

Framing, Engagement, and Policy Change: Lessons for the ACA

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Abstract Supporters of the Patient Protection and Affordable Care Act (ACA) sometimes speculate that public attitudes toward the law will shift if proponents succeed in focusing attention on its more popular components, but the scholarly literature on framing effects provides ample reason to question their assertion. This article contends that engagement, an alternative rhetorical strategy where advocates address the same policy dimensions as their opponents, is a more promising approach. Extending the engagement literature to the elite context in which most ACA-related decisions are made, it argues that elite-level engagement necessitates the additional task of linking policy change to opponents' broader philosophical and policy goals. Current debates surrounding the application of sales taxes to electronic commerce—a policy arena that seems far removed from health care policy but overlaps with the ACA in ways that make it an appropriate source of lesson drawing—illustrate the potential of an engagement strategy. Recently, many conservative lawmakers who previously opposed policy change have instead embraced online sales taxes as a mechanism for additional tax cuts. Analogous connections may facilitate the diffusion of ACA provisions that presently receive hostile receptions in Republican-leaning states.

Keywords policy diffusion, health care reform, rhetorical strategies

Public attitudes toward the Patient Protection and Affordable Care Act (ACA) epitomize the partisan polarization that characterizes contemporary American politics. Opinions of the law vary sharply by party, with most Democrats reporting a favorable view and most Republicans reporting an unfavorable view (DiJulio, Firth, and Brodie 2015). Dig a little deeper, however, and interesting patterns emerge. For instance, several provisions

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of the ACA have received consistent majority support even though Americans remain divided in their general opinions. This pattern has led some ACA supporters to speculate that public attitudes may shift in a positive direction if the appealing features of the law are emphasized. In a recent interview with the *Washington Post*, for example, US Secretary of Health and Human Services Sylvia Burwell pledged to work harder to help Americans understand the ACA's many provisions, noting that "Obamacare isn't connected to the actual substance [of the law]" (Sun 2015). Stronger public support, in turn, might facilitate the diffusion of the ACA, leading to the widespread adoption of its more controversial provisions.

The strategy of emphasizing certain features of the ACA and downplaying others resonates with the scholarly literature on *framing effects*. Framing can affect public attitudes toward health care; experimental studies suggest that support for universal access depends partly on the extent to which appeals emphasize the individual behavioral causes of illness versus biological or systemic factors (Gollust and Lynch 2011). Are framing effects powerful enough to spur policy change, however? There is reason to be skeptical. Public policies often do not correspond to majority opinion, and the groups to whom elected officials are most responsive tend not to alter their views in response to shifting frames.

In contrast, advocates of policy change can pursue a different rhetorical strategy called *engagement* in which they focus on their opponents' considerations (Jerit 2008). Engagement implies that, rather than talking past one another using competing frames, competitors will converge on the same dimension. Existing research on engagement focuses on electoral campaigns and mass publics, however, and offers little insight into how this strategy may work in the elite setting in which most ACA-related decisions are made. In this article, we apply the engagement framework to elite-level communications, arguing that policy change is unlikely to occur if decision makers focus on the same consideration but offer competing claims. Instead, our notion of engagement implies an additional rhetorical task. Advocates must address their opponents' concerns *and* explain how their proposal helps opponents achieve their broader philosophical and policy goals. In the context of the ACA, this formidable task involves linking health care reform to Republican objectives such as cutting taxes or expanding the role of the private sector in government programs.

The main objective of this article is to evaluate the strengths and limitations of framing and engagement, applying these lessons to health care reform. Under what conditions will a framing strategy or an engagement

strategy facilitate the diffusion of the ACA, and what can advocates do to take advantage of these windows of opportunity? After reviewing existing research on framing effects and engagement, it turns to a substantive policy arena—the application of sales taxes to electronic commerce—that seems far removed from health care policy but overlaps in ways that make it a good source of lesson drawing. Recent developments suggest that an engagement strategy is more likely to overcome the current hurdles to ACA diffusion. While engagement is certainly no cure-all for the partisan polarization that has enveloped health care reform, it may nevertheless prove to be a way for advocates to facilitate the widespread adoption of some of the law’s components.

Opinion Change and Policy Change

Political issues, and the policy solutions that address them, can be viewed through many lenses. Policies are inherently multidimensional, serving several purposes and invoking many considerations. Public opinion scholars leverage this multidimensionality to study framing effects, which “occur when (often small) changes in the presentation of an issue or event produce (sometimes large) changes of opinion” (Chong and Druckman 2007: 104). Framing can “suggest how politics should be thought about, thereby encouraging citizens to understand events and issues in particular ways” (Kinder 2007: 156). Is the goal of education policy to promote economic development or equality of opportunity? Is abortion policy about women’s rights, social justice, or protecting human life? Framing directs attention toward certain aspects of an issue and away from others, affecting how problems are defined, causes are diagnosed, moral judgments are reached, and remedies are identified (Entman 1993: 52).

Sometimes framing affects public attitudes. A common illustration of its power is the wide discrepancy between support for programs that assist the poor and support for “welfare” (Rasinski 1989). Legislative entrepreneurs and other stakeholders therefore invest considerable energy in developing frames that have the greatest impact on the “audience whose support they see as vital to bringing about their preferred outcomes” (Jones 1994: 195). Their ultimate objective is to shift the terms of debate onto favorable terrain, such that they are more likely to achieve their policy goals. For ACA supporters, research on framing effects suggests that they might generate stronger public support for the law by emphasizing its most popular components.

Most framing research assesses whether and how individuals’ attitudes change in response to messages from politicians, media outlets, interest

groups, and other elite sources. These studies use a “situational framing” approach (Jacobs and Mettler 2011), relying on experimental research designs during which subjects are exposed to varying frames. This approach greatly enhances our understanding of the psychological processes through which individuals form opinions about policy issues. Implicit in many individual-level studies of framing effects, however, is the bolder claim that framing-induced shifts in public attitudes also generate concomitant shifts in public policy. Some analysts make this assumption explicit. Based on experimental evidence, for instance, a recent study concludes that “advocates and public officials who frame children’s issues in economic terms are likely to enjoy greater political success than those who do not” (Gormley 2012: 98).

Such definitive statements overstate the influence of framing effects on policy outcomes, partly because framing is an inherently competitive process (Chong and Druckman 2013). Elites generally lack control over the information that reaches the public, and citizens receive multiple and competing messages. Policy entrepreneurs can try to direct public attention toward certain considerations, but their opponents may emphasize a different set of arguments, images, and frames. As a result, the two sides might “talk past” one another by focusing on entirely different considerations. This is an important shortcoming of relying on laboratory settings to investigate framing effects: “By ensuring that frames reach their intended audience, experiments may exaggerate their power” (Kinder 2007: 157).

Moreover, two scholarly literatures offer reason to question whether framing effects spur policy change. The first is the extensive scholarly literature on democratic responsiveness. Most studies that find a correspondence between public opinion and public policy in the United States rely on highly aggregated measures of Americans’ preferences (Stimson, MacKuen, and Erikson 1995). The subtle changes investigated in individual-level research on framing may not translate into system-level change. In addition, several recent studies demonstrate that government policy does not always correspond to public opinion. Lax and Phillips (2012) identify a “democratic deficit” in the states, finding that policy is consistent with majority will only half the time. Similarly, national policies and senatorial votes are more responsive to the views of the affluent and the organized than the preferences of the majority of Americans (Bartels 2008; Gilens and Page 2014). Importantly, the affluent tend to have more informed and consistent attitudes on political subjects (Delli Carpini and Keeter 1997). Framing effects therefore seem unlikely to alter the relatively crystallized views of the groups to whom elected officials are most responsive.

Indeed, the second research tradition that casts doubt on the potential connection between frames and policy decisions is, ironically, the literature on framing effects. Translating public opinion into policy outputs typically occurs in legislatures, lawmaking bodies that determine the timing and content of policy change. Legislators use distinct rhetorical strategies to shape the relevant lines of conflict (Mucciaroni 2011; Ferraiolo 2013). However, cataloging competing frames is not the same as demonstrating that the prominence of a particular frame has an independent effect on policy outcomes. In an era of partisan polarization, where even local officials' willingness to gather information about new policies is shaped by their ideological proclivities (Butler et al. 2015), it seems unlikely that rhetorical sparring will alter elite views on controversial topics such as health care. If key decision makers are impervious to framing effects, we should be circumspect about their causal force. As Jacobs and Mettler (2011: 926) explain, "Individuals who have experience or training related to the area of debate or are strongly motivated by its subject are less susceptible to framing." This caveat seems especially likely to apply to the officials who ultimately make the policy decisions in which we are interested.

In light of the preceding concerns, advocates of policy change may rely on an alternative rhetorical strategy known as *engagement*. Whereas framing suggests that competitors highlight what they view as favorable issues and avoid those emphasized by their rivals, engagement leads advocates to focus on the considerations of their opponents (Jerit 2008). In short, framing implies avoidance and engagement implies overlap. Recent research on elections illustrates the significance of this distinction, as competing parties and candidates tend to converge on the same issues (Sigelman and Buell 2004; Sides 2006; Green-Pedersen and Mortensen 2015). An identical dynamic can occur during policy discussions. In a study of the early 1990s health care reform debate, Jerit (2008) finds that proponents of policy change received increased public support when they engaged their opponents in a dialogue.

Engagement may be an especially appealing rhetorical strategy in a legislative setting where most protagonists are familiar with the arguments for and against certain courses of action. It may take a distinct form at the elite level, however. While there are exceptions, many contemporary policy debates pit Democrats and Republicans against each other. As a result, engagement efforts typically target partisan opponents. Well-informed elites are unlikely to be convinced by a clever reframing of an issue, and simply talking about the same considerations probably will not be sufficient to win them over. If supporters and opponents of policy change

focus on the same dimension of the debate but make incompatible claims, the underlying impasse is liable to persist.

Advocates' success therefore may depend on their ability both to engage their opponents on the same dimension *and* link their preferred course of action to opponents' other goals. Those who want to alter the policy status quo must complete two rhetorical tasks. In addition to advancing their own claims, they also must defend their proposal against attack (Riker 1996). One way to defuse opposition is to convince skeptics that the proposal will allow them to achieve their broader objectives.¹ Individuals can support the same policy for different reasons, and building diverse coalitions is crucial in a legislative context. Thus, by redirecting the study of engagement from efforts to sway mass opinion to the study of elite-to-elite communication, it becomes necessary to identify instances of, and evaluate the impact of, a specific type of rhetorical claim. The empirical implication of the preceding discussion is that partisan logjams can be broken, contributing to policy change, when advocates engage their opponents on the same dimension and demonstrate that the proposal aligns with opponents' overarching ideals.

In the next section of this article, we turn to a policy arena—sales taxes and electronic commerce—where advocates confronted a political context similar to the one currently faced by ACA supporters. Frustrated by a lack of progress, supporters of applying sales taxes to online purchases had to decide whether and how to alter their rhetorical approach. Based on an overview of recent developments, we argue that they used engagement to try to achieve their goals. They linked their preferred solution to their opponents' larger objectives to try to broaden their coalition, or at least to encourage their rivals to fight change less vociferously. In addition to illustrating how an elite-level engagement strategy can operate, we assess the conditions under which it can facilitate policy change. Our evaluation of engagement's strengths and limitations offers valuable lessons for ACA supporters.

Sales Taxes and Electronic Commerce: Framing, Engagement, and Policy Change

In 2012 state governments collected \$242.7 billion in general sales and gross receipts tax revenue and the average state depended on this source for

1. The engagement dynamic resonates with a growing social psychology literature on "moral framing" which suggests that framing efforts will be more persuasive if they connect to the moral foundations of their target audience (Day et al. 2014; Feinberg and Willer 2015; Wolsko, Ariega, and Seiden 2016).

30.5 percent of its total tax collections (O’Sullivan et al. 2013). However, this funding stream is at risk due to the rise of electronic commerce, the buying and selling of goods and services over the Internet. Online retail sales grew from \$15 billion in 1999 (0.5 percent of all retail sales) to \$261 billion in 2013 (5.8 percent).² The Supreme Court has ruled that state governments can only require out-of-state sellers to collect sales taxes if there is a “nexus” between the state and the remote vendor. Its 1992 decision in *Quill Corporation v. North Dakota* (504 U.S. 298 [1992]) made it possible for the states to begin asking Congress to allow them to collect sales taxes on online transactions (Nugent 2009; Lunder and Pettit 2013), but Congress has not acted. As a result, local vendors have to collect sales taxes for the state at the point of sale, but Internet retailers do not. Online purchasers are responsible for paying the tax, but compliance is low and enforcement is essentially nonexistent. Some analysts argue that e-commerce therefore “heralds some of the most difficult challenges ever to state taxing authority” (Scheppach and Shafroth 2008: 63).

State officials have responded to these challenges in several ways, both lobbying Congress and taking independent action. Twenty-three states are full members of the Streamlined Sales and Use Tax Agreement (SSUTA), an interstate compact that seeks to simplify, modernize, and synchronize state sales tax laws “so all types of vendors—from traditional retailers to those conducting trade over the Internet—could easily collect and remit sales taxes” (Maguire 2013: 9). Nineteen states have adopted “click through” laws,³ which require local affiliates of online retailers to collect sales taxes on the transactions that they facilitate.⁴ Several states negotiated deals with Amazon that require the online retailer to collect sales taxes (CanagaRetna 2012). Traditional “brick-and-mortar” retailers support these efforts. Working through professional associations such as the Retail Industry Leaders Association (RILA) and alliances such as the Marketplace Fairness Coalition, they argue that failing to collect sales taxes on online purchases effectively subsidizes online-only retailers.

Today, there is greater openness to the idea that state governments should be permitted to collect sales taxes on electronic commerce than there was

2. The US Census Bureau publishes an annual report that estimates e-commerce activity in key sectors of the economy. Called “E-Stats,” the reports are available at www.census.gov/estats.

3. The list of nineteen states can be found at trustfile.avalara.com/blog/which-states-collect-sales-tax-for-click-through-nexus/.

4. The term “local affiliate” refers to individuals or businesses that pass customers onto online retailers like Amazon through their own websites. When the customer makes a purchase, the affiliate earns a referral fee or percentage of the sale. For one example, see affiliate-program.amazon.com/.

when the issue first emerged in the 1990s. At both the state and national levels, however, advocates confront a partisan divide that has caused their progress to stall (Karch and Rosenthal 2016). Many Democrats support initiatives to alter the status quo, but Republican support is mixed. This split is evident in the congressional trajectory of the Marketplace Fairness Act of 2013, which was endorsed by the Democrat-controlled Senate in a 69–27 vote⁵ but made virtually no progress in the Republican-controlled House. It is also evident at the state level. The pace at which states have joined the SSUTA and adopted click-through laws has slowed, and many holdouts are under Republican control.⁶

Of course, there are several significant differences between the ACA and online sales taxation that prevent these cases from being equivalent. The ACA is a historically large social welfare expansion, the object of a heated national partisan debate, one of the most redistributive policies in generations, and a signature part of President Barack Obama's legacy. In contrast, electronic commerce has received far less attention from elected officials and the media, and it will undoubtedly have comparatively less powerful effects on the country. While electronic commerce lacks the political salience and economic impact of the ACA, however, the partisan dynamics described above suggest important areas of overlap. A partisan divide influences state policy choices about sales taxes and electronic commerce, just as partisanship affects state health care reform decisions (Jacobs and Callaghan 2013; Rigby and Haselswerdt 2013; Jones, Bradley, and Oberlander 2014). Indeed, many states that have not taken action on e-commerce have neither embraced the Medicaid expansion nor developed a state-level exchange.⁷ This partisan split helps explain the speed of adoptions in the two policy areas, another key similarity. In both contexts, a large number of states embraced policy change immediately and then the pace of adoptions slowed to a trickle. Consider the SSUTA, which thirteen states joined when it came online in 2005. Only three states, all with Republican governors, joined the compact between 2011 and 2013.

5. Of the fifty-three members of the Democratic caucus who voted, forty-eight supported the Marketplace Fairness Act; only twenty-one of forty-three Republicans voted for it.

6. An event history analysis of the fourteen adoptions that occurred through 2013 confirms that, all else equal, Republican-led states are less likely to adopt a click through law. The results of this analysis are available on request.

7. For instance, seven states (Alabama, Florida, Idaho, Mississippi, South Carolina, Texas, and Virginia) have not joined the SSUTA, adopted a click through law, or endorsed the Medicaid expansion. This comparison should not be taken too far, however, since many ardent opponents of e-commerce taxation come from states that lack a sales tax (Alaska, Delaware, Montana, New Hampshire, and Oregon).

Similarly, only two of the five most recent states to adopt the Medicaid expansion had a Democratic governor.

Most important for the purposes of this article, in both contexts advocates of policy change attempted to generate additional Republican support by trying to shift policy discussions onto more favorable terrain. Many ACA proponents have argued that framing can accomplish this task, but during the e-commerce debate advocates have used both framing and engagement strategies. By comparing the relative efficacy of these efforts, we can illuminate the prospects for similar ACA-related campaigns. We must be circumspect in interpreting our results given the important differences between the two policies. However, we believe that these differences do not outweigh the benefits we gain from using the electronic commerce taxation debate as an analytical tool for contemplating the future of the ACA.

In addition to offering potential lessons for proponents of health care reform, our examination of the e-commerce taxation debate has broader implications for the study of policy diffusion. Diffusion research tends to emphasize various background conditions that make adoption more or less likely, an approach that says relatively little about the public elected officials who make the decisions in which we are interested. Turning to the rhetorical strategies embraced by supporters and opponents of a specific reform therefore points the study of diffusion in a new and potentially constructive direction. Not only is it possible to examine the geographic spread of the rhetorical strategies themselves; it also becomes possible to assess whether, how, and under what conditions these strategies facilitate the consideration or even the adoption of policy innovations in jurisdictions that seem like unfavorable political terrain.

Our e-commerce case study draws on numerous qualitative data sources, including interest group publications, congressional testimony, national and state media coverage, and interviews with interest group officials, state lawmakers, and state-level bureaucrats. This triangulation strategy ensures greater internal validity by enabling us to identify idiosyncratic statements and giving us greater confidence in our conclusions (Yin 1989).

E-Commerce and Framing Effects

The first serious congressional foray into Internet-related tax policy led to passage of the Internet Tax Freedom Act (ITFA) in 1998. The ITFA established a three-year moratorium during which state and local governments could not impose “multiple or discriminatory taxes on electronic

commerce,” meaning consumers could not be taxed specifically for purchasing goods online.⁸ State and local governments also could not levy new taxes on Internet access. During congressional hearings on the ITFA, proponents of online sales taxation argued that it did not represent a new tax but rather was the collection of a tax that was already due.⁹ ITFA supporters nonetheless claimed that they were preventing a tax hike. As an interest group official explained, “Early on, the biggest argument and the easiest argument for [online sales tax opponents] to make . . . was to say this is a tax increase.”¹⁰

The ITFA passed with strong bipartisan support,¹¹ leading to frustration among state-level bureaucrats and elected officials. Their disappointment eventually led to the creation of the Streamlined Sales Tax Project (SSTP) in March 2000, when forty-three states came together in an attempt to simplify their sales tax laws so that online sales taxes could be remitted more easily. In 2001, forty-two governors sent Congress a letter that invoked arguments about fairness in pressing for policy change. They argued that national officials would end the moratorium if they cared “about a level playing field for Main Street retail businesses” (Geewax 2001).¹²

The fairness frame has been ubiquitous since the 1990s, with supporters of policy change arguing that the status quo unfairly disadvantages brick-and-mortar retailers. Its prominence is reflected in the titles of congressional bills such as the Sales Tax Fairness and Simplification Act of 2005 and the Marketplace Fairness Act of 2015. Moreover, the rhetorical debate surrounding this issue has featured a contest between a fairness frame and a tax increase frame, as media coverage illustrates. When Oklahoma debated whether to collect an online sales tax in 2003, supporters said “it would level the playing field between local businesses and Internet retailers” (Carter 2003). A 2005 editorial in the *New York Times* argued that an online sales tax “would also help level the playing field between local and online retailers,” while acknowledging that opponents would claim that “sales taxes online . . . represent a tax increase” (*New York Times* 2005). In 2009,

8. There is a common misperception that the law prevents state and local governments from taxing online sales, but it does not (Lunder and Pettit 2013).

9. U.S. Senate, Subcommittee on Communications of the Committee on Commerce, Science, and Transportation, *S. 442, Internet Tax Freedom Act*, 105th Cong., 1st sess. (1997), p. 34.

10. Interview with interest group official, October 9, 2015.

11. The House version passed by voice vote, while the Senate version passed on a 96–2 vote.

12. The widespread reach of the SSTP and the gubernatorial letter should be interpreted as evidence of state officials’ efforts to grapple with a new issue. It does not imply that more than forty states supported collecting sales taxes on online purchases.

supporters of an online sales tax in Wisconsin argued that their efforts would bring “more fairness to the state’s tax code” by putting “Wisconsin small business on a level playing field with out-of-state Internet sellers.” Meanwhile, Republicans in the state voiced their opposition by stating that it was “not the time for tax increases” (Lindquist 2009). Nearly all our interviewees emphasized the persistence and centrality of the fairness frame. An elected official who has worked on the issue for twelve years explained, “The argument for [collecting online sales tax] is fairness. . . . That is the argument I’ve been using the entire time.”¹³

The preceding description of the e-commerce debate resonates with the theoretical underpinnings of the framing literature. Proponents emphasized a fairness frame to justify change, while opponents responded with a tax increase frame. This lack of convergence is exactly what framing scholars would expect (Riker 1996). However, framing falls short as an explanation of recent policy change, especially in Republican-led states. Republican governors have led the last three states to join the SSUTA, and other conservative leaders have argued that Congress should allow states to collect sales taxes on online purchases. The ubiquity and stability of the “fairness” versus “tax increase” debate cannot account for the growing openness of Republican leaders to altering the status quo. That is to say, the frames have not changed, but the outcomes have—at least somewhat. As the next subsection explains, this shift is better explained by analyzing how proponents used engagement to attempt to win conservative allies.

Elite Engagement and Policy Change

Engagement occurs when competitors debate the same policy dimension rather than focusing on different concerns. When engagement is used to persuade mass publics, the primary arena in which its impact has been assessed, the two sides can treat the same dimension differently. In her analysis of President Clinton’s Health Security Act, Jerit (2008: 18) provides an example along the dimension of complexity. Opponents claimed the proposal was too complex, while proponents argued that it was straightforward and efficient. In this particular example, one still sees competitors “talking past” each other in a way that resonates with the framing literature.

When elites communicate with each other, engagement requires more than simply addressing the same issue dimension. Building on the previous example, legislators who believe a proposal is too complex will almost

13. Interview with elected official, August 25, 2015.

assuredly not change their mind because a partisan opponent tells them that it is actually straightforward and efficient, particularly in an era of partisan polarization. However, engagement can be persuasive if proponents engage their opponents and simultaneously connect their arguments to their opponents' broader goals. Returning a final time to the Health Security Act example, supporters could assert that its efficiency would trim government spending, linking their claim with a key Republican objective. This connection to broader principles might give advocates a better chance of persuading elite opponents who are already familiar with the basic contours of the debate.

The persuasive potential of the engagement strategy helps explain the recent openness of Republican officials to collecting sales taxes on online purchases. Supporters continue to rely on the "fairness" frame, but they have supplemented it with a rhetorical strategy that relies on engagement. Specifically, they increasingly focus on the issue of taxes, engaging with the argument that policy change is a tax increase. This rhetorical turn is not unprecedented; it relates to supporters' insistence that online sales taxes are not new taxes but rather taxes that are going uncollected. The key rhetorical innovation is linking this claim to the broader philosophical and policy goals of the contemporary Republican Party. Earlier efforts to engage on the taxation dimension were ineffectual because they involved competing claims and counterclaims rather than attempting to convince foes that policy change serves their interest.

How could proponents simultaneously link their arguments for e-commerce taxation to the dimension of taxes and argue that change was compatible with the broader Republican agenda? A state elected official answered this question by explaining how his fundamental argument depends on the partisan nature of his audience: "I would say to Democrats . . . here's more money to provide the services you'd like the state to provide more of. . . . [For] Republicans, for those who do not think there should be any increase in taxes, fine! You can use the additional money [brought in by e-commerce taxation] to reduce other taxes or even the overall sales tax rate if you want."¹⁴ This rhetorical strategy is a recent innovation that many proponents of online sales tax collection have embraced. It enables them to connect policy change to Republican goals by describing the collection of taxes on e-commerce as a tool for cutting taxes. An interest group official explained that this rhetorical strategy increased some Republican state legislators' openness to change

14. Interview with elected official, August 25, 2015.

because “[Republicans] don’t want to raise taxes, but they’re willing to fund the taxes that are due, especially if you’re going to use them to reduce other taxes.”¹⁵

Recent developments in several Republican-leaning states support these claims. In Texas, for example, Tea Party state legislators recently criticized Senator Ted Cruz (R-TX) for opposing national legislation permitting online sales taxation; they emphasized that the increased revenue the state received would be used to lower the margins tax levied on Texas businesses (Hailey 2013). Similarly, when the issue arose in Florida, a vice president of the state’s Chamber of Commerce pointed to Ohio and Wisconsin as models to be emulated, and his rationale was revealing. The two states, he noted, “which happen to have conservative governors—are supporting [national e-commerce taxation legislation] with the anticipation that [they] will use the added sales taxes from the Internet transactions to lower income taxes” (Dunkelberger 2013).

Indeed, Ohio and Wisconsin illustrate how elite engagement can facilitate policy change. In Ohio, Republican governor John Kasich strongly opposed online sales taxation when he chaired the Budget Committee in the US House of Representatives in the mid- to late 1990s. His position as governor is quite different, however. In 2013 the governor signed an executive order instructing the state’s tax commissioner to seek full membership in the SSUTA. Also, he has recently described e-commerce tax legislation as a “tax cutting mechanism,” explaining, “If we’re going to get more revenue, we should cut people’s taxes with it” (Provance 2015).¹⁶

Developments in Wisconsin also hint at the potential efficacy of engagement. Like Ohio, Wisconsin is one of a growing number of conservative states that has pledged to use additional revenue from an online sales tax to lower other taxes. This promise aligns with Republican governor Scott Walker’s strong stance against higher taxes (Umhoefer 2011), and the governor has taken two actions that emphasize the coherence between policy change and this broader objective. First, after the US Senate endorsed the Marketplace Fairness Act of 2013, the governor sent the Wisconsin congressional delegation a letter explaining his stance on the issue. Alluding to the goal of providing tax relief to middle-class families, Governor Walker explained, “I want to make clear, should federal

15. Interview with interest group official, October 9, 2015.

16. This justification supplemented, rather than supplanted, the fairness frame. In his 2013 executive order, Governor Kasich noted that the interstate compact “levels the playing field so that local ‘brick-and-mortar’ stores and remote sellers operate under the same rules, thus ensuring that all retailers can conduct their business in a fair, competitive environment” (John R. Kasich, Governor of Ohio, Executive Order 2013-09K, July 9, 2013).

Marketplace legislation become law, my intention would be for any resulting additional revenue [to] be used to provide individual income tax relief for Wisconsin's taxpayers."¹⁷ Strikingly, the letter neither used the language of fairness nor praised the legislation for creating a level playing field for local retailers. Governor Walker's second noteworthy action occurred in 2014, when he signed into law a biennial state budget that automatically reduces the state income tax if Congress passes legislation permitting the collection of online sales taxes (Laffer 2014). In Ohio and Wisconsin, conservative governors both altered the way they discuss the issue and supported concrete legislative actions to facilitate e-commerce taxation. Their actions suggest that the engagement strategy helped alter state policy choices. This ability to spur policy change stands in sharp contrast to the more tenuous connection between framing effects and legislative decisions.

The preceding analysis suggests that some initially skeptical Republicans have become more open to applying sales taxes to online purchases, justifying this policy shift by linking it to their broader philosophical and policy goals. Conservative governors such as Scott Walker of Wisconsin and John Kasich of Ohio have claimed that the additional revenue generated by a change will enable them to reduce other taxes, a central goal of the contemporary Republican Party.¹⁸ Supporters still use the fairness frame that has been ubiquitous since the late 1990s. Recently, however, they have supplemented this rhetorical strategy with elite-level engagement, addressing the concerns raised by opponents *and* connecting change to opponents' broader principles. The justifications advanced by Republican supporters suggest that the engagement approach has been somewhat successful.

As we discuss in the next section, the e-commerce example suggests that efforts to gain ACA support from Republicans by emphasizing the popular components of health care reform may be misguided. Instead of attempting to reframe the ACA, advocates may be better served by trying to engage Republicans on the same dimensions their opponents are emphasizing while also connecting their claims to broader Republican principles.

17. Governor Scott Walker, "Dear Congressman" letter, May 15, 2013. The entire letter can be viewed at www.standwithmainstreet.com/getobject.aspx?file=Letter%20from_Governor_Scott_Walker.

18. The growth of electronic commerce makes this argument more appealing than it was a decade ago, since it implies that the resulting tax cuts will be larger. Indeed, a recent analysis of the US Senate finds that both partisan affiliation and state revenue foregone were significant predictors of Senators' votes on the Marketplace Fairness Act of 2013 (Karch and Rosenthal 2016). In this sense, the engagement strategy is rendered more effective by the rising economic costs of maintaining a suboptimal tax policy.

Implications for the ACA

As supportive lawmakers, organized interests, and foundations try to overcome partisan resistance to the ACA, pursuing an engagement strategy might prove effective. Backers of health care reform often claim that the adoption of a specific component of the ACA will free Republican officials to pursue other objectives. The recent expansion of Medicaid in Arkansas, dubbed the “private option,” is a case in point. The rhetorical debate surrounding the Medicaid expansion often pits supporters making the moral case for action against opponents who worry about the long-term financial implications of this commitment. The “Arkansas model” provides premium support for certain enrollees to purchase private insurance on the marketplace (Thompson et al. 2014). Its reliance on the private sector enhances its appeal to conservative officials who believe that its cost is more predictable, and who worry about expanding the reach of a governmental program. Officials in Montana, Kentucky, Louisiana, and elsewhere have pointed to the private option approach as a potential model to be emulated. It illustrates the potential power of engagement, addressing cost concerns and linking change to Republicans’ other goals. Not only has the policy idea itself diffused; the political rhetoric surrounding this reform has spread as well, with conservative lawmakers describing it as something distinct from either the Medicaid expansion or the traditional Medicaid program (Grogan, McMinn Singer, and Jones 2017).

Importantly, the broader objectives invoked by an engagement strategy need not be limited to health care reform. Certain components of the ACA have been linked to tax cuts in ways that resonate with the electronic commerce example. Reformers in Texas, for instance, claim that the state’s unwillingness to embrace the Medicaid expansion means it is foregoing significant revenue. This argument is not novel, but increasingly advocates link this revenue to property tax reform. One supporter recently explained, “There is some interest now by some Republican state senators because of the potential to reduce local property taxes” (Feibel 2015). By emphasizing the economic dimension and tying it to tax cuts, Texas reformers are using an elite-level engagement strategy. Time will tell if this approach proves successful.

In drawing lessons for the ACA, it is essential not to overstate the independent power of engagement. The strategy has diffused widely in the context of electronic commerce, but the recent pace of adoptions remains slow. Pursuing engagement is not sufficient for success. Sometimes it leads to policy change; sometimes it does not. The challenge is to identify the

political and institutional conditions that make success more or less likely. Fortunately, the scholarly literature and the e-commerce example offer valuable guidance.

In *The Strategy of Rhetoric*, William Riker (1996) distinguishes between rhetoric and heresthetic. Rhetoric invokes argumentation and persuasion. Heresthetic describes “the art of setting up situations . . . in such a way that even those who do not wish to do so are compelled by the structure of the situation to support the heresthetician’s purpose” (Riker 1996: 9). This distinction implies that, in addition to engaging opponents, supporters must be attentive to the “rules of the game.” One episode in Texas is especially revealing. In September 2010 the state sent Amazon a bill for \$269 million in uncollected sales taxes, citing the company’s distribution center in Irving as evidence of its “physical presence” in the state. Amazon responded by announcing the closure of the distribution center (CanagaRetna 2012). The dispute lingered into the next legislative session, when the legislature endorsed and Governor Rick Perry vetoed a bill that sought to clarify what constituted physical presence. In response, supporters embedded the proposal in a “fiscal matters” bill during a special legislative session. The “fiscal matters” bill was “must-pass” legislation that was necessary for the budget to be certified by the state comptroller. Governor Perry had no choice but to sign it.¹⁹

This example helps demonstrate that the success of engagement may depend on the institutional setting within which decisions are made. Legislative rules and procedures are paramount. The trajectory of click through legislation in Minnesota provides another illustration, as a law was adopted through an omnibus budget bill in 2013 after a stand-alone proposal was unsuccessful in 2011. For ACA supporters, one potential lesson is that embedding policy changes within omnibus tax, budget, or health care bills provides two key advantages. First, omnibus bills have a greater likelihood of passage. Second, the discussions surrounding omnibus initiatives are an especially propitious setting for an elite-level engagement strategy. It is easier to link policies to broader principles such as cost containment and tax reduction when those issues are already under consideration, and that context might facilitate the sort of compromise that allows progress to occur. This dynamic can occur in non-budgetary and non-legislative settings, including bureaucratic amendments to a state’s insurance code.

19. Interview with state representative, October 2, 2015.

The e-commerce example offers other useful lessons for ACA supporters. Just as states have joined the SSUTA, adopted click through legislation, enacted bills that are contingent on congressional action, and taken other actions to collect sales taxes on online sales, health care reform is “a comprehensive package of policy elements and a mix of regulatory and redistributive features” (Jacobs and Mettler 2011: 928–29). In both contexts, the salience of these alternatives varies. Some prominent features of the ACA, such as the Medicaid expansion and health insurance marketplaces, are freighted with enough political baggage that engagement may not always lead immediately to policy change. Developments in Arkansas, where low-income uninsured individuals enroll in exchange-sponsored health plans instead of Medicaid, nonetheless illustrate the strategy’s potential. In contrast, the law’s regulatory changes to the health insurance market and the delivery of health care services may prove especially amenable to engagement.

Looking ahead, significant uncertainty remains over state implementation of the ACA. There are open questions about whether and how states will expand Medicaid as well as ongoing governance decisions affecting the operation of health insurance marketplaces. Moreover, beginning in January 2017 states can apply for State Innovation Waivers through Section 1332 of the ACA. According to John E. McDonough (2014: 1109), this section “has the potential to be a significant and unpredictable game changer in future directions in federal and state health care policy.” States that receive waivers can implement innovative strategies that retain the law’s basic protections while providing residents with access to high-quality, affordable health insurance. The waivers can be used to pursue an unusually wide range of objectives, such as expanding the enrollment base to promote sustainability, streamlining operations, facilitating delivery system reform, enrolling consumers in optimal plans, and smoothing the “sharp edges” of the law (Howard and Benshoof 2015). As a result, they have been linked to everything from the establishment of a single-payer system in Vermont to the expansion of the Arkansas model (McDonough 2014). Thus, the waivers might facilitate the diffusion of a new round of health care policy innovations. The comprehensive nature of the waivers—and the fact that they can be merged with waivers associated with Medicare and Medicaid reform—makes engagement particularly appealing.

An engagement strategy will not be a panacea for the partisan polarization that characterizes responses to the ACA, and we do not expect it to lead to a rapid about-face in public attitudes. However, it offers a viable alternative to the framing strategy that has dominated discussions of the

ACA and is represented by the quotation from Secretary Burwell with which this article began. The framing process can occasionally lead to policy change over the long term (Baumgartner, De Boef, and Boydston 2008), but most discussions of framing effects emphasize ephemeral changes in individual attitudes (Jacobs and Mettler 2011). Under certain conditions, many of which appear relevant to the diffusion of the ACA, an engagement strategy offers an approach that is more responsive to the elites who make the actual decisions that will determine the future course of health care reform in the United States.

Conclusion

In addition to its promise as a political strategy for ACA supporters, elite-level engagement deserves a more prominent place in academic studies of policy change and its causes. Existing research on framing effects illuminates the psychological bases of political attitudes, but there is ample reason to question whether subtle shifts in rhetoric are sufficient to cause well-informed elites to endorse policies that they had previously opposed. The recent trajectory of the e-commerce debate, in contrast, suggests that engagement can occasionally spur previously reluctant state officials to endorse change. Many questions remain about the institutional and political contexts in which engagement is most likely to succeed, and these questions offer numerous fruitful avenues for future research.

For example, the potential impact of an engagement-based rhetorical strategy on policy change offers two valuable lessons for policy diffusion scholars. Existing diffusion research tends to focus on various political, economic, and demographic correlates of adoption over which state leaders have little to no control. These background conditions (and many others) are undoubtedly influential, but it is equally important to recognize the dynamic nature of the policy process. The strategic and tactical choices that are made by institutionally critical actors such as governors and legislative leaders may help explain why a policy innovation either takes root in a seemingly inhospitable environment or fails to gain enactment under what seem to be favorable conditions. To be sure, rhetoric alone is rarely sufficient to explain policy change. The policy-making context might increase or decrease the power of a specific rhetorical strategy, as when the growing scope and scale of electronic commerce enhanced the size of the potential tax cuts that a change in policy would facilitate. However, diffusion scholars must be more attentive to the rhetorical and other strategic choices made by the individuals with the power to decide a policy's fate. Like

policy innovations, the strategies themselves may diffuse through media coverage, advocacy organizations, or other means. Understanding whether and how advocates in late-adopting states learn about and employ rhetorical claims that proved successful in early adopters therefore has the potential to illuminate the impact of various diffusion mechanisms.

At its core, policy diffusion scholarship investigates whether the existence of a given program in one jurisdiction affects the likelihood that it will be adopted elsewhere. Most studies in this research tradition emphasize the adoption decision, but the second lesson of the preceding analysis is that the impact of external developments may be felt during the earlier stages of the policy process (Karch 2007). In the electronic commerce example, the rhetorical strategy of linking policy change to tax policy spread from one state to another as advocates viewed it as a way to try to convince unsupportive state officials to change their views. The geographic spread of this engagement approach suggests that the impact of diffusion can influence the nature of the political agenda and the portrayal of existing policy alternatives in ways that precede, but ultimately may affect, decisions concerning final passage. This insight has implications for both the future trajectory of the ACA and future research on the forces that facilitate or hinder the spread of innovative policies.

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