and implementation of public policy regarding same-sex marriage. In particular, it seeks to explore the effects of local policy entrepreneurs on the policy process by providing a case study that focuses on the actors of the six localities who, in 2004, “openly” violated the status quo in an attempt to secure marriage rights for gays and lesbians in the United States. The reason for conducting research at this level of government is two-fold. First, it allows us to explore how national and/or state policies are interpreted and challenged by local authorities, and to what ends. Secondly, exploring the actions of local officials in this area of public policy allows us to explore how local officials (re)act when faced with contentious and/or morally explosive policy issues such as same-sex marriage, and how their innovative policy decisions and actions diffuse across localities and filter onto state and national agendas.

To develop an analytical and theoretical framework to guide the study, information and data gathered are reviewed through the theoretical lens of three policy literatures: 1) morality politics and policy making; 2) policy innovation and diffusion; and 3) policy entrepreneurs as agents of change. To gather in-depth data and information for the case study, personal interviews were conducted with officials in each of the six localities who participated in the act of defiance, in order to better understand what was
the impetus for their actions, to learn whether those actions were predicated by others actions, and to ascertain what they felt were the implications of their actions as they pertained to same-sex marriage. Where it was not possible to gain personal interviews, public statements made to the media and written records of individual statements were used.

In joining the ranks of those who study policy diffusion and innovation at the local level, this dissertation seeks to expand upon the body of knowledge in this area by conducting a case study that explores local political action regarding the same-sex marriage policy issue debate in the winter of 2004. This case study will be placed in a historical and theoretical context in order to explore the actions of these policy entrepreneurs during the winter of 2004 as part of a larger policy process that signified a turning point in the anti-gay marriage policy trend in the United States.
CHAPTER TWO

LITERATURE REVIEW: CONTEXTUALIZING THE ISSUE

“Unlike the budget, where funding one program leaves another one unfunded, granting rights to one group, does not take it away from another. It just extends the circle.”

Massachusetts Representative Steven Walsh

INTRODUCTION

Over the last ten years, avid attention has been paid to same-sex marriage by scholars, politicians, the media, political pundits, and the Vatican. Numerous articles have been written and several books have been published on the topic by both sides of the policy debate. Scholars have looked at same-sex marriage (SSM) as a civil right, as an economic incentive for governments, and as a morally disputed right that challenges the social norm. Though a reasonable body of literature exists on the policy topic, little attention has been paid as to how, and why, actions and policies in favor of gay and lesbian marriage have diffused across the United States, no study has been conducted to examine how these processes of diffusion were influenced by actors and policy entrepreneurs in the policy and political arena. For that reason, I hope to expand upon the current body of research on same-sex marriage by conducting a case study that seeks to connect the diffusion of policies in favor of legalizing same-sex marriage with policy entrepreneurs in the same-sex marriage movement. In particular, my research will 1) explore the diffusion process of contentious marriage policies throughout the United States, and 2) focus on the effects that local officials have on the diffusion process of pro-same-sex marriage policy initiatives and investigate the outcomes and policy implications
of their actions on the SSM movement in general. In doing so, I seek to add a new dimension in the current literature on same-sex marriage.

Contemporary studies of same-sex marriage have focused most of the academic research on Americans’ notions of public “rights and benefits,” with scholars falling into one of three canons of research: 1) civil and legal rights (Campbell and Robinson 2007; Chauncey 2004; Friedman 1987; Koppelman 2007; Pinello 2006, Rosenberg 2008; Strasser 1997); 2) economic rights and incentives for marriage (Alm, Badgett, and Whittington 2000; Badgett 1998; Congressional Budget Office 2004; Portelli 2004); or 3) morality and politics (Ellison 2004; Goldberg 2002; Haider-Markel 2001; Mooney 2001; Sharp 2005; Sherrill 2004; Wald and Glover 2007). To frame their theories, researchers in the first two canons utilize one of two discourses as it pertains to marriage—marriage as a positive right or marriage as a normative right—to posit their theoretical arguments.

Legal and civil rights scholars often base their discussions of same-sex marriage on the concept of positive rights; i.e., rights that are established by acts written into law and enforced and backed by governmental authority and action (Birkland 2005; Stone 2001). Through positive rights, individuals and groups attain (or protect) certain civil liberties and privileges as citizens not because they are socially inherent, but because the government recognizes and grants these specific rights to individuals and groups. Thus, theoretical claims for equal rights for gays and lesbians to marry are backed by concepts relating to the power of government, and its ability and willingness to acknowledge and pass laws and regulations that further the civil rights of this targeted group. On the other hand, morality and politics scholars concentrate their discussions on normative rights. Normative rights are not defined by written law and are assumed to derive from a higher
authority, often believed to be that of God or nature. Hence, normative rights are based on individual and social morals, beliefs and value systems. Because normative rights are considered intrinsic to the formulation and maintenance of a community and/or society, they become highly emotional and controversial as individuals and groups use their self-prescribed ideas of what set of morals and/or values should represent their society against each other in the political and policy arena. When conflicts over normative and positive rights emerge in the political and policy stream, one or both sides will seek redress through legislative and/or legal action in the courts (Stone 2001). The battle between the positive and normative rights of individuals to marry in the United States is reflected in the legislative and policy battles that have occurred on the state and federal level, and the number of court cases that have emerged over the last 30 years in regards to same-sex marriage.

In addition to these three canons of research, another academic field within public policy also lends itself to research same-sex marriage policy, though it has been little used by current academics studying the issue. Policy innovation and diffusion explores the ways in which public policy spreads throughout the political and policy spectrum. Its purpose is to identify patterns of diffusion and factors (actors, regional demographics, institutional structures, etc.) that in some way influenced or hindered the diffusion of a policy practice and/or idea. As such, it is an ideal theoretical body of knowledge to apply to the study of how policies dealing with contentious issues, such as same-sex marriage, are spread throughout the system, and to study why some policies are accepted and/or rejected by governmental bodies at all levels. To expand upon theoretical knowledge in
the area of same-sex marriage, policy innovation and diffusion will be discussed as an important theoretical concept for examining this area of public policy in this study.

**Civil Rights and Marriage**

According to legal and civil rights scholars (Boise 2009; Eskridge and Spedale 2006; Koppelman 2007; Romano 2003; Mucciaroni 2008; Rosenberg 2008; Pinello 2006; Strasser 1997; Wolfson 2004), even though modern day marriage is often considered or thought of as a private and personal affair between individuals, the right to marry in the United States and elsewhere is really a civil right granted by the State. For that reason, civil rights theorists and same-sex marriage proponents often equate the struggle over same-sex marriage with laws regarding interracial marriage (IRM) and the struggle for civil rights for black Americans. Julie Novkov (2008) observes that it has become commonplace among historically inclined scholars to use the United States’ elimination of bans on mixed-race sexual relationships for analytic guidance in examining the recent controversy over same-sex marriage. Advocates for the legalization of same-sex marriage often use the analogy of bans on interracial marriage as comparable to same-sex marriage, and note similarities in the discriminatory treatment of black and white Americans’ rights to marry outside of their race, to the current bans prohibiting gays and lesbians from marrying within the United States. Theorists argue that, even though Americans appear to be more socially and culturally comfortable with interracial marriages today, acceptance of black and white intimate relationships, and ultimately interracial marriage, was a long and hard fought battle that pitted social reformers against an ingrained status quo that assumed whites as socially and biologically superior to their
black counterparts. Romano (2003) explains that regulations and prohibitions on intimate black and white relationships in America served a crucial function in not only creating the American social order, but also in maintaining it. The importance of maintaining the status quo by keeping black and white Americans from marrying was reflected in the “range and extent of anti-miscegenation laws” (p. 7) throughout the United States after the Civil War.

At the core of the anti-miscegenation laws was the not-so-subtle fear that whites would lose/were losing social and economic status to black Americans as a result of the passage of the Fourteenth Amendment and the Civil Rights Act of 1866. However, as reconstruction collapsed, these constitutional and statutory provisions seeking to create equality for black Americans encountered a reversal of fortune as state laws in favor of reestablishing the status quo (Novkov 2008) began to emerge. In 1883, the Supreme Court of the United States upheld the rights of states to punish black Americans more severely than white Americans for interracial fornication, thus signaling support for states to create and maintain anti-miscegenation laws (Romano 2003) in spite of federal laws recognizing marriage as a personal contract between individuals that all Americans could enter into freely (Novkov 2008). The court ruled that natural law sought to prevent the evils of amalgamation, and therefore states had a “right...to be free from intermarriage” (Novkov 2008:351).

To further diminish any challenges to the status quo, segregationists created and dispersed rumors about the degenerate nature of black sexuality to ward off support for civil rights for black Americans, and to shore up a white consensus against black equality. One of the most prominent myths about black men used to scare off white
support was that black men were “black-beast rapists” (Romano 2003:192). Though the myth was propagated by separatists in the 1880s, the image and fear of black men running through the streets raping white women continued to resonate in the public mind into the 1950s. Bob Weens, a popular segregationist of the time, elevated this fear in the public’s mind when he readily made connections between interracial sex and the loss of white male patriarchal power. Weens noted that “overpowering a white girl is to overpower the white man” (Quoted in Romano 2003:198). He argued that white males would lose status and power if they allowed black men to defile white women through the sexual act. Thus, keeping the sanctity and purity of white women was posited as a concern for all white men, not just segregationists; maintaining the status quo was seen as the only way of ensuring their status and superiority. When segregation itself came under fire, casting all civil rights activists (not just black) as “sexual degenerates seemed the easiest way for segregationists to take back the moral high ground from protesters and to discredit the motives” (Romano 2003:193) of the civil rights movement in general and its workers in particular. The “real” goal of the civil rights movement, segregationists argued, was to openly allow sex between the races.

The social and political emphasis placed on sex between the races was integral to the argument for denying black and white Americans the right to marry. It was postulated that sexual disorder and chaos would be the inevitable result of black equality (Romano 2003). Thus, interracial marriage, along with civil rights, became associated with the destruction of the social order and, inevitably, the American family. Fearful of the destruction of the social order and disintegration of the family, 41 of the 50 states passed and implemented anti-miscegenation laws and kept them on the books well into
the twentieth century. Just prior to the 1967 Supreme Court ruling in *Loving v. Virginia* (388 U.S. 1 [1967]), marriages between black and white Americans were still illegal in 31 of the states, with several state miscegenation laws nullifying and voiding interracial marriages regardless of where they were contracted. In doing so, these states ignored the Full Faith and Credit clause of the U.S. Constitution. Other states, continued to make interracial marriage a felony that could be punished with fines and jail terms (Dalmage 2000; Novkov 2008; Romano 2003).

World War II is credited with changing the way America dealt with its race relations (Berube 1990; Mettler 2005; Romano 2003). The war effort allowed for the integration of black Americans into areas of the public domain that had previously been reserved for white Americans. It also allowed for the exposure of American blacks to European cultures that were more acceptable of race-mixing (Mettler 2005; Romano 2003). By the mid to late 1960s, a positive shift in Americans’ attitudes toward race relations was evidenced by national polls, revealing that whites were more tolerant and willing to live in interracial neighborhoods, send their children to integrated schools, and to work with black people and entertain them in their homes (Romano 2003). However, the most visible change and progress in race relations appeared in the shift in public and private attitudes whites held towards interracial marriage. In 1958, a majority of white Americans were against black and white Americans marrying; polls conducted at the time revealed that 96 percent of white Americans disapproved of black Americans marrying white Americans (Carroll 2007; Romano 2003).

Today, a vast majority of white Americans (77 percent) approve of interracial marriages (Carroll 2007; PEW 2006). This significant change in social attitudes toward
interracial marriage is believed to be the culminating result of “changes in the legal, political, social, and cultural arenas” (Romano 2003:2) of American society, changes that were spawned by the Civil Rights movement in the United States and reinforced by Supreme Court decisions that disbanded the institution of Jim Crow and made open, systematic discrimination against black Americans and other minority groups illegal (Kluger 1977; Novkov 2008, Romano 2003). Social policies and attitudes in favor of interracial marriages slowly diffused vertically across state lines and horizontally across levels of government, eventually resulting in the 1967 Supreme Court decision that declared “Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State” (Justice Earl Warren, 1967). In doing so, the Supreme Court “legalized a relationship that had been criminalized in some form or another in America since the seventeenth century” (Romano 2003:2).

The political and social rhetorical arguments used to deny black Americans civil rights, including the right to marry outside of their own race, has undeniably become the model and platform to deny the LGBT community equal rights and protections under the law. In comparing arguments used against racially mixed marriages and those used against same-sex marriages, opponents against same-sex marriage posit similar themes to those used against interracial marriages. Language used to describe interracial coupling of blacks and whites was described as ungodly and unholy, a perversion, unnatural, an abomination, and blasphemy—all descriptors used to describe gay and lesbian intimate relationships (Bradley Haggerty 2009; Chauncey 2004; Hutchinson 2009; McCarthy McMorris 2004). Individuals and groups who rally against civil rights for LGBT citizens
and against same-sex marriage, in particular, have conveniently replaced race with sexuality in their rhetoric, noting that “these types” of relationships threaten the foundation and stability of the American family.

Premised on the necessity to protect the sanctity of the American family from moral disruption, and to protect America’s children, the “saving the family” mantra became a powerful political tool used to deny black Americans both civil rights and the right to marry outside of their own race. Americans’ fear of a changing status quo enabled it to hold sway with both segregationists and the public, in general. In arguing against civil rights for black Americans, segregationists warned other Americans that the United States Supreme Court’s rulings in Brown v. Board of Education (347 U.S. 483 [1954 and 1958]) allowing school integration, would lead to widespread racial amalgamation as more white girls were exposed to “insatiable” black boys (Romano 2003). In his response to the Supreme Court in Brown v. Board of Education, John Ben Sheppard, the then Attorney General for Texas, declared that desegregation of the schools “comes dangerously close to interference in the sacred, inviolable relationship between parent and child and the rights of parents to bring up their children in their own customs and beliefs” (Kluger 1977:734). Even in 2009, a Louisiana judge denied a wedding license to an interracial couple “out of concern for any children the couple might have” (CBS News 2009). The Justice noted that, “There is a problem with both groups accepting a child from such a marriage…I think those children suffer and I won’t help put them through it” (CBS News 2009). Though the Judge stated that he has many “black” friends, he felt it his moral obligation to prevent a union between an interracial couple in order to protect future offspring from the ravages of divorce (which he believes
interracial marriage leads to) and from the social stigma of not belonging to either racial group. Like the segregationists before him, the Judge assumed a deterioration of the American family would occur if an interracial couple was allowed to marry.

Defending the sanctity of marriage in order to protect families and children is also a resounding theme used by religious conservatives and opponents to same-sex marriage. Advocates for traditional marriage stress “the importance of marriage and family as optimal to a child’s development” and that “marriage is society’s most pro-child institution” (Beng 2010: 11A). In a speech delivered to the New York State Assembly in May of 2009, Assemblyman Michael Fitzpatrick (R-7th District) stated that marriage was “created to build a family to raise children.” He emphasized that, “it is a fact of biology and natural law that marriage is to unify the male and the female for procreative purposes, to raise a family. To say that a gay family is just as good as a heterosexual family is to deny a child a mother or a father, either one depending on the relationship” (Fitzpatrick 2009). In upholding California’s Proposition 22, a law that codified the gender relationship for marriage to that between a man and a woman, the First District Court of Appeals in California ruled in favor of the law to bar gays and lesbians from marrying, partly because of the procreational responsibilities of marriage. Proponents of Proposition 22 and, later, Proposition 8 have argued that “marriage has traditionally been understood to be a human relationship ordered toward reproduction” (Sokolowski 2004), and that the loving, intimate bonds of marriage are second to the procreational duties because, ultimately, “the ‘end’ of marriage is procreation” and “the physical end of procreation is the first and essential defining character of marriage” (Sokolowski 2004).
Reverend Patrick Walker, head of the local Missionary Ministers Conference in Washington, D.C. further holds that, “When you look at the way God designed the male and the female — 'Be fruitful and multiply' was the command. I'm sorry, but the homosexual cannot be fruitful and multiply” (Bradley Haggerty 2009). Opponents’ conclusion that marriage is about producing new citizens for society leads them to assert that the State has a vested interest in the “natural” ability of couples to procreate. Therefore, they are justified in their convictions that the State should limit the rights of gays and lesbians to marry because they fail to pass this crucial marriage test. Legal scholar Douglas Kmeic defends this position when he explains that,

Understanding and admitting the promotion and responsible exercise of procreation to be a vital or compelling state interest logically separates same-sex couples from other non-procreative classes…While the state can tolerate a modest level of disinterest or inability to procreate, it is far more questionable whether any state can rationally be indifferent to sustaining its population by giving public marital sanction to individuals who, because of physical reality and the nature of the sexual relationship, cannot procreate. (P. 2)

However, some scholars have questioned whether those who rally against same-sex marriage because gays and lesbians are [assumed] not capable of fulfilling the procreational duties of marriage are really just talking about procreation per se. A number of LGBT and feminist scholars have argued that conservative anger and resentment towards same-sex marriage is part of a larger dissatisfaction with the changing status and gender roles of women in our society, and that challenging same-sex marriage on the grounds that it hurts traditional marriage is a back door approach to challenging women’s independence, as well as perpetrating stereotypical roles for women as domestic caregivers (Chauncey 2004; McVeigh and Dias 2009). By stressing how same-sex marriage deviates from traditional marriage and the gender roles supported by
such marriages, opponents hope to recast women in their dependent and subordinate roles to men.

Chauncey (2004) explains that when religious conservatives refer to procreation as a fundamental reason for not allowing gays and lesbians to marry, “they often use it as shorthand for a larger set of assumptions about the roles of husband and wives, including women’s need to accept that their primary duty in life is to be mothers” (p. 148). Romano (2003) further explains that the idea of a nuclear family, fostered and supported by the government after World War II, “celebrated motherhood and marriage as a true path for women” (p. 50). Nonconformity to this role, in general, and by women, in particular, became suspect as “independent and assertive women were charged with emasculating men and threatening the nation’s well-being” (p. 50). By virtue of its make-up, same-sex marriage requires the dissolution of predetermined gendered roles in marriage because its partners are of the same sex. Thus, same-sex marriage fosters a new way of looking at and thinking about marriage, one in which couples have to negotiate and redefine what each individual’s responsibility within the relationship will be (Andrade 2006). In doing so, it defies the notion that women have to be domestic caregivers who are dependent on men, and that men are independent providers.

In addition to the rhetoric concerning sex between black and white Americans posing a threat to the American family, black people, in general, and civil rights leaders and activists, in particular, were also publically chastised for trying to infiltrate and corrupt future generations of American children through the educational system. Individuals, groups, and state representatives made dire predictions about the state of America, the American family, and the effect on white children should integration be
allowed to happen after the ruling in *Brown v. Board of Education*. Years after the ruling, white parents across the country were still fighting to prevent their children from being exposed to blacks. Theorists have posited that white flight from the urban centers of the country and the rise of the suburbs was one way that white Americans fought integration (see Gordon [no date]; *Time Magazine* 1978; Venkatesh 2002). Many white Americans felt that their children, neighborhoods and status were being threatened by desegregation and that the schools were battlegrounds for the survival of the family (Formisano [1991] 2004).

During the early 1970s, Louise Hicks, a City Council member in Boston, organized factions of white parents within the city into an anti-integration group called ROAR (Restore Our Alienated Rights). The sole purpose of the group was to derail desegregation efforts in Boston’s south end, which was primarily Irish-Catholic (Formisano [1991] 2004; Theoharis 2003). Parents at rallies and demonstrations held by the group met bused black students with bananas and referred to them as monkeys (Theoharis 2003), thus suggesting the inferior nature of black children to their own. In addition to arguing that blacks were biologically inferior to whites, one white parent questioned whether it was wise to send his daughter to a school that was being desegregated, commenting that, “The question is, am I going to send my young daughter, who is budding into the flower of womanhood, into Roxbury on a bus” (quoted in Theoharis:141). Though, these parents vehemently denied their racism (Formisano [1991] 2004; Theoharis 2003), their fear that integrated schools would expose the “budding womanhood” of their daughters to inferior black male youths cannot be overlooked. For many white Americans, black equality meant sexual equality; white
parents feared that their children would learn in integrated schools that sexuality with black Americans was acceptable. Consequently, the issue of the race-mixing continued to be a paramount reason for many white northern and southern families fighting against school integration. Contact could lead to mixed (thus inferior) families and interracial families would lead to the destruction of the American family.

In more modern times, opponents to SSM are espousing similar arguments. They fear that public acceptance of same-sex marriage will lead their children to accept homosexuality. Opponents have argued that “children are being warped into believing that same-sex families are acceptable” and that “children are being subjected to psychologically and physiologically damaging pro-homosexual literature and guidance in the public school system; all under the fraudulent guise of equal rights” (Boissoin 2002). As they were during the period of desegregation, the schools have become a battleground for the same-sex marriage debate, with American children in the middle. Opponents theorize that if children are taught to accept the “homosexual lifestyle,” they are being taught to not only accept immoral behavior, but damaged families.

Arguing against both the vulgarity of the sexual act, and the harm the conduct poses to families and future generations of children if accepted as a social norm, opponents of SSM posit a definite link between interracial marriage and same-sex marriage. However, even if rhetorical similarities exist, the comparison of same-sex marriage to interracial marriage and to black civil rights, in general, has been condemned by certain sectors of the black community. Proponents of same-sex marriage have come under fire by some political, religious, and civil rights leaders in the black community who say no comparison can be made because LGBT people never suffered from
Putting LGBT struggles for civil rights on the same level as blacks’ struggle for civil rights in America is viewed by some as an affront to the black community. Assemblyman Michael Benjamin of the state of New York (D-79th District) was quoted during a debate on New York’s same-sex marriage initiative, as saying, “I do take…offense to this effort to take the desire for gay rights and somehow use the history of African-Americans and our struggle for rights in America and somehow make them equal” (2009). Assemblywoman Barbara Clark (D-33rd District) openly admonished same-sex marriage advocates on the floor of the New York State Assembly for classifying same-sex marriage as a civil rights issue and for comparing it to blacks’ struggles when she stated that, “I think there are very important things and very important lessons and very important facts that people here on this floor still don’t realize as they make the analogy between civil rights for black people and other people who are underprivileged and people in gay marriage.”

Assemblywoman Clark argued (and voted) against the same-sex marriage initiative because she believed that civil and equal rights for blacks in America have not yet been realized. She noted that, 61 percent of black women in the state of New York were not married because black men, who “could” be eligible as husbands, were not marrying because of social and institutional barriers preventing them from doing so. Clark argues that structural racism and discrimination prevent black men from getting an education, ensure that they do not have enough income and enough revenue to support a wife and a family, and lead to their incarceration at a greater percentage than the rest of the population. These social and structural disincentives make black men unable to or less willing to commit to marry. The New York Assemblywoman feels that until such
time as black Americans are truly treated as equals to white Americans in this country, gays and lesbians should not be extended any “special” rights. Clark noted that civil rights should not be advanced for LGBT citizens until “every [black] man who wants to marry has the right to have a job and an education so he could support a wife and family” (Clark 2009).

Black politicians from New York are not the only people to posit that civil rights struggles for the LGBT community are not comparable to civil rights struggles for black Americans. Political pundits and average citizens have also been vocal about the use of the civil rights analogy. Margaret Bengs (2008, 2010), an open opponent of same-sex marriage and a speech writer for former California Governor Pete Deukmejian (Republican), opined that equating the ban on same-sex marriage to the ban on interracial marriage held no substance because “the ban on interracial marriage denied a certain class of people the right to marry” (2010), and that the ban on interracial marriage was based on “true discrimination of asserting that one race is superior to another” (2008). Bengs’ denounced of the use of civil-rights language and imagery to equate same-sex marriage to interracial marriage because she saw it as an affront to the “real” civil rights movement.

Taylor Harris, a black graduate student from John Hopkins University, supported Bengs’ criticism of same-sex marriage proponents. In an opinion editorial written for the Washington Post (2009), Harris condemned Julian Bond, the current President of the NAACP, for his willingness to equate black struggles for equality in America with gay and lesbian struggles for civil rights. Harris noted that, when Bond used the term “equality,” he was not referring to the right to vote, to eat in a public restaurant, or to
attend an integrated school—rights that have long been associated with the civil rights movement. In particular, Harris took issue with Bond for suggesting that equality means the “right to change the definition of marriage to include same-sex marriage,” and argued that Bonds’ emphasis on the likeness between the two would “unfairly require another form of two-ness among African Americans by asking the 66 percent of black Protestants who oppose same-sex marriage,¹⁸ to look at religion through the veil of race” (Harris 2009). Harris’ admonition of Bonds was furthered by a black parishioner’s attempt to sue two black pastors and their church in Washington, D.C. to recoup two years’ worth of tithes from the church because the pastors presided over a gay commitment ceremony in the church. The parishioner had resigned from the church after the ceremony and filed the lawsuit because she believed the pastors had misled her into believing they were a “real” Baptist church (Wiley and Wiley 2009) but the gay commitment ceremony seemed to prove otherwise.

It can be reasonably argued that the civil rights struggles experienced by blacks and those faced by the LGBT community are not identical. Few social movements vying for social equality are. However, the threat that both of these movements posed, and still do pose, to the status quo (which continues to place white heterosexual males at the apex) and the political rhetoric used to denounce them reveal how factions of society who fear change in the status quo will use similar (if not identical) fear-mongering tactics to deny certain groups and individuals equal status as citizens in this country. By denying this right, status quo supporters seek to regulate, and in fact are regulating, social and economic benefits to a chosen few.
THE ECONOMICS OF MARRIAGE

Who gets what, when, how, and why plays heavily into a society’s notion of citizenship and the social, legal and political benefits that come with it. Thus, when we look at hindrances to marriage, in particular laws that prohibited interracial marriages and currently prevent same-sex marriages, we are really looking at ways in which the status quo prevents certain groups within a society from expanding their status, and thus expanding their legal and economic rights within that society. Though supporters of same-sex marriage (and marriage, in general) speak of intangible things such as love and companionship as integral to bonds of marriage, in its simplest form, marriage is really about “organizing community life by establishing rules about the transmission of property and status” (Romano 2003:4). Individuals denied the right to marry, are denied not only the social, but the economic, benefits associated with marriage. Interracial couples were prohibited from inheriting estates of white relatives and denied their spouses’ insurance and social security benefits, and their children could make no claims to being the legitimate heirs of the white parents (Romano 2003). Laws that prohibited interracial marriage kept property and economic assets out of the hands of black Americans, and protected the wealth, status, and reputations of white Americans who were involved in interracial relations (Dalmage 2000; Romano 2003).

Laws that prohibit same-sex marriage seek to do the same to gay and lesbian couples. By making gay and lesbian relationships legally invisible, gays and lesbians find it difficult, and sometimes impossible, to transfer their wealth, or to inherit their lovers/partners’ estates. In addition, they are denied social security benefits along with a host of other federal and state benefits normally afforded married heterosexual couples.
In a 2004 report requested by, and delivered to, a conservative-led Senate, the Congressional Budget Office (CBO) noted that same-sex couples, along with all unmarried couples, were denied over 1,000 federal benefits. This denial of benefits to those unable to marry posed a financial burden on the couples because they would have to 1) recreate some of the financial legal protections granted through marriage with legal documents to transfer their wealth to each other; and 2) forfeit federal monetary benefits because they were not marrying a person of the opposite sex.

States and localities (e.g., Washington, DC) that have granted marriage rights to same-sex couples have reflected upon the economic benefits of marriage and the ability to transfer wealth between individuals in a same-sex couple, as well as recognized same-sex couples’ right to share and legally recognize their intimate and emotional bonds. In doing so, the eight states that currently grant legal same-sex marriage and/or civil unions (Connecticut, Iowa, Massachusetts, New Hampshire, New Jersey, New York and Vermont, Delaware) have not only lifted the veil of invisibility of these couples, they have also identified a revenue generating source for the state.

The most rational of the theories put forth in favor of same-sex marriage by scholars is the argument made by economists. Alm et al. (1998), Badgett (2009; 1998; 2010), Badgett et al. (2004, 2006), the CBO (2004), the GAO (1997; 2004), Portelli (2004), Ramos et al. (2009), and Sears and Badgett (2008) have argued not for the civil rights of gays and lesbians to marry, but for the economic benefits of same-sex marriage for both state governments and the federal government. Their empirical studies have
sought to address the question of how same-sex marriages have affected local, state and federal revenues by examining the relationship between the potential number of gay men and lesbians willing to marry and the increase of tax revenue based on joint filings of state and federal income tax by same-sex married couples. The independent variables used to determine increased revenues for state and federal governments included marriage penalties generated from income tax and the reduction of use of federal-funded programs, such as Temporary Aid to Needy Families (TANF) by gay men and lesbians who marry. The variables used to project additional costs to state and federal governments included increased employee benefits for same-sex spouses, a reduction in estate tax income, and social security benefits.

These and subsequent studies have found that there is a positive relationship between same-sex marriage and economic gain for states and the federal government should same-sex marriage be legalized. Alm et al.’s (1998) study indicated that legalizing same-sex marriage would lead to an annual increase in federal and state income taxes of $.3 billion to $1.3 billion. The CBO (2004) estimated that the reported 600,000 same-sex couples identifying themselves as partners in the 2000 Census would add an additional $200-400 million annually to federal revenues for the first five years. They projected that this would increase to $400-$700 million for the next five years of their ten-year study, with the likely impact toward the higher range of the estimates. [These estimates are said to be even higher, reaching almost $1 billion annually in 2008 according to Sears and Badgett (2008)]. Compared to the overall projected income tax revenue of $176 billion for the 2004 time period (CBO 2004), these figures are miniscule; however, the fact
remains that both state and federal governments would benefit financially from same-sex marriage.  

In a series of economic impact reports examining states allowing same-sex marriage or considering some type of legal sanction of same-sex couple’s intimate relationships, a team of researchers from the Williams Institute recently conducted a state-by-state analysis of the fiscal soundness of allowing gays and lesbians to marry. In their report on the fiscal impact to Washington, D.C., the researchers (Sears et al. 2009) concluded that, “extending marriage to same-sex couples will boost the District of Columbia’s economy by over $52.2 million over three years, which would generate increases in local government tax and fee revenues by $5.4 million and create approximately 700 new jobs in the D.C. area” (p. 1). In other studies conducted by Williams Institute scholars on New Jersey, Washington, New Mexico, New Hampshire, California, Connecticut, Colorado, Massachusetts, Maryland, and Iowa, the researchers concluded that extending marriage rights, civil unions or domestic partnership rights to same-sex couples would result in a positive net impact on all of these state budgets. They estimated that, if the state of New Jersey extended marriage to same-sex couples, it would boost New Jersey’s economy by over $200 million, creating 1,400 jobs and generating $15.1 million in new revenues for state and local governments (Sears et al. 2009); that the Commonwealth of Massachusetts already realized nearly $100 million in savings and gains after allowing same-sex couples to marry (Sears et al. 2010); and that the state of Iowa added a $12 to $13 million boost to the state and local economy after it legalized same-sex marriage in 2009 (Kastanis et al. 2011). These, and previous findings, bolster
the economists argument that government, in general, has an economic interest and a financial incentive to promote same-sex marriage throughout the nation.

In her research on “The Economic Value of Marriage for Same-sex Couples” Badgett (2010) suggests that there is a very real demand for marriage by same-sex couples because same-sex couples find marriage to be a *valuable* status. This notion of marriage as having added value beyond financial incentives is further explored by Portelli in his economic model of same-sex marriage. Portelli’s analysis of the economic impact of same-sex marriage is based on Gary Becker’s neoclassical microeconomic model of marriage. For Becker, maximizing one’s “utility” in a relationship means to maximize one’s household goods, which he describes as: quality of meals, quality of time together, prestige, children, companionship, love, health and status. Portelli found that, similar to heterosexual couples, same-sex couples increased their utility through marriage, thus increasing economic benefits both on a personal level and on a state and national level. He hypothesized that if same-sex couples were allowed to marry, it would “strengthen the incentive to marry, increase the efficiency of marriage markets, provide for more children to be raised in two-parent optimum environments, and benefit states economically overall” (p. 96).

Compelling in its ability to show a financial incentive to allow same-sex marriage in the United States, the economic literature fails to explain why the general public remains so unfavorable to gays and lesbians marrying. Part of the reason may be that this body of literature centers on a rational model of distribution to explain and advocate for social and public policy change in this area. In doing so, it does not adequately consider how individual and social norms and value systems influence, and at times
drive, the political and policy processes surrounding the issue. Theorists who subscribe to this rational approach to same-sex marriage overlook what Layman and Carmines (1997) convincingly argued, that U.S. politics is increasingly becoming value-based rather than market-based, and that the basic cleavage in U.S. politics today is between those who follow traditional Christian beliefs and those whose beliefs favor a more secular society. Consequently, the basis of political conflict in the United States may be becoming not who gets what but who believes what (Mooney 2001). Therefore, we must go beyond the rational logic of economics and explore the body of literature that deals with issues of morality policies and politics as they pertain to this issue.

**MORALITY POLITICS AND POLICY**

Moral conflicts over homosexuality and what conservatives have labeled “the homosexual lifestyle” have been, and remain, at the center of the political and social debate over gays and lesbians’ right to marry in the United States. To explore how morality politics have evolved around the issue, a handful of academics have focused their research on the inter-relational dynamics of morality, politics, and public policy. Mooney (2001), Sharp (2002 and 2005), Meier (2001), Green (2007), Rozell (2007), Wilcox (2007) and Haider-Markel (2001) examine how intrinsic value systems based in religiosity influence the political and policy process. They contend that issues of “morality” are pervasive throughout our political system and play an important role in policy development, noting that morality issues arise on national, state, and local agendas as readily as other types of policy issues but that their impacts on the political system and their effects on Americans cut deeper into the fabric of our social and personal lives.
Unlike economic or distributive policies that determine whether to expand a section of highway, locate a new recycling plant, or build a community park in an underprivileged neighborhood, morality policies are noneconomic in nature (though they may have material consequences) and are deeply entrenched in the values systems of individuals, groups, and the public at large (Studlar 2001). These policies, and the politics that surround them, represent core assumptions about values, social norms, and the rights of certain individuals and groups to act in certain ways, and to participate in the democratic process. As such, morality-defined issues are key in influences on the political agenda at all levels of government, shaping public policy throughout the nation.

Although moral issues may arise on the political agenda like other issues, Sharp (2005a) contends that morality issues and policies are distinct from other political and policy issues because they are rooted in deep-seated religious beliefs and/or moral values. She notes that the conceptualization of morality politics hinges on the fact that “at least one party to the conflict is mobilized largely because proposals or existing practices are viewed as an affront to religious belief or a violation of a fundamental moral code” (p. 3). Mooney further explains that “core values that stimulate morality policy debates are rooted deeply in a person’s belief system, determining how he or she defines himself or herself and his or her place in society” (2001:5). He emphasizes that core values, such as race, gender, sexuality, and especially religion, are part of a person’s primary identity, and act as the basis for people’s most fundamental values. And, “unlike more secondary identities, such as class and socioeconomic status, most people never even hope to change these primary identities” (2001:5).
Dionne (2006), Lipset and Schnider (1987) and Studlar (2001) concur with Mooney’s assessment that when fundamental core beliefs of a group or society are challenged, people will fight to save themselves and the society to which they belong. These theorists argue that battles over culture, values and religion, are more polarizing than disputes over the distribution of material resources since disputes over economics are more easily resolved than those couched in terms of moral values because money and resources are fungible. Political battles over finances and resources can lead to compromises and thus, ultimately, settled. However, in “battles over faith and values, the differences cannot be split so easily because the battle is over fundamentals” (Dionne 2006:179). When groups and/or individuals argue over fundamentals, compromises are not sought, deals are not agreed upon, and disputes continue because settlement would require one or both sides to concede or denounce part or all of their value system.

Studlar (2001) suggests that as long as defined core values are uniformly observed and adhered to, no political controversies will occur. However, when threats or challenges to primary core values arise, they can cut deeply into the psyche of the society and/or community, so that individuals who adhere strongly to long-held, traditional societal or religious beliefs literally feel that they need to save themselves from destruction (Mooney 2001). This fear of moral damnation and destruction is exhibited in statements made by the American Family Association on its website in arguing against same-sex marriage: “Marriage is a sacrament designed by God that serves as a metaphor for the relationship between Christ and His Church. Tampering with His plan for the family is immoral and wrong. To violate the Lord’s expressed will for humankind,
especially in regard to behavior that He has prohibited, is to court disaster” (nogaymarriage.com 2009).

Other, religiously-defined issues such as abortion, stem-cell research, the death penalty, prostitution, and pornography all fall in the realm of morality policy (Mooney 2001; Sharp 2005a; Studlar 2001) because each in some way challenges the core value systems of certain individuals and/or groups in a given society. In doing so, these morally defined issues become sites of contestation for which individuals, groups, political parties, and policy entrepreneurs will seek public policy solutions.

**Morality Policy and Policy Process**

Like non-morality policy issues, morality policy exists in, and arises out of, what Kingdon (1995) refers to as a policy “primeval” soup, where ideas float around, fading in and out of prominence until a focusing event or policy entrepreneur pulls an idea or issue out of the soup and places it onto the political agenda. Morality theorists contend that because morality issues are more salient to the public, moral issues are given more prominence within the primeval soup, fade less, and leave its confines more readily due to the normative values they assert and the ease with which they can be presented. Studlar (2001) explains that, “while morality issues may involve only a minority of people, activists are often strongly committed to their cause and are quite willing to carry the fight to a larger audience. Since morality issues are—at least on the surface—relatively easy to understand, activists can often involve a broader public as sympathizers” (p. 39). Because the dispute is framed in terms of fundamental rights and values stemming from religious imperatives, advocates for or against moral policies
invest considerable emotional capital in the values that they want their government and society to promote and protect. Unlike economic or other social policies, moral policies have a major impact on political identity and therefore the activism of citizens and the mobilization of interest groups.

In her groundbreaking research, Patricia Strach (2007) posits that individual values, social norms, and the policy process are intimately entwined. She notes that “when policy actors sit down to create a new public policy, they do not draw from the entire universe of possibilities. Rather, they start with a limited range of possibilities, using shortcuts to make their job manageable” (p. 47). In doing so, policy actors rely on normative American values. Hence, social issues that rise and fall in the political realm include elements of the policy process, and ingrained social ideas, both of which influence policy stability and change. Strach emphasizes that “understanding that there is a structure to policy and that it plays a role in the life course of the policy helps to connect policy structure to actors and institutions in the policy process that push for policy change to broaden social practice” (p. 57). Defining structures as being more than statutory rules, requirements, or procedures, Strach sees structure as incorporating social values, abstract principles, and assumptions that underlie how policies accomplish their goals. As such, assumptions about “normative” values are important components of public policies. “If social practices are fundamentally at odds with the values and assumptions embedded in policy, a policy gap opens up, providing a window of opportunity for policy change” (p. 47). Like Kingdon’s model of “policy windows,” which open up and offer opportunities for policy change, Strach’s model suggests that windows, or gaps, can open up as a result of junctures, instances where the publics’
expectations of a policy deviates from, and collides with, the actual values and goals intended in a policy. Strach asserts that policy junctures can have a profound effect on the policy process because they can become sites of political contestation where morality and non-morality politics can find their way into the policy process. Morality theorists conjecture that there is more contention at these junctures when moral values conflict with policy goals.

Research conducted by Sharp (2002, 2005), Klawitter and Hammer (1999), Colvin (2002), and Barclay and Fisher (2003) complement Strach’s exploration of the inter-relational dynamics of values and the policy process. In her comparative case study, *Morality Politics in American Cities* (2005), Sharp asserts that issues that are commonly associated with morality politics and policies are more salient at local levels of government, and will inherently reveal themselves at the local level first because they touch upon deeply held beliefs and values that are often represented by the status quo of the community. Sharp (2002) contends that actions by low-level elected officials (e.g., city executives, county clerks, city council members, county commissioners) are viewed as either defending the acceptable legal practices of the status quo or challenging it through policy innovation. In moral controversies such as policies affirming LGBT rights, advocates for equal rights are characterized by Sharp (2002) as status quo *challengers* on the political left, and those opposed as status quo *defenders* on the political right. She defines governmental action as a response to the status quo challengers. In this case, the challengers are LGBT civil rights and marriage rights activists and their supporters.
To address how local politicians arrive at their decisions to either favor the status quo challengers or to support the defenders, Sharp (2002) developed a topology of action that she believes guides local authorities in their decision-making process when pressured by activists on both sides of a moral issue. Including six avenues, ranging from least favorable to most favorable action, Sharp’s topology suggests that local leaders will utilize one of the following avenues of action to respond to the pressure placed on them:

1) Repression: officials will either directly or indirectly try to repress collective action or raise the cost of its two main preconditions—organization and mobilization of opinion actions; 2) Non-responsiveness: officials may take up policy demands of the activists according to their issue agenda status but do not adopt the actions the activists want; 3) Evasion: officials will make efforts to avoid confrontation through symbolic gestures to defer, delay, or defuse activists claims; 4) Responsiveness: officials will take action that affirms the claims of those challenging the status quo; 5) Hyperactive Responsiveness: officials will take action in support of status quo challengers but their actions are “made in unusual haste using processes that short-circuit the usual avenues for deliberation” (p. 865); and 6) Entrepreneurial Instigation: officials will take the initiative to push morality issues onto the agenda in the absence of overt pressure by any constituency groups.

It must be noted that how local decision makers come to choose one of the avenues of action proposed by Sharp will not depend solely on the pressure applied by challengers and defenders of the status quo. Rather, a number of other factors may also bear upon their decision-making process, including factors such as how a city or county understands and interprets intergovernmental authority, demographics, the local economy, the existence of policy entrepreneurs, the level of diffusion of innovative
policy and practices in the region, and whether a focusing event has spurred action (see also Birkland 2005; Downs 1957; Gaventa 1982; Gosset 1999; Kingdon 1995; Macedo 2005; Mintrom 1997). Yet, the influence of special interests groups (both challengers to and defenders of the status quo) in morality policy dilemmas, and their effect on the actions of politicians at the local, state and federal level, cannot be denied.

**Politics, Religion and Policy**

The critical role that religion plays in the creation and sustainability of an issue deemed as moral in nature within the public and political sphere is central to the discussion of morality politics. Both Dionne (2006) and Wolfe (2006) explore how religion in American politics acts as a polarizing force, pitting individuals, special interest groups, and political parties against one another. Dionne suggests that the reemergence of religion as a significant factor in determining the outcome of elections at all levels of government may be, in part, due to the reaction of white evangelical Protestants against their marginalization in the American public sphere over the last 40 years. Liberal victories on abortion and school prayer, the rising power of feminism, and the sexual revolution of the 1960s are believed to have eroded the power and dominance of Protestantism in American politics and culture. Dionne contends that the move to a more open religious-identified Republican Party came on the heels of the civil rights movement and was fueled by the move of white evangelical southern Democrats into the Republican Party. He argues that religious organizations such as Jerry Falwell’s “Moral Majority,” were called into being by organizers of the Republican Party who realized that they could
foster a strong conservative vote by appealing to the cultural concerns of white Americans with socially conservative views and moderate incomes.

Wolfe (2006) further enlightens our view of the relationships among religion and morality policy and politics when he examines the very nature and use of religion as a political tool. Wolfe believes that religion itself has become politicized and thus must be understood in that context when exploring how and why Americans become polarized on social issues that appear to have, and be attached to, underlying moral values. Wolfe explains that when people align themselves with a party or movement because of moral or religious convictions, they are not acting religiously, inasmuch as they are acting politically. He maintains that,

It may be true that some people attach so much importance to their views on abortion, capital punishment, or gay marriage that they seek allies in other religious traditions. But if so, it is their political views—their take on public policy—that they are putting first, while their theology or religious practice comes second…The people who fight today’s culture war, by contrast put politics first. It is not their stance on what God wants that determines the party for which they vote. They know what they believe on political matters, and they pick a party just as they pick a denomination. (P. 210)

As secular voters have become the core constituency for the Democratic Party, the opposite is true for the Republican Party. Voters who are highly attached to morality issues (not necessarily religious values) will align themselves with the party that best espouses its nonsecular, conservative view points. Over the last 30 years, the Republican Party has openly solicited and catered to this vocal voting bloc. In particular, it has sought the vote of the black community, using same-sex marriage as one issue to draw them into the party (Carroll 2009). Of all the ethnic groups in the United States, black
Americans are the most religious, both in their belief and attendance in church (Egan and Sherrill 2009).

Using ‘scripture’ as their political platform, the anti-gay movement started by white evangelists in the 1970s has now been joined by a number of black churches and religious leaders in the twenty-first century. Bishop Harry Jackson, the founder of “Stand 4 Marriage” and minister of Hope Christian Church in Bowie, Maryland, is one such example. Jackson is considered “a longtime point man for the religious-right’s outreach to minority communities” (Carroll 2009), and he and his supporters are said to have strong ties to white evangelical organizations that are supported and funded by Republican operatives (Carroll 2009; Fisher 2009). Jackson hopes to build a strong coalition of pastors in the Washington D.C. area with the help of conservative and Republican allies to help defeat pro same-sex marriage initiatives at the local and congressional level (Fisher 2009). Jackson is not alone in his endeavor. A number of black ministries throughout the country are aligning themselves with conservative pundits to fight the “homosexual agenda.” Reverend Patrick Walker, leader of Missionary Baptists Ministers Conference (MBMC), an organization that has been around since 1885 and a fixture in Washington D.C. politics, states that over 500 congregations have joined the fight. He and Jackson have joined forces to put a referendum on the ballot to ban same-sex marriage in the District of Columbia (Fisher 2009).

This use of religion and religious institutions and organizations (which once acted as the base for the civil rights movement in this country) to foster the political goals of the Republican Party supports Wolfe’s (2009) argument that religious people are acting politically when they use their religious dogma to support political ends. However, the
question arises as to how and why practices and concepts to do so emerge. How did a black minister and his small church in a little known area of Maryland become aligned with high ranking Republican operatives? How were ideas and practices spread across those who would take up arms against same-sex marriage? And how were they spread amongst those who would fight them to attain it?

To answer these questions we must look to the literature on policy innovation and diffusion. Theories on policy diffusion will enable us to better understand how beliefs and policy innovations and practices surrounding same-sex marriage were/are spread amongst groups and filtered throughout the political system. A diffusion analysis will also help us to identify factors that can lead governmental bodies to accept or reject policy innovations based on the core principles posited by Mooney (2001) and other morality theorists.

**Policy Innovation and Diffusion**

Policy diffusion encompasses a variety of processes by which an idea, belief, value, cultural form, or public policy, translates across social and political borders. How these processes occur, and what impetus drives them has been the study of academics in multiple disciplines for over a century. In her study of historical trends in policy diffusion and innovation, Walsh-Russo points out that diffusion studies proliferated throughout the social sciences during the nineteenth and the twentieth century because of the desire of social theorists to describe and explain social change. A host of scholars from different disciplines (e.g., Berry and Berry 1999; Brown and Cox 1971; Leichter 1983; Gray 1973; Rogers [1962] 1995; Karach 2007; Skocpol 2007; Mintrom 1997; Walker 1969, 1973; and others) have long marveled at the spread of ideas and policies
from state to state in American democracy. The question of “Why and how do politicians, citizens, and professionals in one state take inspiration from national policy debates and imitate, resist, and/or rework legislative models from other states” (Skocpol, back cover: Democratic Laboratories 2007) has been part of an open scholarly debate within the realm of political science and public policy. What factors lead one state or locality to adopt innovative practices and policies, and another to resist adoption? What if any, influences do institutions and social and political agents have on the process? And, what types of policies and practices seem to diffuse more readily than others? Policy diffusion theorists continue to search for these answers today.

Classic diffusion theory is often associated with Everett M. Rogers’ work, Diffusion of Innovation ([1962] 1995). In his seminal work, Rogers defines diffusion as “the process by which an innovation is communicated through certain channels over time among the members of a social system” (1995:5). Innovation, in turn, is seen as relative to the adopter, and defined as being any “idea, practice, or object that is perceived as new by an individual or other unit of adoption” (1995:5). Rogers found that early adoption of innovative ideas were associated with three factors: importance, space, and time. He posited that more “important” places (such as urban centers) tended to adopt earlier; and that places "closer" to an innovation seemed to adopt earlier than those farther away. Rogers’ also popularized the idea that innovative policy adoption follows an S-shaped logistic curve, which slowly increases in adoptions until it reaches a tipping point, then adoptions accelerate rapidly, plateau, and finally increase only gradually as it reaches the last adopters. Ogburn's (1957) theory on “cultural lag” allowed diffusion theorists to expand upon the stage model presented by Rogers. Ogburn (1957) pointed out that a
cultural lag occurred between inception of an innovation and acceptance of the innovation by a social or cultural institution. This lag, he suggested, allowed for different entities to incorporate and change the innovation to suit their purposes. This cultural lag helped researchers explain why the diffusion of innovative ideas, practices, or concepts takes place at different rates and times for certain states, localities, and regions.

Jack Walker is credited with popularizing diffusion theory within the field of public administration with his 1969 study, “The Diffusion of Innovations among the American States.” In his study, Walker challenged the traditional expenditure models used by public policy theorists to predict policy trends by suggesting that the spread of innovations from state to state could be explained by diffusion processes. In doing so, Walker “shifted the conversation regarding the emulation of policy among states from one of internal state fiscal and political conditions to one of regional competition, where states adopted innovations either to gain a competitive advantage or to avoid losing ground” (Daun-Barnett and Perorazio 2006:2). In formulating his theory for public policy theorists, Walker narrowly defined innovation to mean a "law" that was new to the state adopting it, and equivalent only to a single adoption. In focusing only on the adoption of a new program or law, regardless of whether the state actually implemented the policy, Walker (1973) hypothesized that a typical diffusion pattern,

existed in which one of the pioneering states adopted first, followed by other pioneers, and finally by other states which tended to take cues from their regional pioneers. This diffusion process forms an essentially geographical pattern, and can be visualized as a succession of spreading ink-blots on a map created by the initial adoptions of new policies by states playing in a national “league” of cue-taking and information exchange, followed by other states whose standards of comparison and measures of aspiration are more parochial and who typically adopt new policies only after others within their regional ‘league’ have done so.” (P. 1187)
Like Rogers, Walker identified three core characteristics of policy innovation and diffusion that he believed led to the geographical ink-blot pattern he predicted: 1) the speed of adoption of new policies and practices varied among states; 2) there were regional leaders who competed against each other; and 3) demographic, socioeconomic, and political factors were important preconditions for innovation. Similar to Rogers, he assumed that, wealthier and more competitive states would have a tendency to be more innovative than poorer states.\textsuperscript{28}

Following on the heels of Walker’s research, Gray (1973) sought to extend in a more “rigorous” fashion the investigation of innovation and policy diffusion by the states. Contrary to Rogers’ and Walker’s conclusions, Gray’s research revealed that policy diffusion did not necessarily follow a neat progression across wealthier states with important actors competing and vying for domination in policy innovation. Instead, Gray theorized that the type of policy, rather than its innovativeness greatly influenced its diffusion pattern. She observed that the adoption of certain types of policies (e.g., civil rights and welfare) did not follow a single diffusion path unique to the subject matter of the law; therefore, the “innovativeness” of a policy or practice was not a determining factor. Instead diffusion patterns were found to \textit{differ based on the issue area and the degree of federal involvement in the policy issue}. Gray pointed out that an interaction effect existed, wherein adopters influenced those in the social system who had not yet adopted. She posited that “the interaction explanation is more appealing on substantive grounds because decision makers in state governments emulate or take cues from legislation passed by other states” (p. 1176). Thus, as more entities adopt, the effect on nonadopters increases, and pushes them to either adopt or reject the new policy.
Elazar (1972, 1986) and, later, Dorris (1999) agree that as more states adopt similar legislation, nonadopters are pushed to accept or reject the policy; however, Elazar contends that states incorporate policy innovation from other states depending on what region the state is in and who its neighbors are. In essence, he argues that there is a regional effect in policy adoption based on the local cultures of the states. Elazar has posited that there are variations in America’s national character that are driven by the local cultures. To explain the effect these subtle variations in local cultures have on American civil society, Elazar divided American political culture into three distinct typologies: moralistic, individualistic, and traditionalistic. Northern states are seen as having a moralistic political culture, which is characterized by its concern for a good society and its orientation towards a commonweal. Middle states are credited with having an individualist political culture, which supports the marketplace. And southern states are viewed as having a traditionalistic political culture, which emphasizes a “structured social hierarchy rooted in familial, social and political bonds” (Dorris 1999:45).

Since the publication of these seminal works on policy diffusion and innovation, political and public policy scholars have divided themselves into three camps championing different theoretical models of policy diffusion and adoption: 1) determinants models based on political, economic, and demographic factors underlying diffusion; 2) regionalism models based on intergovernmental relationships among states in a region; and 3) federalism models based on the effects of federal incentives and interventions (Garston 2009). Berry and Berry (1999) expanded upon these three adoption models by adding three additional models for exploring policy diffusion and
innovation between states and levels of government: 1) *national interaction models* focusing on the role of such groups as the National Conference of State Legislatures or the National Association of Governors; 2) *regional diffusion models* focusing on the influence of neighboring states; and 3) *vertical influence models* focusing on the influence of the national government. Their addition to the field enabled modern policy theorists to better fit real world diffusion models to the theoretical models proposed in classical theory.

**Policy Innovation and Diffusion and Politics**

Karach (2007) contends that “political innovations help structure the basic rules of the political game by determining the legitimate aim and scope of governmental activity.” Because politics is about “who gets what, when, and how” (Lasswell 1936), the diffusion and subsequent enactment of innovative public policies by state or local governments can alter the existing costs and benefits of government programs, and the public’s attitudes and perceptions of those programs. Thus, the salience of political (and policy) innovations lie in the fact that they are rarely confined to a single jurisdiction because they are able to diffuse beyond the site of their initial adoption. But what constitutes a political and policy innovation is often determined by the beholder. Karach (2007) notes that, “political innovations include virtually everything that is contested and contestable about politics” (p. 2). He asserts that innovations “can be policy ideas designed to improve governmental performance” or “organizational forms, such as the interest groups…They can also be the institutions that govern a particular polity or set of polities, such as the council-manager form” (p. 2). Because innovation can take many
forms, the way political innovations diffuse can also take many forms. Diffusion can occur across states or countries. Innovations can spread from city to city, as when domestic partnerships diffused across many cities in the Pacific West and Northeast. Or innovation can spread either horizontally or vertically throughout the political system, as “when officials at one level of government emulate the ideas of their colleagues at another level” (Karach 2007:3), as exemplified when states began implementing DOMA-like laws in their respective jurisdictions to prevent same-sex marriages. Because diffusion implies “a process of learning or emulation during which decision-makers look to other cities, states, or countries as models to be followed or avoided” (Karach 2007:3), the core value of innovation and diffusion lies in its ability to affect the behavior and decision process of officials to create or emulate the same political form or to enact the same policy that is being utilized elsewhere.

**Policy Innovation and Diffusion and Social Movements**

Social Movement theorists became interested in policy innovation and diffusion because of the perceived influence of policy innovation and diffusion on contentious politics and collective action. Walsh-Russo (2004) explains that in most classical theoretical models of diffusion, policy innovation and diffusion theorists rarely explored “the particular cultural and social conditions that led to the transfer and exchange of ideas, practices, strategies, organizational forms, and personnel between and among [social] movements” (p. 2). Thus, cultural patterns that hold symbolic meaning to the citizenry of a society, such as values, beliefs, ideas, morals, and social norms, and which purportedly bind and hold a society together (Parsons 1964), were often overlooked by
classical theorists in favor of studying the structural forms of innovation (i.e., political, economic, and legal). Social Movement theorists understood that by incorporating cultural aspects into diffusion theory, researchers were afforded the opportunity to not only explore how actors incorporate the meaning of an innovative idea or process, but also to examine how cultural patterns can encourage, hinder, or alter the spread of an idea, thing or process (Polletta and Jasper 2001).

Strang and Soule’s (1998) research emphasized the cultural and structural logic of the social movement diffusion process, arguing that more attention should be paid by scholars to addressing why similar practices and/or ideas diffuse at different rates via different pathways in different settings. They explain that diffusion studies that pay attention to how both cultural and structural elements influence how individuals, and systems, encounter and spread innovation provide an opportunity for researchers to “locate and document social structure, where we consider how patterns of apparent influence reflect durable social relations. And how they provide an opportunity to observe the cultural construction of meaning, where we learn how practices are locally and globally interpreted, and ask why some practices flow while others languish” (p. 266). Lillrank (1995) agrees with Strang and Soule’s suggestion that structural theories of diffusion alone cannot tell us what “types” of innovations are likely to diffuse more readily than others. He points out that a practice will only diffuse if it is rendered salient, familiar, and compelling by communities, and/or change agents—all factors associated with cultural patterns reflective of a community or society.

It is important for researchers to consider cultural approaches to innovation and diffusion because they help direct attention to the actors in the policy arena who make
their living “promulgating innovation and commenting on change” (Strang and Soule, 1998:277). Special interest groups, leaders in movement communities, and other policy entrepreneurs can influence decision makers at all levels of the process because they are able to bring resources to the table, and they are also able to communicate innovative ideas and practices horizontally and vertically throughout social movement and political communities (Birkland 2005; Colvin 2002; Kingdon 1995; Mintrom 1997; Strang and Soule 1998). Social movement actors who are central to the process will often adopt culturally legitimate policy innovations, whereas those actors on the fringe or margins of the process, who are unconstrained by community and social norms, will take greater risks to bring about radical innovations that diffuse more quickly (Menzel 1960, Walsh-Russo 2004) within the movement itself, but slowly in the policy arena. The effect of actors on the policy diffusion process is tempered by what Tarrow (1994) explains are cycles of protest, which present themselves during periods of heightened social and political conflict; during these times, new ideas, strategies, and practices are rapidly developed and diffused throughout the various entities making up the movement. Timing is important in how and when a policy innovation should and can be promoted by actors and policy entrepreneurs within the movement and policy domain because of these cycles. Consequently, the diffusion of social movement policy innovation is not only contingent upon the location of the person in the process (central or fringe) but also upon the time at which it is presented, and on how it is communicated to the public by movement actors and policy entrepreneurs.29 If innovations used by other movements, or other parts of a movement are successful, the likelihood of actors and policy entrepreneurs adopting new organizational strategies, tactics, practices, and ideological
beliefs from other movements (Walsh-Russo 2004) increases. The ability to mimic or copy the action of others who were successful in their endeavors becomes highly important to actors and policy entrepreneurs who support all, or specific, goals of a social movement, and are faced with making decisions on contentious issues that are not popular with the general populace. Actors and policy entrepreneurs are more inclined to utilize time-tested practices in order to increase the success of their political and social actions by incorporating accepted innovative practices. Hence, promoters and adopters of innovative policies and practices that are socially and politically risky will carefully weigh the experience of others before adopting a policy or action as their own (Myer and Strang 1993; Strang and Soule 2008; Walsh-Russo 2004).

Taking action to adopt new social policies that favor a suspect class, group, or segment of the population requires not only the active efforts of social movement actors, it also requires a robust and strong coalition of “change” agents to achieve the goal (Strang and Soule 1998). Individual actors and policy entrepreneurs need to have strongly backed coalitions in favor of their actions. As such, diffusion across movements involves not only top-down, but also bottom-up, adoption (Chabot and Duyvendak 2002). Granovetter points out that in social movements, collective action often diffuses via weak ties carrying the news of what innovative practices others in the movement are experimenting with or have successfully incorporated into their strategies.

These weak ties are often connections, loose networks, or structures that actors have access to, but are not strongly linked to. Understanding how weak ties bind ideas and practices with actors and policy entrepreneurs, as well as policy innovations to social movements, is important for research in social movement diffusion because studying
models that treat the adopter as a reflective decision maker allows researchers to trace the “flows of material along social relations, efforts of external change agents to promote adoption, and interpretative work aligning sources and adopters” (Strang and Soule 1998:267). In doing so, these models provide a strong basis for researchers to study how policy innovations are interpreted, accepted and/or rejected by individual actors, policy entrepreneurs and social movement communities.

By understanding both the cultural and structural aspects that can influence policy diffusion, we can further study how social value systems come to bear upon the actors in the process. Therefore, it is important for those studying policy innovation and diffusion as it pertains to social movements in the United States to understand how morality politics and policy traverse and influence the actions of policy entrepreneurs and actors in the diffusion process.

**Morality Politics and Policy Diffusion**

Only a handful of theorists studying contentious policy issues, such as LGBT rights, have ventured to focus their attention on how morally-defined issues in the policy arena, and the innovative practices and solutions developed to address them, diffuse across the policy spectrum. While a number of diffusion theorists have considered diffusion of innovative practices and policies in terms of geographic proximity, competition between states, and the role of governance structures and legislative control (e.g., Berry and Berry 1990, 1992; Daun-Barnett and Perorazio 2006; Gray 1973; Savage 1985; Walker 1969), few have considered how “moral imperatives” attached to specific policies affect the way in which these policies diffuse across localities and states.
Mooney and Lee’s (1995) research on the diffusion of abortion policies pre-Roe v. Wade sought to address this oversight by connecting research on policy innovation and diffusion with research on morality policy and politics. Their research led others within the field of morality politics and policy to explore diffusion as an aspect of contentious policy making.

Researchers who have studied LGBT rights in particular found this to be an interesting avenue for exploring how localities responded to policies affecting the civil rights of LGBT citizens. In one of the first studies of its kind, Haider-Markel and Meier (1996) sought to determine the circumstances under which a locality would respond to and/or treat initiatives for LGBT rights differently from other policy initiatives. Because of the moral coding of LGBT rights, and the political conflicts associated with them, the researchers assumed that a difference would emerge. Their study revealed that when LGBT issues were not viewed as salient to the public at large, they were dealt with in ways that were quite typical for interest group politics. In these cases, the issue would not be heavily publicized and groups would lobby local, state, and national politicians directly or indirectly. However, when the LGBT initiative was salient to the public, such as policies to advance same-sex marriage, the issue became framed in moral terms rather than redistributive terms, and clear preferences emerged (Faber 2007; Haider-Markel and Meier 1996). In addition to these findings in regards to how localities addressed policies dealing with LGBT rights, Klawitter and Hammer’s (1999) research on the diffusion of local anti-discrimination policies for gays and lesbians in employment revealed that policies to address LGBT rights in employment encountered anti-diffusion barriers that were the result of a concentration of interest groups who opposed policy innovation in the
area, along with statistical regional differences. Their research showed that the “Pacific West, New England and East North Central cities and counties have been most likely to adopt” (p. 32) policies that grant LGBT citizens civil rights.

In examining the diffusion of anti-same-sex marriage policies throughout the states, Michael Faber (2007) noted that the issue of same-sex marriage appeared to lay “somewhere between traditional patterns of policy diffusion and patterns consistent with morality politics research” (p. 7). His study revealed a number of significant factors that seemed to affect the diffusion of statutory policies that banned marriage between persons of the same-sex, including: 1) a larger fundamentalist population within a state leads to a higher probability of passing a mini-DOMA; 2) more liberal states are less likely to prohibit same-sex marriage; 3) a higher divorce rate, suggesting a more permissive and less traditional view of marriage, is associated with a lower likelihood of a mini-DOMA passing; and 4) the presence of a neighboring state with a mini-DOMA in place has a powerful effect on the probability that a state will pass its own mini-DOMA. This last key finding suggests that morality policy, though fundamentally different from distributive policy, may diffuse in similar ways as other policies on this level.

Faber hypothesized that, like other types of economic and social policy, pressure is exerted on state lawmakers to act in accordance with their neighbors; thus, they will pass policies similar to that of adjoining states. He suggests that this may explain why states without mini-DOMAs are “clustered in the northeast, with four of eleven states without DOMA-like statutes having no neighbors with such laws, (New Hampshire, Massachusetts, Connecticut, and Rhode Island)” (p. 16). In contrast to Faber’s work, Barclay and Fisher (2006) argued that same-sex marriage as a policy issue does not seem
to work like other morality issues in the political realm. The reason, they contend, lies in the fact that opponents, as well as the general public, see the issue as one where a special interest group is trying to redefine a social institution. Barclay and Fisher postulate that same-sex marriage laws require positive action by a state to (a) publicly sanction the committed, romantic, and sexual relationships of gay and lesbian couples, and (b) offer to those couples the same benefits, obligations, and social status accorded to their heterosexual counterparts. Such activity requires each state to engage in redefining the parameters of romantic and sexual relationships. (P. 333)

Because of this redefinition, Barclay and Fisher believe that opposition to same-sex marriage will be greater than that posed on other LGBT rights issues, and that the opposition will have a broader support base within the general populace.

ADVANCING THEORETICAL KNOWLEDGE

How researchers have sought to study and address the issue of same-sex marriage has encompassed a number of theoretical frameworks. Same-sex marriage has been viewed as part of the civil-rights movement in America and as a morally contentious issue that challenges the social norm, and it has been viewed through an economic lens. Though each body of literature is strong in its presentation of the issue, individually they fail to fully enlighten us on how same-sex marriage has evolved from a fringe political and policy issue to a major public policy issue of the twenty-first century. This research hopes to enlighten and present a new perspective on the same-sex marriage debate in America by tying the theoretical threads presented in the literature review together through a diffusion analysis of the issue. In doing so, it will test assumptions about the relationship between same-sex marriage, morality, and civil rights.
The study will draw attention to the local policy entrepreneurs involved in creating positive change in the same-sex marriage dispute and explore the circumstances surrounding these particular local authorities, and try to determine what pushed them into rebellion against the status quo. Because there were so few of them [according to the U.S. Census (2000) there were over 18,000 cities and 3,000 counties in the United States all governed by thousands of local officials], it will seek to address what these “outliers” had in common that may have predisposed them to act in similar fashion. It will also explore whether or not the San Francisco mayor’s actions were a tipping point, as some have suggested, and determine if his policy actions “diffused” across local and state boundaries. In addition, it will look at, if, and how, these local officials were being influenced behind the scenes to act in favor of same-sex marriage.

Focusing on these issues will give us a richer understanding of how and why certain contentious policy actions diffuse throughout the system, and how this diffusion process has influenced the evolution of same-sex marriage from a predominantly negative public policy in the United States to one that appears to be slowly working its way to acceptance. The next chapter will discuss the methodological approaches to this research.
CHAPTER THREE

APPROACH TO THE STUDY

“Black people, of all people, should not oppose equality, and that is what same-sex marriage is all about.” Julian Bond—Chairman, NAACP

INTRODUCTION

Elaine Sharp posits that “to fully and accurately depict what happened in a particular community on even one morality issue...requires the sort of richly detailed information and evidence that must be gleaned from fieldwork using newspaper archives, analysis of other documentary sources and interviews with relevant government officials and issue activists” (2005:22). This research follows Sharp’s suggestions for studying morality issues in that it utilizes archival and documentary documents to identify and develop a case study that can be used to examine the diffusion of public policy as it concerns same-sex marriage. The case study approach—“the detailed examination of an aspect of a historical episode to develop or test historical explanations” (George and Bennett 2005:5)—was chosen over other approaches because case studies can help us to “uncover evidence of causal mechanisms at work and to explain outcomes” (George and Bennett 2005:8-9) of complex policy issues and actions. Additionally, case studies allow us to challenge the theoretical norm—assumptions and ways scholars traditionally look at a phenomenon—as exemplified by Theda Skocpol’s comparative historical analysis of social revolutions and the role states played in them. The case studies presented in States and Social Revolution (1979) challenged the rational choice theories of the time by presenting a structural analysis of the phenomena that transformed the way scholars
considered modern day social revolutions and validated the use of case studies as a methodology for policy and political research.

Because same-sex marriage is a complex moral issue that encompasses facets of social movement, diffusion, and morality theory, the following research will be divided into two distinct parts. The first part of the study seeks to identify how policy initiatives concerning modern day marriage have diffused throughout the United States. Because SSM has been categorized as a civil rights issue and compared by advocates of same-sex marriage to interracial marriage in the United States, the first part of the study will examine the diffusion of marriage policies for interracial marriage and same-sex marriage. A comparative analysis of these marriage policies will allow us to 1) identify if there are patterns in the diffusion process of the two sets of marriage laws (e.g., regional effects)\(^{34}\); and 2) create a framework for contextualizing the second part of the study. Thus, part one of the study will seek to address the following research questions (RQs):

RQ1: In what ways are political/social actions and policies that sought to ban interracial marriage and policies banning same-sex marriage similar?

RQ2: How are policies that sought to repeal these legislative acts similar?

RQ2a: As these policies spread throughout the nation during their respective time frames in history, were there patterns to their diffusion?

RQ2b: In what ways is the diffusion of these marriage policies similar/dissimilar?

The second part of the study will seek to identify the role that policy entrepreneurs played in the diffusion of same-sex marriage policies and practices. It will focus on a handful of “outliers,” local officials who, during the winter of 2004, helped set the stage for the third wave of same-sex marriage policies in the United States. In particular, it will look at the influence local officials had in promoting the diffusion of radical actions in favor of same-sex marriage during a specific point in time. This part of
the study seeks to discover 1) what inspired a reversal in the status quo as it pertained to same-sex marriage policies in some localities in the United States, and 2) to trace the diffusion of these pro-same-sex marriage policy actions. In doing so, I hope to reveal how changes in social policies can occur as a result of local governmental action.

A review of a timeline constructed by the National Conference of State Legislatures (2010) outlining policy actions and events (see Table 3.1) leading up to and following the actions of local officials who acted defiantly in favor of same-sex marriage forces us to delve deeper into the complexity of the marriage issue and, in doing so, encourages us to address lingering questions in the policy arena of same-sex marriage. For instance; why did innovative policy action take place in these localities and not others? Was it really the Massachusetts Court decision that pushed these local authorities into rebellion or can we credit President Bush’s 2004 State of the Union Address, which called for a constitutional amendment to ban same-sex marriages, with pushing these individuals? Were Gavin Newsom’s actions the tipping point for policy innovation in favor of same-sex marriage on the local level? Did his actions diffuse across local and state boundaries as is suggested in the press, or were these other local officials already gearing up to act defiantly in favor of SSM? Were these lone acts of defiance or were these local officials being pressed behind the scenes by other actors to take a stand? Because there were so few of them, what characteristics, if any, did these “outliers” share that may have predisposed them to act in a similar fashion? To answer these and other questions, we need to peel back the layers surrounding the policy decisions and actions evident in these case studies to expose the internal workings of these policy entrepreneurs and examine what effects their actions had on the SSM movement in general. In doing so
we may come to better understand how and why this particular innovative policy practice—to publically defy state law and social custom as it pertains to marriage—spread to different localities in the U.S. at this particular time in history.

Table 3.1 2004 Same-Sex Marriage Timeline of Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Actor</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 18, 2003</td>
<td>Massachusetts Supreme Judicial Court</td>
<td>Rules state constitution guarantees equal marriage rights for same-sex couples</td>
</tr>
<tr>
<td>January 20, 2004</td>
<td>President George W. Bush</td>
<td>State of the Union Address: we must “defend the sanctity of marriage”</td>
</tr>
<tr>
<td>February 4, 2004</td>
<td>Massachusetts Supreme Judicial Court</td>
<td>Upholds its ruling, tells state legislature civil unions are not equal to marriage</td>
</tr>
<tr>
<td>February 12, 2004</td>
<td>Gavin Newsom, San Francisco Mayor</td>
<td>Authorizes city officials to issue marriage licenses to same-sex couples, performs marriages</td>
</tr>
<tr>
<td>February 20, 2004</td>
<td>Victoria Dunlap, Sandoval County Clerk</td>
<td>Issues marriage licenses to same-sex couples, 26 couples marry in front of the courthouse</td>
</tr>
<tr>
<td>February 20, 2004</td>
<td>Patricia Madrid, New Mexico Attorney General</td>
<td>Issues opinion: same-sex marriage is illegal in New Mexico</td>
</tr>
<tr>
<td>February 24, 2004</td>
<td>President George W. Bush</td>
<td>Announces support for federal constitutional amendment barring same-sex marriage</td>
</tr>
<tr>
<td>February 27, 2004</td>
<td>Jason West, New Paltz Mayor</td>
<td>Begins performing same-sex marriages with no licenses</td>
</tr>
<tr>
<td>March 1, 2004</td>
<td>Carolyn Peterson, Ithaca Mayor</td>
<td>Begins accepting marriage license applications from same-sex couples and forwards them to the state Attorney General</td>
</tr>
<tr>
<td>March 2, 2004</td>
<td>Jason West, New Paltz Mayor</td>
<td>Charged with 19 counts of marrying people without a marriage license (a misdemeanor)</td>
</tr>
<tr>
<td>March 3, 2004</td>
<td>Multnomah County Attorney</td>
<td>In response to inquiry by county supervisors, issues legal opinion that Multnomah county rules violate Oregon state constitution</td>
</tr>
<tr>
<td>March 3, 2004</td>
<td>Diane Linn, Chairwoman Multnomah County Board of Supervisors</td>
<td>Orders county rules to be changed, marriage licenses granted to same sex couples, couples marry</td>
</tr>
<tr>
<td>March 3, 2004</td>
<td>Eliot Spitzer, New York Attorney General</td>
<td>Issues opinion: same sex marriage is illegal in NY because of “husband and wife” and “bride and groom” language in statute, recognizes same-sex marriages from elsewhere</td>
</tr>
<tr>
<td>March 5, 2004</td>
<td>Justice E. Michael Kavanagh, Supreme</td>
<td>Bars New Paltz Mayor from performing same sex marriages for one month.</td>
</tr>
<tr>
<td>Date</td>
<td>Actor</td>
<td>Action</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>March 8, 2004</td>
<td>James Bruno, Deputy Mayor Asbury Park</td>
<td>Solemnizes the marriage of two men who applied for a license</td>
</tr>
<tr>
<td>March 9, 2004</td>
<td>Peter C. Harvey, New Jersey Attorney General</td>
<td>Warns Asbury city officials that they face prosecution on misdemeanor charges of issuing invalid marriage licenses and marrying people without licenses</td>
</tr>
<tr>
<td>March 11, 2004</td>
<td>California Supreme Court</td>
<td>Halts San Francisco same-sex marriages; agrees to hear case on the legality proceedings in May/June</td>
</tr>
<tr>
<td>March 23, 2004</td>
<td>New Mexico Supreme Court</td>
<td>Issues a temporary restraining order to prevent the Sandoval County Clerk from issuing more marriage licenses to same-sex couples</td>
</tr>
<tr>
<td>April 20, 2004</td>
<td>Justice Frank Bearden, Oregon Circuit Court</td>
<td>Halts same-sex marriages in Multnomah County; orders the state to recognize the 3,000+ same-sex marriages performed</td>
</tr>
<tr>
<td>May 17, 2004</td>
<td>County Clerks</td>
<td>Begin issuing marriage licenses to same-sex couples in Massachusetts</td>
</tr>
</tbody>
</table>


In focusing on these outliers and their actions, this part of the research will seek to address the following research questions:

RQ3a: What led to and/or influenced these policy entrepreneurs to act in favor of same-sex marriage instead of supporting the status quo?

RQ3b: Were there similarities between the actors and the localities they represented that may have predisposed them to “like” actions

RQ4: To what degree were their actions influenced by the LGBT community and the SSM movement?

RQ5: To what degree were these policy entrepreneurs influencing the other?

RQ6: What function did political “windows of opportunity” play in the initial diffusion of innovative policy practices by these actors?

RQ7: What were the personal consequences, if any, of their actions?

RQ8: What were the political consequences, if any, of the policy actions of these policy entrepreneurs at the time?
RQ9a: What were the perceived advantages and/or disadvantages of their policy initiatives on the same-sex marriage movement in general?

RQ9b: Were their efforts continued in other ways?

**APPROACH TO RESEARCH**

To initiate research on the topic, I began by identifying primary sources for information gathering that could provide historical and insightful data on same-sex marriage and/or interracial marriage in the United States. Because interracial marriage is not the primary focus of the paper, emphasis was placed on gathering data for SSM. Most information gathered on miscegenation was used to establish a background that could be used to compare older policies against the new policy issue. Research resources included:

1) academic studies conducted on marriage policy issues that dealt with one or both of the policy issues;
2) current and archival information (1950s to present) found in print and recorded media sources;
3) government reports and other publications regarding same-sex marriage found on governmental websites and in print (e.g., transcripts of hearings, meetings, policy decisions, press releases);
4) general demographic information found in the U.S. Census pertaining to the localities identified for the second part of the research; and
5) information collected through personal interviews with local actors who were identified by the media as instigators of policy innovation as it concerned the affirmation and advancement of same-sex marriage in their respective localities.

Information was gathered and reviewed for all three waves of same-sex marriage (1971-2011)\(^3\)\(^5\); however, emphasis was placed on gathering data for the specified time period—the winter of 2004.
**Media Archival Research:** An archival search of newspapers with national presence dating from 1971 to the present (i.e., *New York Times*, *Washington Post*, *Boston Globe*, and *San Francisco Chronicle*) and popular magazines such as *Newsweek*, *Time*, and the *Advocate* (2003 to present) allowed me to gather background information so that I could place the issue of same-sex marriage and the actions of local authorities in a historical context. In choosing a combination of various newspapers and magazines, I was able to gather a broad array of opinions and perspectives on how the media portrayed the efforts and actions of local politicians who acted favorably towards same-sex marriage after the second opinion of the Massachusetts Supreme Court was released on February 4, 2004. I define “reacted favorably” as taking an immediate public course of action that furthered or positively impacted the ability of same-sex couples to marry in their respective localities and states.36

A review of the periodicals for the time period revealed six instances in different localities across the United States where local officials reacted favorably on behalf of same-sex marriage. The localities identified include both city and county governments and included: San Francisco, California; Multnomah County, Oregon; New Paltz and Ithaca, New York; Sandoval County, New Mexico and Asbury Park, New Jersey. The local officials who were identified by the press as being “maverick” policy entrepreneurs during this time period included three newly-elected mayors, a deputy mayor, a county clerk, and the chair of a county board. Identifying a timeline of action served a dual purpose. First it allowed me to trace the actions of the officials in relation to the Massachusetts Supreme Court decision, which may have opened a window of opportunity for such action. Second, it allowed me to place each individual’s action in
relation to the others to see if this group of policy entrepreneurs appeared to be reacting in response to the actions of a “certain” policy entrepreneur, or to each other in a chain reaction. For example, if we consider the timeline presented in Table 3.1, it appears that the actors followed a linear path, thus suggesting one action might have influenced the other.

**Government Documentation:** Once the six localities and their representatives were identified, I conducted an internet search of the local governments’ websites, looking for official documentation that might support the accounts in the press. In looking for these sources, I hoped to find information that may have precipitated the action of the policy entrepreneur. For example, I sought to identify whether the policy entrepreneurs in question were already working in the direction of their actions by reviewing the minutes from board and city council meetings prior to the dates of their actions. I searched the internet for archival records of city and county board meeting minutes, press releases and committee reports released prior to and during the time period in question. Because it can be hypothesized that the Massachusetts’ court decision opened a window of opportunity for advocates in favor of SSM, I looked at records dating back to the release of the first decision in November of 2003.

In addition to reviewing these records, I searched the records for other policy actions that identified if the city or county in question had in the past considered and/or instituted any policy in favor of same-sex couples, such as domestic partnership benefits for employees. I also reviewed the county and city charters to determine if they had in place anti-discrimination policies that included *sexual orientation* and/or *sexual preference*. The reason for searching for past policies in favor of civil rights for the
LGBT community is that it allowed me to gather data that would be the basis for examining whether entities with pre-existing statutes favoring LGBT rights may be predisposed to act favorably in support of other LGBT rights issues such as same-sex marriage (Klawitter and Hammer 1999).

**Personal Interviews**: Though several academic studies on same-sex marriage have emerged over the last ten years, few have centered their attention on “actual players” in the local political arena who sought to influence state and national policy through innovative policy action at the local level. Past research in this area has mainly focused on a quantitative analysis of policies enacted by city and county governments in favor of LGBT rights in general (Dorris 1999; Klawitter and Hammer 1999). Thus, an important research method for this study centered on being able to conduct semi-structured, one-on-one interviews with the local officials who acted positively on behalf of same-sex marriage in 2004. The advantage of using semi-structured interviews to complement the media and governmental archival research is that it allowed me to gather individual stories and explanations of how and why these individuals made the decisions to act the way that they did. Information gathered from the archival research allowed me to hypothesize what variables were important indicators leading to “favorable actions” in support of same-sex marriage. However, interviews allowed me the opportunity to learn if and why these variables may be important for the diffusion of policy action in favor of SSM from the perspective of the policy entrepreneurs.

The mass media (i.e., *Advocate, San Francisco Examiner, New York Times, Newsweek*) provided exposés of some of these local officials and their actions at the time; however, the coverage did not place these actors, nor their actions, in a theoretical
framework appropriate for analyzing and studying the issue. Personal interviews allowed me to gain in-depth knowledge regarding the factors that led these local officials to their decisions and how they perceived their actions and the consequences of those actions. Essentially, interviews were chosen as a methodological approach in order to help fill in the gaps in the policy story and to determine if self-interest, intergovernmental authority, county subculture, local economics, interest group pressure, and/or policy innovation by others were factors influencing the actions of these policy entrepreneurs at the time. Personal explanations of their political actions by the individuals themselves provided data that were used to address research questions, as well as inform assumptions made by myself and others about why these actors did what they did.

The choice to conduct interviews came with many challenges (e.g., gaining access for the interviews, time consuming); however, the “richness” of detail that Rubin and Rubin (2005) suggest a researcher can gather from the effort makes this methodology integral to conducting case studies. For example, discussions with Diane Linn enabled me to flesh out in detail a narrative story that provides a thorough account of her decision-making process. It also enabled me to discover “new and important themes” (Rubin and Rubin, 2005:134) within the narrative not readily noticeable in the media’s coverage of the events.

Another reason for pursuing interviews with these particular actors’ stems from the fact that their actions were considered to have had far-reaching effects that went well beyond the realm of their localities. National political leaders such as Congressman Barney Franks (D-MA) criticized the “rebellious” actions of San Francisco’s mayor, noting that Newsom’s actions could hinder the movement for same-sex marriage. Franks
was concerned that the mayor’s actions would backfire and “be used against us politically” to threaten the new Massachusetts law (Pierre and Cooperman 2004:A09). Others in the movement went so far as to suggest that the actions of these local politicians (in combination with the Massachusetts court decision) furthered the anti-same-sex marriage sentiment across the nation by giving conservatives something to rally around during the 2004 election season. Because of these public assertions, I felt that it was integral as part of the research to see how these officials perceived their role in the controversy, how they interpreted the short- and long-term effects of their actions, and what they thought of the assertions that their actions may have hurt, not helped, the movement for same-sex marriage.

Through a comparative analysis of the actors’ responses in the interviews, I hope to identify factors that may have led not only to action but to different types of action on their part. Such factors include perceived role as elected official, personal values and beliefs, fear of reprisal by state officials, actions of the Massachusetts courts, and so on.

DATA COLLECTION

The first half of the study examines the environmental context in which contentious marriage policies play out and diffuse as innovations across states. To address this issue, I chose to look at the passage of anti-miscegenation laws during modern times and create a model of diffusion to compare with the ways in which same-sex marriage policies have diffused over the last 30 years. To collect data for this, I reviewed individual State laws dating back to the beginning of the 20th century and traced the enactment, re-enactment, and repeal of the anti-miscegenation laws. Creating a timeline enabled me to identify what states acted in similar fashion or in concert during
specified periods of time in American history. This enabled me to map out patterns of adoption and compare the diffusion of anti-miscegenation laws with that of same-sex marriage laws to determine if there were similarities.

For the second half of the study, I hoped to explore how individuals helped the diffusion process along. Thus, I chose to conduct personal interviews with the policy entrepreneurs who were integral in bringing the same-sex marriage issue to the forefront of local politics in 2004. I was cognizant of the fact that I needed to develop an interview strategy that asked the right questions and figure out a tactical way for securing the interview. Unfortunately, as Goldstein (2003) and others have suggested, neither of these objectives were easy to attain. To gain access to these local actors, I followed a traditional pattern of solicitation. I first sent letters of introduction on University letterhead (see Appendix C), and then followed up with a phone call and/or email within a week of sending the letter.37 Per Goldstein’s (2003) suggestion, my introductory letter outlined my research and made clear the amount of time I was requesting. Follow-up calls to official offices usually required that I ask to be put in contact with a staff person who had the authority to schedule the interviewee’s time (usually the person’s secretary, scheduler, or communications director). Once contact was made with the appropriate staff person, I repeated my letter request and attempted to build a level of rapport with the individual, in hopes of getting him or her to act as an unofficial emissary to the elected official. Building this rapport was necessary because staff have the ability to hinder or help the process of access.

This method of contact was successful in helping to arrange and conduct interviews with Asbury Park officials, the mayor of Ithaca, and the former chairwoman of
Multnomah County. Alternatively, it failed in helping me gain access to the mayor of San Francisco, Gavin Newsom. Over a two-year time period (2007-2009), I mailed and faxed ten letters, and followed up each of these letters with e-mails and phone calls to the San Francisco mayor’s office. Unfortunately, these traditional methods failed to secure an interview. Unable to secure an interview in this manner, I pursued another route—personal connections. I contacted several people I know in California who were major donors to Newsom’s campaign for mayor. However, by the time I decided to use personal contacts, these donors had pulled away from the mayor when he made a bid to run for governor of California. Try as I might, I did not succeed in my attempt to interview this actor.

Gavin Newsom is not the only actor with whom it was difficult to gain an interview. Because she is no longer involved in political life (Lisotta 2004), finding and gaining access to Victoria Dunlap (former County Clerk, Sandoval New Mexico), also proved to be quite difficult. Whereas web searches on MySpace, Facebook, yellowpages.com, and anywho.com provided leads to find Jason West, they failed in my attempt to reach Victoria Dunlap. I received no responses to letters sent to the addresses found on the internet for Victoria Dunlap. As both, Newsom and Dunlap are important to this research, I ended up relying on public statements made by each and interviews conducted by other researchers. In particular, I used responses to interviews conducted by Pinello in his work America’s Struggle for Same-Sex Marriage (2006) to aid in my research.

**Interview Guide:** Prior to going out into the field, I developed an interview tool to guide me in the interview process (see Appendix E). The interview tool outlines a
number of core questions and follows Rubin and Rubin’s (2005) “tree and branch” structure, where the interview guide is divided into parts that represent the focus areas of my research. For this case study, the four focal areas of interest are: 1) similarities of actors and/or localities; 2) the decision-making process of the actors, what encouraged them to act, and the action itself; 3) the personal and political consequences of their actions; and 4) their perspective on the effect of their actions on the same-sex marriage movement, in general. The guide was divided into four sections representing these focal areas and included 18 open- and semi-open-ended questions. It was essential to design the guide with open-ended questions because these questions help prevent “yes/no” responses, and encouraged interviewees to provide “nuanced answers” (Rubin and Rubin 2005) in their responses to interview questions.

Part I: Backgrounds and Similarities of the interviewer’s guide is composed of questions that allowed me to get a general feel for the locality and the person I was interviewing. Questions 1 and 2 deal specifically with the interviewee and were intended to break the ice and to put the person in a frame of mind to think about his or her responsibilities as an elected official. Questions 3 through 5 ask the interviewee to describe the interviewee’s locality and the people who make up his or her community. These questions were designed to gauge how the officials perceived the communities they represented (i.e., progressive, moderate, or conservative). How interviewees spoke about and described their constituents provided an indicator of what populations and groups they believed best characterized their community, and goes to the heart of the “image” or the “collective vision” they and their constituents have for their locality (what it should or could be). Question 6 acted as a transitional question. Asking whether there
is a large LGBT community in their locality and if this community played a strong role in their election to office tied together Part I and Part II, which includes the interview questions associated with the key research questions of how and why these actors acted as they did in 2004. Overall, questions in this first part of the interview protocol helped lay the groundwork for addressing Research Question 4.

Part II: Acting on Behalf of SSM focused on how officials acted. Questions were designed to elicit responses that could address Research Questions 3a-b, 4 and 5. Questions 7 and 8 in the guide were specific to Research Question 3a-b. To gather insights on what led to and/or influenced their decision to act in favor of same-sex marriage, the interviewees were asked to reflect back to the winter of 2004 and to describe what led to their decision. Follow-up questions included “Did your political actions reflect your personal beliefs about marriage and were you in contact with leaders of the LGBT community prior to making your decision?” Questions 9, 10, 11, and 12 sought to address Research Questions 5 and 6. Interviewees were asked if they had any contact with other local officials who supported their actions on same-sex marriage. In particular, I wanted to know if they had any contact with Mayor Gavin Newsom at the time and what they thought of his actions. All questions in this section were designed to identify causal factors, to determine whether the actors saw the Massachusetts court decision as a window of opportunity, and if Gavin Newsom was viewed as the tipping point for the policy innovation.

Part III: Consequences and Part IV: Effect on the Same-Sex Movement of the interview guide sought to elicit responses that would address the last four research questions. Questions 13, 14 and 15 in Part III of the interview guide sought to address
Research Questions 7 and 8. How did the interviewees perceive their actions, and what, if any, were the personal and/or political consequences of their efforts to legalize same-sex marriage in their respective localities? Part IV of the guide sought to gather responses to address Research Question 9a-b: What did the interviewees believe were the long-term effects of their actions on the SSM movement in general? Questions 16 and 17 in the guide are particularly important because they allow each interviewee to tie his/her single action into the larger movement and, in doing so, address the accusations that his/her actions may have been harmful to the SSM movement. It also allowed those who continued their efforts beyond 2004 to discuss how their initial actions evolved into other policy actions. The last question in the guide, Question 18, was designed to end the interview by giving the interviewee a chance to speculate on whether and how they could have altered their actions to foster the policy end that they had hoped to achieve.

**Pilot:** To test the flow of the questions and the ease of use of the interview guide, I conducted a pilot test interview with a political consultant who is close to the issue. The individual is a long-time friend and offered to give frank feedback on how he believed elected officials would react to the questions and to the interview itself. The pilot test allowed me to gauge the time needed to conduct the interview and to help me practice my interview techniques. Conducting a pilot test with a seasoned political consultant was invaluable in prepping me for the actual interviews because, even though I had an interview guide to follow, it trained me to listen, and prepared me to ask and respond to unscripted questions that arose during the interview.

**Interview Data Analysis:** I outlined a number of variables that I believed should be examined in analyzing answers provided by the interviewees for each of the interview
questions. The list of variables and their values were developed prior to the interviews and based on information found in the archival data. Variables identified include 1) what influenced action; 2) action taken; 3) local similarities; 4) windows of opportunity; 5) political consequences; and 6) personal consequences. These variables were associated with individual research questions and therefore were not exhaustive. I expected that the interviews would provide me with additional variables I had not considered, and that might be specific to each case.

Demographic Data: To gather background information on the six localities, I reviewed the web pages of each locality and also retrieved demographic information for each case study from the U.S. Census website. Because 2004 fell between the 2000 and 2010 census years and the actions occurred before the 2006 Census updates, I used the 2000 Census to develop a demographic profile of each locality. The reason developing a demographic profile for each locality was to ascertain if these case studies shared any demographic similarities. It must be noted here that many scholars have questioned the validity of the 2000 census in calculating the number/percentage of same-sex couples household in the United States. Gates and Steinberger suggest that

The potential of misreporting or miscoding of sex in the U.S. Census is well documented (Black, et al. 2000, 2007, O’Connell and Gooding 2006, U.S. Census Bureau 1975). Even miscoding rates as low as 0.19%-0.23% (as identified by the Census Bureau) imply that over 40% of identified same-sex couples will in fact be misallocated opposite sex married couples (Black, et al. 2007). Further, sex misreporting is likely to be nonrandom, with older or non-English speakers potentially more likely to misreport their sex. The contamination of the same-sex household population with these misallocated opposite-sex married households is hence a serious issue for researchers using these datasets.
So even though I chose to use the 2000 census to establish a demographic profile of the localities, I do so with caution. Any comparisons made regarding same-sex couples households therefore will be treated as suspect.

Because religion is said to play a major role in the policy and social debate over same-sex marriage, I also looked at the religious affiliation of residents of each locality and determined the size of the Evangelical denomination in the community (which is the most outspoken religion with respect to homosexuality). Estimates for religious associations to churches were not provided on a city level for smaller metropolitan areas in the Association of Religion Archives data base, so county projections were used to indicate affiliation for the six localities. It is understood that similarities between cities and counties cannot be readily drawn. However, Elazar (1972, 1986) argues that localities share a cultural identity and make-up; therefore, religious background data for the county may also reflect the religious affiliations of these small communities. Table 3.4 provides a snapshot of religious affiliation at the county level. For the purpose of this research, Church Affiliation refers to and includes all Christian and non-Christian denominations (e.g., Muslim, Jewish, Hindu)

In addition to the demographic data, I also sought to identify, through documents provided on the localities websites (and later through interviewees), indicators that would tell me whether or not the communities in question viewed themselves as being progressive, moderate or conservative in social policy towards the LGBT community. Therefore, I constructed a policy matrix outlining policies in favor of LGBT rights that localities had in place prior to the winter of 2004. Policies such as domestic partnership benefits and non-discrimination policies, and including “sexual preference” or “sexual
orientation” in city or county charters, are believed to be indicators of a progressive community. Thus, the locality can be considered to be predisposed to support LGBT citizens if language to grant and/or recognize LGBT rights (Klawitter and Hammer 1999) is included in the charter.

### Table 3.2 City/County Policies in Support of LGBT Citizens

<table>
<thead>
<tr>
<th>Locality</th>
<th>Domestic Partnership Registry and Benefits</th>
<th>Non Discrimination Clause includes Sexual Orientation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Implemented Prior to 2004</td>
<td>Implemented After Winter 2004</td>
</tr>
<tr>
<td>New Paltz</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Ithaca</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Asbury Park</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>San Francisco County</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Multnomah County</td>
<td>√</td>
<td>√</td>
</tr>
<tr>
<td>Sandoval County</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* State Law applicable to the City of Asbury Park

Sources: Garden State Equality (2010); Human Rights Campaign (2010); Ithaca Municipal Code (2010); and Multnomah County Code (2010)

### Data Analysis

As discussed in Chapter Two, the Literature Review, Elazar’s (1972, 1986), Dorris’ (1999), and Sharp’s (2002, 2005a, 2005b) insights into the diffusion of morally-laden policy initiatives serve as the foundations for conducting an analysis of the data collected in this study. To recapitulate, Elazar (1972, 1986) believes that states incorporate policy innovations from other states depending on what region the state is in and who its neighbors are. These regions are represented by three distinct cultural types, which he defines as moralistic, individualistic, and traditionalistic. Northern states are characterized as having a moralistic political culture, which is exemplified by the
region’s concern for a good society and its orientation towards a commonweal. Middle states are said to have an individualist political culture, which supports an open marketplace, free of intrusion. Southern states are viewed as having a traditionalistic political culture, which emphasizes a social hierarchy rooted in strong familial, social and political bonds.

According to Dorris (1999), municipalities will respond to Lesbigay issues based on Elazar’s regional topology. Therefore, in analyzing and comparing the diffusion of interracial and same-sex marriage policies in the United States, I will utilize Elazar’s topology to determine if these cultural indicators can help explain the pattern of diffusion of these laws throughout the states. For example, the South is representative of a traditionalistic political culture (Dorris 1999; Elazar 1972, 1986). As such, it is expected that the South will direct its policy efforts towards maintaining the cultural status quo. In tracing the diffusion of marriage policies, it could by hypothesized that Southern states would most likely be the first to implement laws to prevent both interracial and same-sex marriage, that the laws implemented would be more restrictive than other regions in order to maintain social custom, and that these states would most likely be the last ones in the union to repeal their laws.

Sharp’s (2002) topology of actions by local authorities faced with morally charged issues may provide us with a theoretical framework for measuring the actions of the interviewees. Sharp believed that when local leaders were faced with a morally contentious issue, they responded in one of six ways: 1) Repression: officials will directly or indirectly try to repress collective action or raise the cost of its two main preconditions—organization and mobilization of opinion actions; 2) Non-responsiveness:
officials may take up policy demands of the activists according to their issue agenda status but do not adopt the actions the activists want; 3) *Evasion*: officials will make efforts to avoid confrontation through symbolic gestures to defer, delay, or defuse activists claims; 4) *Responsiveness*: officials will take action that affirms the claims of those challenging the status quo; 5) *Hyperactive Responsiveness*: officials will take action in support of status quo challengers but their actions are “made in unusual haste using processes that short-circuit the usual avenues for deliberation” (2002:865); and 6) *Entrepreneurial Instigation*: officials will take the initiative to push morality issues onto the agenda in the absence of overt pressure by any constituency groups. The six actors identified in this case study will be assessed through this topology.

A number of researchers examining controversial policy issues have used socioeconomic and demographic variables as predictors for political and social behavior (Dorris 1999). Sharp (2005a 2005b), Dorris (1999) and others have asserted that certain demographic variables may predispose localities to pass progressive policies in favor of morally charged issues such as LGBT rights. For instance, Sharp (2005a, 2005b) argues that higher percentages of six demographic indicators—1) same-sex partner households; 2) professional workforce; 3) incidence of single female headed households; 4) percentage of women in the workforce; 5) percentage of the population not adhering to a church; and 6) percentage of population aged 25 and older with a Bachelor’s degree—identify cities as being culturally unconventional. She asserts that unconventional cities tend to be more liberal in their policy making. Therefore, unconventional communities are believed to be predisposed to act favorably towards morally charged issues in favor of
the status quo challengers. Sharp’s six indicators of an unconventional community are included in the demographic profiles of the localities.

Because of the small sample size—six localities consisting of both cities and counties—it was not appropriate to conduct a quantitative analysis of these sites to compares them to other cities and counties, or to each other. However, I will attempt to contrast the demographics of the entities and identify if there are any superficial similarities that can be readily recognized among the case study localities. The purpose of considering demographic variables is to see if the variables discussed by Sharp (2005) might be relevant for this discussion, not to generalize the results of the analysis.

**CONCLUSION**

Having developed both a material and theoretical framework for conducting the study, the following chapters will discuss the research findings. Chapter Four will provide a historical comparative analysis of the diffusion of interracial marriage and same-sex marriage policies in the United States. Chapter Five will discuss the findings from the personal interviews as they relate to the innovation and diffusion of same-sex marriage policies during the winter of 2004. Chapter Six will conclude the study by discussing the effects of any of the local official’s actions on the same-sex movement in general and where same-sex marriage policy is today. The final chapter will discuss the implications for research theory and the potential for future research in the area of same-sex marriage.
CHAPTER FOUR

RACISM, HOMOPHOBIA AND THE DIFFUSION OF MARRIAGE POLICIES

“The legislature shall never pass any law to authorize or legalize any marriage between any white person and a negro, or descendant of a negro.”
Alabama Constitution, Art. 4 § 102 (1940)

“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.”
Alabama Constitution, Art. 1 § 774 (2006)

INTRODUCTION

As noted in Chapter Two, many in the movement to legalize same-sex marriage (SSM) argue that interracial marriage (IRM) and same-sex marriage are similar policy issues that share a common thread. The commonality, they assert, lies in the social and political discriminatory treatment faced by interracial couples and then by gays and lesbians in their attempt to marry those they love. Thus, the common thread that links the two anti-marriage policies together is the denial by those in power of what both groups have argued is a basic civil right. The linkage of these two anti-marriage policy movements in America by status quo supporters offers a basis for drawing a comparative analysis of how contentious policies involving disenfranchised groups promulgates throughout the socio-political system.

Because those in support of same-sex marriage contend that interracial marriage can serve as a guide to understanding the political and social circumstances surrounding same-sex marriage (Novkov 2008), a comparative analysis of the diffusion of the two policies will allow us to 1) explore if interracial and same-sex marriage share social and political characteristics in their adoptions; 2) identify which states adopted these
contentious policies first (i.e., who were the innovators); 3) identify if there are patterns of adoption and diffusion of the two policies across the states in the U.S.; and 4) if such patterns exist, determine whether the patterns are comparable. The purpose of this analysis is to study the patterns in which states adopt controversial social policies in order to gain insights into the process of political change and development in the American states.

This chapter will explore the diffusion of state policies that banned interracial marriage (IRM) within the United States and compare their diffusion to the modern day enactments of marriage polices banning same-sex marriage (SSM). It will discuss similarities and dissimilarities in the policies and explore patterns of diffusion.

**RACE, SEXUALITY AND MARRIAGE: THE CONNECTION**

In Chapter Two of this dissertation, I discussed the socio-political similarities in the making and execution of these two anti-marriage movements by status quo supporters who sought to prevent interracial couples, and seek currently, to prevent same-sex couples, from marrying within the United States. In particular, it was noted that similarities in the policy movements to deny interracial couples and gay and lesbian Americans the right to marry could be seen in 1) the rhetorical arguments used by opponents to launch and support their anti-marriage campaigns; and 2) emblematic themes that included protecting the sanctity of marriage, saving the American family from destruction, and preventing American children from being morally corrupted. Today, defending the sanctity of marriage in order to protect American families is a core argument used by religious conservatives and opponents to same-sex marriage.
Advocates for traditional marriage stress that marriage is society’s most pro-child institution (Beng 2010). With procreation as its goal and children as its ultimate end, opponents to same-sex marriage have successfully argued in the court of public opinion and in state courts that gays and lesbians should not be allowed to marry because they are biologically unable to fulfill their marriage duties, namely bear children for continuation of the family and society as a whole. Those opposed to interracial marriage 50 years ago and those opposed to same-sex marriage today assert that the State has a vested interest in the “natural” ability of couples to procreate and to produce “socially acceptable” children. As such, they believe they were/are justified in their convictions that the State should limit the marriage rights of these targeted groups because they fail to pass this crucial marriage test, which is to reproduce a “socially acceptable” family.

As presented in Chapter Two, the strategy used by segregationists during the early and mid-20th century and that used by opponents to SSM are similar, in that they both placed American children in the middle of the marriage debate and designate public schools as the battleground. SSM antagonists virulently argue that children, under the guise of equal rights, are being brainwashed in public schools into believing that homosexuality and same-sex families are normal (Boissoin 2002). Although several studies have proven that children raised by same-sex parents are the same as or even emotionally healthier than children with opposite-sex parents (Williams Institute 2009), those who oppose same-sex families continue to falsely claim that children raised by same-sex parents will be/are damaged goods and therefore inferior to other children. The assessment of gay and lesbian families and interracial families by opponents as being somehow damaged helps support their contention that legal recognition of either type of
marriage would not only be disruptive to the status quo, but destructive to society in general as they would be introducing “subpar” children into the social genetic pool of the United States. Polls conducted during the civil rights movement and at the beginning of the same-sex marriage movement revealed that the American public, in general, not only accepted the rhetoric as self-evident, but believed that any change in the status quo towards accepting these types of marriages could lead to the deterioration of American society as a whole (Romano 2003).

Compelling as the rhetoric and social-political themes may be in connecting the two anti-marriage movements to the American psyche; this does not give us a full picture of how the rhetoric became ingrained in institutions within the United States. One way to explore how the rhetoric transitioned into policy is to examine the speed with which and the way in which policies banning these particular types of marriages diffused across the states, to identify which states were the innovators in adopting these policies, and then to look at when, and if, others followed. By tracing the rise, fall and spread of these types of anti-marriage policies, we may be able to ascertain if there are patterns in how anti-marriage policies supporting the disenfranchisement of interracial couples, and then gay and lesbian, couples proliferated throughout the system, and then determine if these patterns of policy diffusion are similar across the two groups.

**Policy Diffusion and Anti-Marriage Policies**

Analyzing policy innovation and diffusion allows us to explore how public policy spreads throughout the political and policy spectrum. The purpose of this analysis is to identify patterns in the diffusion process and the factors (e.g., actors, actions, regional
demographics and/or cultures, institutional structures) that may explain why some policies and practices readily spread throughout the system and why others are hindered and do not make it through. Policy diffusion researchers concur that states will usually draw on the experiences of other states when contemplating policy adoptions and most, if not all, diffusion theorists agree that policy innovations are more apt to happen between states that border each other. Research conducted by Rogers (1962), Walker (1972), Elazar (1972, 1986, 2002) and others suggests that there are patterns to these policy adoptions that can be examined along a number of economic, political, or social issues, and that a state’s acceptance and/or denial of innovative policies and practices is associated with either intrastate or regional cohesions. These theorists argue that states that share similar cultural patterns and consider themselves outwardly different from the rest of the country will respond to or act towards certain policy issues in a similar manner. For example, Walker’s (1972) research suggests that in relation to issues over race and civil rights, Southern states were more cohesive in attitudes, beliefs and policies than the industrial states of the northeast. Consequently, Southern states were less likely to follow the national norm in terms of accepting the change in social status of black Americans. As such, these states resisted implementing public policy that would acknowledge and/or promote civil rights until they were forced to do so by the federal government and the courts. On the other hand, Northwest states, such as Oregon, which have a high rate of unity with national norms, and behaviors, changed laws more readily to align themselves with the national trends related to civil rights for black Americans.

Morality theorists have taken classical diffusion a step further to consider how social policies with “moral imperatives” affect the way policies diffuse across localities
and states (Mooney 2005; Sharp 2002, 2005a). These theorists argue that issues that are framed in moral terms often diffuse differently from redistributive policies because of their controversial nature. Theorists also note that policy issues identified as moral in nature (e.g., abortion, prostitution, interracial and same-sex marriage) will often encounter anti-diffusion barriers as the result of a concentration of interest groups that oppose policy innovation in the area (Faber 2004; Haider-Markel and Meier 1996; Klawitter and Hammer’s 1998). Because of their controversial nature and the concentration of special interest groups involved in the issue, policies that threaten or attempt to change the status quo will be characterized as “moral imperatives” and thus will meet with greater resistance in the public domain than policy issues that do not have moral content.

Classic and morality diffusion theory provides a basis for exploring the diffusion of public policies that sought to ban interracial and same-sex marriage. Utilizing theories that explore border and regional effects of policy diffusion across the states will allow us to examine patterns of diffusion of these marriage policies, and provide a basis for conducting a comparative analysis of state policies related to this issue. In conducting this analysis, I hope to 1) shed light on the question of how morally charged policies of this nature spread throughout the United States; 2) identify if there is a pattern in how these policies moved across the nation; and 3) determine if there are similarities in the diffusion patterns associated with these two policy areas.
Waves of Anti-Miscegenation Laws

There appears to be three distinct moments in time where major socio-political changes in American life influenced the formulation and proliferation of modern anti-miscegenation laws. The first time period identified appears in the middle to latter part of the nineteenth century. At that time, the North and South were in the midst of social and policy wars regarding slavery. In an attempt to appease Southern slave holders, Congress passed the Fugitive Slave Law in 1850 and the Dred Scott decision in 1857. But the publication of *Uncle Tom’s Cabin* in 1852 revealed the social and political stressors and cleavages that would soon push the nation into a civil war. Though anti-miscegenation laws existed prior to the Civil War, they increased rapidly once the war ended. Some scholars have credited the rapid rise of state laws during this time period as a knee-jerk reaction by the states to the social upheavals and political and policy changes that occurred as a result of the Civil War (Birkland 2002; Novkov 2008; Romano 2003). Federal laws that sought to secure rights for black Americans on a national level—the 14th Amendment and the 1866 and 1875 Civil Rights Acts—were openly challenged by a number of states, in particular Southern states. To limit the ability of black Americans to access the social and political benefits of these new federal laws, a number of states began passing state laws that hindered black Americans’ abilities to exercise their newly established federal rights. One group of laws that ensured that black Americans would not be treated or considered on a par with white Americans was the anti-miscegenation laws that ultimately forbid black Americans from having and forming intimate relationships with white Americans.
Between 1850 and 1885, 19 states implemented or strengthened current laws forbidding black and white Americans from having intimate relationships and from marrying (see Table 4.1). The ability of states to circumvent newly established federal civil rights laws through the passage of state laws punishing and/or prohibiting sex and marriage between white and black Americans were ultimately upheld by the Supreme Court in *Pace v. Alabama* (106 US 583, 1883). In this seminal case, Tony Pace was convicted and sentenced to two years in prison for living and fornicating with a white woman. Citing the newly passed 14th Amendment, Pace argued that the Alabama law under which he was indicted and convicted was in conflict with “the concluding clause of the first section of the Fourteenth Amendment of the Constitution, which declares that no state shall deny to any person the equal protection of the laws” (U. S. 584:106). Unfortunately, the Supreme Court disagreed, noting that Alabama’s law not only forbid black Americans from marrying and fornicating with white Americans, it also forbid white Americans from marrying and fornicating with black Americans. Thus, it concluded that the intent of the 14th Amendment was met by the law because both white and black Americans were treated equally. As a result of the Supreme Court’s decision, it would take almost 100 years for the full intent and purpose of the federal civil rights laws passed after the Civil War to be fully realized by black Americans.

**Table 4.1: States (Re)Enacting Anti-Miscegenation Laws 1850-1885**

<table>
<thead>
<tr>
<th>STATE</th>
<th>YEAR STATUTE (RE)ENACTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>California</td>
<td>1850</td>
</tr>
<tr>
<td>Utah</td>
<td>1852; reenacted: 1888</td>
</tr>
<tr>
<td>Kansas</td>
<td>1855</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1855</td>
</tr>
<tr>
<td>STATE</td>
<td>YEAR STATUTE (RE)ENACTED</td>
</tr>
<tr>
<td>-------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Washington</td>
<td>1855</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1857</td>
</tr>
<tr>
<td>Nevada</td>
<td>1861</td>
</tr>
<tr>
<td>Ohio</td>
<td>1861</td>
</tr>
<tr>
<td>Oregon</td>
<td>1862</td>
</tr>
<tr>
<td>Idaho</td>
<td>1864</td>
</tr>
<tr>
<td>Colorado</td>
<td>1864</td>
</tr>
<tr>
<td>Arizona</td>
<td>1865</td>
</tr>
<tr>
<td>Alabama</td>
<td>1822; reenacted:1852</td>
</tr>
<tr>
<td>Missouri</td>
<td>1879</td>
</tr>
<tr>
<td>South Carolina</td>
<td>1879; Passed Constitutional Amendment in 1895</td>
</tr>
<tr>
<td>Mississippi</td>
<td>1880</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1882</td>
</tr>
<tr>
<td>Maryland</td>
<td>1884</td>
</tr>
<tr>
<td>Florida</td>
<td>1885</td>
</tr>
</tbody>
</table>

Note: States and U.S. territories that passed laws prior to joining the Union are included.

A second wave of state legislation prohibiting interracial marriage emerged in the early years of the 20th Century—1900-1939 (see Table 4.2). Scholars have come to refer to “the first twenty or so years of the twentieth century as the ‘nadir’ of race relations in America” (Webster 2010) because it was believed to be the lowest point of race relations in American history. The institutionalization and continued rise of Jim Crow laws in the South along with the release and national political acclaim for the movie “Birth of a Nation” in 1915, left the nation ripe for the passage of laws that sought to reinforce black Americans’ inferior social status and limit their rights as American citizens. During this time, over a third of the states readily passed or reaffirmed existing statues
prohibiting or criminalizing marriages and intimate relations between black and white Americans (see Table 4.2). Alabama led the century by passing a constitutional amendment outlawing such relationships in 1901, even though the state had had its earlier laws validated in *Pace v. Alabama* in 1883. In 1905, California revised its 1850 statute to not only expand upon the notion that individuals of different races could not marry but also to reaffirm its position on white and black Americans.

Between 1907 and 1909, Wyoming, Montana, Missouri, Colorado, North and South Dakota, and Utah also enacted or reenacted statues in their respective territories. These seven states were followed by Nebraska and Nevada in 1911, when each state reenacted interracial marriage bans that had been in place since the mid-1800s. South Dakota and Wyoming revisited their policies again in 1913. South Dakota, Nevada, and Missouri revised and reenacted their statutes again in 1929 in response to what Moran (2004) refers to as sexual anxieties that gripped the country as “blacks began their great migration from the rural South” (p. 1673).

During this second wave of anti-miscegenation laws, the states were not alone in wanting to prevent intimate relationships between the races; there also were members of Congress who sought to institute a national ban on interracial marriage. In his book on constitutional amendments, Vile (2003) notes that there were at least two attempts by Southern congressmen to amend the Constitution in order to prohibit marriage and sex between black and white Americans; the first amendment was introduced on the floor of the House in 1912 by Seaborn Roddenberry and the second was introduced by Coleman Blease in 1928. Both Democratic representatives were from South Carolina, a state that
had passed its own constitutional amendment outlawing interracial marriage in 1895. In introducing his amendment, Roddenberry passionately argued that

Interruption between whites and blacks is repulsive and averse to every sentiment of pure American spirit. It is abhorrent and repugnant to the very principles of Saxon government. It is subversive of social peace. It is destructive of moral supremacy, and ultimately this slavery of white women to black beasts will bring this nation a conflict as fatal as ever reddened the soil of Virginia or crimsoned the mountain paths of Pennsylvania (Congressional Record, 62d:502-503).

Though both amendments ultimately failed, the fact that the issue had made it to the halls of Congress served to reinforce the actions of the states at that time.

The last wave of anti-miscegenation laws in America appears to have occurred from 1940 to 1965 (see Table 4.2). Mettler (2004), Romano (2003) and other scholars have credited the social change in the status of black Americans as a result of their involvement in World War II as soldiers and the judicial successes of the early civil rights movement with prompting this wave of anti-miscegenation laws in the country. Even though the civil rights movement helped change public attitudes towards race relations in a positive way, it also fostered a national backlash against interracial marriage. During the 1940s and 1950s segregationists saw equal rights and integration as a sinister scheme sponsored by the NAACP and other civil rights groups to hide the real fact that they were trying to legalize miscegenation (Romano 2003; Schoff 2009). Status quo supporters saw it as a threat to the foundation of American values. Thus, while many Americans supported civil rights in education and employment for black Americans, many were still uncomfortable with crossing the racial barriers in intimate relationships. Consequently, average Americans overlooked it when a number of states passed more restrictive laws to prevent the co-mingling of the races in matrimony.
Eleven states implemented, reenacted and/or revised current statutes to either reaffirm their bans or to make pre-existing laws harsher by establishing and/or increasing criminal penalties for their violation (see Appendix G). What is interesting to note is that 10 of these 11 states—Delaware, Tennessee, Georgia, Louisiana, Arkansas, Texas, North Carolina, Virginia, Oklahoma, and Kentucky—did not have laws on the books in the twentieth century. Two of these states—Tennessee and North Carolina—went so far as to amend their constitutions to prevent black Americans from marrying white Americans during this era. It must be noted that while a number of Southern and Midwestern states reinforced their bans on IRM, some states began reversing their anti-miscegenation statutes during this time (1940-59) in accordance with the changing social status of black Americans and the initiation of lawsuits challenging states’ right to ban these relationships. The California Supreme court decision in Perez v. Sharp (Cal.2d 711, 198 P.2d 17[1948]) appears to be a turning point in anti-miscegenation laws.

By the time the Supreme Court weighed in on the issue of interracial marriage in 1966, several states had repeatedly changed or revisited their statutes with the purpose of stopping interracial marriages from occurring in the United States. Table 4.2 lists the states that revised, amended, or passed new anti-miscegenation legislation during the 20th century. Of the 30 states listed, 5 Southern states (Alabama, Florida, Mississippi, Tennessee, and North Carolina) joined South Carolina47 in amending their state constitutions to preclude black Americans from marrying white Americans within their borders and to refuse recognition of interracial marriages performed in other jurisdictions. A little less than half (14) of the 30 states on this list repealed their laws prior to the Supreme Court decision in Loving v. Virginia (1967). The remaining 16 states were
forced to accept the legal rights of black and white Americans to marry as a result of the court’s decision. Yet it would still take another 30 years for 2 of the states—South Carolina and Alabama—to actually remove the anti-miscegenation language from their constitutions. 48

Table 4.2 States (Re)Enacting Anti-Miscegenation Laws During the 1900s

<table>
<thead>
<tr>
<th>State</th>
<th>Statute First Enacted</th>
<th>(Re)enacted/Revised/Amended</th>
<th>Constitutional Amendment</th>
<th>Year Repealed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indiana</td>
<td>1818</td>
<td>reenacted 1952</td>
<td></td>
<td>1965</td>
</tr>
<tr>
<td>California</td>
<td>1850</td>
<td>revised 1905; revised 1930</td>
<td></td>
<td>1948</td>
</tr>
<tr>
<td>Utah</td>
<td>1852</td>
<td>reenacted 1888, 1907, 1933 and 1953</td>
<td></td>
<td>1963</td>
</tr>
<tr>
<td>Nebraska</td>
<td>1855</td>
<td>reenacted 1911 and 1943</td>
<td></td>
<td>1963</td>
</tr>
<tr>
<td>Nevada</td>
<td>1861</td>
<td>reenacted 1911, 1929, 1955 and 1957</td>
<td></td>
<td>1959</td>
</tr>
<tr>
<td>Oregon</td>
<td>1862</td>
<td></td>
<td></td>
<td>1951</td>
</tr>
<tr>
<td>Idaho</td>
<td>1864</td>
<td>reenacted 1948</td>
<td></td>
<td>1959</td>
</tr>
<tr>
<td>Colorado</td>
<td>1864</td>
<td>reenacted 1909</td>
<td></td>
<td>1957</td>
</tr>
<tr>
<td>Arizona</td>
<td>1865</td>
<td>reenacted 1939; amended 1942; revised 1956</td>
<td></td>
<td>1962</td>
</tr>
<tr>
<td>Missouri</td>
<td>1879</td>
<td>reenacted 1909, 1929, 1949; supplemented 1966</td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>South Carolina</td>
<td>1879</td>
<td></td>
<td>1895</td>
<td>1966</td>
</tr>
<tr>
<td>Mississippi</td>
<td>1880</td>
<td></td>
<td>1942</td>
<td>1966</td>
</tr>
<tr>
<td>Maryland</td>
<td>1884</td>
<td>amended 1945; reenacted 1957</td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>Florida</td>
<td>1885</td>
<td>reenacted 1944</td>
<td>1955</td>
<td>1966</td>
</tr>
<tr>
<td>Alabama</td>
<td></td>
<td>revised 1940</td>
<td>1901</td>
<td>1966</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1908</td>
<td>reenacted 1913, 1931, and 1945</td>
<td></td>
<td>1965</td>
</tr>
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<td>Montana</td>
<td>1909</td>
<td></td>
<td></td>
<td>1953</td>
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<tr>
<td>North Dakota</td>
<td>1909</td>
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<td></td>
<td>1957</td>
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<td>South Dakota</td>
<td>1909</td>
<td>reenacted 1913 and 1929</td>
<td></td>
<td>1957</td>
</tr>
<tr>
<td>Delaware</td>
<td>1930</td>
<td>reenacted 1953</td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>Tennessee</td>
<td>1932</td>
<td></td>
<td>1956</td>
<td>1966</td>
</tr>
<tr>
<td>Georgia</td>
<td>1933</td>
<td>reenacted 1935</td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>Louisiana</td>
<td>1945</td>
<td>reenacted 1950</td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1947</td>
<td></td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>Texas</td>
<td>1948</td>
<td>revised 1952</td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>North Carolina</td>
<td>1950</td>
<td></td>
<td>1953</td>
<td>1966</td>
</tr>
<tr>
<td>State</td>
<td>Statute First Enacted</td>
<td>(Re)enacted/ Revised/Amended</td>
<td>Constitutional Amendment</td>
<td>Year Repealed</td>
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<tr>
<td>-------------</td>
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<td>--------------------------------------------------</td>
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<tr>
<td>Virginia</td>
<td>1950</td>
<td></td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>1951</td>
<td>supplemented 1965</td>
<td></td>
<td>1966</td>
</tr>
<tr>
<td>Kentucky</td>
<td>1953</td>
<td>revised 1955; supplemented 1966</td>
<td></td>
<td>1966</td>
</tr>
</tbody>
</table>

**Waves of Anti Same-Sex Marriage Laws**

It can be argued that same-sex marriage has followed a similar trajectory as interracial marriage. Social and political changes that spurred positive changes in the social status and rights of LGBT citizens in the United States are believed to have fostered a public backlash in this private realm. Similar to the civil rights movement, where marriage was not a central focus for most leaders of black equality movement (movement leaders even argued against interracial marriage) (Romano 2003, Schoff 2009; Weinberger 1957), same-sex marriage was not on the agenda of most LGBT organizations. LGBT leaders and movement organizers paid little attention to SSM until the issue became publically and politically salient through a number of key court cases in the late 20th and early twenty-first century [i.e., *Behr v. Levin* (1998) and *Goodridge v. Department of Health* (2004)]. As noted in Chapter Two, like black civil rights leaders, LGBT leaders moved slowly to embrace this social and political issue as part of the movement’s civil rights agenda. This inattention by national LGBT leaders enabled conservative elements to build and fund an anti-SSM campaign and movement that was able to readily influence and assist in the passage of federal and state laws banning same-sex marriage (Chauncey 2004, Wolfe 2004) with little or no opposition from the LGBT community.
The passage of the Defense of Marriage Act (DOMA) in 1996, which defined marriage as a legal union between one man and one woman and declared that states were not required to “give effect” to any laws permitting same-sex marriages in other states, sparked the biggest changes in state laws regarding marriage. Though a number of states had already defined marriage as between a man and a woman in response to *Baker v Minnesota* (1971), DOMA opened the floodgates for all states to outlaw same-sex marriage because it gave federal permission for states to ignore the Full Faith and Credit Clause of the Constitution (Chauncey 2004; Koppelman 2007). The willingness of so many states to adopt DOMA legislation as their own state law seemed to limit the states’ ability to act independently from the federal government (Koppelman 2007). It was not until 2004, when Massachusetts challenged this federal doctrine that states began to stand up for their rights as autonomous entities. Unfortunately, most states had acted against the rights of gay and lesbian couples to marry by the time this occurred.

Today⁴⁹, 42 of the 50 states have enacted statutes and/or constitutional amendments prohibiting same-sex couples from marrying within their boundaries and refusing to recognize marriages performed in other states. The District of Columbia and six states (Connecticut, Massachusetts, New Hampshire, New York, Iowa and Vermont)⁵⁰ have legalized same-sex marriage and two others (New Mexico, Rhode Island) have refused to define marriage in statute. Similar to the trend in anti-miscegenation laws, 15 of the 50 states reenacted or revised earlier statutes that prohibited gay and lesbian couples from marrying but, unlike the trend in anti-miscegenation laws, an overwhelming number of states (32) passed constitutional amendments to prohibit same-sex marriage as well as the recognition of those marriages
conducted in other states. Some states even made domestic partnerships and civil unions prohibitive so that gay men and lesbians would have no legal recourse by which to have their intimate relationships recognized by the state (see Appendix H). Table 4.3 lists the states and years that each state (re)enacted statutes and/or constitutional amendments banning same-sex marriage.

Table 4.3 State Laws Prohibiting Same-Sex Marriage 1973-2011

<table>
<thead>
<tr>
<th>State</th>
<th>Statute First Enacted</th>
<th>Statute Reenacted/Revised</th>
<th>Constitutional Amendment</th>
<th>Year Repealed to Allows Same-sex Marriage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>2006</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Alaska</td>
<td>1996</td>
<td>1998</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>1980</td>
<td></td>
<td>2008</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td></td>
<td></td>
<td>2004</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>1977</td>
<td>reenacted 2000</td>
<td>2008</td>
<td></td>
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<td>Connecticut</td>
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<td></td>
<td>2009</td>
</tr>
<tr>
<td>Delaware*</td>
<td>1996</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Florida</td>
<td>1977</td>
<td></td>
<td>2008</td>
<td></td>
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<td>1996</td>
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<td>2006</td>
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<td>reenacted 1997</td>
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<td>reenacted 1987</td>
<td>2004</td>
<td></td>
</tr>
<tr>
<td>Maine</td>
<td></td>
<td></td>
<td></td>
<td>2009*</td>
</tr>
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<td>Minnesota</td>
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<td>2000/2002</td>
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<td>State</td>
<td>Statute First Enacted</td>
<td>Statute Reenacted/Revised</td>
<td>Constitutional Amendment</td>
<td>Year Repealed to Allows Same-sex Marriage</td>
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<tr>
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<td>1987</td>
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<td>N/A</td>
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<td>Oregon</td>
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<td>1973</td>
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<tr>
<td>Utah</td>
<td>1977</td>
<td>reenacted 1993</td>
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<td>Wisconsin</td>
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<td>Wyoming</td>
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<tr>
<td>District of Columbia</td>
<td>N/A</td>
<td>N/A</td>
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</table>

1California Constitutional Amendment overturns state Supreme Court Ruling legalizing SSM in 2008. This constitutional amendment was declared unconstitutional in 2012 by the Ninth Circuit Appeals Court.
2Maine’s Constitutional Amendment overturns state legislation legalizing SSM
3Arizona failed to pass a constitutional Amendment in 2004 but anti-same-sex marriage advocates were able to put it back on the ballot in 2008 and it readily passed.
4Bills have been sponsored in Minnesota since in 2004 in an attempt to put a constitutional amendment on the ballot and all have failed. The latest in 2009 failed to be brought up for a vote. It is expected that with Republicans taking control of both houses in the State an amendment will eventually pass.
5North Carolina is the only state in the Southeast that has not approved a constitutional amendment restricting marriage to one man and one woman. On February 23, 2011 the Defense of Marriage, SB 116 was introduced. The bill, would allow voters to vote on November 6, 2012 for or against a “Constitutional amendment to provide that marriage between a man and a woman is the only domestic legal union that shall be valid or recognized in this State” (http://www.ncfamily.org/stories/110314s1.html)
6Since 2004 amendments to ban gay marriage have been introduced in the legislature but have been defeated. A bill banning same-sex marriage introduced in 2011 was pulled from committee by its Republican sponsor in March 2012.
7Wyoming is one of the few states that is still using laws passed pre-DOMA to prevent gays and lesbians from marrying in the state. However, in 2007, 2009 and 2011, bills passed the state Senate in an attempt to place a constitutional ban on same-sex marriage and to prevent the state from recognizing marriages performed in other states—the bills failed in the state Assembly.
8In January of 2012, Delaware allowed civil unions to take place in the state but did not repeal its same-sex marriage ban.
Similar to anti-miscegenation laws, state laws banning same-sex marriage seemed to emerge and reassert themselves throughout the states as the issue became socially and politically relevant. As such, there appears to be a rise and fall in the diffusion pattern of the laws as each wave passed. The following section will examine the diffusion of both laws to determine if there exists patterns in the behavior of the diffusion and if the patterns can be compared.

**Diffusion of Anti-Miscegenation Laws**

Berry and Berry (1999) contend that a state’s adoption of a certain public policy is the result of emulations of previous adoptions by other states. As the policy issue becomes more salient to the public, more and more states will adopt such policies as their own. This is evident in the diffusion of anti-miscegenation laws during the middle and later part of the nineteenth century. As challenges to the rights of states to have slavery arose and issues regarding the freedom of black people became foci of political debates at the state and federal levels, several states enacted laws that sought to ban relationships between black and white Americans. Prior to 1850, only two states—

![Figure 4.1 Diffusion of Anti-Miscegenation Laws 1850-1885](image-url)
Indiana and Alabama—had laws on the books forbidding black and white intimate relationships. But as the issue of slavery became salient politically, new states to the union and older states enacted new laws or dusted off laws that had existed during the 1700s and reenacted them as new laws. Figure 4.1 shows the diffusion of these laws between 1850 and 1885. Yellow highlights the 19 states that (re)enacted an anti-miscegenation law during this timeframe. Red highlights states with a pre-existing law, and white highlights states that did not have active laws on the books during this time period. Though Alabama had laws already on the books, it (re)enacted the laws in 1852.

As the diagram shows, Western and Mid-western states appear to be leaders in the adoption of anti-miscegenation laws during the first wave. The clustering of states on the west side of the country suggests a regional affect may have occurred. The first states to enact laws in the western part of the United States included California (1850), Utah (1852) and Nebraska (1855). These three states were later followed by five other Western/Mid-western states: Nevada (1861), Oregon (1862), Idaho (1864), Colorado (1864) and Arizona (1865). What is unusual about these enactments is that the states that enacted laws first were not part of the North-South disagreement over slavery. Thus, while slavery may have been an influencing point, other social/political factors may have played a role in why these states enacted anti-miscegenation laws at this time.
The second wave of modern anti-miscegenation laws appeared at the beginning of the 20th century. Figure 4.2 provides a visual representation of the diffusion of these laws from 1900 to 1939. It includes those states whose laws were enacted prior to the 1900s and were still in effect during this timeframe. The seven darker blue states (Wyoming, Montana, North and South Dakota, Delaware, Tennessee, and Georgia) are states that enacted new laws and the lighter blue states (Arizona California, Colorado, Nebraska, New Mexico, Nevada, Missouri, Utah, and West Virginia) are states that reenacted and/or revised their laws during this time period. The red colored states are states with pre-existing laws that were passed during the 1800s and still in effect during this time period. The white states are those that did not have anti-miscegenation laws on their books during this snapshot of time.

Researchers maintain that states will draw on the experiences of other states to act on a policy issue, and that adjacent states are more likely to act in a fashion similar to another adjacent state (Gray 1972; Walker 1972). As we see in Figure 4.2, anti-miscegenation laws passed in the first part of the 20th century seemed to have spread in a short period of time to states that were adjacent to one another and located in the same region of the United States. Of the 16 states that passed or reenacted anti-miscegenation
laws, 10 did so between 1905 and 1911 and were located in the Western and Northwestern part of the country. Thus, there also appears to be a regional effect occurring in the diffusion of anti-miscegenation laws during the first part of the twentieth century that centered itself in non-Southern states.

Between 1940 and 1965, 7 more states enacted new laws banning mixed marriages and another 15 reenacted and/or revised pre-existing laws. Figure 4.3 shows the diffusion of these laws during this time period. The 7 lighter green colored states (Oklahoma, Louisiana, Arkansas, Kentucky North Carolina, Virginia, and Texas) are states that enacted new anti-miscegenation laws and the 15 darker green colored states are states that re-adopted or revised interracial marriage bans between 1940 and 1966. The eight red colored states represent states that had enacted laws prior to this time period that were still in effect. Of these eight states, two—Oregon and South Carolina—had enacted their laws during the first wave of legislation in the late 1800s; the other six states (California, Colorado, North and South Dakota, Georgia, and Montana) reenacted or revised statutes during the early part of the 20th century as part of the second wave of anti-miscegenation legislation sweeping the country. Once again, white states are those that did not have anti-
miscegenation laws on the books. What is interesting to note about the white states is that, in all three time periods, the states without anti-miscegenation laws appeared to be centralized in the Northeastern part of the country. In contrast, the diffusion of anti-miscegenation laws during 1940-1965 time period appears to be centralized in the Southern region of the country.

Similar to the diffusion patterns seen in the second wave, anti-miscegenation laws in the third wave diffused across adjacent states and did so in a relatively short period of time. The seven states (light green) that enacted new anti-miscegenation laws during this time did so over an eight-year span of time, with the first group of neighboring states—Louisiana, Arkansas, Texas, and Oklahoma—passing new legislation between 1945 and 1951, and the second group of adjacent states—Kentucky, North Carolina, and Virginia—passing new legislation between 1950 and 1953. The latter three states were not only adjacent to, but also surrounded by, states that had also reenacted and/or revised their statutes during this time.

What is also particularly interesting during this third wave is that while 19 states (dark green) were moving to ensure that no marital comingling between the races occurred, a reverse policy trend began to emerge in states that had previously enacted anti-miscegenation laws. Beginning with California in 1948, a total of eight states reversed policies and repealed standing laws barring interracial marriages by 1960. California’s reversal was inspired by the the California State Supreme Court ruling in Perez v. Sharp that section 69 of the California Civil Code, which stated, “All marriages of white persons with Negroes, Mongolians, members of the Malay race, or mulattoes are illegal and void,” violated the equal protection clause of the United States
Constitution. The court ruled that, “Legislation infringing such rights must be based upon more than prejudice and must be free from oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the laws.”

This reversal of policy trend continued as the civil rights movement made significant gains throughout the nation (Cruz and Berson 2001) with another four states (Utah, Nebraska, Arizona, and Wyoming) repealing their statutes. By the time the Supreme Court ruled in Loving v. Virginia in 1967, only 16 Southern states still had active laws on the books. Three of these states (Kentucky, Oklahoma and Missouri) had won challenges to their statutes through State Supreme Court decisions in 1966 reaffirming the states’ right to enforce these laws. These affirmations by State Supreme Courts for anti-miscegenation laws were believed to be in reaction to the Loving case, which had just been appealed to the United States Supreme Court.

**Diffusion of Anti-Same-sex Marriage Laws**

The first wave of anti-SSM laws occurred during the early days of the LGBT movement. With the first laws appearing on the books in 1973, a year after the Supreme Court ruled in favor of Minnesota state law in Baker v. Nelson (409 U.S. 810 [1972]). Within 5 years, a total of 14 states passed statutes that limited marriage to opposite sex couples, beginning with Maryland, Colorado and Texas in 1973. Two years later, five more states—Nevada, Montana, Oklahoma, Louisiana, and Virginia—would also limit marriage in their states to the opposite sex and, in 1977, another five states—California, Utah, Wyoming, Minnesota, and Florida—joined them. It must be noted that these laws were passed at a time when Anita Bryant (who referred to herself as an anti-
homosexuality activist) and her “Save our Children” coalition and campaign had reached a pinnacle.

Figure 4.4 shows the spread of anti-SSM policy in the states during this first wave of anti-SSM policies in the U.S. When the first three states instituted their anti-SSM policies, there appeared to be no clear discernible pattern in the diffusion of these laws. The states are not adjacent to one another and are not even in the same regions of the country. However, they are considered by Walker (1969), Elazar (2002) and others to be the policy innovators and thus the trendsetters for these laws at the time. As trendsetters, it is expected that neighboring states would mimic their actions, which is what occurred. By the decade’s end, anti-SSM laws spread throughout the Western and Southwestern regions of the country as some border states emulated their neighbors. In addition to the western states, three Southern states—Florida, Louisiana and Virginia—also passed policies to define marriage as a heterosexual institution and prevent gay and lesbian couples from marrying (the passage of laws in these states were believed to be part of the influence of Anita Bryant’s campaign against homosexuals). As states adopted anti-SSM policies, we can see a regional pattern develop over the ten-year period. However, by the time the last
three states (Kansas, New Hampshire and Indiana) passed initiatives in 1988-89, the issue had faded back into the policy stream for both the public and for the LGBT community.

A second wave of anti-SSM laws coincided with the passage of the Defense of Marriage Act passed in 1996, inspired by state court actions in the *Baehr v. Levin* case and later by *Brause v. Bureau of Statistics* in which the state courts affirmed the rights of gay and lesbian couples to be granted marriage licenses (see Appendix H for a comprehensive list of court cases filed on behalf of lesbian and gay couples from 1970 to 2011). Figure 4.5 shows the diffusion of anti-SSM laws during this period. Some of the original states highlighted in Figure 4.4 reenacted their statutes and/or enacted constitutional amendments so that they would not have to recognize marriage performed in other states.

Figure 4.6 shows the diffusion of mini-DOMAs during the third wave of state legislation banning same-sex marriage from 2000-2010. The 13 light green states are states that passed new legislation and the darker green are states that reenacted or revised current laws. The purple states are states that had preexisting laws on the books that were enacted during the first and/or second wave. It must be noted that the 18 states that revised current laws actually passed constitutional amendments banning same-sex
marriages in their states. The purpose of the constitutional amendments was to make it more difficult for a legislative body to reverse the law and to thwart legal challenges to it. Also, a number of the states went far beyond the definition of marriage as that of a man and women and sought to ban any legal recognition of homosexual relationships, thus making civil unions and domestic partnerships also illegal in those states.

The nine white states are those states that either have laws affirming the rights of homosexuals to legally marry (Connecticut, Iowa, New York, Vermont, Massachusetts and New Hampshire), or states that currently have no laws either for or against same-sex marriage on their books (Rhode Island, New Mexico and New Jersey).54

Comparing SSM and IRM Policy Diffusion

Francis Beckwith (2010) argues that one cannot draw a comparative analogy between anti-miscegenation laws and anti-same-sex marriage laws because no contextual analysis can be made.55 In reviewing the diffusion of anti-miscegenation laws and same-sex marriage laws, however, it must be noted that similarities do exist. These similarities include: 1) the political and social rhetoric used to deny both groups the legal right to marry; and 2) the ways in which the laws diffused throughout the country. As noted

Figure 4.6 Diffusion of State Defense of Marriage Laws 2000-2011
earlier, we see that state policies that banned both interracial marriage and same-sex marriage diffused predominantly in the Western/Midwestern part of the country during the first and second waves. In addition, the third waves of legislation for both centered itself in the Southern region of the country. The comparative analysis also reveals that states that border each other have similar policy adoption patterns—only a few states in each of the diagrams resisted adopting a policy similar to the states bordering them (see Ohio and Indiana in Figure 4.1, and New Mexico in Figure 4.2). Additionally, we readily notice that the block of Southern and Southeastern states on both maps appear to have similar attitudes about interracial and same-sex marriage. In the first diagram, Southern and Southeastern states represent a cohesive group of states that had miscegenation laws on the books longer than any other region of states. It was also this block of states that was most affected by the Supreme Court’s 1967 ruling in *Love v. Virginia* because the decision forcing these states to remove anti-miscegenation laws challenged long-held cultural, social, and legal beliefs (Romano 2003).

We also see a clustering of Southern and Southeastern states with expanded constitutional amendments—meaning that not only did these states pass Constitutional Amendments banning same-sex couples from marrying they also added language that denounced any kind of legal recognition for homosexual relationships. Again, this is a reflection of long-held beliefs of states, that are within the area of the nation that is known as the Bible belt. What is most interesting here, however, is that 12 of the South and Southeastern states—Alabama, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Carolina, Tennessee, Texas, Virginia—all passed Constitutional Amendments during the 2004-06 election cycles (HRC.com). Thus, it can
be hypothesized that a regional effect among the Southern states did exist as it pertained to miscegenation, and that one also appears to have occurred in the twenty-first century in regards to same-sex marriage.

Where the laws differ in their application was that few states passed constitutional amendments barring interracial couples from marrying. Only six states in the union actually amended their state constitution to prevent black and white Americans from marrying. However, almost two-thirds of the states (31) have amended their constitutions to prevent same-sex unions. Another distinct difference between the diffusion of policies was the type of statutes passed. Of the 30 states that had statutes during the 20th century, 17 had expanded clauses that also sought to punish the functionary who performed the marriage if they knowingly performed ceremonies for interracial couples (see Appendix G for outline of state punishments). Depending on the state, functionaries could receive a fine between $100 to $1000 and/or a jail sentence of three months to a year. This was not true for same-sex marriages. No clauses exist in the statues that seek to punish the functionaries. This absence of legal punishments may be one reason why a handful of individuals in 2004 performed marriage ceremonies for over 7000 gay men and lesbian couples.

Though many have reasonably argued that sex between the races was at the heart of the anti-miscegenation, it cannot be readily argued that this is what has driven the anti-SSM laws. A number of the states that implemented anti-IRM laws also banned sex between the races; however, they were unable to do this in regards to same-sex marriage. One reason for this is was that gay men and lesbians had already won a hard fought 30-year long battle to have their sexual lives decriminalized in most of the 50 states. In 2003,
the Supreme Court ruling in Lawrence v. Texas (539 U.S.123 S.Ct. 2472 [2003]) finally struck down the few remaining state laws that criminalized homosexual sex between consenting adults. As a consequence, states could not use “sex” per se as a rationale to prevent marriage between same-sex couples as was done with interracial marriage, though many believe that it is the notion of sex that prevents most Americans from supporting such marriages.

One of the most obvious differences in the diffusion of the two anti-marriage laws is the speed with which they traveled through the states. If we look at passage of anti-IRM statutes throughout the country, we see almost 100 years between the first and last laws being passed to prevent black and white Americans from marrying. In relation to same-sex marriage, we see barely 30 years. Not only is the time span shorter but the number of states involved is higher. Only two states—New Mexico and Rhode Island—failed to pass either statutes or a constitutional amendment to prevent same-sex marriage; however, New Mexico did agree with the intent of DOMA in ruling that homosexuals could not marry in the state regardless of the absence of such laws. This was not true in the case of modern anti-miscegenation laws. Most Northeastern states failed to involve themselves in the movement to outlaw interracial relationships.

CONCLUSION

This review of the diffusion of IRM and SSM laws suggests that similarities do exist among these two anti-marriage policies. In particular, it has been noted that the laws seems to have diffused in a similar fashion in that neighboring states located in the same regional areas of the country appeared to work in parallel with each other in passage of
the laws. Additionally, we noted that Southern and Southeastern states appear to have similar attitudes about interracial and same-sex marriage. These states not only banned these types of marriages but also added penalties to punish the individual performing the marriage ceremony.

What this research did not explore was what role political actors may have played in the diffusion of these policies. Kingdon (2000) and Mintrom (1997) suggest that policy entrepreneurs play a major role in guiding policy innovations and their diffusions; thus, policy entrepreneurs are integral to the diffusion process. To further explore how and why certain states acted in certain ways in regards to marriage policy, we must look at influencing actors. The next chapter will explore how the actions of policy entrepreneurs influence diffusion of policy. In particular, it will focus on how local politicians affected the diffusion of same-sex marriage policies in modern times.
CHAPTER FIVE
OUTLIERS: LOCAL POLICY ENTREPRENEURS ACTING IN FAVOR OF SAME-SEX MARRIAGE

“There is a lawmaking process in this nation, and it does not include elected officials picking and choosing the laws with which they agree.”
Editorial Opinion, Amarillo News

If we’re not willing to make these kinds of decisions, we have no business running for public office.”
Diane Linn—Former Chair, Multnomah County Commission

INTRODUCTION

Walker (1969; 1972) writes that “the actions of other states are sometimes key factors in prompting reluctant politicians to accept controversial programs” (p. 890). He argues that once a policy or program has
been adopted by a large number of states it may become recognized as a legitimate state responsibility, something which all states ought to have. When this happens it becomes extremely difficult for state decision makers to resist even the weakest kinds of demands to institute the program for fear of arousing public suspicions about their good intentions; once a program [policy] has gained the stamp of legitimacy, it has a momentum of its own, (P. 890).

This assessment by Walker regarding the impetus for the politicians to act in sync with the political status quo appears to be true in regards to both political and policy stances on interracial and same-sex marriage. One state seemed to follow another when passing laws that limited the ability of black and white Americans and then gay and lesbian Americans, to marry.

The unquestioned and unprecedented speed by which DOMA was passed and the rapid action by several states to pass their own versions of DOMA suggest that politicians at the time were worried about what the public would think if they did not address what
certainly must be a legitimate state responsibility to protect traditional marriage. As the number of mini-DOMAs in the country escalated, the legitimacy of the policy appeared to be self-evident. State and local politicians, in general, failed to question the policy and only a handful of states resisted the national trend to codify marriage as being between a man and a woman. The fact that so many (85,000 municipalities) actively or passively supported the tenets of DOMA, and the laws themselves, makes us wonder what would cause a handful of local politicians to break from the status quo. What factors would lead one to take on a nation and challenge the political and social “legitimacy” of protecting traditional marriage? This chapter will explore the role that policy entrepreneurs played in the diffusion of innovative policy action challenging the status quos quick acceptance of anti-same-sex marriage policy. It will focus on a handful of “outliers,” local officials who, during the winter of 2004, took on a nation, and helped set the stage for a “new” wave of same-sex marriage policies in the United States. In particular, it will investigate the influence these local officials had in promoting the diffusion of radical action in favor of same-sex marriage during this point in time.

In focusing on these outliers and their actions, this part of the study seeks to discover: 1) What led to and/or influenced these policy entrepreneurs to act in favor of same-sex marriage instead of supporting the status quo?; 2) Were there similarities between the actors and the localities they represented that may have predisposed them to “like” actions?; 3) To what degree were their actions influenced by the LGBT community and the SSM movement?; 4) To what degree were these policy entrepreneurs influencing the other?; 5) What function did political “windows of opportunity” play in the initial diffusion of innovative policy practices by these actors; and 6) What were the personal
consequences, if any, of their actions? In seeking to answer these questions, I hope to reveal how challenges to “legitimized” social and political policies can instigate change as a result of entrepreneurial action of local government officials.

In order to place the actions of these actors in a theoretical framework I will be use Sharp’s (2005a, 2005b), and Deleon and Naffs’ (2004) explanatory models of unconventional communities to explore if there are demographic characteristics of the political subcultures of each of the localities that may have predisposed their representatives to act in favor of same-sex marriage. I will also use Sharp’s (2002) topology of avenues of decision making for local officials to determine how the actors responded when faced with this contentious moralistic social issue. Use of these models enables me to use an investigatory approach that allows for a systematic assessment of the actors and their actions based on contrasts and comparisons.

**Conventional versus Unconventional Localities**

In recent years, “a number of scholars writing from different perspectives have identified certain characteristics of local environments that tend to produce political cultures most conducive to social movements, economic innovation, and progressive reform” (Deleon and Naff 2004:694-695). Rosdil (1991), Sharp (2005a, 2005b), Deleon and Naff (2004) believe that these characteristics, which include social diversity, nontraditional family structures and gender roles, the presence and acceptance of gay men and lesbians, a low level of religious traditionalism, and high levels of income and education, reflect the emergence of a new political culture (NPC) separate from the political culture often described in Elazar’s works. They contend that this new political
culture both reflects and influences the point of view of the community, in general, and often shows itself as being less conservative, more liberal in nature and more prone to challenging the status quo and social norms. Communities identified as having this new political culture are therefore categorized as unconventional because of their innovative policy action and break from tradition.

Sharp (2005a, 2005b) asserts that new political cultures in localities can be identified through demographic trends composed of six attributes—percentage of women in the workforce, percentage of college graduates age 25 or older, size of the LGBT population, percentage of persons living in non-traditional family households, percentage of individuals not adhering to a church, and the percentage of managerial/professional/high-tech/educational workers. She believes that these demographic indicators can help us determine if a community is unconventional or conventional (traditional) in nature and thus can help us anticipate its reaction to moralistic issues.

Deleon and Naff (2004), Rosdil (1991), and Sharp (2005a, 2005b) rationalize the use of these particular demographic characteristics to build their unconventional community models based on the historical linkage between each of these attributes and progressive and/or liberal views in American society. Deleon and Naff (2004) write that two of the demographic indicators—education, and occupation—are “consistently linked to more liberal views and higher levels of political participation” (p. 693). Sharp (2005b) notes women tend to have a more liberal point of view due to their changing role in American society and the rise of single parent households. Deleon and Naff support this contention by noting that women across “many demographic groups, including those
defined by age, religion, region, social class, marital status, and educational attainment...tended to vote more often for Democratic candidates” (p. 692), who tend to represent more liberal social views. The presence and acceptance of LGBT persons in a community is also another factor that identifies individuals and communities as being progressive and more liberal leaning (see Florida’s Gay Index 2002). Religion also factors into the demographic indicator model because of its growing influence on Americans’ political attitudes. Deleon and Naff posit that “in terms of ideology, religiosity is often correlated with political conservatism, especially on social issues” with “evangelical fundamentalists...among the most conservative and politically active groups in the country” (p. 694). Therefore, level of affiliation with a religious group helps distinguish communities as being conventional or unconventional. Florida (2002) suggests that a “creative class,” consisting of professionals in science and engineering, architecture and design, education, arts, music and entertainment, business, finance, law, and health-related specialties, helps produce new ideas, technology, or creative content and engage in complex problem solving in a community. Their presence enables communities to think creatively and also helps foster economic innovation and growth in the locality.

Sharp argues that political subcultures can influence local officials’ political dealings with morality issues and that the nature of these political cultures—conventional or unconventional—can provide us with hints about how local officials will act when faced with morally charged issues. She reasons that officials in communities identified as unconventional may be predisposed to act more favorably toward progressive, left leaning issues such as LGBT rights, pornography, and abortion because these
communities tend to be “innovative” local political cultures. Conversely, she argues that officials in communities identified as status quo keepers, are more likely to behave in ways that are “consistent with traditional values and supportive of the conservative, ‘family values’ agenda promoted by conventional conservative forces” (2005a:14-15). Consequently, local officials in conventional communities are expected to act in hostile ways towards progressive issues such as LGBT rights and pornography, and in positive ways towards conservative elements such as anti-abortion protesters.

Using data from the 2000 Social Capital Benchmark Survey, Deleon and Naff were able to validate the relationship between demographic characteristics and the conventional/unconventional communities based topology of political culture. Sharp was able to confirm this validation in her follow-up study “Cities and Subcultures: Exploring Validity and Predicting Connections” (2005b). Utilizing Sharp’s (2005a, 2005b) and Deleon and Naff’s (2004) research findings as a basis for exploring the demographic characteristics of the six localities in this study, I can attempt to determine, through a visual assessment of the percentages of these demographic indicators, whether or not the localities in this study can be categorized as conventional or unconventional communities.

A distinction of conventional (status quo abiders) or unconventional (innovative status quo challengers) will allow me to theorize if the actions of the local actors are consistent with, or at odds with, the nature and cultural values associated with the communities they represented. In keeping with the contextual logic of Sharp’s (2005a) and Deleon and Naff’s (2004) models, I theorize that communities with higher than average representation in most or all of these six demographic indicators, as compared to
national averages during the time period, may indicate unconventional communities. A
designation of unconventional will aid me in determining if the political cultural make-up
of the community may have predisposed their local representative to act favorably
towards of same-sex marriage.

As discussed in Chapter Three, I used the national, city and county percentages
found in the 2000 Census data\textsuperscript{61} to conduct the analysis of local demographic indicators.
Table 5.1 shows the national percentages of the six demographic indicators used by Sharp
(2005a, 2005b) to identify unconventional communities. Thus, data for five of the
indicators—education, labor force (women/management, professional, technical,
education), household, same-sex couples—were collected from the 2000 U.S. Census.
Data for the last indicator, religious affiliation, came from the Association of Religious
Data Archives (ARDA).\textsuperscript{62} For this study, “affiliated with” is defined as all
“congregational ‘adherents’ including all full members, their children, and others who
regularly attend services or participate in the congregation” (ARDA).

\begin{table}[h]
\centering
\begin{tabular}{|l|c|}
\hline
Demographics & Percent \\
\hline
\textbf{Total Population} & 281,421,906 \\
\hline
\textbf{Education} & \\
\quad Percent Bachelor Degree or Higher, Age 25+ & 24.4 \\
\hline
\textbf{Households} & \\
\quad Percent Married w/ Children & 23.5 \\
\hline
\textbf{Labor Force} & \\
\quad Percent of Women in the Labor Workforce & 57.5 \\
\quad Percent Management, Professional, Technical, Educational & 33.6 \\
\hline
\textbf{Religious Affiliation} & \\
\quad Percent Not Affiliated with a Church* & 50.2 \\
\quad Percent Evangelicals & 28.2 \\
\hline
\textbf{Same-sex Households**} & 3.5 \\
\hline
\end{tabular}
\caption{Demographic Characteristics--United States}
\label{tab:demographics}
\end{table}

Source: U.S. Summary 2000: Census 2000 Profile and the Association for Religious Data Archives
*Reflects unadjusted figures of ARDA data
**2000 US Census estimated that there were 594,391 same-sex households in the United States. However the measurement
process has been called into question.
Because the Evangelical Church is the most visibly outspoken religious group, against homosexuality, in general, and same-sex marriage, in particular (Deleon and Naff 2004, Green 1996), this supporting indicator was added to Sharp’s six-indicator index in order to determine if the localities in question had a large vocal opposition that had the potential to affect the actions of the actors.\(^6\)3

In addition to looking at the localities through a demographic lens, I will also use the notion of “community image” to determine how local officials in this study viewed their own community during the time of the study. Sharp informs us that “local public officials reflect their subcultural milieu” and “they share its values and preferences” (Sharp 2005:14). Thus, public officials’ perceptions of the communities they represent are believed to be reflective of the political subculture of that community. Whether a community considers itself to be progressive, conservative or moderate often influences how it responds when challenged by a morally contentious policy issue. This community perception also potentially influences the decision-making process of community leaders when they make, support or deny a moral policy issue.

**THE LOCALITIES**

**Multnomah County, Oregon:** Multnomah County has the smallest geographic area of all the counties in the state of Oregon but houses the largest population in the state. Described as an urban-rural region with a central city as its hub, the county includes both the city of Portland, the most populous (656,000) and wealthiest city of the state on the west side, and the city of Gresham\(^6\)4 on the east side of the county (towards Mount Hood). Because of its size and location, Portland is home to the county seat and, as such,
it is suspected that the county commission is heavily influenced by the liberal political subculture of the city and not as much by the rural, less influential communities that make up the rest of the county.

Viewing Multnomah County through the demographic indicators that make up Sharp’s six-item index for unconventional cities we see that Multnomah County could easily be considered an unconventional locality. The high/above average percentage rates of four of the six indicators suggest that the county overall could lean toward a more progressive political culture. Table 5.2 reveals that: 1) 62 percent of women are in the labor force as compared to the national average of 57.5 percent; 2) the county has an educated community with over 30 percent of the population having a bachelor’s degree or higher; 3) over half of the county’s population was not affiliated with to a church; and 4) the county’s LGBT population of 16 percent larger than the national average. The only two statistics that are not showing above national average is the number of “creative” professionals in the workforce (11 percent), which is well below the national average of 30 percent and the number of persons living in a “traditional” family household (i.e., married with children) is slightly higher than the national average with 26.5 percent versus 23.5 percent for this time period.
Table 5.2 Demographic Characteristics--Multnomah County

<table>
<thead>
<tr>
<th>Demographics</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Population</strong></td>
<td>660,486</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Bachelor Degree or Higher, Age 25+</td>
<td>30.7</td>
</tr>
<tr>
<td><strong>Households</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Married w/ Children</td>
<td>26.5</td>
</tr>
<tr>
<td><strong>Labor Force</strong></td>
<td></td>
</tr>
<tr>
<td>Percent of Women in the Labor Workforce</td>
<td>62.8</td>
</tr>
<tr>
<td>Percent Management, Professional, Technical, Educational</td>
<td>11.4</td>
</tr>
<tr>
<td><strong>Religious Affiliation</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Not Affiliated with a Church</td>
<td>54.2</td>
</tr>
<tr>
<td>Percent Evangelicals</td>
<td>23.0</td>
</tr>
<tr>
<td><strong>Same-sex Households</strong></td>
<td>16.0</td>
</tr>
</tbody>
</table>

Source: U.S. Summary 2000. Census 2000 Profile and the Association for Religious Data Archives

To determine the theoretical assumption that Multnomah County fits the unconventional model designation, I will use the perception of the local actor, former Chair and Commissioner of Multnomah County, Diane Linn, to either support or negate Multnomah County as being unconventional. Chairwoman Linn, describes Multnomah County (and Portland, specifically) as “San Francisco lite” and credits Oregonians in general with being independent self-thinkers. In the interview, she noted that, “there’s a lot of progressive thought and incredible innovation,” and that “we were on the forefront of both women’s rights and gay-lesbian rights in so many ways.” Her description of her county and community (at large) as being progressive and forward-thinking suggests that she viewed her community as nontraditional. This, perception of the community by its local representatives, combined with the fact that Multnomah County had instituted a domestic partnership benefits policy and had nondiscrimination language regarding sexual orientation in its County Charter, further supports the contention that Multnomah County can be categorized as unconventional and, therefore, predisposed to act in favor of same-sex marriage.
San Francisco, California: Fondly known as the “City by the Bay” by most Californians, San Francisco has been at the cutting edge of socio-cultural advancements in the United States for most of its modern history. During the heydays of the 1960s, the city by the bay became known as the “city of love” as the socio-cultural wars of the 1960s turned the city into a haven for a burgeoning counterculture that openly challenged the status quo. As home to several progressive and liberal social movements (e.g., anti-war movement, women’s movement), it was natural for San Francisco to emerge as the West Coast’s center for the LGBT movement during the early 1970s. The centralization of thousands of gays and lesbians in the city at the end of World War II helped build an active and strong LGBT movement on the West Coast that sought to be at the forefront of LGBT politics. Thus, it was not unusual that a newly elected mayor, heavily supported by the San Francisco LGBT community, would seek to give gays and lesbians the same rights as heterosexuals to marry in this city of love.

Born and raised in San Francisco, Gavin Newsom saw San Francisco as unique in that he was the only mayor of a county in the United States. The city/county distinction of San Francisco gives the mayor broader power than mayors in traditional cities. Newsom believes that San Francisco’s uniqueness also went beyond the municipal construction of the city/county and is reflected in the innovative spirit of the city and its willingness to take social risks. In a television interview with The Commonwealth Club in 2011, Newsom stated that:

People love to mock and people love to mimic San Francisco because we are on the leading and cutting edge…I can go through a litany of issues where San Francisco seemed on the extreme but now we are part of the mainstream. And that is the spirit of our city…The genius of our city, the spirit of our city is about always being audacious, being bold, and stretching, stretch goals. We do not always reach them, but at least we
have the power and purpose of attempting to try new innovative things. It’s the spirit of our city that goes back to our founding 150 years ago.

Newsom defended the open, audacious boldness of his city, its historical actions to challenge the status quo, and its progressive and liberal nature in a debate on the Larry King Show (2008). When confronted by conservative guest speaker Reverend John MacArthur about his stance on same-sex marriage, Newsom retorted that he is “proud to represent a city that has diverse points of view, open points of view,” a city “that doesn’t believe in discrimination, that has evolved from the old construct,” that has “held back society.” Based on his defense of his city, and the historical perception of the city as being socially progressive and politically left, we can assume that San Francisco readily fits the unconventional community designation.

If we look at the demographic characteristics that make up San Francisco’s political community (see Table 5.3) we see that San Francisco has a well below average number of traditional family households with only 12.2 percent of its families being married with children. In contrast, we see an extremely high percentage of same-sex households (36.5 percent). We also see that San Francisco has a higher than average percentage of women in the workforce, with 61 percent of the female population working outside the home; and the city/county seems to be above the national average with respect of the percent that does not affiliate with or adhere to a Church (58.1 percent). These percentages, along with the fact that San Francisco was the first government in the country to have a domestic partner policy and also to incorporate nondiscriminatory language regarding sexual orientation in its city/county charter lends support to the designation of San Francisco as an unconventional community.
Table 5.3 Demographic Characteristics--San Francisco

<table>
<thead>
<tr>
<th>Total Population</th>
<th>776,733</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Bachelor Degree or Higher, Age 25+</td>
<td>24.4</td>
</tr>
<tr>
<td><strong>Households</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Married w/ Children</td>
<td>12.2</td>
</tr>
<tr>
<td><strong>Labor Force</strong></td>
<td></td>
</tr>
<tr>
<td>Percent of Women in the Labor Workforce</td>
<td>61.2</td>
</tr>
<tr>
<td>Percent Management, Professional, Technical, Educational</td>
<td>19.3</td>
</tr>
<tr>
<td><strong>Religious Affiliation</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Not Affiliated with a Church</td>
<td>58.1</td>
</tr>
<tr>
<td>Percent Evangelicals</td>
<td>8.0</td>
</tr>
<tr>
<td><strong>Same-sex Households</strong></td>
<td>36.5</td>
</tr>
</tbody>
</table>

Source: U.S. Summary 2000: Census 2000 Profile and the Association for Religious Data Archives

Sandoval County, New Mexico: Sandoval County sits on the outskirts of Albuquerque, New Mexico, one of the largest cities in the state (housing almost 25 percent of the population). The county seat resides in the small town of Bernalillo less than an hour away from the metropolis. Based on its demographic characteristics Sandoval County does not present itself as either a progressive or conservative county (see Table 5.4). Almost a quarter of the population has a bachelor’s degree or higher (24.8) which is almost the national average. The high incidence of traditional families (38.6 percent: the largest percentage in the study) and the slightly below average of women in the workforce (56.7 percent) suggest a family value leaning often associated with a conservative or status quo community. However, these positive status quo demographics are tempered by the fact that most county residents do not affiliate with a religious institution, 53.1 percent, which is above national average; and there appears to be as many self-identified Evangelicals in the county as there are lesbian and gay households (both at about 11 percent of the population). Additionally, the percentage of professional/technical workers is a little over 10 percent (10.4). Even though the county voted Republican during the 2004 presidential election, these conflicting demographics
suggest that the county is not an ultra-conservative stronghold, nor does it appear to be a progressive liberal one.

Table 5.4 Demographic Characteristics--Sandoval County

<table>
<thead>
<tr>
<th>Total Population</th>
<th>89,908</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Bachelor Degree or Higher, Age 25+</td>
<td>24.8</td>
</tr>
<tr>
<td><strong>Households</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Married w/Children</td>
<td>38.6</td>
</tr>
<tr>
<td><strong>Labor Force</strong></td>
<td></td>
</tr>
<tr>
<td>Percent of Women in the Labor Workforce</td>
<td>56.7</td>
</tr>
<tr>
<td>Percent Management, Professional, Technical, Educational</td>
<td>10.4</td>
</tr>
<tr>
<td><strong>Religious Affiliation</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Not Affiliated with a Church</td>
<td>53.1</td>
</tr>
<tr>
<td>Percent Evangelicals</td>
<td>11.1</td>
</tr>
<tr>
<td><strong>Same-sex Households</strong></td>
<td>11.6</td>
</tr>
</tbody>
</table>

Source: U.S. Summary 2000: Census 2000 Profile and the Association for Religious Data Archives

**Asbury Park, New Jersey:** A popular haven for New York weekenders in the 1930s to 1950s, Asbury Park fell as a result of urban decay during the racial uprisings that gripped the coastal city in the early 1970s. On the edge of financial ruin less than 10 years prior, Asbury Park was in the midst of an economic revival in 2004. The City Council, made up of an ethnically diverse membership, was one of the few city councils in New Jersey that had openly gay members during the time period in question. The demographic make-up of the city (see Table 5.5) reflected a slightly below average percent of women in the workforce with (53 percent). Because it is a coastal vacation resort the labor force is dominated by unskilled labor. This is reflected in the population of professional workers that is well below national average at 21 percent. In addition to a lower than average professional workforce, the educational attainment of its citizenry is well below the national average at 7.7 percent holding a Bachelor’s degree or higher. What is interesting to note is that while 9.7 percent of the population is married with children, the extremely high incidence of citizens affiliated with a Church (over 70
percent) in the county suggests that Asbury Park could have an underlying conservative, family value leaning. The low incidence of married families with children and the high incidence of religious affiliation may be related to the large population of black Americans who live in the town. Strong religious identity and low marriage rates are characteristic of this ethnic population in the United States.57

<table>
<thead>
<tr>
<th>Table 5.5 Demographic Characteristics--Asbury Park</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Population</strong></td>
</tr>
<tr>
<td><strong>Education</strong></td>
</tr>
<tr>
<td>Percent Bachelor Degree or Higher, Age 25+</td>
</tr>
<tr>
<td><strong>Households</strong></td>
</tr>
<tr>
<td>Percent Married w/ Children</td>
</tr>
<tr>
<td><strong>Labor Force</strong></td>
</tr>
<tr>
<td>Percent of Women in the Labor Workforce</td>
</tr>
<tr>
<td>Percent Management, Professional, Technical, Educational</td>
</tr>
<tr>
<td><strong>Religious Affiliation</strong></td>
</tr>
<tr>
<td>Percent Not Affiliated with a Church</td>
</tr>
<tr>
<td>Percent Evangelical</td>
</tr>
<tr>
<td><strong>Same-sex Households</strong></td>
</tr>
<tr>
<td><strong>Source</strong>: U.S. Summary 2000: Census 2000 Profile and the Association for Religious Data Archives</td>
</tr>
</tbody>
</table>

While the demographic characteristics may suggest otherwise, Asbury Park is thought of as a liberal, progressive community by the city council members and other city officials interviewed for this study. John Loffredo, a member of the City Council, describes Asbury Park as being “a very different town, very eclectic.” He says that “people are pretty tolerant of each other because it is so different here.” The Deputy Register notes that “People want to move here...you have every ethnic group, you have every religion...There’s the wealthy, the very poor, the nuts, the criminals, halfway houses. We embrace everybody...And we’re a teeny town.” Deputy Mayor Bruno, who was born and raised in Asbury Park, remembers a town that was ahead of the music scene (Bruce Springsteen and Bon Jovi both played in Asbury Park in the early days of their careers). The Deputy Mayor said, “I’ve always called Asbury Park a mini New York City
because we have all the problems of the big city, you know, with crime and drugs and all that… and we have all walks of life in Asbury Park. It’s very diverse.” However, even though town representatives see their community as diverse and tolerant, they readily cautioned that this outward diversity can mask a conservative undercurrent not only in the town but in the state of New Jersey, overall.

**Ithaca, New York:** Surrounded by hills cut by beautiful gorges and waterfalls, Ithaca, New York was named by the *Advocate* (2007) as one of the best places for lesbians and gay men to live. A small college town nestled at the foot of a 40-mile lake that is one of the deepest lakes in the Finger Lakes area, the town boasts a population of roughly 30,000 people. According to the 2000 U.S Census, Ithaca had almost twice the national average of individuals 25 or older with a bachelor’s degree or higher (57.5 percent). It also boasts an extremely talented and creative professional workforce with over 53.8 percent of the population in management, professional, educational or technical professions. Based on this workforce, it is no surprise that the percentage of inhabitants of Ithaca who are affiliated with a Church is fairly low. With 70.9 percent of the town’s population not affiliated with a religious institution, it can safely be hypothesized that Ithaca is not a traditional family value oriented community. However, there is higher than average population of Evangelicals in Tompkins County where Ithaca is located. The higher than average population of Evangelicals is in stark contrast to the small percentage of gay men and lesbians living in the town (a little more than 1 percent of the population identified itself as a LGBT household in the 2000 census. However, this percentage is suspect because of methodology used by the census to identify LGBT households).
Mayor Peterson describes Ithaca as a beautiful little city that is heavily influenced by education. Because it is the home to Cornell University and Ithaca College, the population of the small town goes from 30,000 to upwards of 50,000 people in the community when we add the students. When asked about the socio/political leaning of her community, the Mayor proudly noted that:

We are a very liberal community. We have a large population that supports a lot of liberal causes. We are a community against the Patriot Act by votes from our city council and against the war in Iraq by vote of our city council. We’ve just became a sanctuary – a city for veterans. In fact, we just had an AWOL veteran come to our city council at a meeting this month because he felt comfortable coming to Ithaca. We declared a sanctuary. Then he turned himself into Fort Drum the next morning. So we are known for some forward-thinking public policy. If we really get annoyed at Berkeley, or California gets ahead of us on something, we want to get right up there with the West coast cities on some of these forward-thinking policies.

Based on the Mayor’s description of her city and its innovative policies, the high level of in three of the demographic indicators, along with the fact that Ithaca had instituted both a domestic partnership policy and had language in the city charter banning discrimination based on sexual orientation, it is reasonable to assume that Ithaca can be categorized as an unconventional locality.
New Paltz, New York: New Paltz is a small college town located due north of New York City. The town’s population is the smallest of all the localities in the study, with a little less than 13,000 permanent residents. The number of women in the town’s workforce is slightly higher than national average during this time period, and the number of traditional families in the town is well below the national average at 18.9 percent. In spite of the town being host to one of the state’s regional colleges, State University New York--New Paltz, the education level of the town is only slightly higher than the national average. Given that it higher than average percentage of professional workers, the overall demographic profile implies that New Paltz may house a more liberal population than other towns in Ulster County.

Table 5.7 Demographic Characteristics--New Paltz

<table>
<thead>
<tr>
<th>Total Population</th>
<th>12,830</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Education</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Bachelor Degree or Higher, Age 25+</td>
<td>25.0</td>
</tr>
<tr>
<td><strong>Households</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Married w/ Children</td>
<td>18.9</td>
</tr>
<tr>
<td><strong>Labor Force</strong></td>
<td></td>
</tr>
<tr>
<td>Percent of Women in the Labor Workforce</td>
<td>58.6</td>
</tr>
<tr>
<td>Percent Management, Professional, Technical, Educational</td>
<td>41.2</td>
</tr>
<tr>
<td><strong>Religious Affiliation</strong></td>
<td></td>
</tr>
<tr>
<td>Percent Not Affiliated with a Church</td>
<td>43.3</td>
</tr>
<tr>
<td>Percent Evangelical</td>
<td>2.7</td>
</tr>
<tr>
<td><strong>Same-sex Households</strong></td>
<td>0.5</td>
</tr>
</tbody>
</table>

Source: U.S. Summary 2000: Census 2000 Profile and the Association for Religious Data Archives

Former Mayor Jason West perceives his hometown of New Paltz as a cautiously progressive community. West states that,

It’s a progressive town, but it’s not like Madison, Wisconsin or San Francisco, where there’s a long tradition of it. It was kind of one party rule until the early 90s when there was more and more influx of people from New York City. So the party registration map heads towards the Democrats and, even then, the Democrats were not – there are a lot of progressives, but there’s not a lot of progressive policy that comes out. So you know, you have more conservative towns around passing things like women’s protection laws that we can’t seem to get passed in New Paltz
because there is a very vocal kind of right – not right wing Christian coalition – but the old school, Rockefeller Republicans, private property, free enterprise…Not the kind of homophobic racist strain of right wing.

Based on West’s perception of New Paltz, it appears that the town may perceive itself as liberal because of its Democrat party leaning, but that it does not generally act in a socially progressive manner. New Paltz did not have a domestic partner registry, nor did the city charter have nondiscrimination language in regards to sexual orientation. So it may be safe to categorize the town as being status quo maintainers, but not “traditional” conservative status quo maintainers.

This visual comparison of the demographic characteristics of the localities and the perceptions of the local officials provide a basic indicator of whether the actors were supported by a new political cultural that would allow or even encourage rebellious action against the status quo. In three of the localities—Multnomah County, San Francisco, and Ithaca—the designation of “unconventional” appears to fit. It is inconclusive, however, as to whether the other three entities can be labeled as truly “conventional” or “unconventional” based on the information gathered for this study. Further factors would have to be considered.

**IMPETUS FOR ACTION**

Daniel Elazar (2002) contends that, “Americans have had a long, complex, and usually positive relationship to their local communities and local self-government system” (p.xiii). One of the reasons why this may be true is that citizens feel their voices are heard and their concerns more readily addressed at the local level. It may also be that citizens see their local representatives are a reflection of the community. The six actors
who make up this study were long-time residents of their communities and thus could be seen as reflecting those they served. Half of these individuals are both male, and half are female and all held positions of authority where they could act on behalf of the community. Reflecting the populations of communities they represented, the actors were white, heterosexuals whose ages ranged from the mid-20s to late 40s; and their relationship status at the time varied from single to divorce in process. All newly elected, they represented communities in states on both the East and West sides of the country.

The factors that drove these individuals to act in a similar manner when the rest of the country stood by and supported the status quo vary (see Table 5.7). Though each acted in a favorable way towards same-sex marriage and LGBT citizens, each official viewed his or her actions as mostly independent and free from other’s actions, and none credited the ruling of the Massachusetts Supreme Court as being the “main” impetus for their action. Although Bruno names New Paltz and California as being somewhat of a motivator the rest of the actors ascribe other influences. Mayor Jason West of New Paltz explains that it was a pre-existing plan that he had been working on that was pressed into action before its time. Diane Linn asserts that it was in direct response to the 2004 Presidential State of the Union address, and Victoria Dunlap says it was in response to a question asked of her office. Newsom credits his gut emotional reaction to the realization that George W. Bush intended on pushing for a constitutional amendment banning same-sex marriage as triggering his action. Mayor Carolyn Peterson of Ithaca, New York describes her impetus for action as a feeling a wave coming from the west and hitting the east that pushed her into making a move. And Deputy Mayor Bruno of Asbury Park
states that because of what was going on in California and New Paltz they knew they were next.

### Table 5.8 Influenced Decision to Act in Favor of Same-sex Marriage

<table>
<thead>
<tr>
<th>LOCAL ACTOR</th>
<th>INTERNAL/EXTERNAL</th>
<th>INFLUENCER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bruno</td>
<td>External</td>
<td>What was going on in California and New Paltz...we thought we were next. Asbury Park’s next. A lot of gays live here.</td>
</tr>
<tr>
<td>Dunlap</td>
<td>External</td>
<td>A constituent called up and asked if we did same-sex marriages, I told them I’d look into it.</td>
</tr>
<tr>
<td>Linn</td>
<td>External</td>
<td>The big kind of trigger of the whole thing, in my opinion, was the State of the Nation address by George W. Bush… He knowingly and, I think, capriciously flouted the issue of; by God, we’re just not going to let anyone other than a man and a woman marry in this country.</td>
</tr>
<tr>
<td>Newsom</td>
<td>External</td>
<td>I had a conversation with our Press Secretary back home right after the State of the Union and said we have to move on this.</td>
</tr>
<tr>
<td>Peterson</td>
<td>External</td>
<td>I liken it to a wave coming from the West rolling towards the East—starting with—Gavin Newsom performing marriages.</td>
</tr>
<tr>
<td>West</td>
<td>Internal</td>
<td>I’ve been a public advocate of the issue for years… knowing that the mayors can perform marriages, I started looking into this.</td>
</tr>
</tbody>
</table>

Although two of the actors (Bruno and Peterson) credit what was going on in other parts of the country as affecting them, there was no planned or concerted effort by these actors to change the status quo—if anything, it was quite the opposite. Based on the information gathered from personal interviews conducted with four of the actors—Bruno, Linn, Peterson and West—and third-party media interviews conducted with Newsom and Dunlap, it appears that no unified front existed among these actors or any other actors in cities and counties around the country to push same-sex marriage at the local level at this
time. According to those personally interviewed, there was no communication between them, and no open support for each other’s actions\(^6\). As a matter of fact, it appears that most of these officials never crossed paths. Diane Linn states that she met Gavin Newsom after the fact, and that he only opened up his schedule to spend fifteen minutes of time with her. James Bruno remembers meeting “a kid” (Jason West) at an awards ceremony hosted by the LGBT community, and Carolyn Peterson says she met Gavin Newsom years later at a conference on environmental sustainability and they never discussed the marriage issue. Jason West remembers Gavin calling to congratulate him but no further contact was made. Virginia Dunlap, the only Republican in the group, left politics and does not appear to have met or communicated with any of the others during or after her actions.

At no time since their actions in favor of same-sex marriage have all these individuals been in the same room to discuss their acts of defiance; Gavin Newsom has never conducted a personal interview to discuss his actions outside of normal press conferences and speaking engagements. He even sought to distance himself from the topic when he explored running for Governor of California in 2008. Based on this lack of personal contact and communication we can assume that these policy entrepreneurs did not collude in their actions. As such, it is necessary to explore structural factors that may have guided and/or directed their course of actions.

**TOPOLOGY OF ACTION**

In Chapter Two, I discussed Sharp’s (2002) topology of action to explain ways in which local officials may respond when faced with a controversial moral policy issue.
Sharp contends that actions by locally elected officials are either defending the acceptable legal practices of the status quo or challenging it through policy innovation. She believes a topology of action comprising six avenues, that range from least favorable to most favorable action, suggest different paths these local authorities can take in their decision-making process when pressured by activists on both sides of a moral issue. As noted in Chapter Two, when pressured, local officials may: 1) directly or indirectly try to repress collective action (repression); 2) take up policy demands of the activists according to their issue agenda status but not adopt the actions the activists want (non-responsiveness); 3) make efforts to avoid confrontation through symbolic gestures to defer, delay, or defuse activists’ claims (evasion); 4) take action that affirms the claims of those challenging the status quo (responsiveness); 5) short-circuit the usual avenues for deliberation and take “hasty” action in support of status quo challengers (hyperactive responsiveness); or 6) take the initiative to push morality issues onto the agenda in the absence of overt pressure by any constituency groups (entrepreneurial instigation).

The moral policy issue itself, the organization and political power of the interest groups acting for or against the issue, and the willingness of the actor to take political risks are all factors that influence which course of action a local official will take. In the case of these local officials, there is no one common action taken (see Table 5.8). Of the six avenues, we see that Responsiveness, Hyperactive-responsiveness and Entrepreneurial Instigation were the avenues of chosen by these officials. Two of the officials—Bruno and Dunlap—chose to be responsive. When asked by community constituents to act on their behalf, they took action following standard protocol. Two of the actors—Linn and Peterson—acted in a hyper-responsive manner by subverting the
normal decision making process and channels to act in favor of same-sex marriage. And the last two—Newsom and West—acted as an entrepreneurial instigators when they pushed the issue on to state and national agendas for the LGBT community.

### Table 5.9 Actors Topology of Action

<table>
<thead>
<tr>
<th>ACTOR</th>
<th>TYPE OF RESPONSE</th>
<th>ACTION TAKEN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bruno</td>
<td>Responsiveness</td>
<td>Followed established process/procedure per his position: sought permission by the Mayor; received legal opinion, acted in open concert with City Council Members and Deputy County Clerk</td>
</tr>
<tr>
<td>Dunlap</td>
<td>Responsiveness</td>
<td>Followed established process/procedure per her position: investigated question presented by constituent; consulted County Attorney followed legal advice.</td>
</tr>
<tr>
<td>Linn</td>
<td>Hyperactive</td>
<td>Acted in secret; circumvented normal process: did not bring to the full board—intentionally left conservative commissioner out of decision-making process; did not allow public comments</td>
</tr>
<tr>
<td></td>
<td>Responsiveness</td>
<td></td>
</tr>
<tr>
<td>Newsom</td>
<td>Entrepreneurial</td>
<td>Instructed City Clerk to issue “gender neutral” marriage licenses. Violated current state law. Issued licenses before his legal challenge could be considered by the state courts.</td>
</tr>
<tr>
<td>Peterson</td>
<td>Hyperactive</td>
<td>Circumvented normal process: Did not put vote to Council</td>
</tr>
<tr>
<td></td>
<td>Responsiveness</td>
<td></td>
</tr>
<tr>
<td>West</td>
<td>Entrepreneurial</td>
<td>Pushed issue onto the LGBT community, City Council, and City Attorney</td>
</tr>
<tr>
<td></td>
<td>Instigation</td>
<td></td>
</tr>
</tbody>
</table>

**Responsiveness**: Victoria Dunlap has stated that her involvement in the same-sex marriage debate came not out of a personal conviction in favor of same-sex marriage but was prompted by a public inquiry. According to Dunlap, “I had a person call and ask if we did perform same-sex marriages. And I said as of yet we had not but I would look into it. I had one of my staff members ask the county attorney, and he said we had to issue the licenses. We could not prohibit anyone based on sex” (Quoted in the Advocate 2004). Dunlap responded to the constituent request by announcing that she would begin issuing
marriage licenses to same-sex couples on February 20, 2004. Sixty-six marriage licenses were issued and twenty-five same-sex couples were able to marry before the state Attorney General issued an injunction to stop her from continuing to provide the licenses.

Bruno, on the other, hand responded to a request from the Deputy Register, who asked if he would be willing to perform a marriage ceremony for a well-known local gay couple. The couple had come into the recorder’s office and requested a marriage license. Not knowing what to do, the Deputy Register took the issue to the Mayor and some of the members of the City Council. When the Mayor abstained from doing the ceremony, the Deputy Register and gay City Council members asked Bruno, who in turn asked the Mayor for permission to conduct the ceremony. Bruno remembers that, “He (the mayor) didn’t think it was legal. I thought it was legal. I read it… and it didn’t say anything in the constitution about a man and a woman… so I went with it. I disagreed with the mayor.”

Like Dunlap, Bruno followed established protocols. He worked in concert with members of the City Council, the Deputy Register and the City Attorney to ensure that they followed established legal requirements, such as waiting the required three days after submission of the marriage license by the gay couple before performing the marriage ceremony. Also, public hearings had recently been held by the City Council in regards to passing a domestic partnership law within the town so the public already had a chance to weigh in not only on domestic partnerships but also on same-sex marriage. Thus, Bruno and others involved in this act of defiance were well within their purview to act as they did. Unfortunately, they were only able to solemnize one marriage before the state Attorney General threatened to have them arrested. To this day, the licensing fees
that were collected for another 20 marriage licenses from gay and lesbian couples and
sent to the state have not been returned to the town’s clerk or reimbursed to those who
requested the marriage license.

**Hyperactive Responsiveness**: When asked if any outside groups had influenced
their decision making, Peterson and Linn acknowledged that they had been responding to
the requests of status quo changers. Each acknowledged that they had been responding to
pressure being exerted on them by LGBT groups in their community—groups that had
supported each for election. Linn recalls being approached by the Executive Director of
Basic Rights Oregon (BRO) and its lobbyist, and being told

> We want to find out if you’re prepared to change policy here in
Multnomah County to allow same-sex couples to get marriage licenses
because you have the authority to do that, and let’s explain to you why.
And not only do you have the authority, but you have the responsibility
and you have a legal responsibility to not deny same-sex marriage licenses
to same-sex couples.

Faced with the threat of a possible lawsuit by the LGBT organization, Linn (along
with three other commissioners) believed that the only way that same-sex marriage would
come to Multnomah County was to handle the issue quickly and in secrecy. So she
intentionally short-circuited the process by leaving the fifth Commissioner out of the
decision-making process and failing to have public comments. Linn explains

> Not only did we not tell anyone else beyond a very, very close circle of
advisors at that point, but we didn’t tell the fifth commissioner because
this is what he would have done. He would have gone straight to the press
and said my colleagues are planning to allow same-sex couples to marry
and I can’t allow that. He would have stopped it cold. He’d have gone to
*The Oregonian* if we had had a public hearing. This is what I couldn’t get
my wonderful progressive friends in Oregon to understand. The reason
we did it under the radar was because not a single person would have been
able to marry in Multnomah County if we had not popped the decision
cold onto the community. And because we collaborated with Basic Rights
Oregon and they quietly lined up all of the couples to get in line that
morning. We orchestrated that subversive public policy decision so that we could catch everybody off guard. And that was the part that was the stake through my political heart with *The Oregonian*, with the press. They would never forgive me again. That was it. I’d always been very open with them, always had great public processes about everything. We didn’t sneeze in Portland without having public discussion about it. In this case, because I believed that if we could allow a group of same-sex couples to actually marry and celebrate that fact, that people would understand why we did it that way.

Peterson stated that she had started meeting with LGBT groups and the City Attorney to discuss same-sex marriage soon after Gavin Newsom began issuing marriage licenses and performing weddings in San Francisco. Though Peterson’s actions were considered less that radical (she collected marriage applications and forwarded them to New York State’s Attorney General for action), she is still viewed as acting in a hyperactive responsive manner because she did not follow the established decision-making process of her city. Peterson states,

The first decision was we’re not going to remain silent on this. We’re going to take a stand one way or the other. And the interesting thing to me is as I think back, is that I took that stand and did not pause to ask Common Council what they thought. I didn’t ask them to vote. I took a policy stand because it had to be done fairly quickly.

In taking a policy stand without the benefit of the whole council, which Peterson had described as fairly progressive, she circumvented the process and thus acted in a hyperactive responsive manner in deciding when and what course of action to take. In order to move quickly in support of this controversial issue, she circumvented the democratic process of her city council. Linn acted in a similar manner to Peterson, except her reasoning for acting in a hyperactive responsive manner stemmed from what she believed would be resistance to the policy initiative, not time.
Entrepreneurial Instigation: Gavin Newsom is credited with being the first public official to defy the Defense of Marriage Act. Days after the Massachusetts Supreme Court declared same-sex legal in the state, Newsom sent a letter to the County Clerk instructing her to start issuing “gender neutral” marriage licenses. Newsom had only been in office for 36 days and acted against the advice of his staff and Democratic pundits (Pickert 2009). His entrepreneurial policy instigation was driven by what he called his duty as the newly elected Mayor of San Francisco to uphold the constitution of the state of California. In his letter to the County Clerk (see Appendix B), Newsom wrote,

Pursuant to my sworn duty to uphold the California Constitution, including specifically its equal protection clause, I request that you determine what changes should be made to the forms and documents used to apply for and issue marriage licenses in order to provide marriage licenses on a nondiscriminatory basis, without regard to gender or sexual orientation.

What instigated his innovative policy action to issue marriage licenses to same-sex couples, Newsom admits, was his attendance at the national State of the Union address given by George W. Bush on January 20, 2004. Like Linn, Newsom was appalled by what he heard the President say that evening regarding people’s rights to marry in this country. Explaining his reasons for deciding to act in favor of same-sex marriage in an interview with Charlie Rose on March 25, 2004, Newsom stated,

No way did I imagine… that I would head out to Washington D.C., go to the State of the Union; listen to the president of the United States talk about the issue of marriage in such a way that really sparked a real sense of responsibility to do something.

He remembers sitting in the upper tiers in a room filled with supporters of the President and the Defense of Marriage Act and suddenly realizing that the President was
using the State of the Union address as a venue to show his support for a national constitutional amendment barring same-sex couples from marrying in the United States. Newsom remembers the emotional reaction he had to the President’s words that evening and how he viewed them as a call to action:

I turned the page in the speech, page 10: Defense of Marriage. Then I got it. People were jumping up and down and here I was sort of isolated, up on the tiers there, at the State of the Union, sitting down, quietly and pensively reflecting on the fact that the rest of the world is not like California, it’s not like San Francisco. And I felt a great sense of weight of obligation having just taken the oath of office weeks prior, to bear true faith, ―true faith‖ and allegiance to the constitution of the state of California and constitution of the United States. And it was at that moment, a real tipping point for me, that I felt the inevitability of the President’s support on the constitutional amendment.

I walked out of the capital with a great sense of expectation that perhaps, just in a modest way, that we could do something about it. And I called back to City Hall and I said tell me what other cities have done something on the issue of gay marriage; tell me what other cities have tried to advance nondiscrimination as it relates to same-sex marriage and, when I get back, let’s discuss the prospect of doing the same in San Francisco. Little did I know no one had ever done it, I was shocked. Shocked…really, in this country!

Newsom’s entrepreneurial actions resulted in over 4,000 same-sex couples from 46 states tying the knot in California before a state court halted the marriages. His actions put same-sex marriage “on the national political agenda and secured its place as one of the hottest topics of debate in election 2004 (Rose 2004a).

Similar to Newsom, Jason West was not approached by the LGBT community to take action and implement same-sex marriage on its behalf. Instead, West, who had been a long-time supporter of the issue, brought same-sex marriage to the attention of the LGBT community in New Paltz, New York. Jason stated,

I had run for the Green party candidate for the state legislature in 2000 and 2002. 2000 is when this issue first started coming up around us, and then I
think Vermont had just recently legalized civil unions. So I’m on the campaign trail in 2000, and people start asking, “What’s your position on this?” So I’ve been a public advocate of the issue for years. And so then I’m looking at – in addition to the basics of being mayor, potholes, water, sewer, what else can we do? What other leverage do we have to get progressive policies enacted? What are the parameters of what we can get done? And knowing that the mayors can perform marriages, I started looking into this. Campaigning, talking to the queer student union, they asked, “What are you going to do for us?” I said, “Well, I think we should do some gay marriages. I don’t know if it’s legal or not, but at the very least, we can have a little theater with it.” You know, do a little mock marriage ceremony to draw attention to the issue.

In bringing the issue to the forefront of policy issues in New Paltz and placing it on the political agenda, West acted as entrepreneurial instigator. In doing so, he inspired the LGBT community to organize into an active political force (where one had not existed before), and helped build a coalition of same-sex marriage supporters in Kingston County, New York. He remembers,

The marriages…were a galvanizing moment for the gay community and also the county to get organized. One person put it that you’ve got this young straight guy doing more for us than we’ve done for ourselves. One year later, they had the first pride parade in New Paltz, which I think, however many it is, six or seven years later, it’s been going every year. Within the year, the first LGBT community center opened in Kingston, which is the county seat about 20 minutes north of New Paltz, which now has a building and all sorts of programs.

**Windows of Opportunity**

Though the actors seem to downplay the significance of the Massachusetts court decision as being the integral motivating force behind their decision to act, it is evident that the court’s decision opened up a window of opportunity for these actors. It can be reasonably argued that the court’s decision provided a legal and political opportunity for these actors to pose a legal challenge to their own state constitution in their own unique ways. While a number of LGBT organizations were finding and preparing gay and
lesbian couples to act as plaintiffs in court cases to challenge the constitutionality of their state laws, these actors went far beyond the political comfort zone of this legal methodology and sped up the process by simply issuing the marriage licenses and making the state react to their policy actions. Instead of waiting for a case to wind its ways through the courts, they chose action over words and daring innovation over cautious incremental public policy. In doing so, it has been suggested that they helped change the course of same-sex marriage in the United States.\textsuperscript{70}

What is noteworthy is that, except for California, the states represented—Oregon, New Jersey, New Mexico, and New York—did not have statutes that defined marriage at the time. Like, Massachusetts, these four states lacked DOMA-like clauses in their constitution, and they did not have any have other statutory language that precluded gay and lesbian couples from marrying. It was the \textit{absence} of such language that appeared to encourage the actors in these four states to challenge social custom. As noted earlier, all of the actors reviewed the language of their state constitutions and sought legal opinion as to whether they had legal grounds on which to proceed. Chairwoman Linn described how the lack of constitutional language forbidding same-sex marriage compelled her and the other commissioners to proceed when faced with a probable lawsuit:

A woman named Betty Roberts...had spearheaded gender-neutral language in the Oregon constitution and, in fact, made the point that it was discriminatory to make references to gender or discriminate against people because of their gender. Therefore, on an extremely technical, legal level, if you’ve said to a man, you can’t marry a man because they’re a man, or to a woman, you can’t marry a woman because you’re a woman, technically under the Oregon constitution that’s illegal.

Now, that’s unique. Nowhere, I don’t think, any place, in any other state constitution was that exact language. Now, that ended up meaning absolutely nothing to the press or to anybody else, including the Attorney General or the Governor. They quickly ignored that. To me it meant
something because I grew up in that whole environment of taking those things seriously. The other part was that we had a high-profile court case called the Tanner decision, where a lesbian couple challenged Oregon Health and Science University, OHSU, around claiming that they were a protected class under the Oregon constitution and her partner should get benefits.

Hard-fought court case that the gay couple won, which set the precedent that in fact gay and lesbian couples were, quote-unquote, protected class. So, unique to Oregon, you had two components of the Oregon constitution that made it possible for the gay and lesbian community to threaten a lawsuit – not on the rest of the counties of Oregon because why would they go there – they’re gonna get stonewalled – but to the most progressive county of Oregon, and that would be Multnomah, where the heart of the gay and lesbian community. And they wanted access to this right.

We asked our lawyer at the county to produce a legal opinion telling us whether or not she agreed with their legal analysis and whether or not we would be putting Multnomah at risk to deny them and what would it mean if Basic Rights Oregon proceeded to sue the county. Well, her opinion came out in agreement with their position. A decent lawyer, hard worker, probably pretty progressive in her underlying values, looked at it straight-up and said, yeah, they can sue us, and I can’t promise you that we could win the case. So on a purely policy, legal level, at that moment, I also looked at them and said, do you two have any idea what this is going to mean? And they said, well, you know, it could be good.

Jason West, who had been researching the legality of same-sex marriage in New York State and planning same-sex marriage ceremonies long before the marriages began to take place in California, describes his reasoning and process for determining what he believed was his legal ability to act in favor of same-sex marriage. West states,

The gist of it is, when I first took office, it was one of the things I wanted to see if I could do. And so I asked the village attorney to look into whether it was legal in New York State, not knowing where to look in the law myself. What he came back with, basically, was I can’t find anything that either allows it or does not. So basically, there’s nothing that says you can’t. But realistically, we’re probably going to get sued if you do.

So we looked at the law, and New York is not a state that defines marriage as a union between a man and a woman. The defining statute for marriage in New York is simply a marriage is a contract between parties. There’s
no mention of gender whatsoever in the definition of marriage. They also have, the state legislature has actually made a list of marriages that are null and void. For instance, you can’t marry a minor.

You can’t marry a close relative. Someone who, I think one on the list is somebody who is mentally unable to understand the contract that they’re being a party to, so you can’t get married if you’re drunk or mentally disabled or something where you’re not able to understand what’s going on.

The legislature goes out of its way to say what’s not allowed. Define marriage as gender neutral already, so there’s nothing in there. But for New York and New York State, you need two things to be legally married. You need a marriage license issued by a town or city clerk, and you need the ceremony to be solemnized with the authority to do so; a mayor, a priest, a judge...basically a person who says...those magic words. “By the power invested in me, by the state of New York, I hereby declare you husband and wife,” or whatnot.

So you need both of those elements, but there’s this interesting clause that I found in New York law in the domestic relations law that says – I think it’s Article 3, Section 25 that says – if you don’t have a license, as long as your wedding is properly solemnized, you are legally married in New York State. However, the person officiating the marriage is then guilty of a misdemeanor, punishable by up to a year in jail and a $1,000 fine.

When the town clerk refused to issue marriage licenses, we looked at this law. The section says, you do not have to have a license as long as it is solemnized, and there is notice between the couples. However, I may get in trouble for this. And it makes sense. Basically, you don’t want to punish a newlywed couple for the priest not knowing what they have to do. Not that you need a license. So that was our legal justification that these are legal marriages.

There’s nothing in law that says you can’t be legally married. In fact, I believe it was after the Massachusetts Supreme Court decision the year before I did the marriages or maybe in the wake of Gavin Newsom, which was, I think, two or three weeks before me, then Governor Pataki instructed the state health commission who was in charge of vital records, like marriage licenses, and the state health commissioner sent a letter to every city and town clerk instructing them that it is illegal to issue marriage licenses to same sex couples. And he couldn’t find anything in the law, so what he said was that the reason it’s illegal is because on the marriage license, there is a spot for groom’s name and a spot for bride’s name. Therefore, marriage is in New York State is only between one man
and one woman. So same-sex couple, marriage is illegal...[because] it says it on the form.

Bruno and Peterson also consulted their city and county attorneys to determine their legal standing should they choose an affirmative course of action in favor of same-sex marriage. Like Linn and West, they were told by the legal authority of their municipality that the language in their state constitution did not prohibit them from issuing marriage licenses to gay and lesbian couples and/or solemnizing marriages.

Sandoval County Clerk Victoria Dunlap felt she too had a legal obligation to issue marriage licenses to same-sex couples in New Mexico. After reviewing the laws governing marriage in the state and seeking the advice of the County Attorney (who advised her that his research favored issuing marriage license to any adult couple who applied and, if she did not issue the license, she might be guilty of malfeasance), Dunlap said her “reading was that marriage is between two consenting adults—it doesn’t matter whether they’re male and male or female and female. That has nothing to do with it. It’s two consenting adults, so what I did was correct, and I think more of the rest of the country understands that. You know, there is no DOMA law here” (Quoted in McGivern 2005). Unfortunately for Dunlap, her legal advisor—the Sandoval County Attorney—worked at the behest of the County Commission in concert with the state in seeking the injunction order to stop her from moving forward on the issue. According to Dunlap’s attorney, the County Attorney failed to tell the Commission that he had given Dunlap the legal advice in the first place.

Dunlap also remembers trying to get other legal opinions before moving on, but she said that no one would talk to her. In an interview she conducted with Pinello (2006), Dunlap remembers:
I tried to make contacts with people that did know. I called the U.S. Attorney’s office. I contacted Josh Akers at the *Albuquerque Journal* and asked him if he could get ahold of the governor. I called a contact in the state senate...People weren’t responding to anything. It was almost like I had turned invisible. No one wanted to touch this (Quoted in Pinello 2005: 2).

Relying on her interpretation of the law and the legal advice of the County Attorney, Dunlap issued 64 marriage licenses before the State Attorney General’s injunction took hold. Initially, the injunction was a temporary stay and Dunlap went back to court to have the order removed so that she could continue issuing the marriage licenses to same-sex couples. Her request was, however, denied and a motion to file a permanent injunction was filed against her. Interestingly enough, “Dunlap’s same-sex marriage licenses were never invalidated because the matter was never litigated to its conclusion after the former Attorney General, Patricia Madrid, persuaded Dunlap to stop issuing the marriage licenses to same-sex couples’ (Sharpe 2010). Until this day, the marriages and licenses issued have never been voided in New Mexico.

It appears that Gavin Newsom was the only actor who was acting directly against a pre-existing statute that defined marriage as that between a man and a woman. As such, other actors did not see his actions as the same as theirs. Diane Linn did not believe that Newsom had the legal authority to pursue same-sex marriage, as she and the others did, because Proposition 22 had defined marriage in California and prohibited such marriages from taking place. She saw his actions as “civil disobedience.” However, Newsom, in his letter to the San Francisco County Clerk (see Appendix B), noted that he was upholding the equal protection clause of the California constitution and thus was acting with legal authority in his role as Mayor of San Francisco. Newsom articulated in that,
Upon taking the Oath of Office, becoming the Mayor of the City and County of San Francisco, I swore to uphold the Constitution of the State of California. Article I, Section 7, subdivision (a) of the California Constitution provides that “[a] person may not be . . . denied equal protection of the laws.” The California courts have interpreted the equal protection clause of the California Constitution to apply to lesbians and gay men and have suggested that laws that treat homosexuals differently from heterosexuals are suspect. The California courts have also stated that discrimination against gay men and lesbians is invidious. The California courts have held that gender discrimination is suspect and invidious as well.

Like those who he inspired with his bold act to launch same-sex marriages before Massachusetts could commence theirs, Mayor Newsom believed that he was well within his legal rights to do so. What Newsom deemed illegal and counter to state law was the Proposition 22 statute that defined marriage as that between a man and woman. He believed that this statute violated the equal protection clause in the constitution and, in doing so, excluded a portion of California’s citizenry from enjoying this right.

Carolyn Peterson was the only actor who did not face legal sanctions for her action. This may be because she chose not to actually perform the marriage or to even issue the licenses to same-sex couples. Instead, what Peterson did was instruct the city clerk to allow same-sex couples to apply for marriage licenses. These licenses were then forwarded to the New York State Attorney General for action. Though West would describe this as a “coward’s” way of handling the issue, it was Peterson’s actions that instigated a lawsuit against the state in an attempt to make New York take a stance on same-sex marriage. Though she and the LGBT community that supported her lost the case—the New York Supreme court ruled that same-sex marriage was illegal in New York—her forcing the issue on the courts put same-sex marriage on the state political
agenda and enabled others to pressure the legislature to eventually act in favor of same-sex marriages.

**CONSEQUENCES OF ACTIONS**

It is often believed that with every act to advance rights for disenfranchised groups, political actors often pay a price, either personally, politically, or both. It appears that this was true for these six policy entrepreneurs. All actors affirmed that they faced some type of personal repercussion for their actions (see Table. 5.9). Each actor described receiving hate mail and/or death threats, with Gavin Newsom receiving well over a 1000 death threats (Pickert 2009). As the first female elected Mayor of Ithaca, Mayor Peterson said the death threats and hate mail were a little more than disconcerting, and she and others involved had to actually think about their safety. Diane Linn stated that she had her home spray painted and vandalized, and Jason West stated he was physically assaulted in public by an angry constituent who shoved him and screamed in [his] face, “someone should fucking shoot you, you fucking faggot lover.”

Some of the personal actions taken against these policy entrepreneurs went beyond individual harassment to judicial punishment. Deputy Mayor Bruno and the Deputy Register of Asbury Park were threatened with arrest by the Attorney General of New Jersey for abusing the power of their positions. Jason West was arrested, had to post bail, and threatened with a trial for solemnizing 25 same-sex marriages. Judge Vincent Bradley, of the Ulster County Supreme Court, issued a temporary restraining order that was upgraded to a permanent order by Judge Michael Kavanagh. The permanent
restraining order sought to prevent West from ever conducting any type of marriages in the state of New York again.

<table>
<thead>
<tr>
<th>ACTOR</th>
<th>CONSEQUENCE OF ACTIONS (Positive)</th>
<th>CONSEQUENCE OF ACTIONS (Negative)</th>
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<tbody>
<tr>
<td>Bruno</td>
<td>There was a lot of positive feedback from people… Even from people I didn’t even think of, people I grew up with.</td>
<td>I got threatened. I got basically ordered by the Attorney General not to do any more or I’d be arrested.</td>
</tr>
<tr>
<td>Dunlap</td>
<td>I had priests, preachers, ministers, people calling me that said keep going, keep going, we’re standing behind you.</td>
<td>The State Attorney General had a judge issue an emergency injunction order preventing me from doing any more same-sex marriages.</td>
</tr>
<tr>
<td>Linn</td>
<td>I’ve never experienced higher highs …there was so much love and celebration, flowers, and parties going on all around the city.</td>
<td>I received death threats. Someone put graffiti on my house and there were paint stains on the front of the house.</td>
</tr>
<tr>
<td>Newsom</td>
<td>I was proud, I was honored to do that wedding (school teacher). What a gift.</td>
<td>Received over 1000 death threats.</td>
</tr>
<tr>
<td>Peterson</td>
<td>So I have a huge, huge, huge file of mostly – when I look down the subjects are “thank you,” “thanks,” “gay marriage, yes, please,” “thanks,” “gay marriage is yes.”</td>
<td>I would get letters that said, “To the devil of.” Things got very frightening for a female Mayor; I started worrying about my safety.</td>
</tr>
<tr>
<td>West</td>
<td>Mayors of DC, Philadelphia, San Francisco, LA, Al Sharpton called me. All these people were calling to offer congratulations and thanks</td>
<td>I got the occasional death threat. A far right kind of neo Nazi AM radio host called for me to be shot on national radio.</td>
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A few of the actors also faced personal lawsuits brought against them by conservative religious organizations who opposed same-sex marriage. Bruno remembers that a religious group filed a lawsuit against him and the Deputy Register on behalf of a town resident. Bruno’s feelings on the lawsuit still remained high years later, “It was
somebody who lived in Asbury Park on 8th Avenue…they used his name, and they filed some shit against me. It was a joke.” The suits were ultimately dropped but the stress of having to secure legal representation to fight outside forces placed an additional emotional burden on these actors.

In addition to personal repercussions, all but one actor (Peterson) felt they had suffered repercussions to their political careers because of their actions. Three of the actors—Dunlap, Linn, and West—lost their positions as a direct result of their actions. Each were soundly defeated in the next election cycle and attributed this defeat in part to them losing support from constituents and the political parties they represented as a consequence of acting out in support of same-sex marriage. Dunlap was censored by the state GOP. The Sandoval County Republican Party’s Committee Chairman said of Dunlap’s issuing of the licenses, “Other than assassination, all we can do is censure her” (Quoted in Pinello 2006:16) and “We just don’t want anything to do with her anymore. We’ve had a bellyful” (Amarillo Globe News 2004). Dunlap even fell under attack from President George W. Bush, who publically announced that one of his own, a Republican “county clerk in New Mexico has also issued marriage licenses to applicants of the same gender. And unless action is taken, we can expect more arbitrary court decisions, more litigation, more defiance of the law by local officials” (Quoted in McGivern 2005). In an interview with Alibi (2005), Victoria Dunlap had this to say about the political ramifications she faced:

People in my party disagreed with me. Yes, vehemently. And I could care less, because I heard ‘em scream on the phone before. And I thought, ‘they’re just closed-minded people. I don't care. I don't care what they think.’ I've got to care about the public. That's who I serve. I've got to care about doing the right thing for the public. I’m taking it back to what it’s all supposed to be about—the law.
Without support of the party and other political pundits, Dunlap lost her bid for the Republican nomination for District 4 Sandoval County Commission seat in the June 2004 primary.

### Table 5.11 Consequence of Actions on Political Career

<table>
<thead>
<tr>
<th>ACTOR</th>
<th>NEGATIVE EFFECT</th>
<th>CONSEQUENCE OF ACTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bruno</td>
<td>Yes</td>
<td>Well, a lot of people were against it. And I know that cost me voters, it cost me constituents.</td>
</tr>
<tr>
<td>Dunlap</td>
<td>Yes</td>
<td>I was censored by GOP. Lost my election.</td>
</tr>
<tr>
<td>Linn</td>
<td>Yes</td>
<td>I ended up losing my next election and really couldn’t get a job in Portland where I’d been born and raised and worked all my life.</td>
</tr>
<tr>
<td>Newsom</td>
<td>Yes</td>
<td>I blew my base up in San Francisco. My Irish Catholic base, the more moderate base.</td>
</tr>
<tr>
<td>Peterson</td>
<td>No</td>
<td>I’m in my second term of office. These are four-year terms. I’m in year five. And I had no opponent. And no one can remember when the mayor did not have an opponent.</td>
</tr>
<tr>
<td>West</td>
<td>Yes</td>
<td>I lost my reelection four years later…there are half a dozen reasons. It’s one of them.</td>
</tr>
</tbody>
</table>

Diane Linn said that she was unable to work with other commissioners and conduct the day to day business of the commission because her colleagues turned into political enemies. The three commissioners who had supported her decision to move forward with the marriages in secret became, according to Linn, “mean girls” after Linn made a public apology for subverting the system in order to bring same-sex marriage to Oregon. Linn remembers,

I decided to publicly apologize about the process, about the way we made the decision. I wanted to tell the community that, for myself, as chair of this Board, I apologize for the discomfort and the kind of disruption this has caused. I stand by my decision. I celebrate same-sex couples and marriages. That position I’m unequivocal about. But I apologize to all of you for what this has caused. And that wasn’t easy to do. I had banks of
cameras staring at me having to make that apology. And I did it with a fairly good team of political advisors that had helped assess the situation with me. Well, what that did, remarkably, was it tipped the other three commissioners against me…

The three of them, based on my decision to apologize to the public, decided to create a voting bloc against me – and the fifth commissioner, by the way, who was left out – on every single thing I ever tried to do from that point forward – everything, everything.

Linn also remembers how the political backlash to her career appeared to be the result of how she had made the decision to allow same-sex couples to marry in her county, and not necessarily the decision itself. She iterates that,

There’s one thing around making public policy decisions. There’s another thing about how you make them. And, basically, we’d just gotten right up to the edge of civil disobedience to pop the decision on the community. Technically, we really didn’t have to. It wasn’t a legislative decision. It was a procedural administrative decision. But again, one thing I was really stunned about was The Oregonian and the political community in Portland, the people that I’d run with their support of for years and years and I’d been in event after event supporting gay and lesbian rights. And I thought we were all on the same page. Didn’t really care about the specifics of the legal decision or the political strategy we decided to use to allow all of these couples to actually marry. So even the core support that I’d run from started to disintegrate fast…And the implications went on for three more years, and I ended up losing my next election and really couldn’t get a job in Portland where I’d been born and raised and worked all my life…I got kind of shut out, not only because of this decision, how it was made.

Once a rising star in the Democratic Party, Newsom contends that, because he acted on principle and not on politics, he was not welcomed in certain political circles as a result of his views and actions on same-sex marriage. Even with his approval ratings and popularity in the city reaching a favorable 69 percent, Newsom said he felt repercussions to his actions. He believed that he had damaged his reputation among his own Irish Catholic and moderate base, telling Charlie Rose that,
I blew my base up in San Francisco, my Irish Catholic base, the more moderate base. I have offended a lot of good close friends; people who got me in office just literally a few months ago. People who worked hard for me that were disappointed...So now I go to events, I got people walking out that were big supporters, I don’t even get the same return phone calls. There are events being cancelled that I am participating in (Rose 2004a).

During interviews, Newsom often spoke of the cowardice of elected Democrats in not taking a stand on the principles of what the party stood for, namely civil rights for all. And he continually chided party members who spoke of supporting civil unions, which he saw as a perfect escape route because it allowed politicians to look sensitive to the issue without offending cultural conservatives. During an interview on MSNBC (2008), Newsom pointedly told party members,

Separate is not equal. Please spare me the speeches at the Jeffersonian-Jackson dinners about equality if you are not willing to give equal rights to everyone. Civil unions are not marriages. Not one politician in America that’s married has gotten rid of their marriage license for a reason.

In 2011, Newsom abandoned his bid to run for Governor of California because he could not get the support from the old political guard that had supported his rise to fame in San Francisco. Switching to a less prestigious position, he chose to run for Lieutenant Governor of the state and easily won against his opponent.

Though the actors acknowledged that there were negative repercussions to their actions, there were also positive ones. All of the actors remember outpourings of support from their communities and beyond. And all recall that the positive consequences far outnumbered the negative. Dunlap remembers having “more good positive feedback for what I did. I had priests, preachers, ministers, people calling me that said keep going, keep going, we’re standing behind you” (Quoted in McGivern 2005). Many of the actors believed that most of the negative personal attacks had come from groups and individuals
outside of their community, or were those on the fringe. Because of what was said in the letters and emails she received, it was evident to Mayor Peterson that “these” were not “her people”. Peterson readily won reelection and, for the first time in the history of Ithaca, the Mayor did not have an opponent. Gavin Newsom skyrocketed to political fame in California. However, he still tries to present himself to the public as more than the man who brought same-sex marriage to the state. At some point, in time all of these actors were acknowledged by and even given awards from various local and national LGBT groups for what was believed to be heroic acts in support of LGBT rights. And all acknowledged that, if given the chance, they would gladly do it again.

**Conclusion**

Disconnected; lacking support from high-ranking political figures and party pundits; and threatened with jail, death and political ruin, these six political outliers were able to instigate change in the same-sex marriage movement way beyond their localities. Inspired to act for varying reasons (President’s speech, responding to a question, trying to avoid a lawsuit), none, at the time, truly fathomed the magnitude of their actions, on themselves, or the SSM movement, in general. As politicians, each assumed there would be some kind of political risk, yet, maybe because of their newness to their elected positions, all appeared to be somewhat caught off guard by how much this single act of leadership would change their lives and effect their careers. Dunlap and Linn were forced out of politics and their home states. Newsom’s actions set him in play to run for Governor of California. No one opposed Peterson in her run for reelection and it is suspected that, if she had not decided to retire last year, she would still be the Mayor of
Ithaca. Though Jason West left New Paltz, he has since returned and once again was elected Mayor of the small community outside of New York City in 2011.

For good, or for bad, their actions captured the nation. With the help of the media, these local rebellions against state authority went “viral,” inspiring both negative and positive action on the part of the public. Within days of their actions, more and more localities, politicians, and interest groups began to openly demand same-sex marriage for gay and lesbian citizens. Those who had remained quiet now found a voice to publicly support the cause. Conservatives who opposed the marriages found a rallying point that could be used manipulate the general public’s fear of change. As Rose predicted, same-sex marriage became an effective wedge issue in the 2004 elections. Religious and national anti-SSM groups began pouring more money into organized campaigns in support of harsher laws and constitutional amendments to bar gay men and lesbians from having any type of relationship legally recognized (i.e., civil unions, domestic partnerships) in states around the country, and to stop the advancement of any pro-same-sex marriage legislation.

Although state attorneys general and state judges were able to stop these actors (and others) from issuing more marriage licenses and proceeding with more same-sex marriage ceremonies at the time, the issue did not fade back into the policy stream as it had on previous occasions. Instead, as the social and political impact of these policy entrepreneurs’ actions settled on the public psyche, SSM advocates and supporters found that a door for challenging the legitimacy of state policies barring same-sex marriage and the national Defense of Marriage Act had somehow sprung open. And this opening would take us to where we are today.
CHAPTER SIX

CONSEQUENCES OF POLICY INNOVATION

“*It’s going to happen, whether you like it or not!*”

Gavin Newsom—Mayor, San Francisco

INTRODUCTION

Pinello (2006) reasons that *Goodridge v. Department of Health* “radicalized” and “coalesced” the LGBT community like no other issue since the advent of AIDS in the early 1980s. Like many other scholars (e.g., Rosenberg 2008; Rauch 2004) he credits the Massachusetts court decision with being the real impetus for and turning point for the same-sex marriage movement; asserting that Newsom and the others would not have done what they did if it were not for the Massachusetts decision. His assumption that the Massachusetts court ruling provided a window of opportunity for these actors to act politically in favor of same-sex marriage is correct. However, he may be overstating the effect of the court decision on their acts of defiance, especially in the light of the fact that Hawaii and then Alaska had legalized same-sex marriage in their states without having radicalized the SSM movement and/or pushing local politicians to start marrying same-sex couples in other states. And, as explored in Chapter Five, the actors indicate other reasons besides the Massachusetts court decision for acting in favor of same-sex marriage.

The assumption that it was the court’s decision that instigated change in the SSM movement can be attributed to what Rosenberg (2009) sees as civil rights proponents “mythical” belief in state and federal courts as social change agents. Rosenberg (2008) reasons that civil rights advocates’ belief that it is the courts and no other mechanisms that bring about social change “cloud[s] our vision with a naïve and romantic belief in the
triumph of rights over politics” (p. 429). The notion that social action and political advocacy are what create social reform, more so than judicial decisions however, places the burden of social change outside the corridors of the courtroom and suggests that we have to look elsewhere for instigators of social reform.

Based on Rosenberg’s supposition, that it is political and social actors that create social reform and not necessarily the courts, it is then important that we consider what, if any, are, the socio/political ramifications of the actions taken by these local actors on the same-sex movement. This chapter will address the last Research Questions and seek to answer: 1) what were the national political consequences, if any, of the policy actions of these policy entrepreneurs at the time; 2) what were the perceived long-term advantages and/or disadvantages of their policy initiatives on the same-sex marriage movement in general; and 3) were their efforts continued in other ways?

IGNITING A FIRESTORM

Few will argue that the actions of James Bruno, Victoria Dunlap, Diane Linn, Carolyn Peterson, Gavin Newsom and Jason West did not generate a national media sensation. Though some actors were in the spotlight more than others, actors interviewed for this study stated that they were swarmed by the media, and it appeared their acts of defiance went viral, giving attention to both them and the same-sex marriage movement. Depending on the media outlet (e.g., [Fox News, MSNBC, CNN] New York Times, San Francisco Chronicle), these actors were either hailed as cutting-edge policy makers or rogue politicians who greatly exceeded their authority and needed to be removed from office. During the three-month firestorm that ensued from February 12, 2004, when San Francisco’s County Clerk issued its first marriage license to gay and lesbian couples, to
April 20, 2004, when Multnomah issued its last; literally hundreds of interviews and
news stories featuring these six local politicians or referencing their actions (Marshall
2010; Rosenberg 2008) appeared in the press.

Carolyn Peterson remembers it being an “a very exciting and moving time”
because it was “the first time that Ithaca, New York was featured in the New York Times
with pictures.” Her New Paltz counterpart, Jason West, remembers being inundated by
the press,

I was on the BBC World News Live twice. I did a dozen interviews in the
Japanese press, the Danish press; it was on the evening news in Baghdad.
A war correspondent noticed that he had an interview with the prime
minister of Iraq. And the prime minister said, “Oh, you’re from New Paltz
where they did those marriages?” It was in the news in Costa Rica and
Guatemala where I have friends who saw me on the evening news. It was
insane the planetary media saturation of what we did.

Even now, West is often consulted by the press whenever there is a new
development in the same-sex marriage debate. He was recently featured in the press
again because of his reelection to the position of Mayor of New Paltz after a four-year
hiatus (Kembel 2011), and because of the move by New York legislators to legalize
same-sex marriage (Rovzar 2011) in the state.

Due to his status as a Mayor (former Mayor) of one of the largest cities in the
nation, and because he is seen as the original instigator of the acts of defiance, Gavin
Newsom is and will remain the poster child for same-sex marriage for both sides of the
debate. As such, he remains at the forefront of media attention in regards to same-sex
marriage. Newsom, like West, was interviewed by both the national and international
press in 2004, and continues to be so today. His interviews with MSNBC, CNN, Charlie
Rose, Larry King, Rachel Maddow, and others can be found on YouTube, and more are
added each time a new development occurs in the marriage debate in California. Despite the fact that Newsom is now Lieutenant Governor of California and his duties are far removed from the debate, in general, the media still turns to him for political insight when there is a significant change in public attitudes and/or policy on same-sex marriage.

In addition to creating a media sensation with their bold move to issue marriage licenses and/or to marry gay and lesbian couples, the actors were also charged with unintentionally aiding and abetting the religious right in their strategy to push states in the direction of banning same-sex marriage in their domains. To the chagrin of these progressive policy innovators, their actions were credited with mobilizing the religious right in its efforts to pass constitutional amendments in 11 states during the 2004 election period and beyond. Diane Linn, who lost her bid for reelection as Chair of the Multnomah County Commission, was accused by some liberals of revitalizing the Oregon Citizens Alliance (OCA) and other social conservatives in the state during the 2004 election year, and, in doing so, helped them place a constitutional referendum on the ballot that year that passed with 52 percent of the vote (Hamilton 2004; MacDonald 2006). However, Pinello (2006) notes that the OCA had submitted its initiative to the Oregon Secretary of State’s office one week before Linn announced that Multnomah County would commence issuing marriage licenses to same-sex couples.

Jordan Lorence, a lawyer with the Alliance Defense Fund, a Christian group that sued to block the California marriages, concurs that local action helped foster a conservative backlash nationally (Murphy 2004). Lorence asserted that the Massachusetts court decision acted as a trigger, but it was the actions of Newsom that helped coalesce and accelerate conservative reaction to same-sex marriage when
Newsom put San Francisco at the heart of the debate. He stated that the “images of same-sex couples embracing in San Francisco” were permanently “etched in the public’s mind” (Quoted in Murphy 2004). Lorence also held that the actions of Newsom and others would enable conservatives “to get 10 or 15 more state constitutional amendments in the 2006 and 2008 election cycle, and maybe even more, because people feel so strongly about this” (Quoted in Murphy 2004).75

Mayor Peterson of Ithaca, New York said she sought to balance her public policy action in favor of same-sex marriage against a potential negative political and public backlash. She said she chose the course of action that she did because:

I had to try to find a balance that I thought made sense, and that indicated Ithaca’s support for same-sex marriages. And we believe we ended up with a very unique way to show our support.

My feeling about doing the marriages outside of the Department of Health regulations and so on in the state of New York was that it could possibly be a distraction from the legal work and constitutional changes that needed to happen in New York State. I didn’t want to become the focus of “this person that’s doing marriages.” I wanted to start the ball rolling for legislative change and legal support in New York State for same-sex marriages.

So that is the policy and the reasons in a nutshell that formed the position. And then I called a press conference at City Hall to announce what I was going to do. It was to act....so I had the press conference with key leaders of LGBT community standing behind me and supporting me in this position. The city attorney supported me in this position, which was to accept the same-sex marriage applications, bundle them up, send them off to Albany, knowing we were going to get booed by the same people who were standing up there with support, but then going as a friend of the court to support the position.

I gave permission to our city attorney’s office as part of our work with the 25 couples and legal interns with Cornell University to helping put a case together to make to the court in New York State. That’s what we did.
Unlike Peterson, who chose not to readily draw opposition attention to her policy efforts, Newsom, West and Linn sought the opposite. These actors stated that they wanted to put a human face on same-sex marriage and therefore chose to perform the public marriages. Unfortunately, their attempts to put a human face on the issue were usurped by ultra-conservatives and the GOP. “The long parade of weddings at City Hall—across the street from the California Supreme Court—provided a dramatic backdrop for the gay rights debate” (Dolan 2008). These types of images helped reinforce the conservative fear mongering that had surround same-sex marriage from its inception, by showing the public that the beginning of the end of American morals and values had arrived. Republican pundits and organizers were able to take the visual elements of thousands of gay men and lesbians being publically married and use them to shock and frighten an already leery public.

The human faces being conveyed to the average Americans signaled that change was in the air. How Americans responded is open for interpretation. Jonathan Rauch (2004), a guest scholar at the Brookings Institute, believed that the vehement public reaction to the visual images of same-sex marriage left the country feeling like it had entered another cultural war. Rauch (2004) articulated that, “Between the court-ordered legalization of gay marriage in Massachusetts, the elation and outrage over San Francisco's gay weddings, and the crushing repudiation of same-sex matrimony on Nov. 2, Americans have been whiplashed in 2004.” Dolan (2008) believes that “San Francisco's highly publicized same-sex weddings...in 2004 helped spur a conservative backlash in an election year and a national dialogue over gay rights.” The publicness of the actions and efforts of these political entrepreneurs and the reported social and
political backlash from media exposure are still being discussed by progressive and conservative pundits and movement organizers today.

**Election 2004**

Whether true or not, there appears to be a persistent public perception that local action on same-sex marriage had a great impact on the 2004 election. To the extent that the actions of these outliers and their influence on state and national politics can be measured\(^{77}\), a number of political pundits on both sides of the debate have alluded to a connection between their actions (in conjunction with *Goodridge v. Department of Health*) and the reelection of not only George W. Bush, but also the take-over of the Senate and House by Republicans that election year.\(^ {78}\) When Karl Rove, political advisor to George W. Bush was asked by a *New York Times* reporter if he was indebted to the Mayor of San Francisco for his actions in opening City Hall to same-sex marriages (Rosenberg 2008), the reporter said that Rove could barely stifle a grin. Later, Rove admitted that same-sex marriage, though not the only issue, was “part and parcel of a broader fabric where this year moral values ranked higher than they traditionally do” (quoted in Rosenberg 2008: 369).

In a June 4, 2004 interview with Charlie Rose, Gavin Newsom concurred with the view that the President of the United States had wanted to find a way to use same-sex marriage as a wedge issue in the 2004 election. However, Newsom says that this desire existed prior to his or anyone else’s actions in favor of SSM. Newsom believed,

He [the President] has wanted to from June ’03 in the *Lawrence v Texas* decision, the anti-sodomy decision. He wanted to after the Massachusetts decision on November 18, 2003. And he reinforced it at the State of the Union. They want to make this a wedge issue. They know exactly what
they are doing. And that is why it is so wrong. It is fundamentally wrong to play with human beings lives like this in order to advance a political agenda (Rose 2004b).

Unfortunately, the President used Newsom’s actions and the actions of the other policy innovators as an added reason for there being a need for a national amendment to the constitution banning same-sex marriage in the United States. The President suggested that action needed to be taken to stop these rogue policy makers from breaking the law.

Prior to the 2004 election, it was clear that the Democratic Party was not supportive of same-sex marriage in general (Murphy 2004; Rauch 2004). The party was also not particularly supportive of the efforts of these newly elected local officials to shine a national spotlight on an issue from which the party was trying to distance itself. Democrats espoused that civil unions were a politically sound compromise to a socially contentious issue. They believed that their open support of unions would buffer the party from any political backlash regarding same-sex marriage and the actions of these local officials. Regrettably, the strategy did not seem to work and when evidence of a Republican sweep began to emerge, some Democrats, according to a New York Times headline, sought to “Blame One of Their Own” (Murphy 2004).

As the Democratic Party tried to assess the damages and identify reasons for the election loss, party members began to verbalize out loud what they considered to be the causes. The morning after the 2004 election, Senator Diane Feinstein of California, an ardent supporter of Mayor Newsom commented that his actions helped “energize a very conservative vote” and “gave them a position to rally around.” Even though Feinstein made it clear that she was not casting a value judgment, she said, “I think that whole issue has been too much, too fast, too soon, and people aren't ready for it” (quoted in
Murphy 2004). Congressman Barney Frank from Massachusetts was even harder on Newsom than other Democrats. After failing to convince Newsom to follow the Massachusetts model and wait for a California judicial ruling in favor of same-sex marriage, Frank had this to say about the consequences of Newsom’s actions and the actions of the other policy innovators, “I think there would have been some ‘collateral damage’ in the election, but a lot less. The thing that agitated people, were the mass weddings. It was a mistake in San Francisco compounded by people in Oregon, New Mexico and New York. What it did was provoke a lot of fears.” Barney credited Newsom and the others’ actions with creating “a sense there was chaos…rather than give us a chance to show, as we have in Massachusetts, that this doesn't mean anything to anyone else” (Quoted in Murphy 2004).

While conservatives played up the favorable effect of the actions of these actors and the effect of the “marriages” themselves on the political landscape, the LGBT community, in general, and same-sex marriage supporters, in particular, argued that there was no evidence to support the conjecture that the marriages led to the backlash. Many believed that the Democrats had used these policy innovators as scapegoats for the party’s losses. They contended that, despite the exit polls, there was no conclusive evidence to prove that the actors or the court’s decision had any effect on the outcome of the election (Ansolabehere and Stewart 2005; Egan and Persily 2009; Pacific Views 2004). Ansolabehere and Stewart (2005) suggest that the numbers simply do not show a relationship between the Republican sweep and the passage of 11 state amendments banning same-sex marriage with what happened in San Francisco and the other localities. They argue that neither the action of the local actors nor the Massachusetts court decision
had any influence on the vote. Instead, they argue that if any candidate benefitted from the actions, it was John Kerry, not George Bush, because more Democrats came out to oppose the amendments. Ansolabehere and Stewart (2005) state,

The 2004 presidential election has been termed the “values election.” In one widely discussed exit poll, the plurality of voters (22 percent) ranked “moral values” at the top of their list of concerns, and of that group 80 percent voted for George Bush. In addition, 11 states passed ballot questions that wrote bans on gay marriage into state constitutions. These referenda, according to some analysts, galvanized the Christian right, mobilizing voters who might otherwise have stayed at home. They came to the polls to strike a blow for traditional values, and they cast their ballots for George Bush while they were at it. Were this line of reasoning correct, John Kerry’s defeat could be laid directly at the feet of Chief Justice Margaret Marshall of the Massachusetts Supreme Judicial Court, who authored the court’s decision legalizing gay marriage in the state.

But a careful examination of the 2004 election returns provides no evidence for this interpretation. Marriage referenda mobilized voters on both sides, not just the conservatives…What was the magnitude of the effect? In states without gay marriage on the ballot, Bush’s gains were fairly constant across counties. In those states, you get a pretty good estimate of Bush’s share of the two-party vote in a given county in 2004 by adding three percent to his share of the two-party vote in 2000. But in states with gay marriage on the ballot, where counties that were pro-Bush in 2000 were even more pro-Bush in 2004 and counties that were pro-Gore in 2000 were even more pro-Kerry in 2004, there was an overall net shift of 2.6 percentage points away from Bush from the first election to the second. In other words, in states where gay marriage was on the ballot, partisan voting patterns became more pronounced, with a net advantage for Kerry.

While both sides continue to disagree on the accuracy and meaning of exit and national polls conducted after the 2004 election, none can argue that the actions of Gavin Newsom and the other five actors in this study did not help place same-sex marriage in the national spotlight, and, in doing so, their actions instigated varying responses at the state and national level.
STATE AND NATIONAL RESPONSE

As reflected in Table 6.1, in all of the states where local officials performed same-sex marriages, injunctions were sought by top state officials and/or by conservative groups in an effort to stop them. What was interesting about these legal maneuvers was the speed at which they occurred. Officials in Asbury Park, Sandoval County and New Paltz\textsuperscript{79} were literally shut down by state court action within 24 hours; alternatively, San Francisco and Multnomah County were allowed to continue issuing licenses and marrying same-sex couples for weeks. The difference in time between the East coast and West coast may be due to how the courts in the western states first responded to the requests for injunctions. In California, the state Supreme Court rejected the request from the state’s attorney general to stop the weddings and declare invalid the marriages that had occurred to date (CNN 2004a). The rejection by the court gave same-sex marriage activists more time to perform more marriages before arguments would be heard on March 5, 2004.

In Oregon, the Attorney General readily ruled the marriages illegal though he had no legal grounds on which to do so. The Governor asked counties not to issue marriage licenses and told the state register not to process the licenses coming from Multnomah County until the courts could rule on the legality of same-sex marriage in the state (GAYPASG 2004). As in California, the Attorney General of Oregon was hampered by the speed with which the court chose to hear his arguments for an injunction. Both states received what were considered expedited hearings from their state Supreme Court, yet it took almost a month for those hearing to occur. It was not until March 11, 2004 that the
California Supreme Court stopped the marriages that had started on February 12, 2004 in San Francisco. Oregon’s Supreme Court followed suit on April 20, 2004.

In two of the jurisdictions—Asbury Park, New Jersey and Sandoval, New Mexico—the state did not seek a legal ruling on the marriages that had been performed. They simply said the marriages were not valid and told the actors to simply stop issuing licenses to and marrying same-sex couples. However, because both New Jersey and New Mexico did not have statutes barring same-sex marriage, the failure to legally settle the status of the marriages performed has caused at least one of the states to revisit the issue. Because the Attorney General of New Mexico let the issue drop once the Sandoval County Clerk stopped issuing marriage licenses to gay men and lesbians, she never followed the issue to its legal conclusion. As a consequence, the 66 couples who were issued marriage licenses and the 25 couples who actually married were left in a legal limbo.

Believing the Attorney General to be wrong, Victoria Dunlap fervently tried to bring attention to the state’s legal obligation regarding the same-sex marriages performed in her jurisdiction. She rightly argued that the licenses she issued and the marriages performed were still legal because the state had registered them. She stated that, “The only way to invalidate them—it says clearly in the law—is through court proceedings…They’re valid” (Quoted in McGivern 2005).

In 2010, a lesbian couple who had been issued a marriage license by Victoria Dunlap and allowed to marry sought a divorce. One of the women argued that she was entitled to half of the couple’s community property because they had been married for six years. The other retorted that, “New Mexico law does not allow marriage between two
individuals of the same sex” and so, “the purported marriage of the parties was void ab initio (from the beginning)” (Sharpe 2010). The state district judge who presided over the divorce case agreed with Dunlap’s legal reasoning, ruling that the marriage license issued by the Sandoval County Clerk to this same-sex couple, and to the other couples who married, were valid because the state had registered them. As such, these marriages, like other marriages performed by and registered in the state, were subject to divorce (KRQE 2010; Sharpe 2010a, 2010b).

Although New Jersey and New Mexico failed to take the same-sex marriages that had taken place within their borders to a legal conclusion, they did seek to legally recognize same-sex relationships. Beginning in 2009, the New Mexico legislature tried to pass a statewide domestic partnership law that provided gay and lesbian couples some of the benefits of marriage. Unfortunately, the legislation got caught-up in partisan bickering and the bill has yet to pass. New Jersey, on the other hand, passed legislation to legalize civil unions in 2006, in response to a state Supreme Court ruling that determined that to deny same-sex couples the right to marry violated the fair and equal clause of the state constitution. “The high court ruled unanimously that same-sex couples must be provided all the benefits and responsibilities of marriage, although it declined to mandate that marriage was specifically required, and gave the state legislature 180 days to choose either marriage or an alternate system that would provide equality” (Lambda Legal, N.d). In response to the courts mandate, the state chose to create a separate but equal universe for same-sex couples and granted civil unions.

What is interesting to note here is that James Bruno and the other city officials involved in solemnizing the one same-sex marriage in the state, were highly criticized by
the LGBT organization that brought forth the *Lewis v. Harris* (188.NJ.415, 908 A.2d [2006]) lawsuit that the New Jersey state Supreme Court ruled on. These actors were told by Garden State Equality (the largest LGBT organization in the state) that their actions had probably derailed the organization’s chance of getting same-sex marriage legalized in New Jersey.

The New York State Department of Health, in response to Mayor Peterson’s request to validate the same-sex couples marriage licenses submitted by the County Clerk of Ithaca to the department, ruled that “the state’s domestic relations law does not allow marriage between same-sex couples and that New York courts recognize only marriages between men and women…The health department warned that any city clerk who issues a marriage license to same-sex couples and anyone who performs those marriages would violate state law” (*CNN 2004c*). The department’s decision was supported by the state attorney general, who was not totally in support of same-sex marriage but not totally against them. New York’s then Attorney General, Elliot Spitzer, who was next in line to be governor of the state, “urged local officials not to preside over same-sex marriages” (*CNN 2004c*) until the courts could rule on the constitutionality.

“On June 24, 2004” ‘New York’s Ulster County Supreme Court Justice E. Michael Kavanagh issued a Temporary Restraining Order against all officials of the Village of New Paltz, prohibiting them from solemnizing ‘same-sex marriages’ (Phan 2004), following a lawsuit filed by Liberty Counsel, a conservative Christian political group funded by Jerry Falwell*. Kavanagh had already issued a permanent injunction against Mayor Jason West barring him from performing not only same-sex marriages but any marriage ever again in the state of New York. ‘West along with members of the
Village Board then appointed Board Trustees Rebecca Rotzler and Julia Walsh as ‘marriage officers’ to continue solemnizing marriages for same-sex couples (Phan 2004). By the time Kavanagh’s final injunction took place, over 300 same-sex marriages had been solemnized in New York (West interview), and it was not until 2006, when the New York State Supreme Court weighed in on the issue, that the marriages were considered invalid and the legislature was forced to take up the issue.

Table 6.1 State and National (Re)Action to Acts of Defiance

<table>
<thead>
<tr>
<th>ACTOR/STATE</th>
<th>POLICY ACTION</th>
<th>STATE (RE)ACTION</th>
<th>NATIONAL (RE)ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dunlap/ New Mexico</td>
<td>Issued 66 marriage licenses; 25 same-sex couples married</td>
<td>2004: Attorney General has court issue injunction to stop marriages; state takes no legal actions on same-sex marriages performed at the time. 2009-2011: legislature considers statewide domestic partnership law—fails. 2010: state judge gives legal standing for divorce to lesbian couple married in 2004.</td>
<td>President mentions her actions in a speech</td>
</tr>
<tr>
<td>Linn/ Oregon</td>
<td>Issued marriage licenses and married 3022 same-sex couples;</td>
<td>2004: Attorney General has court issue injunction to stop marriages; state passes constitutional amendment barring SSM; 2005: Marriages are revoked; Multnomah County issues refunds of license fees to same-sex couples.</td>
<td></td>
</tr>
<tr>
<td>ACTOR/STATE</td>
<td>POLICY ACTION</td>
<td>STATE (RE)ACTION</td>
<td>NATIONAL (RE)ACTION</td>
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<tr>
<td>Newsom/California</td>
<td>Issued marriage licenses; over 4000 same-sex couples married</td>
<td>2004: Supreme Court issues injunction; marriages revoked; couples sue with support of the City; 2008: State Supreme court rules Proposition 22 unconstitutional; same-sex couples allowed to marry; passage of constitutional amendment barring same-sex marriages; 2009: State Supreme Court rules Proposition 8 constitutional</td>
<td>2010: Federal District Appeals Court judge rules Proposition 8 unconstitutional. 2012: Ninth Circuit Appeals Court supports Federal Appeals Court judge's ruling; opponents appeal decision asking for full Ninth Circuit review</td>
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<tr>
<td>Peterson/New York</td>
<td>Accepted marriage applications by same-sex couples and forwarded them to the state’s Department of Health for a ruling on whether they could be granted</td>
<td>2004: Health Department denied applications; couples sue with support of the city. 2006: State Supreme Court rules SSM not legal. 2004/2008: State recognizes marriages performed in other states. 2011: State passes legislation legalizing SSM; Governor signs bill.</td>
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<tr>
<td>West/New York</td>
<td>Solemnized 25 marriages; authorizes Board Trustees to continue marriages</td>
<td>2004: West charged with 19 misdemeanor counts; NY District judge issues permanent restraining order against West. Later issues temporary restraining order against other city officials; charges dropped against West. 2006: NY State Supreme Court invalidates marriages 2004/2008: State recognizes marriages performed in other states.2011: State Legislature legalizes same-sex marriage</td>
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In reviewing the progression of events that occurred during and after the policy actions by these local actors, it appears that local action, along with the Massachusetts
ruling, helped facilitate a sea change in how America viewed same-sex marriage. A change that many in the SSM movement believe opened the door to reversing the DOMA trend in same-sex marriage policy in the United States. If anything, these actions helped set the stage for both legislative and legal battles to take place in those states where actors took a stand. Unlike prior cases that were brought before state Supreme Courts in Hawaii, Alaska, and Massachusetts, where marriage of the plaintiffs was argued in the abstract, the arguments presented in court cases in California, Oregon, and New Mexico dealt with “real” marriages.

These real marriages had the “human face” that Linn, Newsom, West and the others had hoped to bring to the issue. As such, it made it more difficult for the public, and for elected officials to simply ignore them. Three of the five states where innovative policy action occurred—California, Oregon, and New York—eventually changed state law to legalize same-sex marriage. One of these states—California—has brought the issue of same-sex marriage to the steps of the United States Supreme Court, a place where Gavin Newsom said he had always intended it to be (Rose 2004a).

**Litigation as Strategy for Equality**

The advent of the civil rights movement and the success in both state and federal courts to secure legal and social rights for black American’s created the perception of the courts, in particular the Supreme Court, as a defender of human rights and the instigator of social reform. In his study, *The Hollow Hope* (2008), Gerald Rosenberg explores the concept of state and federal courts’ ability to bring about social change. He reasons that the capacity of the courts to create large sweeping social reform is a myth, and that
changes to the social order can be attained if, and only if, the public is ready for that change to occur. Rosenberg writes, “Perhaps only when political, social, and economic forces have already pushed society far along the road to reform will courts have any independent effect, and even then their decisions may be more a reflection of significant social reform already occurring than an independent, important contribution to it” (Pp. 5-6). Therefore, courts are reluctant to issues decisions that are contrary to what the public feels and believes at the time.

Rosenberg (2008) may be somewhat correct in his assumption that legal decisions alone cannot readily change the status quo and that social and political factors have to already be in play before courts will step in and settle controversial issues. When *Pace v. Alabama* made it to the Supreme Court in 1883, the nation, reeling from a civil war where race played heavily in the conflict, was not ready to handle intimate relationships between black and white Americans. Similarly, when the first case regarding a gay marriage was brought to the attention of state and federal courts with *Baker v. Nelson* in the early 1970s, the nation was ill prepared for the LGBT rights movement, in general, let alone, same-sex marriage. Thus, it is not unusual that the courts during both time periods decided against expansion of the social order to legally recognize these types of intimate relationships.
As the public became more and more exposed to the reality of same-sex marriage through its legalization in six states and Washington D.C. by 2011, public support and acceptance of same-sex relationships began to slowly shift. Egan and Persily (2009) have shown that, “Americans approval of same-sex marriage has been increasing steadily for the past two decades.” Additionally, a 2011 Gallup poll (see Figure 6.1) revealed that for the first time in the history of the debate, a majority of Americans (53 percent) were in favor of same-sex marriage. This increase in public opinion may reflect more acceptance on the part of average Americans towards same-sex marriage, but public opinion alone cannot secure legal rights for same-sex couples. Therefore, it is through the courts that proponents of same-sex marriage believe the issue must ultimately be decided.

**Figure 6.1: Public Opinion of Same Sex Marriage 2011**

Source: Gallup Poll. 2011. “For First Time, Majority of Americans Favor Legal Gay Marriage.”
Litigation and Same-sex Marriage

Litigation has played, and continues to play, an integral role in gaining civil rights for gay men and lesbians in the United States. Hence, it is no surprise that those in support of marriage equality in the LGBT community would use a litigious strategy in their attempt to secure what they believe is an inalienable right. To gain this right, same-sex marriage proponents have utilized a time-tested civil rights strategy that relied on legal incrementalism (Marshall 2010; Rauch 2008). Beginning with Hawaii, the two national LGBT organizations at the forefront of the marriage movement—Lambda Legal Defense and the National Center for Lesbian Rights—and others have depended on a pragmatic legal strategy that they believed would increase their chances for success. Their intentions were to file lawsuits state by state in order to gain acceptance of same-sex marriage in the United States. Their strategy required that they carefully chose the right state to present the challenge in, usually a liberal-leaning state. Once, the state was identified, they then ensured that there was some public and political support for their action prior to making the legal challenge. Lastly, they painstakingly searched for and found the “right” plaintiffs for the case. Ideally, these would be couple(s) that they felt the public could relate to (i.e., those in long-term committed relationships).

Roey Thrope, executive director for Basic Rights Oregon (BRO), described this pragmatic strategic approach to Daniel Pinello in an interview for his study, America’s Struggle for Same-Sex Marriage (2006):

BRO has a legal advisory group that was formed in 1999 or 2000. That group came together specifically on the issue of same-sex marriage. It was kind of ahead of its time. It was a group of attorneys who were working with Basic Rights Oregon and the ACLU, and they did some research and determined that then was not the right time. So they continued to meet
regularly and help out BRO on a number of different projects, waiting until the time was right…
When the Goodridge decision happened we immediately had some planning sessions were we went through and tried to figure out the best way to try and gain marriage equality in Oregon…we eventually decided that the best way was to have couples get married…We figured that there was a backlash coming anyway. Certainly, the [2004] State of the Union address only confirmed that belief. We knew that no matter what we did, Oregon was not a state that had a defense of marriage act at the time. So we knew it was coming, no matter what. We thought, well it might be helpful to have couples already married, and we would have gay people talking about what that meant to them.

We did some research and decided that Multnomah County Commission was our best bet, although we had other options if they said no…We met with four of the five commissioners…We said to them that we believed, because of the legal decisions made in the past year and the similarity of Oregon’s constitution to that of Massachusetts, that a strong argument could be made that it was illegal to deny same-sex partners these licenses. We asked them to go to their own legal counsel and ask that question (Quoted in Pinello, 2006: 105-107)

First modeled by the NAACP to secure equal rights for black Americans in the early years of the civil rights movement (Marshall 2010), this incrementalist approach is a slow, time-consuming and expensive process that requires patience on the part of the plaintiffs, the attorneys, the public, and, most importantly, the movement. As Thrope noted, the attorneys for BRO had begun the process almost 14 years earlier and based their potential success on cases that had already used the approach successfully (i.e., Baher v. Lewin [1993] 1998, Lawrence v. Texas 2003, and Goodridge v. Department of Health 2004). BRO’s decision to move forward with their strategy was not only influenced by the real possibility of a conservative backlash, but also by the need to harness the positive political and social momentum inspired by the latest successful case, Goodridge v. Department of Health. Without the success of Goodridge v. Department of Health, it is possible that BRO would still be waiting for the right moment to act.
Legal strategy also appears to have factored into the actions of the six locals officials in this study. The constitutionality, thus the legality of the issue, played a major role in their decision to act in defiance of state and national law in favor of same-sex marriage. Prior to making their decision to act, each carefully researched state law and sought legal advice and support. As discussed in Chapter Five, Bruno, Dunlap, Linn, Peterson, and West all sought the legal advice of the city and/or county attorney before choosing a course of action. They did so in order to ensure that they had legal standing on which to base their innovative policy action. Additionally, several of the actors even chose the “right” couples to marry. San Francisco Mayor Newsom chose Del Martin and Phyllis Lyon, a pioneering LGBT activist couple who had been together for 51 years, as the first same-sex couple to ever marry in the United States (NOW 2004; Rauch 2008). However, unlike the SSM movement supporters who favored a strict legal incrementalist approach, these actors chose a radical aggressive approach that usurped the process by acting without waiting for the consent of the courts. Once they had determined on their own that they were not violating the laws and ethics of their respective state constitutions, these actors chose action over cautious incrementalism and put the system into a high action-reaction mode.

Newsom defended his aggressive approach in support of same-sex marriage as being on the “right” side of the equal protection clauses of both the California and United States constitutions. He asserted that civil disobedience is needed against laws that clearly reflect discrimination; and he stated that it is the duty of elected officials and the public at large,

to challenge the law. Just as we did between 1948 and 1967 in this country, where the laws were challenged numerable times as it relates to
interracial marriages. The fact is, someone has to stand on principle, challenge the law and let the courts take over from there. And that’s precisely what’s been done. It’s perfect! The system is set up just for this kind of act, and the system is working wonderfully. The question, of course, will ultimately be settled on constitutional grounds. And that question will ultimately get to the California Supreme Court a year or two from now. And I think it will be the most significant moment in the history of this debate because I think it will truly be the tipping point on gay marriage…and bring this thing down across the nation (Rose, Power Couple: 2004).

The other actors also saw their actions as being on the right side of their states constitutions. Diane Linn, acted in a hyper-responsive manner to the demands of BRO, only after the legal standing question had been satisfactorily answered for her by the county attorney. She, like Newsom, believed that her actions were a primer for her state Supreme Court. All of the actors believed that their state courts would take up the cause and eventually rule on the side of fairness and equality as it pertained to same-sex marriage.

While legal pragmatists waited years to get their cases into the system, policy entrepreneurs short-circuited the process and got into the courts within months. Thus, it can be reasonably argued that the actions of these actors helped expedite the legal saliency of same-sex marriage by forcing it onto the state political agenda, which in turn forced these states to pressure their courts to accept and speed up legal review of the issue. This acceleration of the legal review process enabled SSM supporters to keep the issue alive and at the forefront of the states’ political agenda after the initial actions of the actors had long passed. Of the five states affected by the actions of the actors in this study, only one state would be able to take the issue beyond its border and place it in the purview of the United States Supreme Court. That state would be California and its Proposition 8.
THE MAKING OF A CONSTITUTIONAL CHALLENGE

When Gavin Newsom left the White House on the evening of January 20, 2004, he stated that he only wanted to do something minor in support of the rights for gay men and lesbians to marry. Convinced that other localities were already doing something in favor of same-sex marriage, he wanted San Francisco to join and support their efforts as a referendum against the President’s speech. But once Newsom realized that no efforts had been taken by either local or state officials, it solidified his resolve as a newly-elected official to do something. So, with this in mind, Gavin Newsom began California and same-sex marriage on the road to the top court in the state and in the nation.

After he had begun marrying same-sex couples at City Hall, Newsom stated that the sole intent of his actions was to bring a legal challenge to “the California constitution and, ultimately the U.S constitution.” Newsom believed that it was the duty of state and federal high courts to “protect people under its equal protection” clause. He noted that in the past when the issue of same-sex marriage reached state Supreme Courts, the courts, consistently, advanced “the issue of same-sex marriage and relations” (Rose Conversation 2004). Newsom was correct in his statements that once the issue reached the state high courts they appeared to side with SSM proponents. The State Supreme Court in Hawaii supported the legal rights of same-sex couples to marry in 1998; the State Supreme Court in Alaska supported the rights of gays and lesbians to marry in 1995; the State Supreme Court in Vermont supported the rights of gays and lesbians to marry in 1999; and the Massachusetts Supreme Judicial Court of the Commonwealth also ruled in favor of gay men and lesbians’ right to marry in 2004. Yet, despite these rulings
favoring same-sex marriage, no couples had actually married by the time Gavin Newsom took a stand.

One of the reasons why no same-sex couples had married in spite of the legal decisions granting them such a right was due to a well-organized, well-funded public and political effort by the religious right and ultra-conservatives to stop them from doing so. The solemnizing of over 4000 marriages of gay men and lesbians in California by San Francisco officials is said to have led to both a political and legal backlash in California unanticipated by the LGBT community and SSM supporters (Rauch 2004; Rosenberg 2008). In response to the ‘radical’ actions of the mayor, opponents to same-sex marriage mounted a concerted campaign to stop the ‘homosexual agenda’ from destroying traditional families in California. Organized and funded by the Mormon Church, the religious right immediately launched a legal and political campaign to defend the tenets of Proposition 22.

**California and Same-sex Marriage**

California is unique when it comes to same-sex marriage. This is true because California is the only state in the union that denied, then granted, and then denied same-sex couples the right to marry (see Appendix H for a historic timeline of events surrounding same-sex marriage in California). Other states, such as Maine, have granted same-sex couples the right to marry and then revoked the right, but California is the only state where same-sex couples actually married before the right was taken away. The making of same-sex marriage policy in California, therefore, is earmarked by three significant changes to the state’s policies governing same-sex marriage: 1) passage of
Proposition 22 in 2000; 2) the legalization of same-sex marriage and passage of
Proposition 8 in 2008; and 3) the constitutional challenge and revoking of Proposition 8
in 2010-12.

**Proposition 22**: The advent of laws defining marriage as that between one man
and one woman initially began in the state at the inception of the LGBT rights movement.
In 1977, California became one of the first states to enact legislation that recognized
marriage as being between a man and a woman in response to early legal challenges for
same-sex marriage brought on by *Baker v. Nelson*. To ensure that gays and lesbians in
California understood that marriage was not a right that they would be able to exercise in
the state, the legislature amended the state’s marriage statute to read, “Marriage is a
personal relation arising out of a civil contract between a man and a woman, to which the
consent of the parties capable of making that contract is necessary” (Cal. Stats. 1977, ch.
339, 1). Then in 1994, with the issue of same-sex marriage brewing on the Hawaiian
Islands, language was added to the California Civil Code to define marriage as being
between “a man and a woman.” Once the Hawaiian courts finally ruled in favor of same-
sex marriage in late 1998, religious and conservative groups in California devised
Proposition 22 as a stopgap measure to prevent the LGBT community from acquiring any
kind of marriage rights in California. With a 61.4 percent majority vote, the measure
passed in 2000 during a primary election. Replicating the 1977 enactment, Proposition 22
added a single line to section 308.5 of the California Family Code, explicitly defining the
“union of a man and a woman” as the only valid or recognizable form of marriage in the
state of California (KCRA 2008). The proposition also ensured that same-sex marriages
performed in any state that might permit such marriages in the future would not be
recognized in California. The measure also guaranteed that any legislative attempt to repeal the 1977 statute would not work because the state constitution forbade the legislature from amending or repealing a statute enacted by the people (KCRA 2008).

Proposition 22 thus became the backdrop for a state constitutional challenge by Gavin Newsom and other supporters of same-sex marriage. Soon after the San Francisco marriages were stopped by the California Supreme Court, the city/county of San Francisco filed a lawsuit against the state, challenging Proposition 22 and arguing that excluding same-sex couples from the right to marry violated the California Constitution. The National Center for Lesbian Rights (NCLR) also filed a suit on behalf of Equality California, Our Families Coalition, and six same-sex couples. The Woo v. Lockyer lawsuit contended that “denying same-sex couples the right to marry violated the California constitution’s guarantees of equality, liberty, and privacy” (NCLR). In April of 2004, NCLR consolidated its case with that of the city/county of San Francisco. This combined suit, re Marriages would be the case that would later be decided by the State Supreme Court (NCLR 2004). Gavin Newsom would get his wish, a state constitutional challenge.

Newsom’s audacious move to perform same-sex marriages in the state in 2004 also appeared to have motivated the California legislature to take up the cause—something it had not done in the past. While re Marriages made its way through the courts, the state legislature took up the issue on two separate occasions. In 2005, the legislature passed AB 849 and, in 2007, it passed AB43, “The Religious Freedom and Civil Marriage Protection Act.” Both bills sought to authorize same-sex marriage in the state. However, on both occasions the then-Governor, Arnold Schwarzenegger, vetoed
the legislation citing Proposition 22 as his reason. It was not until the Supreme Court agreed to hear arguments against Proposition 22 that the issue seemed to be headed for a legal resolution.

**Legalization of Same-sex Marriage and Proposition 8:** It is not surprising that San Francisco led the battle for same-sex marriage. Clearly, San Francisco is seen as the one of most liberal and progressive cities on the West Coast and it houses one of the largest gay and lesbian communities in the nation. Even Diane Linn commented that Portland, which is also considered quite progressive, was a “San Francisco lite”—meaning that Portland *aspired* to be like the “city on the bay.” It was not solely the efforts of this progressive haven, however, that enabled same-sex marriage to become a reality in California. It took the support of a coalition of mayors from across the state to help sway the California Supreme Court to invalidate Proposition 22. Specifically, it would take the words of a Republican Mayor, who was once an ardent foe of same-sex marriage, to put another type of human face on the debate, that of a conservative, married, Christian man.

In a tearful press conference held on September 19, 2007, Mayor Jerry Sanders (R-San Diego) voiced his public support for the rights of gay men and lesbians to marry. To the surprise of his staff and supporters, Sanders reversed his position on same-sex marriage and joined 32 other mayors across the state in demanding the legalization of same-sex marriage. At the press conference, Sanders stated, “In the end, I could not look any of them in the face and tell them that their relationships—their very lives—were any less meaningful than the marriage that I share with my wife Rana” (USA Today 2007). The move stunned same-sex marriage proponents and turned the religious and political
right against the popular San Diego Mayor (Terkel 2012). The change in the mayor’s position was believed to have been inspired by his daughter, who was in a committed relationship with another woman. Sanders’ moving speech and his resolve to support gay men and lesbians right to marry ultimately led to him being one of the few chosen to testify in re Marriages on behalf of same-sex marriage in front of the California state Supreme Court.

It would take four years for the case that the city/county of San Francisco and NCLR brought against Proposition 22 to reach, and then be decided upon by, the California Supreme Court. On May 15, 2008, in a 4-3 decision, the court ruled in favor of the plaintiffs and struck down Proposition 22. The majority opinion, written by Chief Justice Ronald M. George, a Ronald Regan appointee, “declared that any law that discriminates on the basis of sexual orientation will from this point on be constitutionally suspect in California in the same way as laws that discriminate by race or gender” (Dolan 2008). The Chief Justice and three of his colleagues dismissed the argument made by SSM opponents that marriage was about procreation, and that only heterosexual couples could properly care for and raise children (CNN 2008). The ruling noted:

We therefore conclude that in view of the substance and significance of the fundamental constitutional right to form a family relationship, the California Constitution properly must be interpreted to guarantee this basic civil right to all Californians, whether gay or heterosexual, and to same-sex couples as well as to opposite-sex couples.

On June 15, 2008, to the angst of the religious right and other opponents of same-sex marriage, thousands of gay and lesbian couples lined up at county clerks’ offices across the state to receive their marriage licenses.
In a written statement to the press, Matt Barber, policy director for cultural issues for Concerned Women for America had this to say about the court’s decision,

The California Supreme Court has engaged in the worst kind of judicial activism today, abandoning its role as an objective interpreter of the law and instead legislating from the bench...So-called ‘same-sex’ marriage is counterfeit marriage. Marriage is, and has always been, between a man and a woman. We know that it’s in the best interest of children to be raised with a mother and a father. To use children as guinea pigs in radical San Francisco-style social experimentation is deplorable (Quoted in Dolan 2008).

Barber and other opponents to same-sex marriage swore to fight the “activist” court’s decision by taking the issue once again to the people.

Anticipating a possible court rejection of Proposition 22, a coalition of religious and social conservative groups funded heavily by the Mormon Church began earnestly to collect the necessary 694,354 signatures to qualify a measure on the November 2008 ballot. They succeeded with Proposition 8; which clearly stated its intent to eliminate the rights of gay men and lesbians to marry. It was described on the ballot as follows:

Proposition 8 - Changes California Constitution to eliminate the right of same-sex couples to marry. Provides that only a marriage between a man and a woman is valid or recognized in California. Fiscal Impact: Over the next few years, potential revenue loss, mainly sales taxes, totaling in the several tens of millions of dollars, to state and local governments. In the long run, likely little fiscal impact to state and local governments (California Secretary of State 2008).

Straightforward in its wording, Californians were well aware of the fact that they would be taking away a person’s right, and ultimately, writing discrimination into their constitution.

Less than five months after being granted the right to marry, the LGBT community was handed a stunning defeat. In a highly public and contentious battle, the religious right and social conservatives prevailed—Proposition 8 passed with a 52 to 48
percent margin. What led to the victory for conservatives and defeat for the LGBT community is open for debate. Political pundits and movement activists point to a number of factors, namely 1) the overwhelming support of black and Hispanic communities for the initiative; 2) the public actions of Gavin Newsom; and 3) the failure of the LGBT movement itself for not running an aggressive and effective anti-Proposition 8 campaign until it was too late\textsuperscript{86}. The reason for the defeat may be a combination of all three.

Described as the most contentious social issue on a ballot during a presidential election year, Proposition 8 gained notoriety because the measure sought to remove a legal right already granted a minority group. Having captured a national audience, donations flowed into the state from across the nation and the measure easily outpaced most of the political fundraising, save for the run for presidency that year. The Huffington Post noted that “Spending for and against the amendment reached $74 million, making it the most expensive social-issues campaign in U.S. history and the most expensive campaign this year outside the race for the White House (Huffington Post 2008). The Yes and No on 8 campaigns “spent tens of millions of dollars in dueling television and radio commercials that blanketed the airwaves for weeks” (Garrison, DiMassa and Paddock 2008). Both sides of the issue canvassed extensively to ensure that their side would prevail.

No on 8 supporters included many Hollywood Celebrities, George Clooney, Brad Pitt, Ellen DeGeneres, Melissa Etheridge, and even Mrs. Loving came out against the initiative. In addition,

most of the state’s highest-profile political leaders -- including both U.S. senators and the mayors of San Francisco, San Diego and Los Angeles -- along with the editorial pages of most major newspapers, opposed the measure. PG&E, Apple and other companies contributed money to fight
the proposition, and the heads of Silicon Valley companies including Google and Yahoo took out a newspaper ad opposing it” (Garrison, DiMassa and Paddock 2008).

On the other side stood the Mormon Church and a coalition of conservative organizations including Focus on the Family, the American Family Association, Knights of Columbus, and Catholic and evangelical clergy (Garrison, DiMassa and Paddock 2008).

One of the most effective tools used by the Yes on 8 campaign was its pronouncement that children would be exposed to and taught gay and lesbian marriage in the classroom. In a series of advertisements and mailers, Proposition 8 campaigners argued that children would be subjected to a pro-gay class curriculum if the measure was not approved. One such commercial showed a young girl telling her mother, “Mom, guess what I learned in school today? I learned how a prince married a prince. As the girl's mother made a horrified face, a voice-over said: Think it can't happen? It’s already happened. . . Teaching about gay marriage will happen unless we pass Proposition 8” (Garrison 2008). Though most considered this to be fear-mongering and a stretch on the part of the Yes on 8 campaign organizers, Gavin Newsom would unwittingly appear to make it a reality.

On October 11, 2008, with only a few weeks left before the November 5th election, and with the measure in a dead heat, Gavin Newsom committed one of the biggest public and political blunders for the No on 8 campaign, he publically presided over the marriage of a lesbian school teacher with her first grade class present at City Hall. Yes on 8 could not have been handed a more telling visual to promote their cause. In his own defense, “Newsom said he didn’t know the schoolchildren would be attending their teacher’s wedding, and a spokesman for the mayor said he does not endorse the idea
of children leaving school to go to weddings -- no matter who is getting married” (Garrison 2008). The mayor’s denials did little to stifle the backlash. Liberal political pundits now saw the mayor as a liability to the same-sex marriage cause (Winart 2008), while Yes on 8 organizers seized the moment (Steeve 2008). Proposition 8 supporters were able to utilize the images of the teacher’s wedding before her class to seal their argument that same-sex marriage would be taught in the classroom to our youngest children. Ultimately, voters were swayed by the message (Fleisher 2010). And the blame would come to lay at the feet of the man who had championed the same-sex marriage in the first place, Gavin Newsom.

The passage of Proposition 8 in California also revealed the racial divide between the LGBT community and ethnic minorities. After the election, the high incidence of racial minorities voting against same-sex marriage as they voted for the first black American President was duly noted. Early exit polls suggested that 70 percent of black Americans (and over 50 percent of Hispanics) who voted in the California election voted in favor of Proposition 8 (The Washington Times 2008). Though these numbers would be adjusted downwards (Fleischer 2010), the results clearly showed that black Californians did not favor extending marriage rights to gay men and lesbians. The 2008 General Social Survey showed that while negative attitudes regarding same-sex marriage had dropped significantly for other racial groups, it still remained high for black Americans. The survey revealed that 58.1 percent of black Americans still opposed same-sex marriage versus white Americans who, as a group, had dropped down to 45.7 percent.

In their study, “Race, Religion, and Opposition to Same-Sex Marriage,” Sherkat, de Vries and Creek (2009) explore why black Americans, who have fought a long battle
to win equality in this country, would oppose another group struggling for those same rights and freedoms. According to these researchers both religion and long held secular views of black Americans account for their high rate of support for a ban on same-sex marriage. The researchers concluded that,

African American religiosity is primarily responsible for their conservative views about homosexuality and same-sex marriage, and a recent analysis of Proposition 8 voting supports that conclusion (Pp. 3-4)...While the weight of evidence suggests that religious factors likely play a strong role in African Americans’ attitudes towards GLBT rights, there is also a strong secular undercurrent of hostility towards same-sex relations among African Americans. African American writers from the sixties and seventies claimed that homosexuality was primarily a white phenomenon and therefore was antithetical to a black identity...Notably, the hostility towards gays and lesbians expressed in entertainment genre is a secular cultural orientation viewing homosexuality as contradictory of African American identity (P 6).

Although, race appeared to be a factor in the passage of Proposition 8 in California, Fleischer (2010) reasons that it was not the cause for its passage. He notes that the black community never shifted its support for the measure. Black voters came into the election opposing same-sex marriage; and they left the election still opposing same-sex marriage, there was no change in the way this voting bloc acted. The section of voters, who shifted their support

it turns out, was greatest among parents with children under 18 living at home — many of them white Democrats...In the last six weeks, when both sides saturated the airwaves with television ads, more than 687,000 voters changed their minds and decided to oppose same-sex marriage. More than 500,000 of those, the data suggest, were parents with children under 18 living at home. Because the proposition passed by 600,000 votes, this shift alone more than handed victory to proponents” (Fleischer2010).

While black Californians overwhelmingly voted against same-sex marriage, it was parents of small children who were most affected by the propaganda and handed victory to the religious right and conservatives in regards to this proposition.
Disheartened by the defeat, same-sex marriage movement organizers immediately sought ways to win back the right that they had cherished for 143 days. Some movement organizers advocated for putting an initiative on the 2010 or 2012 ballot to seek reversal of Proposition 8. However, many involved thought that another initiative would be detrimental to the movement because California voters would not so readily reverse themselves. The American Civil Liberties Union, Lambda Legal and the National Center for Lesbian Rights filed a writ petition urging the state Supreme Court to invalidate the measure, arguing that the public can only use the initiative process to “amend” the state constitution, not “revise” it; therefore, Proposition 8 was not validly passed (Washington Times 2008).

On November 20, 2008 the California Supreme Court accepted three lawsuits seeking to nullify Proposition 8, but refused to allow gay and lesbian couples to resume marrying until it had ruled, that ruling came six months later. On May 26 2009, the state Supreme Court agreed with Kenneth Starr, the lawyer representing proponents of Proposition 8, and ruled that the proposition legally amended, not revised, the state constitution. The court’s decision stopped short of nullifying the estimated 18,000 same-sex marriages that had taken place in the state prior to passage of Proposition 8 (Stickney 2012).

While faith-based groups and conservative supporters celebrated the win (Stickney 2012), Chad Griffin, a supporter of San Francisco Mayor Gavin Newsom began quietly bringing together an unlikely group of gay and straight benefactors and strategists in an endeavor to make one momentous push towards winning marriage rights for gay men and lesbians. Their goal was simple—establish a case that would bring the
issue to the United States Supreme Court. To do so, they enlisted an unlikely, yet remarkable, pair of legal minds. This long-shot effort would be the beginning of the last leg of a journey started by one rogue city mayor who believed that it was constitutionally wrong to deny same-sex couples the right to marry.

**The Federal Challenge:** On a warm Friday afternoon in 2009, “Rob Reiner, the director, arrived for lunch at the Beverly Hills estate of David Geffen, the entertainment mogul. Reiner and his political adviser, Chad H. Griffin, had spent six months drafting an ambitious legal campaign aimed at persuading the U.S. Supreme Court to establish a constitutional right of same-sex marriage” (Nagourney and Barnes 2012). This coalition of Hollywood and entertainment celebrities would attract an unlikely legal team to challenge the constitutionality of Proposition 8 and California’s Supreme Court’s defense of it—former U.S. Solicitor General Ted Olson and his former adversary, trial attorney David Boies. The two were best known for their roles in *Bush v. Gore* (Dean 2009). The teaming up of two of the nation’s premier lawyers—one conservative and one liberal—to make the constitutional case for same-sex marriage (Moyer 2010) would forever change the face and some contend the course of the same-sex marriage in the United States.

To ensure success, Reiner, Geffen, and Griffin and others started a fundraising effort comparable to the one launched by the Mormon Church in its efforts to have same-sex marriage banned in all states across the nation. Their organization, called the American Foundation for Equal Rights (AFER), became the sole organizational sponsor of the groundbreaking federal court case to overturn California's Proposition 8 (Dean 2009). Reiner said “Our feeling is not to go state by state. Our strategy is to make this wind up in the United States Supreme Court and have this, a settled issue for all time”
The day after Proposition 8 passed, Olson and Boies filed *Perry v. Schwarzenegger*, the lawsuit that Reiner and AFER hoped would take them to the steps of the United States Supreme Court.

With financial support secured, the Olson-Boies legal team compiled the most complete record of same-sex marriage in history, including expert opinion, statute and precedent (Johnson 2010), and mounted one of the most ambitious cases in the history of same-sex marriage. The team hoped to champion a ruling that would transform the legal and social landscape regarding same-sex marriage nationwide (Talbot 2010a), not just in California. To accomplish this, they intentionally circumvented “the incremental, narrowly crafted legal gambits and the careful state-by-state strategy that leading gay-rights organizations have championed in the fight for marriage equality” (Talbot 2010a) and excluded all of the usual LGBT organizations from the lawsuit, save for the city/county of San Francisco.

Unfortunately, a number of leading LGBT and civil rights organizations were not sold on the idea of one grand lawsuit aimed at the United States Supreme Court. Fearing a legal disaster, the A.C.L.U., Human Rights Campaign, Lambda Legal, and the National Center for Lesbian Rights issued a statement condemning the efforts of AFER and the Olson-Boies team (Dean 2009). The organizations believed that the odds of success for such a suit were not good, especially at the time, because the “Supreme Court typically does not get too far ahead of either public opinion or the law in the majority of states” (Quoted in Talbot 2010a). And, according to Talbot,

> The legal precedent that these groups were focused on wasn’t *Loving v. Virginia* but, rather, *Bowers v. Hardwick*, the 1986 Supreme Court decision that stunned gay-rights advocates by upholding Georgia’s antiquated law against sodomy. It was seventeen years before the Court
was willing to revisit the issue, in *Lawrence v. Texas*, though by then only thirteen states still had anti-sodomy statutes; this time, the Court overturned the laws, with a 6–3 vote and an acerbic dissent from Justice Antonin Scalia, who declared that the Court had aligned itself with the “homosexual agenda,” adding, “Many Americans do not want persons who openly engage in homosexual conduct as partners in their business, as scoutmasters for their children, as teachers in their children’s schools, or as boarders in their home. They view this as protecting themselves and their families from a lifestyle that they believe to be immoral and destructive.”

AFER, Olson and Boies thought differently and chose to press forward because they felt a sense of urgency regarding the issue of same-sex marriage. Since national organizations and individuals across the country were filing lawsuits on their own accounts in the hopes of expanding marriage rights for gay men and lesbians, Olson, Boies, and others on the team felt that a federal challenge was eventually going to happen. Olson argued that,

> There are millions of people in this country who would like to be married—in California, in Arkansas, wherever. Some couple is going to go to some lawyer and that lawyer is going to bring the case. And that case could be the case that goes to the Supreme Court. So, if there’s going to be a case, let it be us. Because we will staff it—we’ve got fifteen, twenty lawyers working on this case and we have the resources to do it, and we have the experience in the Supreme Court...We’ve all seen people bringing cases in the Supreme Court who don’t know what they’re doing.

(Quoted in Talbot 2010a).

When the opportunity presented itself, AFER wanted to be ready with a team of lawyers who had the experience and wherewithal to handle the federal challenge. As Griffin described it, we want, “the lawyers Microsoft is going to want, not the lawyers who are going to do it pro bono” (quoted in Talbot 2010a). Since Olson and Boies had both the expertise and each had presented cases before the U.S. Supreme Court and won, AFER was confident in their ability to foster and win a constitutional challenge.
The legal strategy developed by Olson and Boies included the following legal arguments:

marriage—and, by extension, the right to marry the person you choose—is a fundamental right; Proposition 8 violates the Constitution’s Equal Protection clause by assigning gay or lesbian citizens a different, lesser status with regard to marriage rights; sexual orientation is a suspect classification, and that gays and lesbians have been subject to a history of discrimination, are defined by an immutable characteristic that ‘bears no relation to their ability to perform or contribute to society,’ and are ‘politically powerless,’ in this case, to win marriage equality (Talbot 2010a).

The opposing side represented by the Alliance Defense Fund, a Christian-conservative counterpart of the A.C.L.U. and Charles Cooper, the Washington lawyer who succeeded Olson as assistant attorney general under Reagan, chose the notion of a “procreative family” as their central legal argument, telling the court that:

We say that the central and the defining purpose of marriage is to channel naturally procreative sexual activity between men and women into stable, enduring unions for the sake of begetting, nurturing, and raising the next generation. Plaintiffs say that the central and constitutionally mandated purpose of marriage is simply to provide formal government recognition to loving, committed relationships (Talbot 2010a).

The first legal hurdle for the team was that they would need to defend their constitutional challenge of Proposition 8 in front of a single conservative federal district judge who had been chosen randomly to hear the case. Chief District Judge Vaughn Walker, of the United States District Court for the Northern District of California, was a Bush appointee, appointed to the federal bench in 1989. Because he was a known conservative, many SSM supporters initially felt that the dream team would have an uphill battle introducing evidence necessary to persuade the judge of the unconstitutionality of Proposition 8. However, in a surprise move, the judge opted to allow the plaintiffs wide latitude in presenting the case. Walker “opted to admit oral
testimony on everything from the history of marriage to the history of anti-gay discrimination, from the fitness of gays and lesbians as parents to the definition of homosexuality” (Talbot 2010a). The plaintiffs exercised this right to the fullest, having scholars like Chauncey, Badgett and others testify on behalf of same-sex marriage.

On August 4, 2010, eight months after the hearing began, Walker brought the proceedings to a close and released his finding. The opinion was a direct rebuttal to the fear-mongering and stereotypic images and claims the Proposition 8 campaign had made against gay men and lesbians. Walker opined that the defendants of Proposition 8 had failed miserably at proving and/or defending the argument that the state had a vested interest in the tenets of Proposition 8. He cited the social rationale of their procreation argument as being seriously flawed, and sarcastically summed up their argument as follows,

the state has an interest in encouraging sexual activity between people of the opposite sex to occur in stable marriages because such sexual activity may lead to pregnancy and children, and the state has an interest in encouraging parents to raise children in stable households. The state therefore, the argument goes, has an interest in encouraging all opposite-sex sexual activity, whether responsible or irresponsible, procreative or otherwise, to occur within a stable marriage, as this encourages the development of a social norm that opposite-sex sexual activity should occur within marriage (Walker 2010:10).

In the end, Walker ruled that,

Proposition 8 fails to advance any rational basis in singling out gay men and lesbians for denial of a marriage license. Indeed, the evidence shows Proposition 8 does nothing more than enshrine in the California Constitution the notion that opposite sex couples are superior to same-sex couples. Because California has no interest in discriminating against gay men and lesbians, and because Proposition 8 prevents California from fulfilling its constitutional obligation to provide marriages on an equal basis, the court concludes that Proposition 8 is unconstitutional.
Hoping to win in another venue, the defendants took their procreative arguments to the Ninth Circuit Court of Appeals. In a last ditch effort, the defendants tried to have Walker’s ruling dismissed because it was later revealed that Walker was a gay man in a long-term relationship. However, the Ninth Circuit Court, like Chief Justice Walker, was not swayed by the arguments presented before them.

**The Federal Decision:** In a historic move, the Ninth Circuit Court of Appeals in a 2-1 vote, ruled in favor of same-sex marriage, declaring that Proposition 8, the measure passed by California voters in 2008 defining marriage as only between one man and one woman was unconstitutional. Affirming Walker’s decision, it was the first time a Federal Appellate court overturned any state law defining marriage as the union of a man and a woman (Egelko 2012). Judge Stephen Reinhardt wrote a scathing, sometimes humorous, majority opinion, which stated that:

Prior to November 4, 2008, the California Constitution guaranteed the right to marry to opposite-sex couples and same-sex couples alike. On that day, the People of California adopted Proposition 8, which amended the state constitution to eliminate the right of same-sex couples to marry. We consider whether that amendment violates the Fourteenth Amendment to the United States Constitution. We conclude that it does.

Although the Constitution permits communities to enact most laws they believe to be desirable, it requires that there be at least a legitimate reason for the passage of a law that treats different classes of people differently. There was no such reason that Proposition 8 could have been enacted. Because under California statutory law, same-sex couples had all the rights of opposite-sex couples, regardless of their marital status, all parties agree that Proposition 8 had one effect only. It stripped same-sex couples of the ability they previously possessed to obtain from the State, or any other authorized party, an important right—the right to obtain and use the designation of 'marriage' to describe their relationships. Nothing more, nothing less. Proposition 8 therefore could not have been enacted to advance California’s interests in childrearing or responsible procreation, for it had no effect on the rights of same-sex couples to raise children or on the procreative practices of other couples. Nor did Proposition 8 have any effect on religious freedom or on parents’ rights to control their
children’s education; it could not have been enacted to safeguard these liberties.

All that Proposition 8 accomplished was to take away from same-sex couples the right to be granted marriage licenses and thus legally to use the designation of ‘marriage,’ which symbolizes state legitimization and societal recognition of their committed relationships. Proposition 8 serves no purpose, and has no effect, other than to lessen the status and human dignity of gays and lesbians in California, and to officially reclassify their relationships and families as inferior to those of opposite-sex couples. The Constitution simply does not allow for ‘laws of this sort.’

Soon after the ruling was released Lieutenant Governor Gavin Newsom was asked what he thought of the court’s decision. He stated, “This is the one last big piece of the civil rights struggle and it’s happening in our lifetime, in real time, and I’m very proud of this court’s decision” (Quoted in Egelko 2012). Newsom was the only actor in the study who appeared to play his roll out to the end.

**WHAT LIES AHEAD?**

There is no doubt that the Ninth Circuit Court of Appeals paved the way for the U.S. Supreme Court to take up the issue of same-sex marriage. Whether it does so or not will depend on a number of factors. In what many have called a highly strategic move, the Appellate court “stepped back from deciding the constitutionality of same-sex marriage and focused instead on the causes and effects of one California ballot measure” (Egelko 2012). In doing so, the Appeals court “crafted the language of their opinion in such a way as to improve its chances for survival in the high court” (Egelko 2012), but the crafted language could also allow for the U.S. Supreme Court “to avoid review altogether” (Egelko 2012). Thus, the U.S. Supreme Court could uphold the circuit
judges’ position without making same-sex marriage legal across the U.S (Feldman 2012) and, once again, leave the issue undecided and in the hands of individual states.

Evan Gerstmann, a political science professor at Loyola Marymount University believes that the “decision was clearly written with a mind toward getting (the Supreme Court) not to take” the case (quoted in Egelko 2012). Sacks (2012) agrees with Gerstmann; he reasons that Reinhardt’s

“refusal to address the broader question in Perry v. Brown appeared to be a deliberate effort to remove the issue from Supreme Court review. It suggests that he thought an argument good enough for one moderate Republican at the bottom of the federal court pecking order (Walker) was too bold for another at the very top (Kennedy).”

Other scholars believe the opinion was written specifically with one Supreme Court Justice in mind, Anthony Kennedy, often seen as the swing vote on the bench (Feldman 2012; Sacks 2012; Savage 2012). Feldman (2008) argues that,

by treating Proposition 8 as Romer redux, Reinhardt was sending a direct message to Justice Kennedy, his former colleague on the Ninth Circuit. He was telling the justice that if the Supreme Court decides to review the new decision, Kennedy would have to uphold it -- since it went no further than Kennedy had gone before. That would allow Kennedy, if he wished, to avoid declaring a general right to gay marriage in an election year (Quoted in Sacks).

Joseph Mazzone a constitutional law professor at Brooklyn Law School believes that,

The votes are there [at the Supreme Court] to hold that bans on same-sex marriage violate equal protection. The four dependable liberal justices would do it. And I think Kennedy would be inclined to do it. He’s getting old, he’s not going to be there a whole lot longer, and he knows historically how [the same-sex marriage debate] is going to turn out. This is not a justice that wants to be on the wrong side of history (Quoted in Sacks 2012).

According to legal scholars, the court can exercise one of three options: 1) refuse to hear the case; 2) agree to hear the case and rule only on the California decision, or 3)
hear the case and address the broader implications of the decision. It is clear that both sides are nervously waiting to see what the U.S. Supreme Court will do. Until such time as this choice is made, same-sex couples’ ability to marry in the largest state of the union will remain on hold\textsuperscript{89}.

**CONCLUSION**

Though much academic attention has been given to the effects of the Massachusetts court decision on same-sex marriage policy in the United States, very little has focused on the impact of the actions taken by six local officials in their stance in support of same-sex marriage. As discussed in this chapter, the actions of these policy entrepreneurs overshadowed the Massachusetts decision as the national media filled the airwaves and front page headlines with gay men and lesbian couples marrying in San Francisco, New Mexico, New Paltz and Oregon. The repercussions of their actions appeared immediate. State courts scrambled to stop them and prevent others from acting in a similar manner; President George W. Bush lamented about their actions in public speeches and pushed more strongly for a constitutional amendment; and gay and lesbian organizations sought ways to harness the momentum the public marriages, as well as the Massachusetts court decision, had brought to the political movement for same-sex marriage.

The level of the public and political backlash associated with these entrepreneurs’ actions is still being argued today, though most scholars believe that the conservative right overstated the influence. What was evidenced was that during the 2004 election
cycle, 11 states readily passed mini-DOMAs, some with enhanced features that sought to ban any kind of social or legal recognition of gay and lesbian relationships. On the other hand, the constitutional legality of state DOMAs came under extreme scrutiny even as these and other states passed new legislation to ban same-sex marriage.

The influence of at least one of the entrepreneur’s actions on the same-sex movement beyond the initial act of defiance cannot be denied. Gavin Newsom rode the issue out to the legal conclusions he had sought: a ruling by the California Supreme Court in favor of same-sex marriages and a chance to put the issue on the steps of the U.S. Supreme Court. Newsom’s persistence in having the city/county of San Francisco lead, his partnering with others in the fight were invaluable in putting local governmental support and resources simultaneously behind the legal efforts. This governmental participation assisted in legitimizing the issue as it raised the issue of state’s rights to grant marriage rights to gay men and lesbians. Because of the partnership Newsom built with other organizations, when he stepped back from the fight, others in San Francisco government were able to take up his vigilance and his fight.

Pinello (2006) stated that if it were not for the Massachusetts Supreme court ruling, Newsom and the other actors would not have acted in favor of same-sex marriage. I argue that if it were not for individual actors such as those presented in this research, the courts would not have such cases on which to rule. In addition, I agree with Rosenberg’s assumption that social and political action has to occur long before the courts can or are willing to take up a morally contentious social issue. Courts do not work or exist in a vacuum; they work in concert with policy entrepreneurs. It is local entrepreneurial innovation that has assisted same-sex marriage in getting as far as it has gotten in this
short amount of time. Therefore, as scholars and as researchers, we must consider the
effect that local action has in creating and bringing about social reform and change. To
ignore this, would be to miss a crucial piece of the puzzle.
CHAPTER SEVEN

CONCLUSIONS: THE OTHER SIDE OF THE RAINBOW

“My friends, welcome to the other side of the rainbow.”
Ed Murray—Washington State Senator

INTRODUCTION

Gary Mucciaroni (2008) argues that “gay rights advocates are more successful when state and local governments are the venues for policy making” (p. 203). Noting that,

Congress and the President have done virtually nothing to advance gay rights. Thirty-five years after the first local governments passed civil rights protections, twenty-five years after the first states followed their lead, and twenty-three years after the first state passed a hate crimes law covering sexual orientation, Congress has yet to enact any major piece of gay rights legislation” (P. 213).

As such, he asserts that the states and local government are better at handling LGBT rights and are more likely to secure civil rights for this minority group (Mucciaroni 2008) than the national government.

If Mucciaroni (2008) is correct in his assumption that local jurisdictions are better at securing LGBT rights, then by local policy innovators’ entrance into the same-sex marriage policy conflict was an important step in the advancement of LGBT rights in this area. The innovative policy actions taken by the six individuals in this case study put same-sex marriage on state and national agendas and kept it from fading comfortably back into the policy stream as it had in previous years. Consequently, the efforts of these innovators helped bring this highly contentious, morally infused social policy to the steps of the United States Supreme Court, at a time when public opinion towards same-sex marriage has shifted in favor of gay men and lesbians’ right to marry (53 percent) in the
United States (Pew 2011). What the Supreme Court decides to do with the issue opens up another line of inquiry for future studies, and it is the stopping point for this research.

This case study sought to present a historical perspective of same-sex marriage policy in the United States. It traced the policy roots from the advent of the LGBT rights movement in 1970’s to the present day, in order to see if patterns existed in the diffusion of the anti-marriage policies throughout the country and to identify actors who may have influenced the policy debate along the way. In conducting this historical analysis, I focused my attention on six local actors who brought national attention to the same-sex marriage debate by acting in defiance of social custom and law, and marrying same-sex couples in their respective jurisdictions in 2004, thus escalating the debate to a new level. In choosing to study these actors and the impact they had on the same-sex marriage movement and policy in the United States I hoped to bring a new perspective to the issue, one that appeared to be lacking in the literature. The following will summarize the findings of the study, and discuss implications for theoretical knowledge, policy, and future research.

**SUMMARY OF FINDINGS**

As discussed in previous chapters, the daring actions of these policy innovators were hailed as both revolutionary and sacrilegious. While progressive liberals and same-sex marriage advocates praised the actions of these local politicians and hailed them for being courageous in their willingness to stand up against a conservative status quo, the religious right and status quo keepers saw the actions of these local officials as being socially dangerous and indicative of the moral decay that had gripped the nation since the
cultural wars of the 1960s. Though each side disagreed on the appropriateness and impact of these local actions on the nation as a whole, both agreed that these policy entrepreneurs had somehow changed the game in the same-sex marriage debate. To better understand how they had changed the game, I used the civil rights argument and the comparison of same-sex marriage with interracial marriage as a backdrop for the discussion. From there I proceeded to look more deeply into how actors could influence the policy diffusion of anti-marriage laws in America, focusing my efforts on this handful of local actors and their efforts to allow gay men and lesbians to marry in their cities and counties. The research was therefore conducted in two parts.

The first part of this case study sought to shed light on the comparison between same-sex marriage and interracial marriage in the United States; proponents of same-sex marriage have repeatedly asserted the civil rights analogy, claiming that same-sex marriage is on par with other civil rights movements, in particular the civil rights movement that developed in the 1960s to alter laws that diminished African Americans ability to participate as full citizens in the United States. Because contingents of religious and civil rights leaders in the black community take exception to the comparison, this research sought in a very broad way to assess whether or not there was any validity to the argument being made by the LGBT community. To date, few scholarly studies have been conducted to address whether or not there are similarities/dissimilarities between the two anti-marriage polices. To determine if a comparison could be made on any level, the first part of this study sought to address the following research questions: 1) In what ways are political/social actions and policies that sought to ban interracial marriage and policies banning same-sex marriage policies similar?; 2) How were policies that sought to repeal
these legislative acts similar?; 3) As these policies spread throughout the nation during their respective timeframes in history, were there patterns to their diffusion?; and 4) In what ways was the diffusion of these marriage policies similar/dissimilar?

The study’s findings concluded that the rhetorical arguments used against same-sex marriage were not only similar, but exactly the same, as those used against interracial marriage. The hate speech used by segregationists to denounce interracial marriage incorporated the use of scripture and natural law to condemn intimate relationships between black and white Americans. These relationships were often described as ungodly, abominations, and against nature. Opponents of same-sex marriage appear to have taken the argument from the anti-miscegenation movement in America and used the same rhetoric to condemn same-sex marriage. The hate speeches used today to describe same-sex relationships and deny marriage rights to gay men and lesbians use identical phrases and imagery in their efforts to create fear regarding the potential consequences of same-sex marriage and, thus, to persuade the public not to accept these types of relationships. Same-sex couples are called perverse, unnatural, ungodly, and abominations. Thus, on the surface, we see that an apparent rhetorical similarity does exist between interracial marriage and same-sex marriage. Oddly enough, a number of those spouting this hate speech against same-sex couples are from the black religious community.

On another level, the research showed that there seemed to be a pattern to state adoption of these anti-marriage policies. By conducting a diffusion analysis of state adoptions of policies that banned each of these types of marriages, I was able to show that a regional diffusion pattern appeared to exist in the passage of laws banning both
interracial marriage and same-sex marriage. This analysis showed that neighboring states located in the same regional areas acted in parallel fashion to pass such laws. This was particularly true of southern states. These states not only banned these types of marriages, but they were also more likely to institute harsher penalties for interracial marriages, and stricter laws refusing to acknowledge any type of same-sex relationships.

The second part of the study sought to understand why a handful of local politicians acted in defiance of law and social custom in order to bring same-sex marriage to their localities at a time when both the public and political operatives opposed such a move. Through the use of personal interviews and archival data, I was able to provide in-depth insight into the actions of the actors and address the following: 1) What led to and/or influenced these policy entrepreneurs to act in favor of same-sex marriage instead of supporting the status quo?; 2) Were there similarities between the actors and the localities they represented that may have predisposed them to “like” actions?; 3) To what degree were their actions influenced by the LGBT community and the SSM movement?; 4) To what degree were these policy entrepreneurs influencing the other?; 5) What function did political “windows of opportunity” play in the initial diffusion of innovative policy practices by these actors?; 6) What were the personal consequences, if any, of their actions?; 7) What were the political consequences, if any, of the policy actions of these policy entrepreneurs at the time?; 8) What were the perceived advantages and/or disadvantages of their policy initiatives on the same-sex marriage movement in general?; and lastly, 9) Were their efforts continued in other ways?

The study’s findings suggest that individual actors were not necessarily influenced by each other as much as they were influenced by their own sense of being on
the “right” side of the law. What factor drove each to the “right” side seemed to vary (e.g., State of the Union Address, constituent question, pressure from LGBT group). Although none of the actors identified the Goodridge v. Department of Health decision as being the main factor, the Massachusetts court’s decision appeared to act as a backdrop for their actions. Legalization of same-sex marriages in one of the most liberal states in the union opened up a political window of opportunity that allowed them to act in defiance of the status quo. Without this backdrop, it is questionable that any of the actors would have thought to challenge the constitutional right of their state to deny marriage to same-sex couples.

When exploring the personal consequences of their decision making, it was discovered that the actors experienced both positive and negative repercussions for their actions. All had received some sort of religious condemnation through hate mail, the press, or public interaction with opposing groups. Some even received death threats. As far as repercussions to their political careers, a few were rebuked by their political party, openly chastised by political pundits, and/or voted out of office. On the positive side, all actors received praise from the LGBT community, in general; and national civil rights leaders such as Julian Bond and Al Sharpton applauded their actions. Though some pockets of the LGBT movement believed that these actors’ actions would hinder their ability to secure rights for same-sex marriage through a legal pragmatic strategy, others in the LGBT community saw it as reenergizing the LGBT movement in its struggle for civil rights, and coalescing and solidifying support for same-sex marriage by LGBT leaders.

In seeking to determine what, if, any, political consequences occurred on a state or national level in relation to their actions, it was noted that political pundits and
political parties on both sides credited these individual actions with mobilizing the religious right and conservatives in the 2004 election. As a result, they were blamed by some Democrats for costing John Kerry the election and helping to secure the passage of 11 state statutes or amendments banning same-sex marriage. However, there is much disagreement surrounding these accusations as data collected from exit and opinion polls at the time seem to support conflicting views.

What is certain is that, in 2004, this local action appeared to have instigated state governments and state courts to act outside of their normal comfort zones and act in a hyperactive mode to settle the constitutional and legal claims made by these individuals. In order to stop this type of local action from spreading to other jurisdictions, state authorities had to act quickly to stop same-sex weddings from proceeding. In doing so, they pushed state courts to expedite hearings. This governmental attention to same-sex marriage gave the same-sex marriage movement the legitimacy it needed. Once local governments (i.e., San Francisco) started signing on as plaintiffs in lawsuits challenging state laws, same-sex marriage began to been seen as a policy issue in which the government had a vested interest. Local governmental intervention changed the policy debate from being between two special interest groups—the religious right and the LGBT community—and turned it into a referendum on which governmental body in the nation—local, state, or federal—had the authority to determine who should be allowed to marry in America.

**IMPLICATIONS FOR LITERATURE**
Same-sex marriage is a dynamic multifaceted social issue. As such, scholars have approached the topic through a number of theoretical lenses. They have looked at it primarily as a civil rights issue; however, tenets of morality policy and economic policy theories have also lent themselves to the discussion. Though all sound in their dealings with the topic, what appeared missing from the discussion was the role policy entrepreneurs played in the same-sex marriage debate. As Kingdon (2000) and Mintrom (2002) suggest, policy entrepreneurs are integral to political and policy processes because it is actors who often create and implement policy innovations that are replicated by others and diffused throughout the system.

This research, therefore, sought to present a new perspective on the same-sex marriage policy issue by tying the theoretical threads of civil rights movement theory and morality politics and policy theory together through a diffusion analysis of same-sex marriage policy in the United States. In doing so, I sought to test assumptions and models presented by morality theory scholar Elaine Sharp (2002), as well as the viability of her topology of actions for local leaders confronted with this specific, morally contentious issue. What I found was that Sharp’s topology of action model could readily be used to describe how these six local actors responded when faced with the issue of same-sex marriage. As described in the study, the actors’ reactions to the issue fell into three of the six categories of action—*responsive, hyperactive responsive* and *entrepreneurial instigation*.

What was interesting to note about these courses of actions is that Sharp only credits one action in particular as being entrepreneurial in nature—*entrepreneurial instigation*—which she defines as taking the initiative to push morality issues onto the
agenda in the absence of overt pressure by any constituency groups. The other responsive actions in her model are not perceived as “entrepreneurial” because they are credited with simply reacting to pressure from outside groups. However, based on Kingdon’s (2000) and Mintrom’s (2002) concept of a policy entrepreneur, I would argue that any actor who acts against the status quo is being entrepreneurial, and as such their actions should readily be defined as such. Therefore, I would suggest grouping Sharp’s responsive action types into an overarching category and classify it as *pioneering* or *innovative* action.

As Kingdon (2000) and Mintrom (2002) have asserted, social change often is the by-product of a policy entrepreneur who chooses to act when an opportunity arises. The key in this situation is that an actor chose to act favorably in the direction of social change. Therefore, local officials’ actions that are classified as responsive, hyperactive responsive or entrepreneurial instigation in regards to morally contentious issues can be considered *pioneering* or *innovative* because those actions challenge and go against the status quo. It matters not if the local actors are acting on their own or on behalf of a special interest group. The fact that they are proactive in their decision making makes them change agents. Therefore, I would argue, that all of the actors in this study were all policy entrepreneurs and innovators, despite the categorization of their actions based in Sharp’s (2002) typology. Each may have responded differently to his or her environment, but each readily seized upon a moment in time, where he or she had an opportunity to effect policy change in the same-sex marriage movement.

Another area of theory that bears some review and discussion is Strach’s (2007) notion of “policy gaps.” Strach (2007) posits that windows, or gaps, can open up as a
result of junctures, instances where the publics’ *expectations* of a policy deviates from, and collides with, the *actual* values and goals intended in a policy. Strach (2007) asserts that policy junctures can have a profound effect on the policy process because they can become sites of political contestation where morality and non-morality politics can find their way into the policy process. I would contend that Strach’s theory of policy gaps as places for moral and policy contestation is applicable to this case study. The six policy innovators who acted in defiance of social custom and law launched their battle for same-sex marriage from a policy gap area. The actors in this study clearly identified the break between what the policy “said” and what the “reality” was, as it pertained to constitutional policies guaranteeing equal rights to all American citizens. As such, these actors were able to exploit that gap as a means to justify action in favor of bringing about social change for same-sex marriage.

It can be reasoned that the public’s expectation of the intent and purpose of our national constitution and the 50 respective state constitutions is that they represent and maintain an American norm. Most people would understand this norm to mean maintaining the status quo. However, the actors in this study clearly pointed out that the *actual values* and *goals* of the Fair and Equal clause envisioned in both the U.S. Constitution and state constitutions was not to maintain the status quo but to expand the status quo to ensure that all Americans would be afforded the same basic rights and privileges under the law. Thus, the stated goals and intent of constitutional policy to grant and defend individuals’ rights appears to have collided with the public’s expectation of maintenance of social norms. Once this gap between expectations and actual goals and values was exposed, groups and individuals on both sides of the debate sought to use the
policy gap as a place to voice their moralistic arguments. And it is in this gap that the battle continues as each side tries to realign constitutional policy to meet its expectations. Opponents to same-sex marriage seek to add language to the policy to maintain the social norm, while proponents seek to exercise the inherent rights afforded in the current policy to create social change.

I also wanted to determine if Elazar’s (1972, 1986) and Dorris’ (1999) models of regional policy adoption could bring us a clearer understanding of the relationship between the diffusion of same-sex marriage polices in the United States and those of interracial marriage policies. The use of these scholars’ models proved to be effective in providing insights into the phenomena; arguably, these regional models are still applicable to today’s research. However, critics of regional diffusion would argue that Elazar’s concept is no longer viable because other factors besides regionalism can explain how and why localities and states adopt policy. In particular, Deleon and Naff’s (2004) and Sharp’s (2005a, 2005b) theory on unconventional cities is an attempt to expand upon the diffusion literature. These theorists argue that a new political culture (NPC), characterized by certain demographic indicators, can be responsible for policy innovation and adoption, and not the cultural regionalism models described by Elazar and his followers.

The NPC model did not seem to play out as well as hoped for in identifying whether localities could be earmarked as conventional or unconventional in this study. I would argue that this relatively new theoretical model is best served when a large number of localities are available for contrast and comparison. Still, the concept of six demographic indicators presented by Sharp (2005a, 2005b) to determine the political
culture of a locality provides researchers a new way of assessing why local officials may be predisposed to act in a certain fashion and helps support her topology of actions.

**Implications for Policy**

This research has helped identify at least four core policy areas I believe state governments, and eventually the national government, will need to address as a result of the changing nature of same-sex marriage policy in the United States. Policy areas where we are currently seeing, and, most likely, will continue to see contestation are in 1) local and state authority (i.e., home rule); 2) Full Faith and Credit Clause; 3) federal benefits; and 4) constitutional provisions.

**Home Rule**: The action of the local officials in this study brought into play the notion of “home rule” and the rights of localities to interpret and apply state law in order to meet the needs of their jurisdiction. As discussed in the research, all actors believed they had the both legal authority and the authority granted them by virtue of their office to act on behalf of same-sex marriage. To ensure this, they had their county attorneys validate that their actions were in accordance with state law. As a result, the delineation of authority in this policy area become somewhat muddled and policy action surrounding the issue has become complicated for the states, especially with local governments such as San Francisco and Ithaca willing to challenge the state in court over the issue. Once same-sex-marriage ceased to be about two special interest groups battling out a morally contentious issue, and instead became about issues of state and local authority, it appears that battles over this policy issue will now be fought on all levels of government.
**Full Faith and Credit (Article 6 Section 7 U.S. Constitution):** Due to the varying and changing nature of the laws surrounding not only marriage, but domestic partnerships and civil unions as well, in the United States, same-sex couples traveling across the country will need a legal handbook to guide them on which states will legally recognize which type of relationship, and, to what extent. The reversal of laws banning same-sex marriage by some states, and the expansion of legal recognition of their intimate relationships in others, is seen as a positive development in the same-sex marriage movement. However, as Koppelman (2006) predicted, it has created a national legal quagmire.

In order to ensure their relationships are valid in as many states as possible, same-sex couples are gathering as many legal proclamations as they can each time a new venue opens up for them to do so. A gay couple in New York exemplifies this desire to validate their relationship and to protect it legally:

“On their dining room table, they have laid out the proof: a New York City certificate of domestic partnership from April 2000, a Vermont certificate of civil union from October 2000, an actual marriage license from California in 2008 and—perhaps the sentimental favorite, if legally the most anemic—an affidavit of marriage from that euphoric moment in 2004 when nearby New Paltz, N.Y., became the center of the gay marriage movement” (Dewan 2011).

The question that now remains for this couple, and other same-sex couples, is whether or not other states will recognize the legal documents and to what extent.

Same-sex couples are not the only ones dazed and confused regarding the legal rights and status of their relationships; states are just as confounded. It was one thing for Congress, through the Defense of Marriage Act, to allow states to ignore the full faith and credit clause of the United States Constitution as it pertained to same-sex marriage, but
what about same-sex divorce? As more and more gay men and lesbians marry, we are beginning to see same-sex divorce. “Since most states, and the federal government, don't recognize gay marriages, many same-sex couples are left with no way to officially split” (Smith 2011). Thus, gay men and lesbians who marry in one state and move to another state that bans such marriages are left in a legal limbo. Because of the lack of support granted by the Full Faith and Credit Clause of the United States Constitution, a couple who marries in Massachusetts, then relocates to another state cannot divorce. And they cannot file for a divorce in Massachusetts unless they both move back to the state and reside there for a year (Smith 2011). Even more perplexing is that without access to a family court, it becomes almost impossible to divide up joint assets and decide custody issues. Currently, the only remedy for these couples is to remain in the states that granted them their marriage rights or to move to one of the other few states that recognize their marriages. However, this does not settle the federal question regarding benefits.

**Federal Benefits:** The legalization of same-sex marriage in six states and the passage of civil unions in five more states has not settled the issue of equal rights under the law. This is particularly true because couples who have been granted marriage rights or rights equal to marriage under state law are still excluded from receiving benefits under federal law. The inability of same-sex couples to avail themselves of the 1,138 tax benefits afforded opposite-sex couples has opened another avenue for same-sex marriage proponents to challenge the Defense of Marriage Act. A little known, but very important lawsuit, *Gill v. Office of Personnel Management*, is challenging one of the core tenets of DOMA. In an interesting twist on the legal strategy used in the same-sex marriage debate, *Gill v. Office of Personnel Management* is premised “not on the constitutionality
of same-sex marriage but on the unconstitutionality of denying federal benefits to a class of citizens whose marriages are recognized by the state” (Talbot 2010). Filed in federal court by GLAD, the same organization that filed the Goodridge v. Department of Health lawsuit, Gill v. Office of Personnel Management may prove to be one policy area that the U.S. Supreme Court may not find too contentious to consider.

**Constitutional Provisions:** While Olson and Boies may have been successful at bringing the issue of same-sex marriage to the steps of the United States Supreme Court, the battle still rages on as opponents to same-sex marriage continue to seek constitutional amendments in every state, hoping to make it nearly impossible for the U.S. Supreme Court to rule in favor of striking down all those constitutions. It is becoming more apparent that as state legislatures begin to roll back laws banning same-sex marriage, as was recently done in Washington and Maryland, that same-sex marriage policy in the United States warrants a review by the United States Supreme Court. However, the looming question is, is the nation’s Supreme Court ready to take up such an issue? And, if so, are gay men and lesbians ready for the results?

A number of legal scholars in support of same-sex marriage are betting on Anthony Kennedy and his rulings in Lawrence v. Texas and Romer v. Evans to sway the court in favor of legalizing same-sex marriage in the nation. However, if the court refuses to take up Perry v Brown, or if it does and rules against same-sex marriage, thousands of gay men and lesbians will have their personal lives invalidated—and the LGBT rights movement in America will be struck a stunning blow. A denial by the court in any direction will affect same-sex couples because it leaves their relationships in a “national” legal limbo. To address only the narrow ruling of the California Ninth Circuit Appeals
Court may vacate that states constitutional amendment, but it does little to vacate the other states that also have them. Additionally, it leaves intact the Defense of Marriage Act. Thus, couples remain in legal flux as they travel across the nation, and they are not able to benefit from the 1,138 tax benefits afforded opposite-sex couples.

LIMITATIONS OF RESEARCH

Several limitations of this research study are found in the inherent limitations of the various methodologies used to structure the research and study the phenomena. Because there are over 18,000 cities, villages and townships and over 3,000 counties in the United States (U.S. Census 2000) of varying sizes and with varying government structures, it was not practical or appropriate to conduct a statistical analysis of these entities. Therefore, conducting a quantitative analysis of the case studies was not feasible because there was no way to construct a “viable” quantitative study based on six outliers (note: most quantitative researchers would see these six cases as problematic, not interesting; and the significance of these six cases and the information they would bring to the policy analysis would readily be overlooked). Therefore, the most important limitation to this research is that, in general, case studies are not structured to generate findings that can readily be used outside of the individual case study. Details derived from case studies are often particular to individual cases, even when there is a cross comparison between similar cases.

While findings are not readily generalizable in case studies, George and Bennett (2005) argue that this is an acceptable limitation if the case studies are able to help us generate theory that can be helpful for studying similar phenomena. Additionally,
Lincoln and Guba (1985) argue that qualitative research is just as strong as that of quantitative research if it has “transferability.” Transferability refers to the extent to which the researcher’s working hypothesis can be applied to another context (Zhang and Wildemuth Nd:6). Transferability relies on researchers to provide rich, in-depth descriptive data of the particular phenomena they are studying; the more rich descriptive details provided in the data analysis, the more others can determine the degree to which the results of the study can be transferred (i.e., are applicable) to other situations. Other researchers can make transferability judgments not only based on the in-depth descriptions provided in the research data, but also by having access to the inquiry’s paper trail. By including historical timelines, state statutes and laws, and other documents in the appendices of this study, I am providing other researchers some of the tools to repeat, as closely as possible, the methodology of this study.

Using archival information and data to construct an overall historical analysis of same-sex marriage policies enabled me to show patterns of diffusion of a morally contentious public policy. However, the fact that the information may only provide a one- or two-dimensional perspective of an issue because some information may be overlooked and/or excluded by the media and researchers should be considered as a limitation. Combining a historical analysis with semi-structured interviews of policy entrepreneurs helped decrease the problems inherent in the archival research by providing a more robust picture of the events and actions surrounding a policy innovation. This proved to be true; when I was able to personally interview four of the actors, I was able to gain more insight than I did just from media reports. Unfortunately, I was not able to gain access to two of the subjects in the study—Newsom and Dunlap. Because Newsom was
a prolific interviewee and always in the public’s eye, there were numerable resources both archival and present day information that I could reference to gather as much insight into how he thought and felt about his actions, past and present. However, Dunlap had only conducted a few interviews. The data collected was enough to answer the core questions of the research; however, it was not as robust as I would have liked.

Another limitation in the study deals specifically with the issue of time. Because, same-sex marriage is a dynamic policy issue, the research was only able to focus on the short-term implications of these policy innovators’ actions on the SSM movement and not the long-term implications. In order to complete the research, I had to determine a cut-off date for data collection, and though I have been able to add some minor insight into events that happened in 2012, the bulk of the information contained within this study only takes us to the end of 2011. Still, in choosing a snapshot in time in the history of same-sex marriage policy in the United States—the winter of 2004—I was able to provide insights as to how and why innovative policy in this area occurred, and analyze how personal actions by local officials influenced the future actions of the same-sex marriage movement up until 2011.

Lastly, neutrality is considered to be an important component for research. Thus, researchers are commonly told to be careful to not let personal, political, or social biases taint their research. However, Lincoln and Guba (1985) suggest that “inquiry is not, and cannot be value free” (p. 10). Thus, naturalistic (qualitative) researchers bring their values to the inquiry. This suggests that the fact that many researchers determine a topic of study based on personal interest does not detract from the research, but rather can be an asset, as long as the researcher is aware of personal biases and makes conscious efforts
to avoid having such biases influence the conduct of the research. For this study, my background as an LGBT activist, and someone who has participated in the SSM movement, has led me to this research; however, my training as a social scientist has made me aware of potential biases I may bring to the work. Since researchers cannot eliminate all their biases, they can at least be cognizant of what role it may play in their research.

**Future Research**

The research conducted in this case study has opened up a venue of options for those who study the LGBT movement, in general, and same-sex marriage, in particular. As noted earlier, having the issue at the edge of the steps of the U.S. Supreme Court has provided a new research venue for legal and civil rights scholars. Specifically, civil rights and legal scholars who view the court as a social reformer may seek to examine these and other questions: Is Rosenberg (2008) correct in his argument that the U.S. Court will not create change in the same-sex marriage policy area until the public is ready? If the public is ready (assuming the latest polls are correct), what does it mean for the states, for same-sex couples, and for the LGBT movement, in general, if the Court refuses to legalize same-sex marriage? What are the implications for state and federal policy if the Court decides to rule in favor of same-sex marriage? And lastly, what roll does morality play in the Court? Considering we have a divided court with several of the conservative members affiliated with religious institutions that denounce same-sex marriage, what is the potential for judicial bias and what role, if any, will it play in the court’s decision-making process? Lastly, what about the LGBT movements incremental strategy of
challenging the laws state by state? How does this fit/conflict with the AFER strategy? What are the positives/negatives of pursuing this type civil rights strategy?

This research in particular has also opened up a line of inquiry into the role that individual actor’s play in the same-sex marriage movement, and how their actions can influence state and national policy in this area. Thus, as scholars move forward, they need to ask themselves, who are the bold actors now? And what effect, if any, will their actions have on this policy debate in the future? I believe the introduction of two unlikely supporters—Olson and Boies—in the same-sex marriage policy issue is a starting point for anyone wanting to further study entrepreneurial actors and policy innovation. In addition to these two highly visible actors, I would also suggest looking at AFER and those who make up this organization. The ability to raise millions of dollars in a short amount of time in order to launch a counter legal strategy against the money and influence of the Mormon Church and conservative donors bears some investigation.

The questions and issues raised here represent a small fraction of topics within the same-sex marriage policy debate that is open for research. It will be interesting to see where scholars take the discussion next.

CONCLUSION

“We all deserve the freedom to marry.” At least that is what the signs read and it was the message of the chants that were being shouted by thousands of gay men and lesbians in front of the California Supreme Court in 2004 and 2008, and the Ninth Circuit Appeals Court in 2010 and 2012. It is a place that many had not considered being until the action of one man made their dream for equal rights in this area somehow seem possible, if even for a fleeting moment.
The actions of James Bruno, Victoria Dunlap, Diane Linn, Gavin Newsom, Carolyn Peterson, and Jason West undeniably affected the same-sex marriage movement. Their courageous move to start issuing marriage licenses and marrying same-sex couples seemed to incentivize the same-sex marriage movement at a time when LGBT movement leaders and liberal political supporters were still straddling the sidelines of the issue. And, it seemed to coalesce the LGBT community into supporting political action in favor of same-sex marriage by giving the community a sense of what it would be like if such a right existed, and what it felt like to have it taken away.

The six actors identified in this study may not have considered acting as “boldly as they did in a national legal vacuum” (Pinello 2006:193) but the fact is they did act, and they did so for varying reasons. Therefore, I would argue they had as much, if not more, of a profound effect on the same-sex marriage movement as did Goodridge v. Department of Health. No one could deny their courage and their sense of commitment to stand on their principals, and risk their political careers in order to be on what they considered to be the “right” side of the law. In doing so, they gave voice to those who feared speaking up before. So it is they, along with the Massachusetts Court decision, who helped bring about enormous social change in this area, change that we are still seeing evolve today.

To overlook the efforts of these six policy innovators and to minimize their influence on the same-sex marriage movement would be to ignore a critical piece of the policy puzzle. A piece that has helped set the stage for the next wave of same-sex marriage polices in the United States, and potentially the legalization of these relationships.
ENDNOTES


2 Proposition 22: Limit on Marriages. Added a provision to the Family Code providing that only marriage between a man and a woman is valid or recognized in California. Proposition 22 was ratified by an overwhelming majority of California voters (61.4 percent) on March 7, 2000 (California Secretary of State, 2010).

3 The LGBT movement has sought to have its relationships legally recognized in varying forms. Domestic Partnerships, Civil Unions, and now marriage are three types of relationships that are legally recognized in varying degrees by various states, corporate, and governmental entities. This paper will only focus on same-sex marriage. In doing so, it will only discuss marriage as it pertains to gays and lesbians.

4 Local officials in some of these localities later filed lawsuits on behalf of the city and/or county they represented, fighting for their right to issue marriage licenses and perform weddings for same-sex couples. The lawsuit filed by the City and County of San Francisco in conjunction with several same-sex couples resulted in the California Supreme Court ruling that overturned Proposition 22 and legalized same-sex marriage in 2008.


6 Koppelman (2006) coined the term mini-DOMAs in reference to state statutes and constitutional amendments prohibiting same-sex marriage; I will continue the use of the term.

7 A historical overview of regulations regarding marriage reveals that the government has established age requirements, banned nuptials between individuals who are biologically related, set limits on the number of spouses one could have and banned interracial marriage (Haider-Markel and Joslyn 2005).

8 The Court reaffirmed its earlier decision in Goodridge v. Department of Health, handed down on November 18, 2003. The decision ruled in favor of the plaintiffs, noting that Massachusetts’ marriage laws prohibiting same-sex couples from marrying were unconstitutional. The Court gave the legislature 180 days to address its rulings. In February 2004, the court rejected the legislature’s attempt to institute Civil Unions, noting that only marriage would end the discriminatory treatment against gays and lesbians and set May 17, 2004, as the effective date for the state to begin issuing marriage license to same-sex couples.

9 After the 2004 elections, 45 states had statutes and/or constitutional amendments in place barring same-sex couples from marrying in their jurisdictions, and refusing to recognize marriages performed in other states.

10 Quoted in, America’s Struggle for Same-Sex Marriage (Pinello 2006: 68).

11 Civil rights are defined as “the ‘rights belonging to an individual by virtue of citizenship, especially the fundamental freedoms and privileges guaranteed by the 13th and 14th Amendments to the U.S. Constitution and by subsequent acts of Congress, including civil liberties, due process, equal protection of the laws, and freedom from discrimination.” West’s Encyclopedia of Law (e-book version [2004]).

12 Pace v. Alabama, 106 U.S. 583 (1883).

13 Judge Keith Bardwell later resigned his position as Justice of the Peace for the Eighth Ward of Tangipahoa Parish, Louisiana, effective November 3, 2009, after Governor Bobby Jindal and several civil rights groups requested his resignation (Desalatte 2009).
California’s constitutional amendment barring same-sex marriage passed in 2008. However, Proposition 8 was ruled unconstitutional by the Ninth Circuit Appeals Court in February 2012.

For more discussion on this subject, see Simple Justice by Richard Krueger (1977) and Race-Mixing by Renee Romano (2003).

This argument is based on the assumption that there were no homosexual slaves, an assumption that has been repeatedly challenged by LGBT persons within the black community and others.

For more discussion on this subject, see The Miner’s Canary by Lani Guinier and Gerald Torres (2002).

A public opinion poll conducted by the PEW Research Center in October of 2009 revealed that 66 percent of black Americans oppose same-sex marriage and only 26 percent favor it. The poll also showed opposition to same-sex marriage by blacks is much higher than the national average (PEW 2009).

Maryland and Washington legalized same-sex marriage in the 2012. However, as this occurred after the cut-off date for data collection; and because these laws have not yet taken effect as of this writing they will not be included in this research.

Researchers assume states would benefit from same-sex marriage because they base individual and married income tax on a percentage of income tax paid to the federal government.


Utility is a term used by economists to describe “individual welfare.” Economists argue that individuals seek to maximize utility functions. Utility is an increasing function of the quantity of each good consumed, and a decreasing function of each type of work performed (Black 2002:490-491).

A Zogby Poll conducted in Oct 2007 showed that almost 60 percent of Americans did not favor same-sex marriage, though there was a perceptible shift towards the acceptance of civil unions, with 62 percent accepting them.

A focusing event is described by Kingdon (1995) as a crisis or disaster that comes along to call attention to a problem, a powerful symbol that catches on, or the personal experience of a policy maker.

Policy entrepreneurs are often described as “change agents,” people who lead dramatic change in political movements and governmental policies. According to Kingdon (1995), entrepreneurs might be elected officials, career civil servants, lobbyists, academics or journalists.

Mintrom (1997), Kingdon (1995), Colvin (2005) suggest that policy and social change is the by-product of resourceful entrepreneurs, inside and outside of formal government, who seize upon political opportunities to bring about their own policy goals when an opportunity arises. As a consequence, the retention of the status quo and/or changes in public policy may come from the efforts of extragovernmental actors who exploit windows of opportunity that open up in the policy process.

Jackson is represented by Shirley and Bannister Public Affairs, a conservative public-relations firm that also represents luminaries Ann Coulter and Peggy Noonan, as well as the Family Research Council’s Tony Perkins, with whom Jackson co-authored a book. Two of the signatories to a letter Jackson and other D.C. area clergy penned to Mayor Adrian Fenty opposing same-sex marriage are members of the American Clergy Leadership Conference, a group founded by the Rev. Sun Myung Moon, who also owns the right-wing Washington Times. The treasurer of Stand 4 Marriage DC is Brian S. Brown, who is also the executive director of the National Organization for Marriage. And the group is represented by Brian Raum,
a lawyer for the Alliance Defense Fund, a Christian-right legal organization founded by James Dobson" (Serwer 2009).

Walker lists 88 programs that were adopted by at least 20 state legislatures prior to 1965. For each program, he gave each state a percentile score (between 0 and 1) based on the order in which it adopted the program (0 if first, 1 if last or still unadopted). He then averaged each state's program scores and subtracted the result from 1. Based on this formula, he found New York to be the most innovative state with a score of 0.656; the least innovative state was Michigan with a score of 0.298. One of the weaknesses noted in Walker's model was that if the policies had an ideological tilt, then higher "innovativeness" scores would go to more liberal states. Also, many of the policies used to determine his model appear to slant toward urban and liberal innovativeness.

Walsh-Russo (2004) points out that, innovations that are easily communicated and strongly legitimated require less promotion.

Strong ties often indicate networks where information is routinely shared. Therefore, there is little new information to report to each other.

New Hampshire eventually enacted anti-same-sex marriage legislation in 2010.

Quote from a speech delivered on October 11, 2009, at the “National Equality March” in Washington, D.C.

Believing that Marxist and other rationalist theories of revolution were inadequate to explain the actual historical patterns of modern day revolutions, Skocpol argued for a structural, rather than voluntarist, analysis of the phenomenon. Utilizing comparative historical analysis as a new frame of reference for analyzing three modern day social-revolutions—the French Revolution of 1787-1800, the Russian Revolution of 1917-1921, and the Chinese Revolution of 1911-1949—she was able to develop an explanation of the causes and outcomes of these revolutions. In presenting the academic world with a fresh perspective and new methodology for studying this phenomenon Skocpol was able to show how states can act as administrative and coercive organizations that are potentially autonomous from class controls and interests (Skocpol 1979).

To begin tracing the diffusion patterns of the miscegenation laws, I utilized an on-line source, the “Brief History of Marriage Meddling in the United States” (http://www.filibustercartoons.com/marriage.htm). To trace the diffusion patterns of same-sex marriage laws I utilized a timeline developed by the Human Rights Campaign (http://www.hrc.org)—a national LGBT organization that advocates and lobbies for LGBT rights. Prior to mapping out each incidence for the diffusion analysis, I conducted a search of Westlaw and State sources to verify the year each law was implemented and/or repealed by the state. I then sought to identify any social or political indicators such as windows of opportunity or focusing events that may have led to the initiation and/or reversal of these policies. For example, Novkov (2008) suggests that miscegenation laws began to appear in the South after the passage of the 1866 and 1875 Civil Rights laws.

Same-sex marriage is a dynamic policy issue. As such, I chose December 2011 as a cut-off date for data collection.

Supportive statements made by various political entities were not seen as “favorable action” because no political or legal actions were taken by the official to act against the status quo.

In some instances, this required several phone calls to the office in order to speak to the right staffer who could make arrangements for an interview.

Contact with Mayor Newsom’s office revealed a disorganized structure where there appeared to be some confusion as to whose job it was to handle the interview request. The Communications Department, which
handles all of the Mayor’s public engagements, appeared to be the most disorganized of all the offices contacted. I was repeatedly shuffled between staffers and was directed to the wrong individuals on several occasions; where one staffer sought to push the request through, another stopped it. Finally, in June of 2009, the current Director of Communications forwarded my last phone message to an intern, who in turn called to inform me that the San Francisco Mayor would not be able to schedule or talk to “anyone” for the next year.

Many of the people contacted were supporting Jerry Brown for Governor and did not want the political uneasiness of asking the Mayor for a favor to conduct an interview when they were not supporting his election efforts.

To elicit nuanced responses, Rubin and Rubin suggest using broad statements.

“The Census Bureau's figures were primarily derived from what it refers to as the ‘relationship item,’ which asks how each member of the household is related to the householder. The ‘householder’ is the person in whose name the housing unit is owned, being bought, or rented and is referred to throughout the questionnaire as ‘Person 1...The Census Bureau got the data it used to calculate the number of unmarried partner households and the partners’ genders by correlating questionnaires where the ‘Unmarried partner’ box was checked with responses to other questions asking the sex of the householder and the partner...Analysts made one more adjustment when the ‘husband/wife’ relationship box was checked but other information in the questionnaire indicated that the person designated as such was the same sex as the householder. In that case, the ‘husband/wife’ response was, in most cases, changed to an ‘unmarried partner’ response (Price-Livingston 2005).

This term is used by Dorris (1999) to refer to the lesbian, gay, bisexual and transgender community.

Four of these states—Kansas, New Mexico, Ohio, and Washington—rescinded their laws prior to 1885. In doing so, these four states joined seven other Northern states—Connecticut, Minnesota, New Hampshire, New Jersey, New York, Wisconsin, and Vermont—that never had any such laws on the books.

Section 4189 of the Code of Alabama declared that, “If any white person and any negro, or the descendant of any negro to the third generation, inclusive, though one ancestor of each generation was a white person, intermarry or live in adultery or fornication with each other, each of them must, on conviction, be imprisoned in the penitentiary or sentenced to hard labor for the county for not less than two nor more than seven years.”

The screening of the film at the White House for President Wilson and its promotion as being “federally endorsed” by the producer gave the movie and its political statements for white supremacy credibility in the public sphere (Wormer 2010).

Roddenberry’s amendment was said to be a public and political reaction to the affairs and ultimate marriages to white women by Jack Johnson, a black heavy weight boxing champion (Vile 2002).

South Carolina was included on this list because it had pre-existing laws that carried into the 20th century.

In 1998, South Carolina and, in 2000, Alabama removed the anti-miscegenation language from their constitutions.

All states that had passed laws for or against same-sex marriage prior to the December 31, 2011 are included in this research.

Oregon, Washington and Maryland legalized same-sex marriage in 2012. The marriages have not yet been allowed to occur so these states will not be addressed in this research.
51 State and year repealed: Oregon 1951; Nevada 1952; Idaho 1959; Colorado 1957; Arizona 1962; Montana 1953; North Dakota 1957; and South Dakota 1957.


53 “As the group’s name implies, Bryant’s central argument was her fear that children would be molested or converted by gay perverts. “As a mother,” she famously explained, “I know that homosexuals cannot biologically reproduce children; therefore, they must recruit our children” (http://www.nndb.com/people). Bryant is best known for her 1977 campaign to repeal a Miami ordinance banning anti-gay discrimination. She was the star attraction at rallies that led to the repeal of gay rights in numerous cities, and she came to California to support the Briggs Initiative in 1978, which failed, but would have banned homosexuals or anyone advocating the “gay lifestyle” from teaching in public schools (Mariner 2004). “I don't hate the homosexuals,” she wrote in a fundraising letter. “But as a mother, I must protect my children from their evil influence” (http://www.nndb.com/people).

54 Like several others who have studied this topic I recognized the need to end data collection at a certain point in time. I chose December 31, 2011 as a cut-off date for data collection and analysis. Since that time three states—Maryland, Oregon, and Washington have legalized same-sex marriages. These states will not be included in the study or analysis.

55 Beckwith (2010) predicates this assumption by arguing that “the miscegenation/same-sex analogy does not work. For if the purpose of anti-miscegenation laws was racial purity, such a purpose only makes sense if people of different races have the ability by nature to marry each other. And given the fact that such marriages were a common law liberty, the anti-miscegenation laws presuppose this truth. But opponents of same-sex marriage ground their viewpoint in precisely the opposite belief: people of the same gender do not have the ability by nature to marry each other since gender complementarity is a necessary condition for marriage.”


57 Personal interview with Diane Linn 2010.

58 Sharp contends that, “Elazar’s classic treatment of political subcultures was once the reigning conceptualization of culture for analysts of subnational politics in the United States,” however, “limitations of that approach have led a variety of scholars to introduce conceptualizations and corresponding measures of subculture that stem from acknowledgment of demographic trends alleged to be at the heart of a postindustrial, cultural divide in the United States” (Sharp 2005b:133).

59 Deleon and Naff’s New Political Culture (NPC) is composed of seven items, computed as percentages of each community sample’s total number of respondents. The seven are: 1) Secularism: percent saying they adhere to no religion; 2) Nontraditional lifestyle: percent who are unmarried; 3) Nontraditional gender roles: percent classified as single working females; 4) Creative class: percent classified as high on our SES Index; 5) Index, constructed from the Social Community Benchmark Survey (SCBS) items asking about friendships with members of various racial groups. Index scores range from a low of 0 (no claimed personal friendships with any member of a different race) to a maximum of 3 (at least one personal friend in each of the three other racial groups); 6) Cultural diversity and tolerance: percent saying they have a gay or lesbian as a personal friend; and 7) Gay/lesbian presence: percent who are unmarried, live with a partner, and say they have a gay or lesbian as a personal friend. This is a very rough proxy for the size of a community’s gay and lesbian population (pp. 699-700).

60 Many diffusion theorists believe that policy innovation is strongly tied to economics and as such believe that unconventional cities will act based on economic incentives as much as cultural incentives. The professional indicator is related to having a creative workforce and also used by Sharp to measure the economic vitality of the city.
The 2000 census was one of the first real attempts by the U.S. government to identify LGBT households. But because of the methodology used (described earlier in endnote 41) scholars have questioned the legitimacy of the figures for same-sex households. Some LGBT scholars suspect that the census undercounted LGBT households.

As noted in Chapter Three, estimates for religious adherence to church were not provided on a city level for smaller metropolitan areas in the ARDA, so county projections were used to indicate affiliation for these three cities: Asbury Park, Ithaca, and New Paltz.

Button, Rienzo, and Wald believe that “environments that promote political mobilization among gays and lesbians probably inhibit the development of a parallel social movement among religious traditionalists” (1997:205-6).

Gresham is the city that the fifth County Commission hailed from. It is believed to be a conservative community.


MacArthur is a frequent guest on the Larry King Live TV talk show. A theologian and minister of the Grace Community Church, King invites him on the show to represent an Evangelical Christian perspective.

The social, economic and political factors that drive and underlie these characteristics will not be discussed in this paper.


What is interesting is that the actors recall receiving calls and letters from other public officials congratulating them for their actions but not from each other. West is the only one who recalls getting a call from Gavin Newsom.

This will be discussed in more depth in Chapter 6.


Paul Livingston offered to represent Victoria Dunlap when the county attorney joined sides with the commission and state to seek the injunction against her.

Jason West said he conducted almost 600 interviews in two months. Gavin Newsom still remains in the press regarding the issue.

Newsom’s became famous for this quote, which he excitedly uttered during a press conference on the steps of City hall after the California Supreme Court struck down Proposition 22. The mayor was “featured on the first TV ad put out by supporters of Prop. 8, which would ban same-sex marriage in California…The ad makes it clear that the Prop. 8 opponents don’t like it, not even a little bit. ‘It’s no longer about tolerance,’ the ad says. ‘Acceptance of gay marriage is now mandatory’” (Wildermuth, 2008).

Lorence was correct in his assumption. During the 2006 election cycle seven states—Alabama, Colorado, Idaho, South Dakota, South Carolina Tennessee, Virginia, and Wisconsin—all passed statutes and/or
constitutional amendments barring same-sex marriage; and in the 2008 election cycle, another three states—Arizona, California, and Florida—also passed measures.

76 City officials San Francisco (and in Multnomah County, Ithaca, and New Paltz) “carefully chose the first couples to wed, hoping their long unions and sympathetic stories would put a face on same-sex marriage that courts would find difficult to reject. The city also decided to begin the weddings on a day when courts were closed to deprive opponents of quick legal intervention‖ (Dolan, 2008).

77 Pundits in favor of the hypothesis that same-sex marriage influenced the outcome of the 2004 election through the mobilization of conservatives cite that 22 percent of those interviewed in exit polls said that moral values were at the top of their list, beating both the economy and the Iraq war (see Rosenberg 2008). Those opposing the hypothesis that same-sex marriage played a role in the 2004 election results cite the inaccuracy of the measurement as a result of how the exit poll questions were constructed. Pew research showed that when people were given a choice, 27 percent picked moral values. However, when given an open-ended question and asked to list on their own, what mattered most in choosing a president, moral values dropped to 9 percent (Pew Research Center 2004; Rosenberg 2008).

78 Democrats lost four Senate seats and four Congressional seats to the Republicans (CNN 2004e).

79 West personally stopped performing marriages after the first day because the county District Attorney charged him with 19 misdemeanor counts of solemnizing a wedding without the benefit of a marriage license. He and the City Board of Trustees later gave authority to others to continue the marriages. In June, 2004, all marriages were halted when an Ulster District Judge issued a final injunction against all.

80 Liberty Counsel Center for Law and Policy bills itself as “restoring the culture by advancing religious freedom, the sanctity of human life, and the family” (lc.org). Liberty Counsel was one of the supporters and sponsors of the “Marriage Protection Act” in California and Florida.

81 OCA was already in the planning stages to bring a constitutional amendment to Oregon (Pinello 2006).

82 Mark Leno, a former San Francisco city council member and now a state senator authored AB43 in attempt to legalize same-sex marriage through legislation.

83 Mayor Sanders now is co-chair of “Mayors for Freedom to Marry” a campaign launched by a coalition of mayors from across the country, whose purpose is to push for marriage equality (Terkel 2012).

84 Per California Constitution Article II Section (8), “the number of signatures needed to qualify a measure for the ballot is based on the number of votes cast for the office of Governor. Petitioners must collect signatures equal to 8 percent of the most recent gubernatorial vote” (BallotPedia.com). Proposition 8 supporters claimed to have gathered 1.1 million signatures to qualify the measure for the ballot (Head, ND).

85 The original title was “Proposition 8: Eliminates Right of Same-Sex Couples to Marry”, was changed to “Proposition 8: Limit on Marriage” by Attorney General Jerry Brown.

86 No on 8 organizers initially started their campaign by showing loving gay and lesbian couples talking about their long-term relationships; the campaigners never directly or aggressively met the opposition head-on until the campaign hired another company to run it ads. As Fleischer (2010) noted, “No on 8’s one TV ad that directly responded to the fear-mongering helped assuage some of the fear, but it was too little, too late.”

87 Griffin was watching the returns in San Francisco with Gavin Newsom on election night in 2008 (Talbot 2010).
By the time Olson accepted AFER’s offer to represent them in *Perry v Schwarzenegger*, he had already litigated 52 cases in front of the U.S. Supreme Court. Boise had also litigated a number of high profiles cases as well (Johnson 2010; Talbot 2010a).

The Ninth Circuit delayed allowing same-sex couples to marry in the state until after the opposition had time to appeal their decision to the full body of the Ninth Circuit, and, if necessary, the U.S. Supreme Court.

Peterson’s actions led to the New York State Supreme Court 4-2 decision that supported the right of the state to deny same-sex marriage in 2006. It is unclear if she and the city of Ithaca legally pursued the issue beyond this point.

Quoted in Johnson (2012).


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sanders-marriage-equality_n_1279728.html).

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Copy Mayor Gavin Newsom’s Letter to County Clerk

February 10, 2004
Nancy Alfaro
San Francisco County Clerk
City Hall, Room 168
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Dear Ms. Alfaro,

Upon taking the Oath of Office, becoming the Mayor of the City and County of San Francisco, I swore to uphold the Constitution of the State of California. Article I, Section 7, subdivision (a) of the California Constitution provides that “[a] person may not be . . . denied equal protection of the laws.” The California courts have interpreted the equal protection clause of the California Constitution to apply to lesbians and gay men and have suggested that laws that treat homosexuals differently from heterosexuals are suspect. The California courts have also stated that discrimination against gay men and lesbians is invidious. The California courts have held that gender discrimination is suspect and invidious as well. The Supreme Courts in other states have held that equal protection provisions in their state constitutions prohibit discrimination against gay men and lesbians with respect to the rights and obligations flowing from marriage. It is my belief that these decisions are persuasive and that the California Constitution similarly prohibits such discrimination.

Pursuant to my sworn duty to uphold the California Constitution, including specifically its equal protection clause, I request that you determine what changes should be made to the forms and documents used to apply for and issue marriage licenses in order to provide marriage licenses on a nondiscriminatory basis, without regard to gender or sexual orientation.

Respectfully,

Mayor Gavin Newsom

cc: Dennis Herrera, City Attorney, City and County of San Francisco
    Matt Gonzalez, President of the Board of Supervisors, City and County of San Francisco
    Bill Lockyer, Attorney General, State of California
    Kevin Shelley, Secretary of State, State of California
    Mabel Teng, Assessor, City and County of San Francisco
### SAME-SEX MARRIAGE COURT CASE TIME LINE

<table>
<thead>
<tr>
<th>CASE CODE</th>
<th>YR</th>
<th>CASE</th>
<th>ST</th>
<th>PLAINTIFFS</th>
</tr>
</thead>
<tbody>
<tr>
<td>C3</td>
<td>1971</td>
<td>Jones v. Hallahan</td>
<td>WI</td>
<td>Donna Berkett (or Burkett) and Manonia Evans</td>
</tr>
<tr>
<td>C4</td>
<td>1973</td>
<td>Thorton v. Timmers</td>
<td>OH</td>
<td>Female Couple</td>
</tr>
<tr>
<td>C5</td>
<td>1974</td>
<td>Donn v. DC</td>
<td>D.C.</td>
<td>Craig Dean and Patrick Gill</td>
</tr>
<tr>
<td>C6</td>
<td>1975</td>
<td>Cable-McCarthy v. California</td>
<td>CA</td>
<td>Benjamin and Marcial Cable-McCarthy</td>
</tr>
<tr>
<td>C7</td>
<td>1990</td>
<td>Underwood v. Florida</td>
<td>FL</td>
<td>Shawna Underwood and Donia Davis</td>
</tr>
<tr>
<td>C9</td>
<td>1991</td>
<td>Baehr v. Lewin</td>
<td>HI</td>
<td>Genora Dancel and Nina Baehr; Joseph Melillo and Pat Lagon; Tammy Rodrigues and Antoinette Pregil</td>
</tr>
<tr>
<td>C10</td>
<td>1993</td>
<td>Goodridge v. Dept. of Public Health</td>
<td>MA</td>
<td>Julie and Hillary Goodridge; Ed Balmelli and Michael Horgan; Maureen Brodoff and Ellen Wade; Gloria Bailey and Linda Davies; Richard Linnell and Gary Chalmers; Gina Smith and Heidi Norton; David Wilson and Robert Compton.</td>
</tr>
<tr>
<td>C11</td>
<td>1997</td>
<td>Lewis et al. v. Harris et. al.</td>
<td>NJ</td>
<td>Mark Lewis and Dennis Winslow; Marcye and Karen Nicholson-McFadden; Saundra Heath and Alicia Toby; Craig Hutchison and Chris Lodewyks; Diane Marini and Marilyn Maneely;</td>
</tr>
<tr>
<td>C13</td>
<td>1997</td>
<td>Storrs v. Holcomb</td>
<td>NY</td>
<td>Phillip and Toshav Storr</td>
</tr>
<tr>
<td>C15</td>
<td>2001</td>
<td>Goodridge v. Dept. of Public Health</td>
<td>MA</td>
<td>Julie and Hillary Goodridge; Ed Balmelli and Michael Horgan; Maureen Brodoff and Ellen Wade; Gloria Bailey and Linda Davies; Richard Linnell and Gary Chalmers; Gina Smith and Heidi Norton; David Wilson and Robert Compton.</td>
</tr>
<tr>
<td>C16</td>
<td>2002</td>
<td>Lewis et al. v. Harris et. al.</td>
<td>NJ</td>
<td>Mark Lewis and Dennis Winslow; Marcye and Karen Nicholson-McFadden; Saundra Heath and Alicia Toby; Craig Hutchison and Chris Lodewyks; Diane Marini and Marilyn Maneely;</td>
</tr>
<tr>
<td>C17</td>
<td>2002</td>
<td>Lewis et al. v. Harris et. al.</td>
<td>NJ</td>
<td>Mark Lewis and Dennis Winslow; Marcye and Karen Nicholson-McFadden; Saundra Heath and Alicia Toby; Craig Hutchison and Chris Lodewyks; Diane Marini and Marilyn Maneely;</td>
</tr>
<tr>
<td>CASE CODE</td>
<td>YR</td>
<td>CASE</td>
<td>ST</td>
<td>PLAINTIFFS</td>
</tr>
<tr>
<td>-----------</td>
<td>----</td>
<td>-----------------------------------</td>
<td>----</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>C18</td>
<td>2002</td>
<td>Morrison, et al. v. O'Bannon</td>
<td>IN</td>
<td>Suyin and Sarah Lael; Cindy Meneghin and Maureen Killian</td>
</tr>
<tr>
<td>C19</td>
<td>2003</td>
<td>Standhardt and Keltner v. State of Arizona</td>
<td>AZ</td>
<td>Teresa Stephens and Ruth Morrison; David Wene and David Squire; Charlotte Egler and Dawn Egler</td>
</tr>
<tr>
<td>C20</td>
<td>2004</td>
<td>Woo v. Lockyer</td>
<td>CA</td>
<td>Harold Donald Standhardt and Tod Alan Keltner</td>
</tr>
<tr>
<td>C21</td>
<td>2004</td>
<td>Andersen v. King County</td>
<td>WA</td>
<td>Lancy Woo and Cristy Chung; Joshua Byrner and Timothy Frazer; Jewelle Gomez and Diane Sabin; Myra Beals and Ida Matson; Arthur Frederick Adams and Devin Wayne Baker; Jeanne Rizzo and Pali Cooper</td>
</tr>
<tr>
<td>C22</td>
<td>2004</td>
<td>Castle v. State of Washington</td>
<td>WA</td>
<td>Celia Castle and Brenda Bauer; Kevin Chestnut and Curtis Crawford Kevin Chestnut and Curtis Crawford; Pamela Coffey and Valerie Tibbett; Christina Gamache and Judith Fleissner; Jeff Kingsbury and Alan Fuller; Lauri Conner and Leja Wright; Allan Henderson and John Berquist; Marge Ballack and Diane Lantz; Tom Duke and Phuoc Lam; Kathy Cunningham and Karrie Cunningham</td>
</tr>
<tr>
<td>C24</td>
<td>2004</td>
<td>Shields v. New York</td>
<td>NY</td>
<td>John Shields and Bob Streams; John Ade and Johnnie Farmer; plus eight more couples</td>
</tr>
<tr>
<td>C25</td>
<td>2004</td>
<td>Samuels and Gallagher v. New York State Department of Health</td>
<td>NY</td>
<td>Diane Gallagher and Sylvia Samuels; Wade O. Nichols and Francis Shen; Amy Tripi and Jeanne Vitale; State Assembleyman Danny O'Donnell and John Banta; Cindy Bink and Ann Pachner; Alice J. Muniz and Oneida Garcia; plus seven more couples</td>
</tr>
<tr>
<td>C26</td>
<td>2004</td>
<td>Seymour, et. al. v. Julie</td>
<td>NY</td>
<td>Twenty-five same-sex couples</td>
</tr>
<tr>
<td>CASE CODE</td>
<td>YR</td>
<td>CASE</td>
<td>ST</td>
<td>Couple(s)</td>
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<tr>
<td>-----------</td>
<td>----</td>
<td>---------------------</td>
<td>----</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>C27</td>
<td>2004</td>
<td>Li v. Oregon</td>
<td>OR</td>
<td>Mary Li and Becky Kennedy; Katie Potter and Pam Moen; Sally Sheklow and Enid Lefton; Walter Frankel and Curtis Kiefer; plus five more couples</td>
</tr>
<tr>
<td>C28</td>
<td>2004</td>
<td>Ash v. Forman</td>
<td>FL</td>
<td>6 same-sex couples</td>
</tr>
<tr>
<td>C29</td>
<td>2004</td>
<td>Deane and Polyak v. Conaway</td>
<td>ML</td>
<td>9 same-sex couples</td>
</tr>
<tr>
<td>C31</td>
<td>2004</td>
<td>Bishop v. State of Oklahoma</td>
<td>OK</td>
<td>Mary Bishop and Sharon Baldwin; Susan G. Barton and Gay E. Phillips</td>
</tr>
<tr>
<td>C32</td>
<td>2005</td>
<td>Smelt v. Orange County</td>
<td>CA</td>
<td>Arthur Smelt and Christopher Hammer</td>
</tr>
<tr>
<td>C33</td>
<td>2005</td>
<td>Varnum v. Brien</td>
<td>IW</td>
<td>Six Male &amp; Female couples</td>
</tr>
</tbody>
</table>
Sample Letter Requesting Interview

March 8, 2010

Jason West
13 Wurtz Avenue
New Paltz, New York 12561

Mr. West,

I am currently conducting research for my doctoral dissertation on local officials who advocated for policy reform as it pertained to same-sex marriage during the winter of 2004.

As a public official who took a strong stand on the rights of gay and lesbian couples to marry in New Paltz, NY in 2004, your insights into the role local official’s play in initiating policy innovation at lower levels of government would be invaluable to my research. I have already completed interviews with a number of local officials who actively stood in support of same-sex marriage during this time period. It was highly recommended that I seek an interview with you.

As a catalyst for change, I hope you too will be willing to join in this important research project. Would you be willing to schedule a telephone interview? The interview should take about 30 minutes. Or if you wish, we can set up a personal interview and I will travel to New Paltz to meet with you. Please let me know what date and time would best serve you.

I will contact you within a week to set up an interview. If you have any questions, you may contact me at either of the following phone numbers: (518) 472-0130 or (518) 486-6635. I can also be reached by e-mail at ka416853@albany.edu.

If you would like to verify my credentials you may contact my advisor, Dr. Sue Faerman, at Rockefeller College of Public Affairs and Policy, University of Albany, SUNY (518) 442-5258.

Thank you for your time and consideration of this request.

Sincerely,

Karyn Teressa Andrade
Adjunct Professor/Doctoral Candidate
Department of Public Administration and Policy
Rockefeller College of Public Affairs and Policy
Sample Letter Confirming Interview

January 9, 2009

Honorable Carolyn Peterson
Mayor, City of Ithaca
108 E. Green Street
Ithaca, New York 14850

Mayor Peterson,

Thank you so much for agreeing to participate in my doctoral research on local politicians and their actions in favor of same-sex marriage. Your insights into this controversial policy issue will be invaluable in helping us to better understand the role of locally elected officials and the impact of their decision-making processes on state and national policies.

This letter confirms our meeting on Thursday, January 15, 2009 at 3:30pm. Per my conversations with your Executive Assistant Annie Sherman, I will conduct the interview in person if the weather permits me to drive to Ithaca. If there is inclement weather and I am unable to drive up to Ithaca I will conduct a telephone interview. I will initiate the phone call at precisely 3:30pm.

Request for this interview has been reviewed and approved by the IRB office at the University of Albany, SUNY. If you have any questions regarding the researcher and/or this research you may contact Dr. Sue Faerman at (518) 442-3950.

Thank you again for your time. I look forward to speaking with you.

Sincerely,

Karyn Teressa Andrade
Department of Public Administration and Policy
Rockefeller College of Public Affairs and Policy

cc: Annie Sherman
Attachments
Researcher Interview Guide

Interviewer: Karyn Teressa Andrade
Interviewee: ________________________
Date: ______________________________
Recording Identifier: __________________

PART I: Background Information

1. When were you elected to office? When did you leave office?

2. How would you describe your duties as a local official?

3. How would you describe your city/county?

4. Can you tell me a little bit about the demographic make-up of your constituents? Has it changed much in the last five years?

5. Did/Do you have strong support of your constituents?

6. Does your city/county have a large LGBT Population?
   - F/U Q: Was this community a strong supporter of you for your election to office?
     If yes, How so?

PART II: Acting on Behalf of SSM

7. Let's go back to the winter of 2004, could you please tell me a little bit about the time, and what led to your decision to openly support same-sex marriage?
   - F/U Q: What was the most memorable thing about that time?

8. Tell me how you came to your decision to act to _______ (explain the actions)
   - F/U Q: Did your political actions reflect your personal beliefs about marriage?

9. Were you in contact with leaders of the LGBT community prior to making your decision?
   - F/U Q: If so, who were the individuals and/or groups you were in contact with?

10. Had you had any contact with any other local officials who supported your point actions on same-sex marriage? Is so who were they? What were their comments?
    - F/U Q1: Had you had any contact to Mayor Gavin Newsom in at this time?
- F/U Q2: What did you think of Mayor Newsom's actions?

11. Had you had any contact with any group and/or individual who warned you against your actions?

12. How were your actions stopped and who stopped them?
   - F/U Q: How did you feel about that?

**Part III: Consequences of Actions**

13. What was the response of your constituents to your actions?
   F/U Q: How did you feel about people's reactions?

14. Did you feel that there were negative/positive political repercussions?

15. Did you feel that there were negative/positive personal repercussions?

**Part IV: Effect on Same-sex Marriage Movement in General**

16. Why do you think more localities across (state), did not join your county's/city's efforts in 2004?

17. How do you think your actions affected the same-sex marriage movement in general?

18. Knowing what you know now, would you make the same decision now? What would you change?
# KEY STATE ANTI-MISCEGENATION STATUTES

*(Not a Comprehensive List)*

<table>
<thead>
<tr>
<th>STATE</th>
<th>YEAR and STATUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>(1940) Ala. Const. Art. 4, § 102; Ala. Code, Tit. 14, § 360</td>
</tr>
<tr>
<td>California</td>
<td>(1850) Sec. 69 Ca. Civil Code</td>
</tr>
<tr>
<td>Delaware</td>
<td>(1930) or (1953) Del. Code Ann., Tit. 13, § 101</td>
</tr>
<tr>
<td>Georgia</td>
<td>(1933) or (1935) Ga. Code Ann. § 53-106</td>
</tr>
<tr>
<td>Indiana</td>
<td>(1952) Ind. Ann. Stat. §44-104</td>
</tr>
<tr>
<td>Maryland</td>
<td>(1951); Md. Code Ann. Art. 27 §466</td>
</tr>
<tr>
<td>Nebraska</td>
<td>(1943) Neb. Re. Stat. §42-103</td>
</tr>
<tr>
<td>Nevada</td>
<td>(1929) Nev. Comp. Laws § 10197</td>
</tr>
<tr>
<td>Utah</td>
<td>(1953) Utah Code Ann. §30-1-2</td>
</tr>
</tbody>
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Note: Oregon and Colorado statutes are not part of list
## SUMMARY OF PROVISIONS OF STATE ANTI-MISCEGENATION LAWS AS OF 1963

<table>
<thead>
<tr>
<th>State</th>
<th>Marriage Prohibited Between</th>
<th>Penalty for Interracial Marriage</th>
<th>Marriage Automatically Void?</th>
<th>Penalty for Functionary Performing Interracial Marriage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Whites and Negroes or any descendants of a Negro</td>
<td>2 to 7 years imprisonment</td>
<td>No</td>
<td>If performed with knowledge of the illegality of the marriage, $100-$1000 fine and possibly imprisonment.</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Whites and Negroes or mulattoes.</td>
<td>Fine or imprisonment or both</td>
<td>Yes</td>
<td>If done &quot;knowingly,&quot; fine or imprisonment or both.</td>
</tr>
<tr>
<td>Delaware</td>
<td>Whites and Negroes or mulattoes.</td>
<td>$100 fine</td>
<td>Yes</td>
<td>If done &quot;knowingly,&quot; $100 fine.</td>
</tr>
<tr>
<td>Florida</td>
<td>Whites and Negroes or descendants of Negroes through the fourth generation</td>
<td>Up to 10 years imprisonment or up to $1000 fine.</td>
<td>Yes</td>
<td>If done &quot;knowingly,&quot; up to one year imprisonment or up to $1000 fine.</td>
</tr>
<tr>
<td>Georgia</td>
<td>Whites and any person with Negro, West Indian, or Asiatic Indian ancestry.</td>
<td>1 to 2 years imprisonment.</td>
<td>Yes</td>
<td>If the marriage ceremony is performed with knowledge of the illegality of the marriage, the functionary is guilty of a misdemeanor but no punishment is specified.</td>
</tr>
<tr>
<td>Indiana</td>
<td>Whites and Negroes or descendants of Negroes through the fourth generation</td>
<td>$100-$1000 fine and 1 to 10 years imprisonment.</td>
<td>Yes</td>
<td>If done &quot;knowingly&quot; $100-$1000 fine.</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Whites and Negroes;</td>
<td>$500-$5000 fine and 3 to 12 months imprisonment if cohabitation continues after conviction.</td>
<td>Yes</td>
<td>If done &quot;knowingly,&quot; up to $1000 fine or 1 to 12 months imprisonment or both.</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Whites and Negroes; Indians and Negroes.</td>
<td>For marriage between Whites and Negroes, up to 5 years imprisonment. For marriage between Indians and Negroes, none.</td>
<td>For marriage between Whites and Negroes, no. For marriage between Indians and Negroes, yes.</td>
<td>If done &quot;knowingly,&quot; fine or imprisonment or both.</td>
</tr>
<tr>
<td>State</td>
<td>Marriage Prohibited Between</td>
<td>Penalty for Interracial Marriage</td>
<td>Marriage Automatically Void?</td>
<td>Penalty for Functionary Performing Interracial Marriage</td>
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<tr>
<td>Maryland</td>
<td>Whites and Negroes or descendants of Negroes through the third generation; Whites and Malaysians; Malaysians and Negroes or descendants of Negroes through the third generation.</td>
<td>1.5 to 10 years imprisonment.</td>
<td>Yes</td>
<td>$100 fine whether or not functionary was aware of the illegality of the marriage.</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Whites and Negroes or descendants of Negroes through the fourth generation; Whites and Orientals or descendants of Orientals through the fourth generation.</td>
<td>$500 fine or up to 10 year’s imprisonment or both.</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Missouri</td>
<td>Missouri Whites and Negroes or descendants of Negroes through the fourth generation; Whites and Orientals.</td>
<td>2 years imprisonment in penitentiary, or at least $100 fine, or at least 3 months imprisonment in county jail, or both fine and imprisonment.</td>
<td>Yes</td>
<td>If ceremony is performed with knowledge of the illegality of the marriage, up to 1 year imprisonment or at least $500 fine or both.</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Persons not of Negro descent and persons of Negro descent</td>
<td>Up to $500 fine and 1 to 5 years imprisonment.</td>
<td>No</td>
<td>If performed &quot;knowingly,&quot; up to $500 fine and 1 to 5 years imprisonment.</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Whites and Negroes or Indians or descendants of Negroes or Indians through the third generation; Cherokee Indians of Robeson County and Negroes or descendants of Negroes through the third</td>
<td>4 months to 10 years imprisonment and possible fine.</td>
<td>Yes</td>
<td>If performed &quot;knowingly,&quot; the functionary is guilty of a misdemeanor but no punishment is specified.</td>
</tr>
<tr>
<td>State</td>
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</tr>
<tr>
<td>South Carolina</td>
<td>Whites and Negros or descendants of Negros through the fourth generation; Whites and Indians or a &quot;half-breed.&quot;</td>
<td>At least $500 fine or at least 1 year imprisonment or both.</td>
<td>Yes</td>
<td>If done &quot;knowingly,&quot; at least $500 fine or at least 1 year imprisonment or both.</td>
</tr>
<tr>
<td>Tennessee</td>
<td>Whites and Negros or descendants of Negros through the third generation.</td>
<td>1 to 5 years imprisonment in the penitentiary, or fine and imprisonment in the county jail.</td>
<td>Yes</td>
<td>If done &quot;knowingly,&quot; $500 fine.</td>
</tr>
<tr>
<td>Texas</td>
<td>Whites and Negros or descendants of Negros through the third generation.</td>
<td>2 to 5 years imprisonment.</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Virginia</td>
<td>Whites and Negros or any descendants of Negros.</td>
<td>1 to 5 years imprisonment.</td>
<td>Yes</td>
<td>$200 fine whether or not the functionary had knowledge of the illegality of the marriage.</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Whites and Negros</td>
<td>Up to $100 fine and up to 1 year imprisonment</td>
<td>No</td>
<td>If done &quot;knowingly,&quot; up to $200 fine.</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Whites and Negros or mulattoes; Whites and Orientals; Whites and Malaysians.</td>
<td>$100-$1000 fine or 1 to 5 years imprisonment or both.</td>
<td>Yes</td>
<td>If done &quot;knowingly,&quot; $100-$1000 fine or 1 to 5 years imprisonment or both.</td>
</tr>
</tbody>
</table>

## STATE-BY-STATE SUMMARY OF U.S. STATE LAWS RELATED TO SAME-SEX MARRIAGES AS OF 2011

<table>
<thead>
<tr>
<th>State</th>
<th>Statutes Limiting Marriage</th>
<th>Constitutional Amendments Limiting Marriage</th>
<th>Constitutional Amendments Limiting Other Unions</th>
<th>States Recognizing Marriage</th>
<th>Statutes Recognizing Civil Unions or Domestic Partnerships</th>
<th>State Supreme Court Decisions</th>
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<td>stopped by</td>
<td></td>
<td>Strauss v. Horton, 207 P.3d 48 (Cal. 2009) (constitutional amendment found valid); but see Perry v. Schwarzenegger, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (Cal Const. art. 1, § 7.5 found to violate due process and equal protection clauses of federal constitution); but see 9th Cir. order granting stay.</td>
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</tr>
<tr>
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<tr>
<td>DC</td>
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<td>Yes. DC Act 18-248; 57 DC Reg. 27 (Jan. 1, 2010)</td>
<td>DC Code 32-702 (domestic partnership)</td>
<td>Dean v. DC, 653 A.2d 307 (DC 1995) (marriage statute prohibits issuance of marriage license to same sex couples)</td>
</tr>
<tr>
<td>Illinois</td>
<td>750 Ill. Comp. Stat. Ann. 5/212; 750 Ill.</td>
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<td>(proposed legislation)</td>
<td>IL 2009 SB 1716 (civil union -</td>
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<tr>
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</tr>
<tr>
<td>Iowa</td>
<td>Ind. Code Ann. § 31-11-1-1</td>
<td>2011 HJR 6 passed by House and Senate - before effective, amendment must be passed again by subsequently elected House and Senate, and approved by voters in 2014 at the earliest</td>
<td></td>
<td>Yes. Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009)</td>
<td></td>
<td>Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009) (statute limiting marriage to heterosexual couple found unconstitutional)</td>
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<td>In re Opinions of the Justices to the Senate, 802 N.E.2d 565 (Mass. 2004) (Proposed bill granting same sex couples status)</td>
</tr>
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<td>State</td>
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<tr>
<td>Minnesota</td>
<td>Minn. Stat. § 517.01</td>
<td>2011 SB 1308 (passed by House and Senate for appearance on Nov. 2012 ballot)</td>
<td></td>
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<td></td>
<td>Baker v. Nelson, 191 N.W.2d 185 (Minn. 1971) (Marriage statute does not authorize marriage between same sex couples)</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Miss. Code. Ann. § 93-1-1</td>
<td>Miss. Const. art. XIV, § 263A</td>
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<td>New Mexico</td>
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<tr>
<td>North Dakota</td>
<td>N.D. Cent. Code § 14-03-01</td>
<td>N.D. Const. art. XI, § 28</td>
<td>N.D. Const. art. XI, § 28</td>
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<tr>
<td>Ohio</td>
<td>Ohio Rev. Code Ann. § 3101.01</td>
<td>Ohio Const. art. XV, § 11</td>
<td>Ohio Const. art. XV, § 11</td>
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<tr>
<td>Pennsylvania</td>
<td>23 Pa Cons. Stat. § 1704</td>
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<tr>
<td>State</td>
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<tr>
<td>Rhode Island</td>
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<td>2011 HB 6103 (civil union - enacted)</td>
</tr>
<tr>
<td>South Dakota</td>
<td>S.D. Codified Laws § 25-1-38</td>
<td>S.D. Const. art. XXI, § 9</td>
<td>S.D. Const. art. XXI, § 9</td>
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<tr>
<td>Tennessee</td>
<td>Tenn. Code Ann. § 36-3-113</td>
<td>Tenn. Const. art. XI, § 18</td>
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<tr>
<td>West Virginia</td>
<td>W. Va. Code Ann. § 48-2-603</td>
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</tr>
</tbody>
</table>

## APPENDIX I

### TIME LINE CALIFORNIA
SAME-SEX MARRIAGE POLICY ISSUE 2000-2012

<table>
<thead>
<tr>
<th>DATE</th>
<th>EVENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 21, 2012</td>
<td>Proposition 8 supporters announce they plan to ask the 9th Circuit to reconsider the case.</td>
</tr>
<tr>
<td>Feb. 7, 2012</td>
<td>A three-judge panel rules that Proposition 8 is unconstitutional</td>
</tr>
<tr>
<td>Feb. 2, 2012</td>
<td>A federal appeals court ruled in San Francisco that a video recording of a 2010 trial on the constitutionality of Proposition 8 must remain sealed.</td>
</tr>
<tr>
<td>Dec. 8, 2011</td>
<td>The U.S. 9th Circuit Court of Appeals heard arguments on whether the decision to strike down Proposition 8 should be overturned because Chief U.S. District Judge Vaughn R. Walker failed to recuse himself or disclose he was in a gay relationship.</td>
</tr>
<tr>
<td>Nov. 17, 2011</td>
<td>The California Supreme Court agreed Proposition 8 sponsors have the right to defend the ballot measure in court.</td>
</tr>
<tr>
<td>Mar. 23, 2011</td>
<td>A three-judge panel of the 9th U.S. Circuit Court of Appeals denied the request to allow same-sex marriages to resume</td>
</tr>
<tr>
<td>Mar. 1, 2011</td>
<td>Attorney General Kamala Harris submitted a petition to the 9th U.S. Circuit Court of Appeals asking that same-sex marriages be allowed to resume while the court considers the constitutionality of the ban.</td>
</tr>
<tr>
<td>Feb. 16, 2011</td>
<td>The California Supreme Court agreed to answer a request by the U.S. 9th Circuit Court of Appeals, which last month requested a clarification on the ability of Proposition 8 supporters to press the case in appellate courts. The high court indicated it could hear arguments on the issue as early as September.</td>
</tr>
<tr>
<td>Jan. 4, 2011</td>
<td>The three-judge panel asked the California Supreme Court for advice before issuing a decision. They asked if the sponsors of Proposition 8 should be allowed to have legal standing to defend the ban against a federal challenge. If the answer is no, then the appeal must be dismissed.</td>
</tr>
<tr>
<td>Dec. 6, 2010</td>
<td>The hearing in front of the three-judge panel of the 9th U.S. Circuit Court of Appeals lasted nearly three hours</td>
</tr>
<tr>
<td>Nov. 30, 2010</td>
<td>A three-judge panel (Stephen Reinhardt, 79, liberal; Randy Smith, 61, conservative; Michael Hawkins, 65, moderate) are named to decide on the appeal of the federal court ruling.</td>
</tr>
<tr>
<td>Aug. 16, 2010</td>
<td>A decision by the 9th U.S. Circuit Court of Appeals trumps Walker’s ruling and puts same-sex marriages in California on hold indefinitely.</td>
</tr>
<tr>
<td>Aug. 12, 2010</td>
<td>Chief U.S. District Judge Vaughn Walker ruled Thursday that gay marriages can begin again on Aug. 18.</td>
</tr>
<tr>
<td>Aug. 4, 2010</td>
<td>In his 136-page ruling, Federal District Court Judge Vaughn Walker decided that Proposition 8, the voter-approved ban on same sex marriage passed in 2008, is unconstitutional.</td>
</tr>
<tr>
<td>Feb. 9, 2010</td>
<td>Trial watchers learn 9th District Court of Appeals Judge Vaughn Walker, assigned to the case randomly, is himself gay.</td>
</tr>
<tr>
<td>DATE</td>
<td>EVENT</td>
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</tr>
<tr>
<td>Jan. 25, 2010</td>
<td>Plaintiffs in the federal trial played a video clip highlighting Pastor Jim Garlow of La Mesa’s Skyline Church as an argument for why justices should rule the ban as unconstitutional.</td>
</tr>
<tr>
<td>Jan. 19, 2010</td>
<td>San Diego Mayor Jerry Sanders, a Republican who supports same-sex marriage, testified at the federal trial, recounting his decision to sign a City Council resolution backing the efforts to legalize same-sex marriage.</td>
</tr>
<tr>
<td>Jan. 11, 2010</td>
<td>Two gay and lesbian couples are at the center of a federal trial on the constitutionality of Proposition 8 in San Francisco. The trial, the nation’s first to examine if a ban on same-sex marriage violates the U.S. Constitution, was a media madhouse.</td>
</tr>
<tr>
<td>May 31, 2009</td>
<td>San Diego area faith-based groups and churches organized a rally to celebrate the decision by the state Supreme Court.</td>
</tr>
<tr>
<td>May 26, 2009</td>
<td>The California Supreme Court upheld Proposition 8 determining the proposition legally adjusted the state's constitution. Thousands of San Diegans rallied from Balboa Park to the Hall of Justice to protest the ruling.</td>
</tr>
<tr>
<td>Mar. 5, 2009</td>
<td>Supporters and opponents of Proposition 8 gathered to watch the California Supreme Court hearing. The deadline for an opinion was set for June 1.</td>
</tr>
<tr>
<td>Dec. 20, 2008</td>
<td>In response to three lawsuits seeking to invalidate Proposition 8, the Yes on 8 campaign filed a brief with the state Supreme Court asking to nullify marriages of an estimated 18,000 same-sex couples who exchanged vows before the passage of Proposition 8.</td>
</tr>
<tr>
<td>Nov. 20, 2008</td>
<td>The California Supreme Court accepted three lawsuits seeking to nullify Proposition 8, but refused to allow couples to resume marrying until it ruled.</td>
</tr>
<tr>
<td>Nov. 12, 2008</td>
<td>San Diegans protested outside the Mormon Temple near La Jolla, angered over reports that the Church of Jesus Christ of Latter-Day Saints contributed millions in support of Proposition 8. The Mormon Church released a statement saying, in part, &quot;It is wrong to target the church and its sacred places of worship for being part of the Democratic process.&quot;</td>
</tr>
<tr>
<td>Nov. 9, 2008</td>
<td>Thousands marched in San Diego from Hillcrest to Balboa Park to protest the passage of Proposition 8. The ACLU filed a petition with the state Supreme Court arguing the measure should have never been on the ballot in the first place. I was there!</td>
</tr>
<tr>
<td>Nov. 5, 2008</td>
<td>Three legal groups filed a writ petition the day after the election urging the state Supreme Court to invalidate the measure.</td>
</tr>
<tr>
<td>Nov. 4, 2008</td>
<td>California voters adopted the constitutional amendment outlawing same-sex marriage, overturning the state Supreme Court decision just months earlier giving gay couples the right to wed.</td>
</tr>
<tr>
<td>Nov. 3, 2008</td>
<td>Thousands flocked to Hillcrest in defense of same-sex marriage with San Diego Mayor Jerry Sanders, whose daughter Lisa is a lesbian, led the charge.</td>
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<tr>
<td>Oct. 27, 2008</td>
<td>Ten days before the vote on Proposition 8, the Associated Press analyzed campaign finance records showing total contributions either for or against the measure surpassed $60 million.</td>
</tr>
<tr>
<td>Oct. 22, 2008</td>
<td>Melissa Etheridge, Mary J. Blige, Steven Spielberg, Barbra Streisand and more celebs raise $3.9 million for the “No on Proposition 8” campaign.</td>
</tr>
<tr>
<td>Jun. 27, 2008</td>
<td>The &quot;Limit on Marriage&quot; initiative was designated as Proposition 8 for the November ballot.</td>
</tr>
<tr>
<td>Jun. 16 to Nov 4, 2008</td>
<td>An estimated 18,000 same-sex couples marry.</td>
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<tr>
<td>May 15, 2008</td>
<td>The California Supreme Court votes 4-3 in re Marriage Cases (2008) 43 Cal.4th 757 [76 Cal.Rptr.3d 683, 183 P.3d 384]. Rules Proposition 22 was unconstitutional because it discriminated against gays.</td>
</tr>
<tr>
<td>Oct. 12, 2007</td>
<td>Schwarzenegger issues a veto of AB 43, once again citing Prop 22. In the veto, Schwarzenegger states the state Supreme Court needed to finish its ruling on the challenge of Prop 22.</td>
</tr>
<tr>
<td>September 2007</td>
<td>State Legislature passes AB 43 “The Religious Freedom and Civil Marriage Protection Act” would allow all loving, committed couples in the state to marry, whether they are of opposite-sexes or the same-sex couples.</td>
</tr>
<tr>
<td>Sept. 7, 2005</td>
<td>Gov. Arnold Schwarzenegger issues a veto of AB 849, citing Prop. 22 for his reason. A couple of weeks after the veto, Schwarzenegger says the courts should decide the issue or another vote should take place.</td>
</tr>
<tr>
<td>Sept. 6, 2005</td>
<td>The state Assembly approves AB 849 to allow same sex marriage. The vote was 41-35.</td>
</tr>
<tr>
<td>Sept. 2, 2005</td>
<td>The state Senate approves AB 849 to allow same sex marriage. The vote was 21-15.</td>
</tr>
<tr>
<td>April 8, 2004</td>
<td>National Center for Lesbian Rights files lawsuit on behalf of six same-sex couples, Equality California, and Our Families Coalition (Woo v. Lockyer). The lawsuit argues that denying same-sex couples the right to marry violates the California Constitution's guarantees of equality, liberty, and privacy.</td>
</tr>
<tr>
<td>Aug. 12, 2004</td>
<td>State Supreme Court rules the marriages performed in San Francisco were void, citing the mayor's lack of authority to bypass state law.</td>
</tr>
<tr>
<td>Mar. 11, 2004</td>
<td>California State Supreme Court stops the city and county of San Francisco from issuing anymore marriage licenses to same-sex couples.</td>
</tr>
<tr>
<td>Feb 12, 2004</td>
<td>Gavin Newsom begins issuing marriage licenses and marrying same-sex couples at City Hall.</td>
</tr>
<tr>
<td>Mar. 7, 2000</td>
<td>California voters pass Proposition 22 (61.4%-38%) defines marriage as between a man and a woman.</td>
</tr>
</tbody>
</table>

Sources: Stickney 2012. “Proposition 8 Timeline.” NBC News  