

## **Public Policy Process and “Don’t Ask, Don’t Tell”**

Dakota Strode  
MA Political Science

### **Abstract**

The public policy process as defined by Kingdon (2011) poorly articulates the stages in which the American public are involved during the passage of legislation. In the agenda setting/identification stage of the public policy process, the public is the most involved. Within the first two stages, various groups attempt to facilitate and cultivate public opinion towards their argument about a policy.

This paper uses the Don’t Ask, Don’t Tell Repeal Act of 2010 to argue that the public is the most involved in the first stages of the public policy process. Through an in-depth analysis of the process to pass the bill, inclusive of the actors and legislative process, I conclude that the public is primarily involved in the first stage of Kingdon’s process. Using quantitative data provided by the Human Rights Campaign, I confirm that the public was most involved during this stage due to their invoked engagement.

Thus, this study builds on the public policy process model by expanding the theory behind Kingdon’s work. Specifically, it illuminates stages in which non-elite actors are involved in beyond Kingdon’s elite framing of the process. By using a social rights bill, this study helps to define how the public policy process model applies to a specific type of policy.

### **Main Paper**

Americans are often involved in the first two steps of the policy process: problem identification/agenda setting and alternative specification (Kingdon, 2011, pp. 3-10). Unlike the latter steps of the process, these stages engage the public more directly. Within the first two stages, various groups attempt to facilitate and cultivate public opinion towards their argument about a policy. Using the Don’t Ask, Don’t Tell Repeal Act of 2010 this paper argues that the public is the most involved in the first stages of the public policy process.

In the first phase of the public policy process, a problem is identified by either the public, public officials, or members of the elite (Kingdon, 2011). The public is increasingly aware of an issue in this stage due to the media’s promotion of an issue, interest groups facilitating public relations campaigns, and political elites taking sides. For example, questions regarding the need for Directive 1304.26, Don’t Ask Don’t Tell (DADT), was originally brought to the public’s attention by the media. Several outlets probed several members of Congress about the murder of Barry Winchell in 1999. This suggested that his death was due to the policy’s institutionalized anti-gay violence (Benecke, 2011, Neff and Edgell, 2013). Further, the public responded positively to media coverage of the Log Cabin Republicans’ (LCR) 2000s lawsuit against the government to end DADT.

These examples demonstrate several aspects of the problem identification stage in the public policy process. The media directly provoked elite participation of DADT and brought the issue to the public’s attention by framing a personal narrative. The visibility of DADT in the media and general public was further increased by LCR’s lawsuit (Johnson and Ham, 2010, Nicholson, 2012, Connell, 2013). As interest groups, the media, and members of Congress continued to actively discuss the impact of the policy, the public grew more aware and responsive to the issue, making it more politically potent. For example, Fox News ran a poll in 2000, after the death of Winchell and the LCR lawsuit, showing that 57% of the public supported gays in the military (“LGBT,” 2008).

This level of support from the public demonstrates that the narrative surrounding DADT was enough to identify the problem as a public concern. The independent but interlinked actions of the media, interest groups, and Congress heightened awareness about the negative effects of the policy. Polling the public added pressure to Congress to address the issue, as it demonstrated a growing desire for discussions and a legislative solution. In this particular stage, the public is most impactful because the media is able to engage with groups the most. Without media engagement, the public is limited in their

collective ability to gain political attention and influence politicians. Because Congress is primarily concerned with being reelected, they are more influenced when there is a clear public opinion about policy initiatives.

As media attention on the topic grew, so did the involvement of interest groups. Specifically, after numerous Arabic linguists were removed from the military due to DADT between 2001-2002, interest groups like the Servicemembers Legal Defense Network, SLDN, joined in the repeal effort (Cosgrove-Mather and Bootie, 2002; Bishop, 2010; Nicholson, 2012; Neff and Edgell, 2013). The involvement of lobbyists helped to solidify the urgency of the problem in the initial stage of the public policy process. Gallup Polls noted that public opinion towards gays in the military has gradually increased since the 1970s ("Gays and Lesbian Rights," 2019). Public opinion consequently spiked after the firing of the linguists and the involvement of SLDN, making the repeal of DADT a public and congressional concern ("2000 to 2008: Individual opinion polls on gays & lesbians serving openly in the military," 2008; "LGBT," 2008).

Interest groups capitalized on the media's coverage and polling data by lobbying Congress with public opinion numbers that identified the issue as relevant. The interactions amongst these groups made the repeal of DADT as a crucial concern to be addressed by Congress. For example, SLDN and the Human Rights Campaign, HRC, created media attention with publicity tours with gay service members, and the academic think tank, the Palm Center, conducted studies regarding those nations with gays openly serving in the military to lobby Congress (Nicholson 2012; Neff and Edgell 2013; N. Frank 2013). Examining the public's support for gays in the military over time provides evidence for the importance of these first two steps. A 2006 Pew Research survey showed support at 60 percent, while a little more than three years later, a USA Today poll demonstrated that support increased to 69 percent ("LGBT," 2008). These numbers indicate that the efforts of interest groups, the media, and political elite did increase the visibility of the issue to the public, increasing public support of the repeal and placing pressure on Congress to act.

After identification, the next step in the public policy process is agenda setting. Agenda setting consists of a variety of people and institutions interacting over time through which a law like DADT can be repealed (Kingdon, 2011, pp. 3, 22-27). Congressman Marty Meehan (D-MA) attempted to bring the repeal bill to the attention of his colleagues in 2005 and 2007; however, nothing concrete resulted from his various attempts (Meehan, 2005; 2007). Congressman Barney Frank (D-MA) passed an exception to DADT in 2004 to allow for gay linguists avoid wartime discharges but did not have strong enough political momentum to repeal the law. (Neff and Edgell, 2013). As Kingdon notes, these setbacks are due to Congress having too many competing interests to practice real agenda setting power. This dynamic explains why Meehan's bills never garnered enough support to leave the House even though the public backed his bill (Kingdon, 2011, p. 36). Groups like SLDN and the Human Rights Campaign (HRC) as well as representatives like Meehan, heavily lobbied Congress to address the issue. Their attempt to build a coalition in Congress shows how the public was less involved in placing the problem on the formal policy agenda (Nicholson, 2012; Frank, 2013; Neff and Edgell, 2013).

In comparison, Presidents and party leadership are incredibly resourceful at agenda setting. With the repeal of DADT, President Barack Obama played a critical role in placing the law on the Democratic agenda. As a candidate, Obama felt the pressure of the public and Democrat Party supporters to repeal DADT, demonstrating the power of public opinion to influence the agenda of policy actors. This pressure encouraged Obama to more directly approach the issue and take a public position, eventually broadening the issue to the entire Democrat Party. When the Democrats took control of Congress in 2008, Speaker Nancy Pelosi and party leadership made the repeal a priority for the party (Neff and Edgell, 2013; Pruitt, 2018; Kingdon, 2011). Kingdon was correct in his assessment that the media, interest groups, the general public, and Congress, as a collective unit, were not strong enough actors to place DADT legislation on the agenda; rather they elevated the issue to political elites as an issue that needed to be discussed by vocally identifying it (Kingdon, 2011, pp. 49 - 64).

Party leadership played a critical role in the advancement of the repeal. President Obama spoke about repealing DADT in his 2010 State of the Union Speech (SOTU), thus setting it officially as a policy

for the Democratic Party to pursue. The Senate Armed Services Committee held a hearing in response to this policy promotion, which subsequently led the Obama Administration to launch a study through the Department of Defense that examined how to remove the law and the impact of doing so (Lee, 2013; Johnson and Ham, 2010). In this example, the public was critical in promoting awareness of the issues and pressuring Congress to act, but they were not nearly as influential in placing the item on the congressional agenda as leadership. Fox News polls after the SOTU in 2010 showed that 61% of all Americans supported gays in the military, and by May, CNN showed that support was at 78% (“LGBT,” 2008). These numbers demonstrate that since the push by the President and party leadership to take on repealing DADT, most Americans began to support the public policy initiative. Increased public opinion in support during the problem identification stages and agenda setting phases further encouraged the President and Congress to address the issue.

However, the public alone was not enough to accomplish this goal. They were provoked by interest groups to encourage congressional action after the policy was placed on the agenda, thus demonstrating their direct involvement in the alternative specification stage. Zohlhofer, Hub, and Herweg (2016) note that political entrepreneurs, or people who have the time, access, resources, and networks who can advocate for policy and their outcomes, are active in both the agenda setting stages and decision-making stages (p.250). The public is the most active in this stage because they were given the tools to facilitate change by political entrepreneurs, unlike in the agenda setting stage.

For example, after a large majority of the public was in support of the repeal, interest groups like the HRC began to engage the public to pressure congressional action in the alternative specification stage (HRC, 2010 a). HRC measured that from the 19 million emails sent to their supporters, 625,000 emails and 50,000 letters were sent to Congress to repeal the law. 1,000 grassroots lobbying events happened in Congress or in local districts, and 20,000 veterans contacted a news forum to encourage congressional and public response to the issue (HRC, 2010 b). These numbers show that the public was heavily involved in the alternative specification stage after the item had been placed on the agenda.

Regarding DADT, it is unlikely that the public would be more involved in other stages. The public is unlikely to participate in the implementation stage of the repeal process, as their ability to access Congress during votes is limited. From the repeal’s passage to the enactment, public participation significantly declined because they believed they had accomplished their goal with the passage of the repeal, when it would not be implemented until September of 2011 (Williams, 2011). Further, because the President has a greater say over the implementation of a law due to Congress’ deferral norms of legislating, increasing public contact Congress would be moot.

Thus, public involvement in the public policy process is most effective in the first two stages. While the influence of the public on the process is limited in the agenda setting stage, it did help to narrow the narrative in the problem identification stage. With less organizational skills and knowledge of government, interest groups facilitated public action in the alternative specification stage, increasing their involvement.

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