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Neighbors in Exclusion: State Proposal of Anti-LGBTQ Legislation

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By

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Abstract: In its landmark rulings on *U.S. v. Windsor* and *Obergefell v. Hodges*, the United States Supreme Court affirmed same sex couples' right to marry and equal protection under the law. 2015 was believed to be a turning point in gay rights, yet states across the U.S. have attempted ever since to circumvent federal case law by passing legislation that discriminates against the LGBTQ community. Utilizing and modifying current theory on policy diffusion, this study seeks to understand how states' partisan and normative characteristics, as well as their acceptance (or lack thereof) of LGBTQ individuals, determine the diffusion of legislation, which counters federal same-sex rulings, across states from 2015 to 2018. OLS regression models were created in order to determine which characteristics significantly predict the proposal of five categories of discriminatory law between border states or dyads. In this study, dyads were believed to be indicators not simply of the transference of legislation across state lines, but also the extent to which a common set of norms and values are exchanged between states. An additional linear regression model was developed to determine the prominence of discriminatory legislation in distinct political, cultural, and geographic regions of the United States. Findings indicate that specific characteristics, such as conservatism and legislative composition, are significant in the diffusion of legislation between border states in each legislative year. In addition to providing new insight into an understudied policy area, this study advances diffusion scholarship by examining which characteristics are significant in the proposal, not passage, of discriminatory legislation between dyadic, bordering states.

Key words: policy diffusion, dyadic relationships, event history analysis, linear regression, religious freedom restoration acts, and religiosity.

Preface and Acknowledgements

In fall of 2017, I attended a class on public policy, where we discussed numerous frameworks for understanding the development and spread of policies throughout different jurisdictions. This came at a time when discrimination against marginalized communities—people of color, gender-non-conforming individuals, and sexual minorities, to name a few—seemed to be at an all-time high. Emboldened in a more conservative, prejudicial era, states have been aggressive in passing laws exclusionary of and hostile to the LGBTQ community specifically, a curtailment of progressive values in favor of theocratic, normative worldviews held by those in the majority. In that same public policy course, I read of Policy Diffusion Framework, something that, at least in part, seemed to explain this phenomenon of states’ sudden and discriminatory legislative agendas. With the aid of Dr. Elizabeth Koebele, I was able to find materials, articles, and a theoretical grounding in how legislative agendas and proposals diffuse from state to state. I pursued the topic as a potential avenue for the development of my thesis, not only because of its currency and relevance, but because I seek to understand the dynamics behind LGBTQ oppression. My motivation in writing this thesis is, thus, not to determine the “how” or process behind the proposal of such laws. I am instead driven to understand the “why,” the mechanisms and circumstances behind this legislative phenomenon.

This project could not have come about without the joint efforts and assistance from my committee and support network of friends, family, and confidantes. I would like to wholeheartedly thank my thesis advisor, mentor, role model, and friend Dr. Jennifer Ring, who encouraged my instincts as a writer and thinker, helping me to frame this subject in an accessible, educational manner, and who widened my thinking about

diffusion from simply an LGBTQ context to something that interacts with an array of issues and legislative subsets. I'd like to thank Dr. Elizabeth Koebele for her resourcefulness, contagious passion, and constant encouragement to pursue this topic in a thesis and beyond. I'd like to extend my sincerest gratitude to Dr. Maureen McBride, whose input, counsel, and perennial wisdom has guided me in improving my thinking and refining my writing. Additionally, I could not have developed my data and models without the expertise and guidance of data analyst and former colleague, Angelo Sisante, whose understanding of econometrics and data analytics provided added focus for this project. The following project is the result of a year of work and preliminary study, made possible by those with whom I collaborated.

Introduction

Writing on behalf of the majority in *Obergefell v. Hodges*¹, Justice Anthony Kennedy proclaimed that, “under the “due process Clause of the Fourteenth Amendment, no State shall ‘deprive any person of life liberty or property, without due process of law,’” including and extending to “intimate choices that define personal identity and beliefs” (pg. 10). In the final passage of the opinion of the court, Kennedy declared that gay couples ask for and should be afforded “equal dignity in the eyes of the law” (pg. 28). Leaving juridical wiggle-room for states to work around same-sex marriage, Kennedy declared that while society must and does “pledge to support the couple, offering” them a myriad of nonmaterial and substantive benefits, including the protection of their union, states can fluctuate in “the benefits they confer on all married couples,” (pg. 16). As if by cue, conservative-leaning states have attempted to erode and roll back the rights and benefits conferred upon same-sex couples, utilizing several avenues to facilitate discrimination against LGBTQ individuals.

On its face, the Supreme Court of the United States’ several landmark decisions in 2013 and 2015, striking down the Defense of Marriage Act and affirming gay Americans’ right to marry, seem to have permanently settled the question of gay rights and federal discrimination of the queer community.² However, in the several years since those landmark decisions, a number of conservative-leaning states have attempted to pass several types of legislation that curb or restrict LGBTQ rights. These laws include but are not limited to religious freedom restoration acts (RFRA), anti-transgender (including

¹ The court ruling affirming the rights of same-sex couples to marry, not to be confused with *U.S. v. Windsor*, which struck down the Defense of Marriage Act.

² The term queer is a divisive word, but here, its usage is as an umbrella term for people within the LGBTQ community.

bathroom-related restrictions) bills, religious exceptions to marry same-sex individuals, restrictions on same sex adoption and foster care, and the removal of civil/employment protections for the LGBTQ community. These types of legislation rank among the most prominent anti-LGBTQ bills proposed or adopted by states, as documented by the ACLU in their year-by-year, state-level breakdown of discriminatory legislation (ACLU-see Fig. 1).³

The recent spate of legislation being proposed to discriminate against the queer community begs several questions:

Research Question #1: Are states that are similarly classified as more discriminatory (here termed “high priority”) in LGBTQ rights more likely to propose or adopt similar discriminatory laws?

Research Question #2: Are states with similar political alignment, legislative composition, and professionalism more likely to propose or adopt legislation discriminatory against the LGBTQ community?

Research Question #3: Do neighboring, geographically proximate states share a similar propensity to discriminate?

Research Question #4: Do states with similar religiosity and moral alignment propose or adopt similarly discriminatory legislation?

This project intends to focus on the diffusion of anti-trans bills, religious freedom restoration acts, marriage-related religious exemption bills, same sex adoption/foster care restriction proposals, and the removal of local LGBTQ protections throughout state

³ Credit to the ACLU, whose compilation of discriminatory legislation in all fifty states was utilized in the creation of this project’s dataset.

governments (Bendery & Signorile, 2016). Namely, I will focus on how different diffusion mechanisms (normative pressure, learning, and emulation) and state characteristics influence state policy agendas in the extent and quantity of legislation proposed. As a secondary goal of this study, geographic diffusion will be measured via an analysis of legislative diffusion between states within predefined regions.

This study could illuminate factors that influence the spread of discriminatory legislation and can determine whether states are entities that work in isolation, or whether they supplement their own legislative agendas with similar policy ideas from other states with like characteristics or traits. Moreover, if regionally proximate states are proven to learn from morally or religiously similar states, it will confirm that states prioritize similar policy objectives, which undermine federal statute and related court decisions. In a broader sense, this project also seeks to understand whether the phenomenon of state-level diffusion of discriminatory laws is the result of a sort of horizontal diffusion, where states defy the rulings of federal bodies like the Supreme Court, by parsing and circumventing those decisions in their legislative agendas.

Theoretical Framework

The Policy Diffusion Framework is an especially useful theoretical framework with which to understand how different “governmental jurisdictions” adopt policies from other such jurisdictions (Sabatier and Weible, 2014, p. 310). Moreover, the adoption of policies is what is known as “policy innovation,” the propensity of other governmental jurisdictions to adopt policies “invented” or popularized by an originator jurisdiction, which exhibits success by developing and passing that policy into law (p. 307). Several

mechanisms have been posited to bring about policy diffusion, including learning, emulation, and normative pressure. Diffusion theory affirms that governmental jurisdictions are boundedly rational entities, expediting the information-gathering process in policy-making by learning from the experiences of other jurisdictions that have passed a similar policy or set of policies (p. 311). A jurisdiction may also imitate or emulate the policy behaviors of nearby jurisdictions, especially those neighboring ‘leaders’ that are viewed as respectable or legislatively professional (p. 311). Emulation may occur regardless of whether a policy is effective or not, resulting in “a sort of herding activity, wherein states are hesitant to be first movers but also do not desire to be left behind and appear out of sync with others” (Volden, 2017, 368). In this study, emulation was quantified through the use of anti-LGBTQ rankings, legislative composition, and professionalism scores (explained in further depth later). Finally, governing jurisdictions often succumb to normative pressure from other jurisdictions that are perceived as sharing a common conception of what ‘good’ policy is—that is, policies that are deemed to be “‘best practices,’” or the most prudent course of action to affirm a commonly-held set of personal or professional values (pp. 311-312). Norms often undergird the conception of what ‘good’ policy is, especially when it comes to legislating morality. These norms can be (and were) quantified in the form of metrics like conservatism and levels of religiosity. This study draws from elements of Volden and Shipan’s (2014) study of the frequency of youth anti-smoking laws diffusing between states between the 1990s and early 2000s, by incorporating many of the same measurements of learning, emulative, or normative mechanisms while also modifying the approach of analyzing the diffusion of laws across dyads.

A common series of approaches used alongside diffusion theory is event history analysis and dyadic relational analysis. Event history analysis investigates, or in some cases predicts, the number of times finite, countable (in some cases, continuous) events like financial crises, political occurrences, or in this case, the proposal of legislation, occur within finite periods time (Berry & Berry, 1990; Grace-Martin). Berry and Berry's (1990) formative event history analysis model was the basis for current diffusion scholarship dealing with distinct units of time.

In this study, event history analysis was not employed in the orthodox sense, since legislative sessions do not fit neatly into single years (some states may only hold a session for a half or quarter of a year, whereas others may hold one every two years), not as capable of being broken into “discrete intervals” of time (Grace-Martin). Put another way, time periods within event history analysis need clearly defined start and end times during which events can take place. If legislative sessions are on-going, blending years—since states are so inconsistent of when they begin/end sessions—typical units of time must be rethought in a more flexible, state-level legislative context. Instead, as the methodological section will explain, this study diverges from conventional diffusion scholarship by developing a distinct model for each of the three legislative years in question, so as to understand how changing political climates, legislative agendas, and state demographics result in the spread of such legislation.

Dyadic interactions have also proven to be a valuable tool in determining the spread of policies between states. Simply put, dyads can indicate how, given a certain set of circumstances, “State A moves towards [or away from] State B” in the proposal or adoption of certain categories of “policy components” (Volden and Shipan, 2014, p. 367).

This methodology is not without its flaws, however. Dyads, especially in the context of diffusion, can indicate false evidence of actual, substantive policy emulation by conflating it with the opportunity of policy learning (Boehmke, 2009, pg. 1129). In this sense, the over-reliance of diffusion scholarship on adoption can be attributed to this pursuit of explicit policy learning through the adoption of laws, instead of gauging how learning can take place in other contexts, like legislative proposal.

One common criticism of policy diffusion theory is that it focuses too much on the adoption of policies from state to state, not the extent to which states establish agendas that learn from, emulate, or adhere to normative policies, despite those policies not succeeding in becoming law. As Volden and Shipan (2012) explain, the generic definition of policy diffusion is simply a “government’s policy choices being influenced by the choices of other governments.” (p. 788). In other words, diffusion is not merely confined to whether or not a policy is adopted but can be the presence of such policies on the agenda of states. More to the point, Taylor et al. (2012) level a criticism at the current way diffusion is being used. Diffusion’s limitations, they claim, are that the framework (and the authors who utilize it) only look at the adoption of policies, not the “what” (content of/distinctions between different types of legislation) or “who” (constituents affected by such legislation) that prospective policies impact when diffused across states (Taylor et al., 2012, p. 88).

Ultimately, states’ consideration of (as opposed to their successful adoption of) policies, should be the measure of diffusion throughout jurisdictions. The gap this project seeks to fill within the field of policy learning and diffusion is to focus on legislative proposals, not simply the outcome and eventual passage of those proposals into law. To

that end, I will look at which of the above mechanisms of policy diffusion condition the spread of five anti-LGBTQ policies among all 50 states.

Hypotheses

In that sense, diffusion at a state-level appears to be governed by learning, emulative, and normative mechanisms. Given this, I hypothesize four dynamics to take place:

H_a #1b: Geographic regions with higher religiosity, greater conservatism, and higher priority status in LGBTQ rights have a greater likelihood of proposing discriminatory laws.

H₀ #1b: Greater political and religious conservatism has no influence on regions' propensity to propose legislation discriminatory toward the LGBTQ community

Geographic proximity influences the diffusion of legislation in numerous ways. First, states and geographic regions are becoming more homogenized in terms of political composition and partisan alignment (Wilson, 2013). Theorists and cultural anthropologists have argued that American politics is becoming more of a sectional, self-sorting culture, where individuals migrate to what Colin Woodard refers to as “like-minded communities” (Wilson, 2013). Those with similar political identities tend to gravitate toward ideologically similar areas—confirmed by a similar phenomenon of young people tending to shift partisan identification when they move elsewhere, while older individuals more solidified in their ideology do not (Abramson, 1983, p. 105). Geographic regions, like the Deep South or Greater Appalachia, appear to have so solidified their polarized identities and partisan orthodoxies that states become almost

ubiquitous in the ideas and legislation they propose. In that sense, geographically proximate states and the regions with which they typically identify as culturally (or otherwise) conservative are more likely to govern in ways consistent with those values.

H_a #2: States with similar political alignment, legislative composition, and legislative professionalism are more likely to propose similar discriminatory policies.

H₀ #2: States' political alignment, legislative composition, and legislative professionalism have no credible influence on other states' proposal of discriminatory policies.

While geographic proximity can and does certainly influence the grouping and interaction of regional partisan identities, it is the political composition within states that tends to influence their perception of and interaction with states close in proximity to them on an ideological "continuum" (Ma, 2017, p. 119). The political culture of states tends to be most influenced by a legacy of movements, political activism, events, and crises that leave a lasting mark of partisan self-perceptions (Jewell and Morehouse, 2001, pg. 13). In the South, a history of the Civil War, Reconstruction, and Civil Rights will have left its indelible mark on how legislators view the federal government, separation of powers, taxation, and much more. In this sense, regions and the states within them not only have ideological emphases, but also policy foci which stem from those emphases. There can, however, be overlap in ideology between states. States, with their regional, defining histories, legislate in keeping with those legacies, becoming innovators, passing or proposing legislation that other states find worthy of imitating, either because the innovating state is viewed as an authority on the matter or because there is partisan congruence between states.

H_a #3: States that rank highly in LGBT-discrimination (here, termed “high priority”) are more likely to be viewed as policy innovators, learned from and imitated by similarly-ranked states.

H₀ #3: States that are classified as “high priority” in LGBTQ rights are less likely to emulate one another in the development and proposal of discriminatory legislation.

These geographic groupings and their accompanying policy orientations are buttressed by long traditions of discrimination within many states. In his analysis of the types of constitutions adopted by all fifty states, Daniel Elazar (1982) discusses how the South, with their Southern Contractual Pattern of constitutional structure, created governments predicated on acknowledgement of the United States Constitution, but intent on defying everything “regarding elections, civil rights, and legislative apportionment,” perpetuating certain social structures “based on slavery or racial segregation” (p. 21). This culture of discrimination and defiance of fairness for marginalized communities has spanned centuries (Southern Poverty Law Center, 2018), extending even into the territory of LGBTQ rights. Texas, with its long history of revised and rewritten constitutions—the present iteration of which has provisions about limited government (Elazar, 1982, p. 21)—was one of the *pioneering* states to criminalize sodomy and defy the federal government in the years following the legalization of gay marriage. To illustrate the discrimination still present in a regional sense, pro-LGBTQ organization GLAAD noted that particularly discriminatory regions of the United States like the South tend to have much higher discomfort about electing gay politicians, attending same-sex weddings, or “learning my child was dating a transgender person.” (GLAAD, 2014). It follows, then, that states that have exhibited storied histories of

discrimination, ranked as “high priority,” are more likely to be viewed as policy innovators, and emulated by fellow states of similar rankings in the proposal of policies.

H_a #4: States with comparable levels of religiosity are more likely to propose legislation discriminatory toward the LGBTQ community.

H₀ #4: Religiosity does not influence states’ proposal of legislation discriminatory against the LGBTQ community.

Much of the United States is entrenched in religious values, with policy, politics, and political discourse being occupied by religious ideas (Hayes & Nagle, 2016; Cooper, 1993; Bridge 2014; Goren & Chapp, 2017; Strang & Meyer, 1993). And much like other socializing institutions, various religious organizations can interact and shape political and legislative discourses (Noll, 1988). In this sense, religious values shape how policy discourses play out, especially in monitoring and regulating the rights and privacy of marginalized people. States, as with any other political jurisdiction, are controlled, in part, by interest groups representing majorities or sizable pluralities, often comprising religious interest groups (Cooper, 1993). These majorities, in an effort to assert their dominance and hold over the status quo, oppress others through power structures such as government. The resulting intrastate political climate becomes one in which one state may, with its strong religiosity, exert normative pressure on other states to follow suit and enact similar legislation. These ideas will be expanded upon in greater depth, but it is important to underscore how legislated morality is contagious and can diffuse between states.

Background

The dual Supreme Court rulings against the Defense of Marriage Act and in favor of same-sex marriage seemed to herald a new era of expanded rights for same-sex couples and members of the LGBTQ community as a whole. Conventional wisdom dictated that expanding support for gay marriage/gay people, together with the two landmark rulings, solidified a political climate in which any discriminatory opposition had less latitude to undermine gay rights (Greenblatt, 2013). At a federal level, that conventional wisdom held true. Significant (although partially unsuccessful) efforts were made to further codify LGBTQ rights through the Employment Non-Discrimination Act of 2013 and President Obama’s Executive Order 13,672, which prohibited discrimination against sexual and gender minorities at a federal level, including those who were federal contractors or other federally-adjacent officials (Harvard Law Review, 2015). Despite cementing or attempting to federally affirm LGBTQ individuals’ status as “discrete and insular minorities” in judicial, legislative, or executive levels, discrimination has nevertheless occurred at a state level since the landmark years of 2013 and 2015 (HLR, 2015).⁴ Many states have taken the leeway provided them by existing precedent in family law⁵ and lack of protective status for the queer community, proposing and passing a spate of laws that diminish the rights of those in the community. Well before the two landmark Supreme Court rulings in 2013, states with more conservative ideological

⁴ In *United States v. Carolene Products Co.*, the majority argued that any action or inaction on the question of protecting these “discrete and insular minorities” must necessarily require “heightened standards of judicial review.” Prior courts have argued that the act of codifying protections for such minorities and dividing “burdens and benefits among” that group and others, the Equal Protection Clause draws ever into focus, and (as in *Romer v. Evans*) whether groups that are not politically in vogue can qualify as discriminated against (HLR, 2015).

⁵ Or, for that matter, other categories of law like anti-transgender or religious freedom restoration acts, which are somewhat recent phenomena that have not received due attention from courts or federal entities.

bents—spearheaded by Texas—exhibited an extensive history of discriminating against LGBTQ individuals through anti-sodomy laws, a ban on “homosexual conduct,” and restrictions on marriage licenses (Mallory et al., 2017, pg. 12). In the years following the affirmation of the right of same-sex couples to marry, Texas maintained its 2005 referendum banning same-sex marriage, the nullification of which prompted Texas to pass a “Pastor Protection Act, allowing clergy members to refuse to conduct same-sex marriages,” in addition to the state’s attorney general issuing an opinion authorizing state officials to refuse issuing marriage license or related ceremonies (pg. 13). Texas is illustrative of how states have found several loopholes or oversights in federal case law, proposing and passing laws that emulate and learn from the policies of other states and policy actors. Current literature reflects this phenomenon, albeit studying policy actors and jurisdictions not at a state-level.

An Institutional Understanding of Oppression

Underlying state action and agency in intervening in the affairs of sexual and gendered minorities is a struggle for supremacy and dominance over those cohorts (Cooper, 1993, p.259). In the latter half of the 20th century, federal and state views on homosexuality and gender-nonconformity have been in lockstep, marginalizing identities through the hegemonic arm of the interventionist state, for decades surveilling and regulating public and private spheres of sexuality—workplaces, clubs, homes, bathrooms, and the media (p. 270). The state can be sexualized in a positivist, progressive sense (decriminalizing sodomy and legalizing gay marriage), where pro-LGBT activists and advocates (as in the case of the European Union) can become influential politically, beyond just being the repressed and oppressed minority (Ayoub, 2014). The state has,

however, acted in predominantly conservative ways. Like-minded states often look to heteronormative policy actors (like churches or religious advocacy groups) for cues of what good or morally-sound normative policies look like—legislative institutions resultantly become so intertwined with religious institutions (as in the case of Oklahoma’s display of the ten commandments on the statehouse lawn) that the two are indistinguishable, diffusing ideas between them and between individual states (Cooper, 1993; Strang and Meyer, 1993). Heteronormative values—which are thought to be opposed to ‘deviance’/non-heterosexual acts and for the strengthening of the nuclear family—are expressed through the state, to placate the views of largely monocultural, politically and religiously homogeneous groups that hold institutions accountable to their values (Cooper, 1993; Joyce, 2014).

In the present political climate, federal and state views on sexual and gender minorities seem to have decoupled. Since its dual rulings in favor of gay rights, the federal state (notwithstanding its recent decision on business-based conscientious objection to serving gay couples) has not exclusively placated the interests of the religious right. States, in their capacity as legislative “laboratories,” have compensated for this widening gulf by proposing or passing laws favorable to electorally dominant constituencies, particularly those religious and conservative groups feeling threatened by what they perceive as disorder in their heteronormative culture. Politics becomes a sort of middle ground, in which dominant religious or political groups’ collective voices are channeled, shifting and molding debates on cultural and normative policy issues in their favor. This is borne out by contemporary social survey data, in which there is demonstrated to be a strength of commitment to those beliefs, so much so that religious

belief drastically influences individuals’ “cultural opinions over time.” (pg. 113).

Diffusion, in a state-level context, is the after-effect of this control by dominant, heteronormative, gender-conforming, religiously-oriented, conservative groups, whose influence results in state legislatures asserting control over marginalized groups through the proposal and passage of discriminatory legislation.

Limited Literature: Diffusion and Queer Discrimination

As it currently stands, literature on the diffusion of discriminatory policies towards the LGBTQ community is growing, but nascent. Very few studies have conducted large-N systematic studies of state-level horizontal diffusion, of multiple types of discriminatory policies, using multiple types of diffusive mechanisms. Those studies that have touched upon diffusion tend to look at 1. Single mechanisms’ influence of the passage of one type of law, 2. The diffusion of laws for or against the community across nations, 3. The political or normative characteristics influencing states and localities’ response to LGBTQ rights, and 4. The circumstances governing the diffusion of a select few categories of anti-LGBTQ laws several decades ago.

Legislating Religiosity

Only a handful of studies have investigated how religiosity and normative alignment tend to influence opinions and legislative processes in respect to significant social issues such as LGBTQ rights. Extended to an international context, Hayes and Nagle (2016) found that individuals in Northern Ireland—a notoriously religious nation, unwelcome to LGBTQ individuals until recently—who were both Protestant and strongly nationalist held intensely negative stances about homosexuality, identifying gay rights as

contradictory to the “Protestant community in terms of a blatant attack on their British identity and cultural heritage.” (pg. 38) Confirming these beliefs at the personal and community-level, Dunn (2010) found that religiosity significantly reduced tolerance of LGBTQ individuals. Bridge (2014), studied what attributes within states (religiosity, political affiliation, etc.) determined their adoption of certain discriminatory policies. He found, in part, that religious belief, specifically the composition of Catholics and Christians in individual states, played a significant role in the spread of Religious Freedom Restoration acts from state to state (Bridge, 2014). The study was hampered, however, by its time-frame (looking at a two decade span of time between 1994 and 2014, not more recent manifestations of such laws) and limited scope, in terms of the types of laws it observed in the diffusion process (only RFRA’s), and the extent to which it exclusively used the normative mechanism when studying diffusion and policy innovation. Bridge’s work is the closest comparable facsimile to what will be attempted in this study; yet, it says something about the state of literature on diffusion and queer-discriminatory legislation that this is the extent of the limited efforts by those in the field to address this subject.

Macro-Level, International Oppression

Research into the diffusion of discriminatory policies throughout nations is also limited in scope and scale. Several authors have studied national regimes of homophobia and discrimination, only passively looking at diffusion as a motivating factor for why these policies are adopted to begin with. Two phenomena make international environments riper for diffusion theory, if at an adoptive level. First, diffusion within an international context tends to be measured through what is known as event history

analysis, explained above as involving units of observation (countries) grouped into risk sets. There is also a dynamic at play known as “international norm legitimacy,” by which nations coalesce around commonly-held values or norms, with the intention being to achieve a set or subset of goals (Kollman, 2007; Risse, 2015). An international setting is an ideal model for diffusion because nations are distinct units, collaborating and reinforcing one another’s policy decisions through a shared exchange of ideas (Schreurs, 2007). This means that nations with similar alignment in religiosity or political composition, with similar views on LGBTQ rights, are more likely to constitute a community and adopt similar laws consistent with their shared values. As the following sections will illustrate, this phenomena, while confined to an international context, can be informative in how polarized LGBTQ policy diffusion can become, and how prejudice can manifest in geographic regions.

In their compendium of homophobia in a global context, Bosia and Weiss’ (2013) observe that anti-gay and anti-trans laws are modular, in that a blueprint set of homophobic policies have been imported by the United States and other Western nations since the 1980s to much of the globe. A product of globalization, homophobic laws have essentially diffused from the West, by way of a normative push from Western evangelicals to transnationally pressure other nations into adopting these othering policies (Bosia and Weiss, 2013). Those nation-states who do not overtly attempt to pass homophobic or transphobic laws are also, oddly, products of globalization. As industrialization, connectedness, and post-industrial advancements have occurred throughout the world, prosperity has eliminated the materialist mindset of survival, replacing in its stead the notions of self-realization and identity (Inglehart, 2006, pg. 8).

The resulting international community becomes one in which intergenerational change and societal, technological developments craft increasingly liberal notions of identity, whether sexual or gender (pg. 8). This diffusion of identity also applies to conservative nations, which reactionarily pass laws that combat these identities. In a similar way to how individuals create their own communities, nations group together in order to solidify their identities, establishing within their national cohorts in-groups and out-groups of people whose behavior is deemed as acceptable or unacceptable (Ostergard & Lee, 2016). Much of this formation of in and out-groups is governed by the majoritarian identities nationally and internationally. Religious majorities are particularly prone to assert their power over policy processes by contracting or restricting LGBTQ rights, reasserting their collective values at an intranational level (Cooper, 1993). Even in more secular countries in Western Europe, same-sex union laws passed from 1989 to present have contained provisions exempting churches or religious organizations from officiating unions (Kollman, 2009). Secular nations with deeply rooted religious cultural values (e.g. greater percentage of religious adherence) are somewhat vulnerable to the influence of religious sects on the policy, which illustrates how religiosity, coupled with political discourses, can steer the debate within a region on the conference of rights. These collective findings can potentially inform the normative relationships between states within regions, and how cultural, religious, and political values play a role in regional diffusion.

State and Local Oppression

Taking a similar approach to Bosia and Weiss (2015) of studying homophobic laws, only at a state level, Mitchell and Petray (2016) investigate what, precisely, motivated states to pass constitutional amendments declaring marriage a union between

one man and one woman. Their study found, in part, that states utilize learning and normative mechanisms when passing such constitutional amendments, especially in establishing normative—or heteronormative—regimes. In effect, homophobic laws become demonstrations of moral, normative “solidarity” between and among states with similar moral alignments (p. 299). In this sense, Mitchell and Petray (2016) echo the sentiments of Bridge (2014), in arguing that states’ discriminatory policies most often diffuse because of religious or normative values that demographically-similar states share. Religious Freedom Restoration Acts are model examples of both dynamics of vertical and horizontal diffusion at play. In the 1990s, conservative religious groups made a concerted push for the enactment of RFRAs both at state and national levels, demonstrating success in Arizona, Connecticut, Illinois, Rhode Island, South Carolina, and Texas (Dolan, 2000). The work of Haider-Markel (2001) confirmed as much, detailing how a spate of state same-sex marriage bans passed in the 1990s were elevated and promoted, in part, by far-right conservative christian groups (pg. 16). National campaigns by the religious right in favor of the passage of DOMA spilled over into state legislative politics, as the chorus of heteronormative groups grew louder in a push for more ‘moral’ policy enactment (pg. 20).

At a local level, governing bodies have taken political realities into account as they implement reforms to or restrictions on LGBTQ rights. In his study on the municipal adoption of LGBTQ related policies, Cravens (2015) found that municipal governments that are more politically polarized are less likely to be legislatively-friendly (meaning, passing laws inclusive of the queer community) to the LGBTQ community, especially if LGBTQ issues are more visible or salient. This is confirmed by Lax and Phillips (2009),

who determine that the salience of an issue like LGBTQ rights results in more responsiveness by government to public opinion. This indicates that, in conservative municipalities and cities, anti-gay policies against marriage, adoption, or civil unions (all fairly visible issues) are more likely to prevail because a majoritarian public are ardently opposed to gay rights, something they are exposed to on a regular basis (Lax & Phillips, 2009). That is to say that as gay or queer rights come into the view of majoritarian conservative, religious, or anti-gay communities, those same majorities are more likely to support addressing the issue through the passage of anti-LGBTQ legislation. Aside from political polarization and issue salience, the moral viability of LGBTQ issues often factors into how or whether policies are adopted by localities. In Andrade (2012), a prominent talking point by anti-gay politicians in the debate in the New York State Assembly to classify “same-sex marriage as a civil rights issue” was the moral impropriety of the LGBTQ community. Some opponents at a state level likened homosexuality (and gay adoption by extension) to indoctrination, teaching children the “immoral” “homosexual lifestyle” that undermines family values and the moral underpinnings of American culture (Andrade, 2012, p. 33). Some Democratic legislators have even contended with the conflation of African American struggles for civil rights with those of the queer community, arguing that the LGBTQ community is not only not worthy of having their rights advanced, but are not religiously or normatively in lock-step with American values.

If nothing else, Cravens (2015), Andrade (2012), and Lax and Phillips (2009) each drive at one component of the state and local push for more discriminatory legislation. It is worth noting that matters of trans rights, abuse of religious freedom, and

same-sex access to adoption (among others) have only recently entered public consciousness (Masci, 2016; Brown, 2017), whereas marriage, the institution of marriage, and those permitted to enter it have been the dominant, central issue of LGBTQ rights in recent decades. This can be attributed to the framing of gay marriage as a decisive milestone for queer rights, on all fronts. Opponents of gay marriage were rather insightful in arguing that gay marriage was just the beginning of a broader battle over LGBTQ rights, where the question of guaranteeing complete rights and protections for LGBTQ individuals would occupy state legislative agendas (Soule, 2004, pg. 472). The underlying theme in each of the above articles on local anti-LGBTQ sentiments is one in which a climate of discriminatory legislation stems from radically-polarized populations with moral and religious objections to the LGBTQ community. This is an affirmation of previous sections and past literature that—while emphasizing passage of laws only—identify these majoritarian groups as the primary actors in the continuation and affirmation of heteronormative regimes.

Passage, Proposal, and The Path Forward

Still, the focus of contemporary research on diffusion and queer discrimination focuses more on the adoption, rather than the proposal, of policies. Nearly every formative piece of literature on the diffusion of anti-LGBTQ legislation is predicated on adoption as being a key component of policy innovation. Moreover, each article focuses on a narrow sliver of diffusion, utilizing only one or two mechanisms to understand the diffusion of one or two types of discriminatory legislation. Bosia and Weiss (2013) seem to only focus on the normative spread of homophobic policies across nations, while Mitchell and Petray (2016) look solely at the normative and learning-based diffusion of

constitutional amendments affirming ‘traditional marriage’—both utilize policy adoption as a core component of the diffusion framework. Cravens (2015), Lax and Phillips (2009), and Andrade (2012) are focused on niche anti-gay policies and the motivating factors behind why municipalities and local governments institute discriminatory policies; while all three elicit valuable findings about the normative and learning-based pressures governments face, they do not put as much of an emphasis on understanding the present increase in anti-LGBTQ legislation being proposed. Finally, Bridge (2014), while the closest to the intent of this study, serves to focus on state-level diffusion, but does so in a narrowed manner, studying only religious freedom restoration acts, not the suite of other legislation proposed in the last four years alone. Too often, literature on discriminatory diffusion are too narrow or constricted in scope, too confined to time, place, or typology of legislation. This study seeks to remedy those gaps by broadening the focus to several types of legislation proposed in states, across a bounded frame of four years.

This is not to say that there is not valuable information to garner, even from authors not studying the diffusion of discriminatory legislation. This study draws, in part, from the work of Shipan and Volden (2014), who looked at what external mechanisms or pressures of diffusion prompt states to implement anti-smoking regulations or campaigns. This research seeks to use as a framework several components of the research design and methods of that study and others, utilizing many of the same manners of measuring characteristics or attributes of states, and better understanding how mechanisms work to condition the spread of policies from state-to-state.

Methods

This study employs a longitudinal statistical analysis to investigate whether the proposal of state anti-LGBTQ policies between 2015 and 2018 influences neighboring states, or states with common ideological or normative views, in proposing (and potentially passing) similar policies. This study is bounded from 2015 to 2018, the period after the landmark Supreme Court rulings of *United States v. Windsor* and *Obergefell v. Hodges* were handed down. These court cases spurred the passage of a spate of anti-LGBTQ bills, which undermined federal caselaw. This is a manifestation of vertical policy diffusion, where states attempt to undermine federal statute by proposing or passing laws that run counter to the 2013 and 2015 rulings. However, this study, and the methodology and research design that follow will focus on the horizontal diffusion of discriminatory policies from state-to-state.

Operationalizing Laws and Dependent Variables

This study will use dyadic relationships, in order to understand which states proposed legislation because other state legislatures were successful in proposing or adopting similar legislation. In their outline of Event History Analysis Model (EHA), Berry and Berry (1990) transform policy adoption into a dichotomous variable (1 if adopted, 0 if not), placing jurisdictions that adopt outside of a “risk set,” increasing the probability that those in the risk set do adopt policies as more states exit the risk pool (p. 330). States that do not adopt legislation are then at risk (hence, the term risk set) of being influenced by those that do. In this study, a modified approach was taken, by emphasizing the proposal of policies, operationalized as both a count and dichotomous variable. Whether and how many laws were proposed was of greater interest in exploring

states' dyadic relationships and placement in the risk set. Solely judging legislative diffusion or success on the passage of laws is restrictive in several ways, neglecting the implications and motivating factors behind the proposal of discriminatory laws. Furthermore, the number of bills proposed by any given state is often an indicator of the fervor of state policy actors in accomplishing policy objectives, much as the number of votes in the House of Representatives to repeal the Affordable Care Act indicated House Republicans' zeal, despite their efforts not resulting in the passage of legislation.

An initial, baseline dataset was created in order to document every state's record of anti-LGBTQ legislation proposal and passage, and the characteristics that condition their passage. No regression equations or analyses were conducted with this data; rather, this information was parlayed into two subsequent datasets that would be used for the purpose of analysis. In the initial dataset, each of the five legislative categories were operationalized in three ways: whether states proposed one of the above five legislative measures (coded as a binary yes/no 1/0), how many of those bills were proposed, and whether any of that particular category was in fact passed. A sixth category of law—gay conversion therapy—was initially included, but due to the fact that no known laws have been passed condoning the practice, diffusion theory can neither be applied nor could this category be included in this dataset.⁶ Utilizing, in part, the same framework and processes as Volden and Shipan (2014) in their work on the diffusion of anti-smoking laws, this baseline dataset utilized independent variables that were not merely indicators

⁶ In recent years, laws prohibiting gay conversion therapy have been passed by typically-progressive states. The promotion of GCT has occurred at a federal level, in the executive branch, in predominantly Republican administrations—as in the case of George W. Bush's "faith-based initiative" streamlining the process by which "religious organizations receive federal funding." This enabled those organizations in the promotion of GCT. States have been relatively silent. Future research may be needed into the horizontal diffusion taking place at a federal, intra-organizational level. (Sacks, 2011).

of geographic policy-learning, “but also whether [a state] learns from those states that are similar in other ways.” (pp. 365-366). These similarities—drivers of diffusion—condition how and whether one or more states emulate a state they deem to be a success. Since success in the arena of discriminatory legislation is difficult to quantify, other metrics were chosen to operationalize the conditions under which such laws are proposed.

Metrics, Rankings, and Independent Variables

The first dataset of 50 states across three legislative years was comprised of several predictive factors or metrics, aside from the five categories of law described above. The first predictor to be included was a ranking of states that propose anti-LGBTQ laws and their position in relation to other states on the Human Rights Campaign (HRC) ranking of LGBTQ discriminatory jurisdictions (Human Rights Campaign, 2017). In their annual state-by-state report assessing the progress and areas of improvement for each state on LGBTQ equality, the HRC (2017) labels especially discriminatory states as “high priority to achieve basic equality,” meaning that those states lack “basic protections” for the LGBTQ community and have implemented (or attempted to implement) discriminatory legislation to further erode progress within the community (pg. 26). In this dichotomous variable, states that were identified as being a high priority were entered as 1, versus those that were not identified as such (0). In this sense, whether a state is classified as a high priority may dictate how and whether it draws from other similarly classified states in proposing or passing similar laws. Since religiosity has been shown to be a major normative factor shaping anti-LGBTQ policy agendas (Lipka and Wormald, 2016), Pew Research’s (2016) measurement of the percent religiosity of states

was also included, in order to determine whether states that were positioned close to one another in terms of percentile were more likely to emulate or learn from their fellow, similarly-ranked states. Due to the fact that a majority of individuals in the United States are Christian, state-level religiosity is a Christian one.

To determine the partisan power and potency within state governments, Ballotpedia's documentation of states with a trifecta of party control (does a party control all branches of a state government) was utilized, after which a dichotomous variable was created (1 signifying that there was complete control by a party of state government) (Ballotpedia). In determining the actual ideological or partisan alignment of states, Gallup's 2016 ranking of states' ideological composition—here, termed “most conservative” at the far end and “least conservative” at the other—was also incorporated. States' ideology can help gauge whether others will emulate leaders in intrastate party politics, making the ideological communities the laboratories to which other states look for reference (Volden, 2017, p. 368). Finally, the Squire Legislative Professionalism Index, recently updated in 2017 (Squire, 2017), was utilized to determine the extent to which legislatures' expertise dictates their ““capacity to generate and evaluate information in the policy-making process”” (Shipan and Volden, 2014, p. 362). There was some initial doubt about the Squire Index and its academic honesty or rigor (the author does not explicitly include an equation or explicit indication of his work), but with some further investigation, it appears to be the most comprehensive measure of the integrity of legislative institutions, especially in the framing of policy diffusion. By far the most up-to-date index available (four other indices exist, but the last one to have been created or updated was in 1988 by Bowman and Kearney), Squire diverges from past

indices by accounting for “the commonality between professionalism components” like salary, session length, and staff pay/’expenditures,’ using Congress as the baseline or ideal legislative institution with the highest standards for all three (Bowen and Greene, 2014, p. 279). This is especially useful in understanding which states are considered most competent, and thus, most worthy of emulation.

It warrants noting that in the case of certain variables, like Pew’s ranking of state religiosity, the Squire Legislative Professionalism Index, and state partisanship/conservatism, they are not measured or updated on a yearly basis, making it more viable to include their most present form in all three datasets.⁷ These variables were incorporated in an attempt to understand how partisan, professional, and religious characteristics influence legislative proposal.

Dataset Development

The creation of the data for this project was comprised of three steps. First, panel data was formulated on a yearly basis for every state, from 2015 to present. This means that every state had three categories (since some state legislative sessions tend to blend years, since they can span several years) for the 2015, 2016, and 2017-2018 legislative cycles. Each three-year state category was then utilized to develop a dyadic dataset. Since diffusion theory and its practice tend to be primarily focused on relationships between jurisdictions (states, countries, localities), particularly those relationships between entities that are geographically proximate to one another, the second dataset was developed in order to determine what characteristics or conditions cause border states to

⁷ Demographic composition of states and the national population in toto tends to make incremental shifts, as seen in projections of population composition, percent of religious adherence, etc. in the last several decades.

be influenced by one another legislatively, especially in the proposal of anti-LGBTQ laws. In order to accomplish this, an observation was created for each state and their bordering neighbors.

To illustrate, California borders Nevada, Arizona, and Oregon—as a result, nine data-points were created to represent California’s dyadic relationship with each state, across all three years of interest. Dyads are, by nature, bidirectional relationships, so the number of laws proposed by each state was tallied across all five law categories, after which the net difference between two bordering states’ total proposed laws was calculated. This was done in order to determine whether individual states were influencing one another in the proposal of certain discriminatory laws.

In 2015, legislators in Nevada proposed two types of anti-LGBTQ laws, totaling two pieces of proposed legislation, while California proposed no laws in that year. This illustrates no influence of either state on one another, due to the absence of any such legislation in California. Since each state and their bordering neighbors tend to have differing or divergent characteristics—including whether they are a high priority in LGBTQ rights, their legislative professionalism scores, legislature’s composition, and percent religiosity—methods were utilized to determine whether bordering states possessed similar traits in the context of legislative proposal. In the case of whether a state’s party maintained a trifecta of control over both state legislatures and the governorship (1/0, yes/no), if states matched in that regard (both a trifecta or both divided government, 1 or 0 was entered in order to indicate that both had similar governmental composition. No values were included for dyads where both states differed in their respective ranking (one state may be a trifecta while the other has divided government, in

which case there would be no values entered). The same method was applied in the case of whether states were high priorities in LGBTQ rights. Regarding both professionalism scores and percentage religiosity, the net difference in scores or percent between bordering states was calculated—meaning that the smaller the net difference, the greater similarity between states. Three regression analyses were conducted for each legislative year across all 309 dyadic state-border relationships, in order to determine the significance of the above state characteristics (professionalism, trifecta status, religiosity, ideology, discriminatory status, etc.) in the proposal of legislation. The reasoning behind creating a model for each year—and not combining them into a unified model for all years, as appears to be the case in some diffusion scholarship—was to account for how in-flux modern political climates can be. In a polarized era such as this, the ideological composition, religiosity, trifecta status, and most popular type of discriminatory law may all change between legislative years. As a result, three models were created so as to understand the mechanisms of diffusion in a snapshot of time.

Upon creating the second dataset, a final dataset was developed based on the regional distribution of legislative proposals across the United States. Utilizing both classical geographic classifications and political definitions of regions (Wilson, 2013) in the U.S., states were grouped together into nine distinct political and cultural cohorts. Some areas of interest include region 1—“Left Coast”⁸ or West Coast (CA, OR, and WA); 2—Mountain West (NV, NE, ID, UT, CO, WY, MT, ND, and SD); 3—Southwest (AZ and NM); region 4—Mid South (TX, OK, AR, KS, and MO); region 5—Deep South

⁸ As indicated in the above parenthetical citation and in the visual representation of total proposals by region on page 42, regions in quotations indicate that their names were utilized or drawn from, in part, Wilson’s (2013) article on the geographic and political makeup of the United States.

(GA, LA, AL, MS, SC, FL, and TN); region 6—Greater Appalachia (KY, WV, and IN); region 7—Midwest (OH, MI, IA, MN, WI, and IL); region 8—“Tidewater” (NC, VA, and MD); and region 9—Northeast (CT, NJ, DE, NY, MA, NH, PA, ME, and RI).

Thereafter, each region was broken into years (2015, 2016, and 2017/18), under which a dichotomous variable was created for whether discriminatory legislation was passed (0/1, no/yes) and a sum of the number of laws proposed in that given region, in a given year. Each region-year also contained average scores of all member-states for professionalism, religiosity, trifecta, high priority, and ideology. One regression was created for all nine regions and all legislative years, so as to simplify and distill down the regional diffusion over a continuous span of time: the period after the two gay marriage rulings in 2013.

An Event History Analysis Model of Lottery Adoption

These 11 hypotheses combine to suggest the following EHA model:

$$\begin{aligned}
 \text{ADOPT}_{i,t} = \Phi & (b_1\text{FISCAL}_{i,t-1} \\
 & + b_2\text{PARTY}_{i,t} + b_3\text{ELECT1}_{i,t} \\
 & + b_4\text{ELECT2}_{i,t} + b_5\text{INCOME}_{i,t-1} \\
 & + b_6\text{RELIGION}_{i,t-1} \\
 & + b_7\text{NEIGHBORS}_{i,t}) \quad (1)
 \end{aligned}$$

Fig 1) An equation from Berry and Berry (1990), modified in this work to better reflect proposal-based diffusion.

Results

Drivers of Diffusion

Before the results of both models are elaborated upon, a word of caution: it was my intention from the very beginning of this study to not blindly follow conventional methodological practices within political science scholarship, without justifying the use of those conventional practices. I have made the deliberate choice to not over-rely on p-values in my interpretations of findings whenever possible, principally because they are often misinterpreted, misunderstood, or distorted to the benefit of researchers.⁹ Instead, p-values will be used—sparingly—in conjunction with other output statistics, so as to provide a fuller picture of how statistical results are substantively significant, regardless of whether their p-values reach an arbitrary threshold of .05 or less. Output statistics other than p-values, such as R-Squared, F-test, and coefficients will be utilized and interpreted. R-Squared values, while not in and of itself indicative of the correctness of a model, indicates how much independent variables predict or explain “the variation in your dependent variable” (Princeton University, 2007). An F-test indicates the confidence with which the null hypothesis can be rejected (MIT; UCLA: Statistical Consulting Group). Finally, coefficients demonstrate in a linear regression that a one unit increase in an independent variable results in a change in the dependent variable (UCLA: Statistical Consulting Group). Taken together, these three metrics, in conjunction with p-values

⁹ The misrepresentation or specious interpretation of p-values can wholly mischaracterize findings, best illustrated in an American Statistical Association statement on the matter: <https://amstat.tandfonline.com/doi/abs/10.1080/00031305.2016.1154108#.W6ggw2hKiUk>. This academic malpractice is rampant throughout several fields; as Christie Aschwanden (2016) notes in her article on p-values, they are seldom explainable by experts, nor understood by the public at large. Instead, it should be interpreted, Aschwanden (2016) recommends, “the probability of your data given your hypothesis,” not the reverse.

(used in a limited capacity), give a fuller picture of the statistical significance of each model and its respective variables.

The first three regression equations, performed across all three legislative periods, were simple linear regressions, intended to determine which characteristics or circumstances were influential in the dyadic relationships between states. From the results pictured in figure 4¹⁰ dyadic relationships between states in 2015 appear to be primarily governed or conditioned by whether parties have a trifecta of control over state governments, the degree of professionalism within state legislatures, and the amount of conservatism present in states. Neither religiosity nor high priority in LGBTQ rankings had a credible influence on the movement of states toward or away from one another. Trifecta status, ideology, and professionalism all have a significant correlation with dyadic states. The coefficients and p-values illustrate this dynamic.

Both professionalism and below average conservative rankings demonstrated a tenuous but significant role in the relationship between dyadic states. Both metrics exhibited a 60 to 70 percent chance that the data would have been reached or collected given the hypothesis that professionalism and ideology are influential in the interaction between dyads. This significant relationship is also exhibited in the variable coefficients—which are especially large, most likely due to the substitution of missing values with placeholder numbers. As will be explained in the limitations portion of this study, negative or significant correlation could mean that as the coefficients of independent variables increase, dyadic states drift apart or have less of a legislative

¹⁰ Only variables worth noting were included so as not to overcrowd or reduce readability.

relationship, but this interpretation can be problematic because dyads are not a dependent variable that can be quantified.

In the case of trifecta status, there is an 84.9 percent probability that these data could have been obtained given my hypothesis that unified government makes diffusion and dyadic relationships more viable. While this is not in and of itself an indication or confirmation of the strength, frequency, or validity of trifecta as it relates to dyadic states, it does illustrate, in conjunction with the coefficient value,¹¹ some considerable influence of trifecta on state dyads. The same can be said of above average conservative ranking, which exhibited a 99.8 percent chance that these data could have been obtained given the hypothesis of ideology being an influential factor in dyadic relationships—which, along with the coefficient, demonstrates a relationship between high levels of conservatism and the interaction between dyadic states. In this context, negative coefficients could mean that states with greater differences in trifecta or ideology are less likely to emulate one another. This dynamic will be further tested with the regional analysis. To reiterate, these models are by no means an indication of regional diffusion or the amount of movement of states in one category of law or another, but rather they attempt to determine which characteristics and conditions define the relative movement of states towards or away from one another. The regional models will attempt to understand the regional and geographic prevalence of these discriminatory proposals.

¹¹ In this case, since the dependent variable was transformed from a string to numeric variable, an increase in one unit of an independent variable means very little when dyadic relationships are not able to be quantified in any measurable way.

State Dyads	Coef.	Robust Std. Err.	t	P>T	Post Estimation Statistics
Professionalism	-99.38	110.5	-0.90	0.371	F(12, 90) = 2.16
Trifecta	-37.52	25.94	-1.45	0.151	Prob > F = 0.02
Above Ave. Conservative	-73.08	23.48	-3.11	0.002	R-Squared= 0.1320
Below Ave. Conservative	-53.45	46.51	-1.15	0.254	

Fig. 3) Relevant linear regression output statistics for the 2015 legislative year

Since p-values are far from the only indicator of “significant” variables, an analysis of other output statistics is warranted. As the F-test indicates, there is a 99.8 percent probability that we can reject the null hypothesis that none of the independent variables (professionalism, high priority, trifecta, ideology, proposal number, etc.) have any credible influence on dyadic relationships between states. This means that the null hypothesis, in which diffusion is not determined by any of the characteristics or rankings outlined in this study, can be rejected with a moderate-to-high degree of certainty. The R-Squared statistic, indicating the extent to which the aforementioned independent variables can explain variance or change in dyadic relationships (here, 13.2 percent), is not especially high, denoting that there are a number of other variables that could more accurately explain dyadic relationships. Those variables will be considered later in this study.

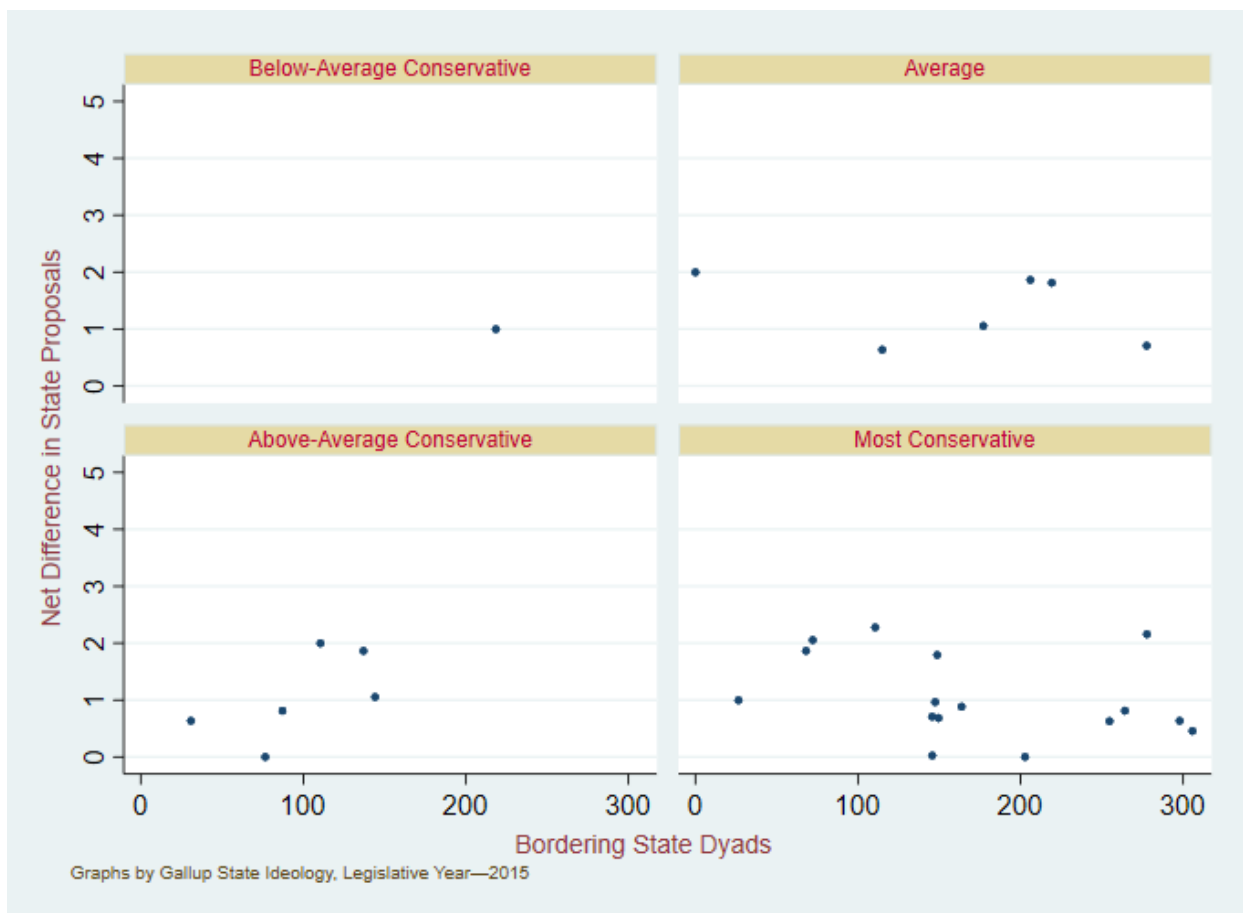


Fig. 4) As indicated in the “Most Conservative” category, greater conservatism generally creates greater gaps in proposed laws between states, indicating that there are a select few innovators in this policy arena, driving innovation in certain regions of the country. The 150-170 range is the mid-to-deep South and the 270 to 300 range are parts of the Midwest and coal country.

The second model for the 2016 legislative period paints a much more robust, clear picture of the relationships between states. The model itself has an F-test of 0.0104, which indicates that there is a 98.96 percent probability that the null hypothesis—stating the above control and independent variables have no influence on the relationships between dyads—can be rejected. The R-Squared statistic of 0.165 indicates a 16.5 percent chance that independent variables can explain variance or change in dyadic

relationships, denoting that several other variables not included in this model could have more predictive capacity in explaining the variance in state dyads.

State Dyads	Coef.	Robust Std. Err.	t	P>T	Post Estimation Statistics
Proposal Difference	-0.45	110.5	-0.90	0.124	F(12, 90) = 2.37
Trifecta	-58.31	29.22	-2.00	0.049	Prob > F = 0.0104
Above Ave. Conservative	-57.57	26.54	-2.17	0.033	R-Squared= 0.165
Below Ave. Conservative	-45.77	41.89	-1.09	0.277	
High Priority	-29.22	32.09	-0.91	0.365	

Fig. 5) Relevant linear regression output statistics for the 2016 legislative year

Regarding each independent variable, there were select variables that seemed to significantly influence interactions between dyadic states. The P-values for trifecta status and above average conservatism were between a 95 and 96 percent probability that these data could have been obtained in view of my hypothesis that unified government and greater conservatism facilitates dyadic relationships in the proposal of each category of law. This seems to indicate that dyadic states with trifecta governments and above average conservatism have diverging, negative relationships with states that are not similarly ranked, especially in light of their proposal of laws. Again, negative coefficients can be—considering the nonquantifiable dependent variable—a nebulous term, but it speaks to the characteristics that most govern the bordering, legislative relationships between states. The same can be said of proposal difference, for which there is an 87 percent chance that data could have been obtained in light of the above stated hypothesis. This appears to indicate that the greater the difference in proposed laws between states,

the greater the diffusion between state dyads, in which one leading state proposes more legislation, resulting in a net difference between itself and neighboring states— nevertheless, those neighboring states may choose to emulate that leader. Similarly, below average conservatism and high priority status in LGBTQ rights have a somewhat more diminished, but still significant relationship in respect to the interaction between dyadic states. The broader implications of the influence of variables like above average conservatism and trifecta status, on state dyads, will be further addressed in the discussion section.

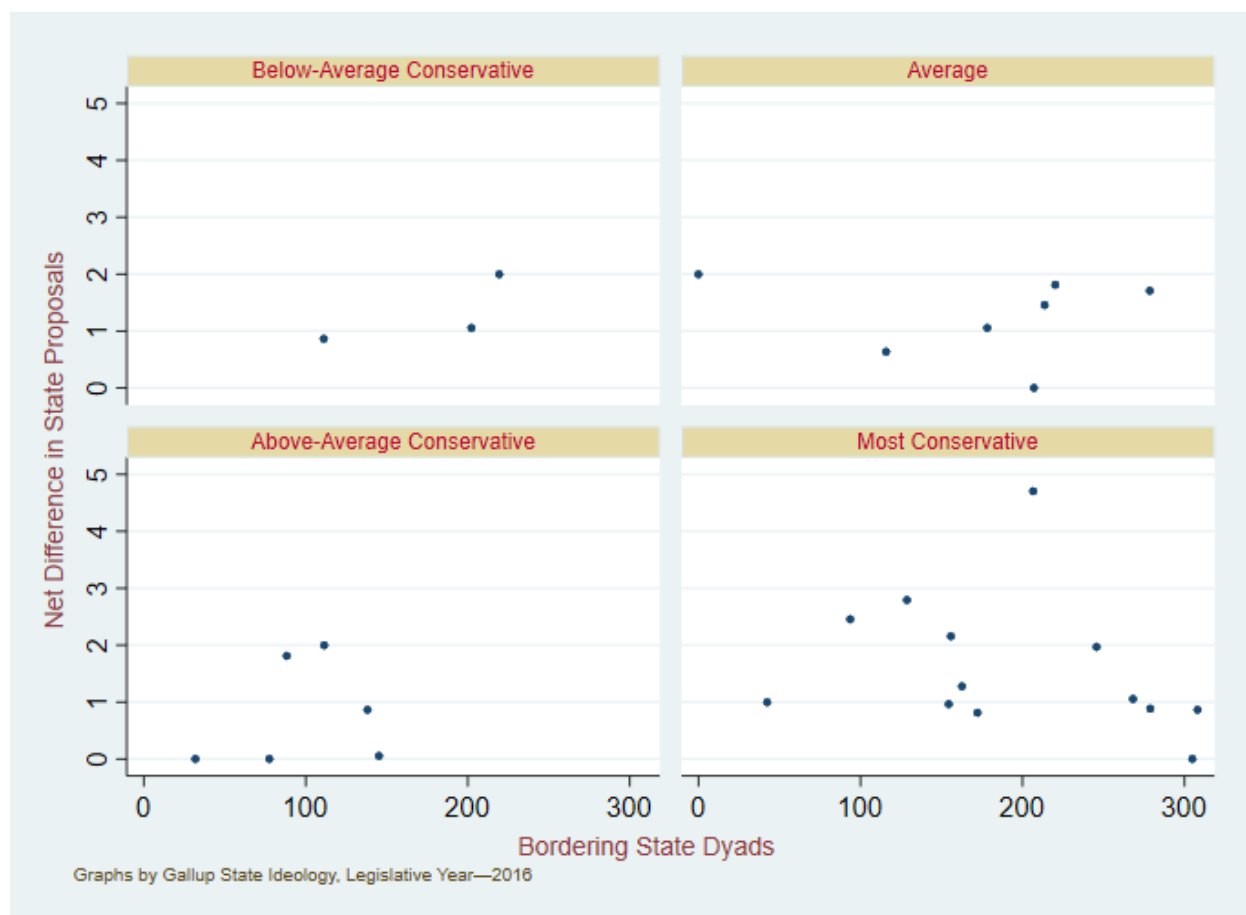


Fig. 6) As in the graph for the 2015 legislative year, state dyads that are similar in their classification as “most conservative” in the mid-South, Deep South, Midwest, and Appalachia tend to cluster around 1-2 net

difference in proposed laws, but several dyads hover above the 2 proposal mark, indicating the presence of ‘innovators’ or drivers of diffusion.

The third model is not entirely dissimilar to the first and second models in terms of post-estimation statistics that are not the conventionally-used coefficients or p-values. The F-test of 0.0332 (marginally higher than the previous models) indicates that there is a 96.68 percent probability that the null hypothesis—claiming that the above independent variables do not explain and condition the relationship between dyads—can be rejected. Less than the previous model, the R-Squared value of 0.1415 demonstrates that there is a 14.15 percent chance that the present set of independent variables explain the variance in the dependent variable (dyads). To reiterate, this is not an especially large R-Squared, but still indicates that other variables outside of this model may have greater explanatory power.

State Dyads	Coef.	Robust Std. Err.	t	P>T	Post Estimation Statistics
Proposal Difference	-0.39	.226	-1.73	0.087	F(12, 90) = 2.00
Trifecta	-56.15	31.31	-1.76	0.082	Prob > F = 0.0332
Above Ave. Conservative	-63.8	27.96	-2.28	0.025	R-Squared= 0.1415

Fig. 7) Relevant linear regression output statistics for the 2017/18 legislative year

Possibly due to the fact that legislative sessions are still in progress or have not yet occurred (because there are few observations with any laws proposed, which may have been dropped in the statistical analysis software that was used), there were fewer influential variables for 2017/2018. While p-values are not to be overemphasized, they all

indicate that there is at least a 91 percent chance that these data were obtained given the hypothesis of conservatism and trifecta status influencing the proposal of laws. The implications of these findings are that trifecta and above average conservatism have a negative, causal relationship with state dyads. Similarly, the greater the difference in proposed laws between state dyads, the greater negative relationship between dyadic, bordering states.

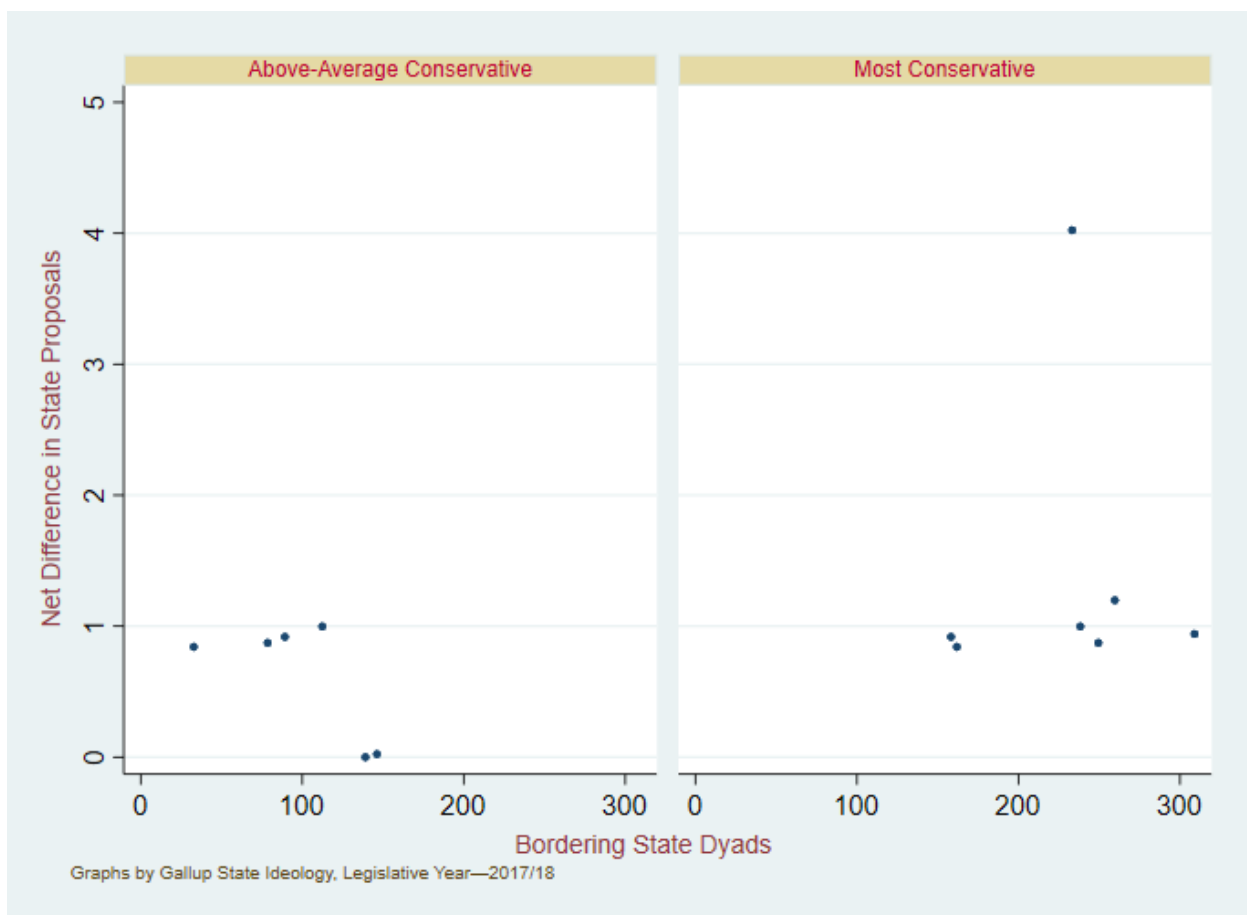


Fig. 8) As with the graphs for the two previous models, conservatism is a major driver of policy diffusion, especially in fostering dynamics in which states lead as innovators in discriminatory legislation, causing other similarly-ideological states to follow suit.

As the second and final step of the data analytics portion of this study, a regression analysis was performed in order to better understand which regions were more prone to propose discriminatory legislation. Initially, three probit models were employed on a year-by-year basis, using the passage of laws (0/1) as the dependent variable. The presence of collinearity, however, made the analysis of those findings untenable and not intuitive because so many observations were dropped. As an alternative, an OLS regression model was utilized, with the intent being to understand which regions were the disseminators of these policies. This was preferable to a logit or probit model, where the regional passage of laws would have been emphasized as the dependent variable, running counter to the purpose of this study.

In the regional regression model, five regions of nine were the most prominent in proposing each category of legislation. Comprised of the Southwest, region 3 was more likely to propose around five fewer laws compared to its neighbors. Similarly, regions 8 and 9, comprised of states in Tidewater and Northeast, were also prone to propose from two-to-six fewer laws than neighboring regions. Since all three regions were shown to have suboptimal P-values (but, again, P-values do not provide a complete picture for the interpretation of data), the coefficients—while interesting—should be met with a degree of skepticism. Conversely, regions 4 and 5—the Mid-South and Deep South—were both more likely to propose approximately 18 and 15 laws, respectively. Looking at other post-estimation statistics, this regional model is by far the most coherent and illustrative compared to previous regression analyses. Interestingly enough, if regions passed laws (1/0, yes/no), these regions passed 5 more laws than those that did not. Which is

consistent with the reasoning that regions which pass laws are more likely to propose them.

The F-test indicates that there is a 96.68 percent probability that the null hypothesis in which regional and geographic proximity has no credible influence on the proposal of laws can be rejected. This is reiterated in the R-Squared value of 0.63, which demonstrates that 63 percent of the variance in the number of laws proposed across all regions is explained by the independent variables, which is an especially high value for a regression model such as this. As a final note, the adjusted R-Squared was closer to 40 percent, but much like P-values, R-Squared should be understood in conjunction with other post-estimation statistics.

Proposal Number	Coef.	Std. Err.	t	P>T	Post Estimation Statistics
Passed	5.75	4.02	1.43	0.172	F(10, 16) = 2.68
Trifecta	-7.35	12.27	-0.60	0.557	Prob > F = 0.0381
Region 3	-5.39	7.41	-0.73	0.478	R-Squared= 0.63
Region 4	18.63	7.34	2.54	0.022	
Region 5	15.00	6.78	2.21	0.042	
Region 7	6.53	7.00	0.93	0.366	
Region 8	-6.09	10.86	-0.56	0.583	
Region 9	-2.88	7.83	-0.37	0.718	

Fig. 9) Relevant linear regression output statistics for the regional diffusion of proposed anti-LGBTQ laws.

Discussion

The findings that regions 8 and 9 were less likely or less prolific in their proposal of laws is consistent with their respective ideological bent. Tidewater states and the northeast, with their prevalence of Democratic governments, moderate Republican governors, and particularly liberal, progressive views on gay rights, were notable for their lessened, minimal proposal of anti-LGBTQ laws. The opposite can be said of the South, Midwest, and mid-south, which were the most ardent proponents of discriminatory legislation. This fits neatly into ideological conventional wisdom, in which more conservative states tend to hold more conservative, discriminatory views on LGBTQ rights. The only region that ran counter to these prior assumptions was the southwest, which was less prone to propose laws, despite a Republican governor in both states and a conservative legislature in Arizona. This may be explained by the issue priorities of both states, where immigration, renewable energy, and other policy matters may gain more traction according to the respective needs of the region.

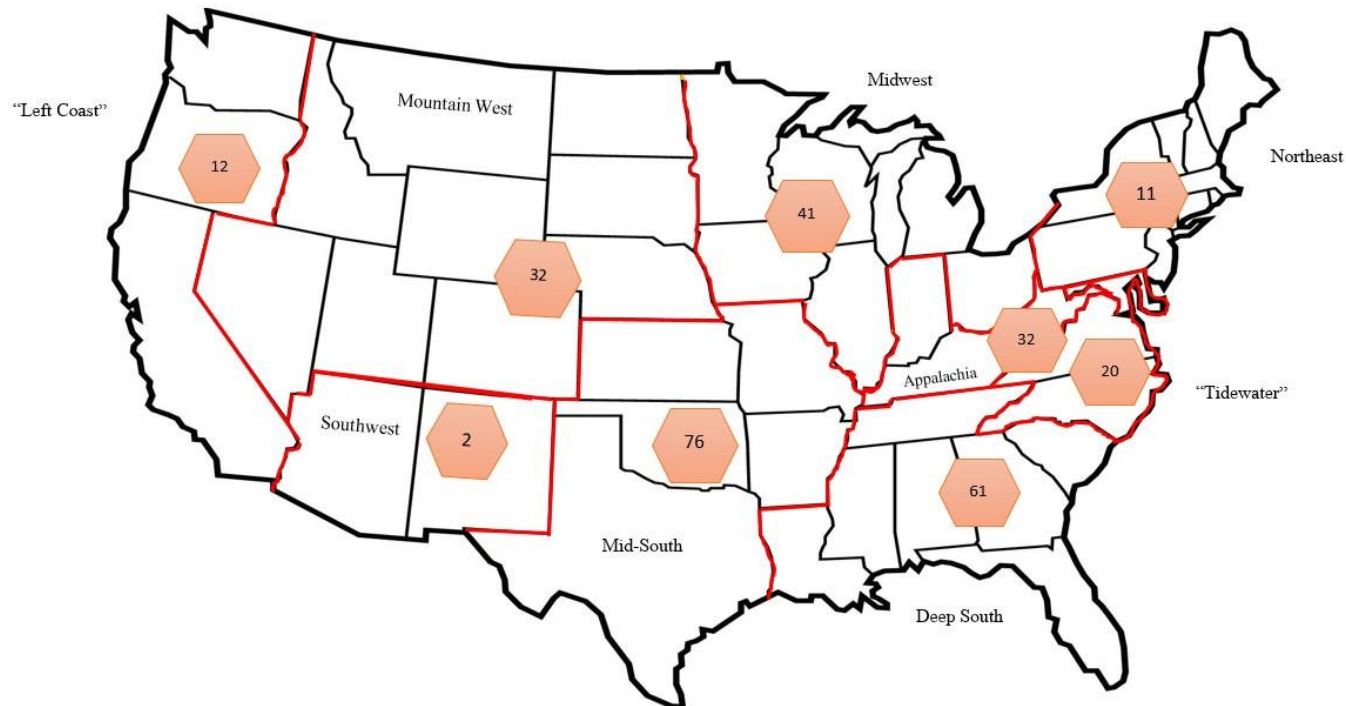


Fig 10) Total number of proposed laws from 2015 to present.

By far the most reliable and revelatory model of all four, the regional model confirmed assumptions about how states with more extreme or polarized politics function in proposing all five categories of law. This would only partly confirm the first hypothesis, that geographic regions with higher religiosity, greater conservatism, and higher priority status in LGBTQ rights have a greater likelihood of proposing and passing discriminatory laws.¹² These findings are partially confirmed by a consistent pattern in the first three models, that trifecta status and above average conservatism are influential in both dyadic relationships and the proposal of laws.

¹² I say partly because religiosity has been shown to not be an influential variable in this study.

While each of the first three regression models are not individually telling or robust—since they are not able to reliably indicate how, exactly, there is a negative or significant relationship—they provide an accurate picture of the circumstances surrounding discriminatory laws’ proposal. Despite each model’s tenuous R-squared and F-test values, they do indicate that religion, high priority status, and professionalism (except in model one, where professionalism exhibited a low-to-moderate influence on dyads) are not characteristics that influence the relationships between states.

These findings have implications for current diffusion and political science scholarship in casting doubt on whether professionalism (Volden and Shipan, 2015; Squire, 2015), religiosity (Kollman, 2009; Haider-Markel, 2001; Bridge, 2014; Mitchell and Petray, 2016), and the propensity to discriminate (Lax and Phillips, 2009) are really as influential as previously thought in the diffusion of discriminatory legislation between governments at a national, state, or local level. At least at a state level, this may be explained by the fact that independent variables have intertwined effects on one another, but are not necessarily significant in and of themselves on the dependent variable of dyadic states. Religiosity may influence conservatism, which in turn influences state dyads, but religiosity alone may be neither relevant nor explanatory in the interpretation of dyadic relationships (Kennedy, 2008). It should be noted that despite this singular study demonstrating religiosity and other variables to be trivial factors in state relationships, that does not mean that religiosity on the whole is not a normative driver of diffusion in local or national contexts, as seen in the literature review above. Taken together, the suboptimal explanatory, predictive ability of the first three models (especially the R-Squared and F-test values) and the fact that the above three variables

were found not to be significant drivers in dyadic relationships indicates that hypotheses 3 and 4 can be rejected.

These findings also demonstrate that as states become more conservative and polarized in state legislative composition, they diverge from or are influential on other states in the proposal and eventual passage of laws. This is to say that although it is not explanatory or illustrative to say these two variables are “influential,” there is some credible effect of conservatism and uni-partisan status in legislative and gubernatorial bodies on the interactions between states. While ruling out (not entirely) the influence of religiosity, much of the second hypothesis (that states with similar political alignment, legislative composition, and legislative professionalism are more likely to propose similar discriminatory policies) can be confirmed. To reiterate, ideology and legislative composition can give the impression that there is a negative relationship between two dyadic states, when in reality one state may attempt to emulate another but fall short in proposing (let alone passing) legislation, or simply be eclipsed by a state in the number of laws proposed by that model state. False positives are a common occurrence in dyadic analyses and historical event analyses, so if the opposite result of the first three models had been achieved (positive relationships between dyads), it would also have raised questions about the analysis or reliability of each model. This indicates that the first three models are merely sorting mechanisms for what, exactly, conditions the regional, state-level diffusion of these laws. As the limitations section will indicate, these concerns leave room for improvement and potential modification of this project’s research design.

Limitations

One of the impediments of measuring dyadic relationships is operationalizing them. Since dyadic relationships are the sum of a whole confluence of circumstances, it is especially difficult to distill those values into a single dependent variable. In the initial three models, dyadic variables were transformed from string variables to numeric variables, meaning that each dyadic label or name (here, labeled “NV/CA—2015”) was assigned a numeric value so that the statistical software could properly read those variables. This complicated the analysis of each model’s results, since dyads with preassigned, random numbers cannot have a direct correlation to independent variables. To illustrate, if a dyad is transformed into a numeric value, and one of its independent variables is the net difference in laws proposed between each state, a one unit increase in laws proposed would result in a meaningless change in dyads, since those dyadic values have no reasoning or rationale, but are simply random. If the dependent variable were instead the number of laws proposed, a one-unit change in professionalism score would have a clear relationship, in increasing or decreasing laws proposed. While the number of laws proposed was initially implemented as the dependent variable, it resulted several variables being omitted, much like the regional model in the attempted probit regression. Future studies would benefit from including an operationalized, interpretable variable as the dependent variable. What that variable would be—beyond laws proposed—is unclear.

It may also be possible that the low R-squared values for each of the first three models can be explained by the fact that they were separate and not combined. While diffusive mechanisms may have been partially explained by each model according to the legislative year, taking an entire picture of the three-year period might have not only

bolstered the predictive and explanatory capacity of this study, but also provided a fuller understanding of legislative trends across the three-year time span. Implementing other potential control variables, namely percentage Democratic or Republican voters in states, the proportion of state populations that are members of the LGBTQ community, and how much approval or support there is in state electorates for the community as a whole may also improve future models' predictive capacity. Finally, while the methodology of this study has been justified, its limited time frame still provides a relatively narrow, myopic view of states' legislative push for these categories of law. As the conclusion will illustrate, further investigation could and should be done beyond the scope of this work.

Conclusion and Future Implications

More than simply looking into the diffusion of discriminatory policies throughout the states, this research has provided a certain amount of insight into how states operate within and react to federal decisions on landmark normative, political issues. In his article on the issue, Engel (2015) found that the United States Supreme Court's decisions regarding same-sex marriage have influenced and even widened the systemic inequalities LGBTQ individuals face in states. Paradoxically, a decision by the highest court in the American federal judiciary branch of government, supposedly settling the issue of gay marriage, has only shrunk the suite of rights afforded members of the LGBTQ community. This contraction of rights is, in part, a backlash of more conservative municipalities, cities, and state governments, against what they perceive as a normative assault on their regime of values (Engel, 2015). Efforts by states to undermine federal statute and curb LGBTQ rights may be a symptom of a larger issue within conservative, Republican state legislatures as a whole. State legislatures with unified Republican

control and an above-average conservative ideological bent appear to be heading—collectively—in a direction of defiance, by pushing for the reduction of rights normally afforded by federal statute and legal precedent. These findings not only indicate that this diffusive push is in full swing within conservative states and their trifecta governments, but also that regions have a shared, commonly held set of conservative views on LGBTQ issues, shaping and increasing their collective propensity to propose, learn from, and emulate such laws. Future studies could employ this framework of normative diffusion and policy learning as a means of understanding other state-level efforts to undermine both individual rights and federal precedent.

As in the case of reproductive rights, states have, in the last decade alone, proposed a spate of restrictive abortion measures that skirt, modify, or undermine court decisions like *Roe v. Wade*, which explicitly afford women the right to have an abortion without interference by the state (Medoff, 2012). Similarly, state restrictions on unionization, voting rights, and firearm regulation are further examples of how states can work to circumvent or finagle previously established federal statutes, laws, and norms to suit their own normative or political purposes. While there have been scores of other journal articles written that document the diffusion of policies across states, including anti-smoking campaigns, lotteries, and welfare benefits, few have delved into the horizontal diffusion of the aforementioned discriminatory, normative policies across state lines (Shipan & Volden, 2014; Mitchell & Petray, 2016). Furthermore, the spread of political phenomena like gerrymandering, redistricting commissions, early voting policy changes, and voter ID laws could be further explained by Policy Diffusion Framework and its underlying mechanisms. Even in the context of vertical diffusion, studies could

delve into how states or cities attempt to counter or adapt to the policies of jurisdictions above them, especially surrounding sanctuary city/state laws, climate change initiatives, and minimum wage increases.

More than just a call for greater research on the current diffusion of other kinds of restrictive, circumventive legislation, this research was conducted to grapple with the scope and scale of present discrimination. While much of conventional wisdom dictates that gay rights and LGBTQ equality is fully achieved as a result of federal intervention, the results of this project demonstrate otherwise. States are more ardent than ever in their proposal of these laws, which demands redressal of the issue at a federal or local level to reaffirm those rights. In the present political climate especially, marginalized groups demand and require this affirmation, for the sake of their safety and inclusion as an in-group, rather than being othered entirely.

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