

EXHIBIT 79

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO.: 2:22-cv-184-LCB

BRIANNA BOE, et al.,
Plaintiffs,
UNITED STATES OF AMERICA,
Intervenor Plaintiff,

v.

HON. STEVE MARSHALL, et al.,
Defendants.

REMOTE VIDEOCONFERENCE DEPOSITION
TESTIMONY OF:
DEVIN CAUGHEY, Ph.D.
May 1, 2024

Page 2	<p>1 A P P E A R A N C E S</p> <p>2 (all via remote videoconference)</p> <p>3</p> <p>4 FOR THE PLAINTIFFS:</p> <p>5</p> <p>6 James Fletcher, Esq.</p> <p>7 Kaitlin Toyama, Esq.</p> <p>8 Andrew Rogers, Esq.</p> <p>9 DEPARTMENT OF JUSTICE</p> <p>10 CIVIL RIGHTS DIVISION</p> <p>11 150 M Street, NE</p> <p>12 Washington, D.C. 20002</p> <p>13 james.fletcher@usdoj.gov</p> <p>14</p> <p>15 Cynthia Cheng-Wun Weaver, Esq.</p> <p>16 HUMAN RIGHTS CAMPAIGN</p> <p>17 1640 Rhode Island Avenue, NW</p> <p>18 Washington, D.C. 20036</p> <p>19 cynthia.weaver@hrc.org</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	Page 4
Page 3	<p>1 A P P E A R A N C E S (continued)</p> <p>2</p> <p>3 FOR THE DEFENDANTS:</p> <p>4</p> <p>5 Christopher Mills, Esq.</p> <p>6 SPERO LAW</p> <p>7 557 East Bay Street, Suite 22251</p> <p>8 Charleston, South Carolina 29413</p> <p>9 cmills@spero.law</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT:</p> <p>13</p> <p>14 Elizabeth Rodriguez-Ross, Esq., GLAD</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	Page 5
	<p>1 I N D E X</p> <p>2</p> <p>3 EXAMINATION BY: PAGE NO.</p> <p>4 Mr. Mills 8</p> <p>5 Mr. Fletcher 335</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12</p> <p>13 FOR THE DEFENDANTS:</p> <p>14 Exhibit 4 Codebook Policies 214</p> <p>15 Exhibit 5 "The Policy Effects of the 162</p> <p>16 Partisan Composition of State</p> <p>17 Government"</p> <p>18 Exhibit 7 Freedom in the 50 States, 206</p> <p>19 Sixth Edition</p> <p>20 Exhibit 15 Dynamic Democracy (excerpt) 115</p> <p>21 Exhibit 16 "Measuring LGBTQ Policy 237</p> <p>22 Environment in the American</p> <p>23 States," Scott LaCombe</p> <p>1 Exhibit 19 "Policy Preferences and 142</p> <p>2 Policy Change: Dynamic</p> <p>3 Responsiveness in the</p> <p>4 American States, 1936-2014"</p> <p>5 Exhibit 20 SB184 47</p> <p>6 Exhibit 21 Rebuttal Expert Testimony of 15</p> <p>7 Devin Caughey, PhD</p> <p>8 Exhibit 24 Freedom in the 50 States, 203</p> <p>9 Fifth Edition</p> <p>10 Exhibit 25 "The Dynamics of State Policy 115</p> <p>11 Liberalism, 1936-2014"</p> <p>12 Exhibit 28 HB130 Engrossed 295</p> <p>13 Exhibit 29 "State Rep. Butler: We're all 300</p> <p>14 pretending transgender</p> <p>15 behavior is normal -- 'Up</p> <p>16 until Obama, it was a mental</p> <p>17 defect, and he kind of</p> <p>18 popularized it"</p> <p>19 Exhibit 30 "Huntsville father's Facebook 302</p> <p>20 post on biological male</p> <p>21 'Butch coded space queer'</p> <p>22 Space Camp worker goes viral</p> <p>23</p>	

Page 6

1 Exhibit 31 "Being transgender no longer 316
 2 a 'mental disorder': APA"
 3 Exhibit 32 HB391 318
 4 Exhibit 34 "The top 10 Alabama political 328
 5 stories of 2023"
 6 Exhibit 37 Whatley Amendment To SB10 170
 7 Exhibit 38 "Father of transgender 187
 8 daughter tells Alabama
 9 lawmakers treatment ban is
 10 misguided"
 11 Exhibit 39 "Alabama Senate passes bill 175
 12 banning transgender
 13 treatments for minors"
 14 Exhibit 40 Video, Alabama Senate 228
 15 Healthcare Committee
 16 Exhibit 41 House Video 231
 17 Exhibit 42 House SB184 Roll Call, 81
 18 LegiScan
 19 Exhibit 43 Senate SB184 Roll Call, 84
 20 LegiScan
 21 Exhibit 44 FAQ WHO development of a 271
 22 guideline on the health of
 23 trans & gender diverse people

Page 7

1 Exhibit 47 "Top Trans Doctors Blow the 275
 2 Whistle on 'Sloppy' Care"
 3 Exhibit 48 Video, Capital Journal 227
 4 Exhibit 49 "Alabama governor signs 260
 5 'Don't Say Gay' trans care
 6 and bathroom ban bills"
 7 Exhibit 51 "Confounding in Survey 196
 8 Experiments"
 9 Exhibit 54 "England Bans Puberty 274
 10 Blockers For Minors"
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23

Page 8

1 I, Lane C. Butler, a Court
 2 Reporter and Notary Public, State of
 3 Alabama at Large, acting as Notary,
 4 certify that on this date, pursuant to
 5 the Federal Rules of Civil Procedure,
 6 there came before me via remote
 7 videoconference from Cambridge,
 8 Massachusetts, commencing at
 9 approximately 9:04 a.m. Eastern, on the
 10 1st day of May, 2024, DEVIN CAUGHEY,
 11 Ph.D., witness in the above cause, for
 12 oral examination, whereupon the following
 13 proceedings were had:
 14
 15 DEVIN CAUGHEY, Ph.D.,
 16 having first been duly sworn,
 17 was examined and testified as follows:
 18
 19 EXAMINATION BY MR. MILLS:
 20 Q. Could you state your name for
 21 the record.
 22 A. Devin Caughey.
 23 Q. And have you given deposition

Page 9

1 testimony before?
 2 A. I have not.
 3 Q. Okay. Well, so the way this
 4 works is I'll ask questions, and you can
 5 answer them. If you don't understand the
 6 question, just let me know. If you need
 7 a break, just let me know. I'll aim to
 8 take breaks, you know, every hour to hour
 9 and a half. But if you need another
 10 break, that's totally fine.
 11 If you could -- and I will try
 12 to as well -- remember to speak slowly
 13 enough for the court reporter and answer
 14 verbally, that would be helpful.
 15 Were you able to set up the
 16 Veritext Exhibit Share?
 17 A. I believe I was, yes.
 18 Q. Okay. Great. To simplify
 19 things, most of the time, I'll probably
 20 just share my screen with the exhibit and
 21 just look at the relevant portions with
 22 you. But if you need to look at other
 23 aspects of a document or we run into any

Page 10

1 issues with screen sharing, you can use
 2 the Exhibit Share as a backup.
 3 A. Sounds good.
 4 Q. What did you do to prepare for
 5 today's deposition?
 6 A. I met with the attorneys I'm
 7 working with at the Department of Justice
 8 on several occasions, maybe five or six
 9 occasions, and I reviewed my report.
 10 Q. Did you review any other
 11 documents for -- in preparation for the
 12 deposition?
 13 A. No, I did not.
 14 Q. And did you discuss the
 15 deposition with anyone other than your
 16 counsel?
 17 A. No.
 18 Q. Do you have any papers there
 19 with you today related to the case?
 20 A. The only document I have is my
 21 report.
 22 Q. Okay. When I refer to SB184,
 23 you understand that will be a reference

Page 11

1 to the law as enacted by Alabama in 2022
 2 regulating the use of medical gender
 3 transition interventions in minors?
 4 A. I do.
 5 Q. Okay. How did you come to be
 6 involved in this case?
 7 A. I was approached by the
 8 Department of Justice asking if I would
 9 be interested in serving as an expert
 10 witness in this case.
 11 Q. And how did they know to contact
 12 you?
 13 A. I don't know exactly, but I had
 14 had conversations in the preceding maybe
 15 two years, starting two years previous,
 16 two years ago, or perhaps more, with the
 17 Department of Justice about -- more
 18 generally, about the possibility of my
 19 serving as an expert witness for the
 20 Department. So I -- my understanding is
 21 that I was sort of already in their
 22 system, in a sense.
 23 Q. And were those conversations

Page 12

1 about Alabama's case or other cases?
 2 A. They weren't specific to any
 3 case.
 4 Q. Were they about this issue of
 5 medical gender transition interventions
 6 in minors or other issues?
 7 MR. FLETCHER: I object on the
 8 grounds of privilege and instruct the
 9 witness not to answer to the extent the
 10 question calls for discussions between
 11 the expert and the United States counsel
 12 with regards to any case.
 13 Q. And how did they know to contact
 14 you two years ago?
 15 A. I don't know exactly. I believe
 16 that one of my colleagues at MIT had
 17 suggested my name to -- one of my
 18 colleagues who has also served as an
 19 expert suggested my name as someone who
 20 would be qualified, or well-suited for
 21 this sort of work.
 22 Q. And did that colleague suggest
 23 your name in the context of cases

Page 13

1 involving medical gender transition
 2 interventions or other types of cases?
 3 A. I don't know. I don't know the
 4 content of his conversation.
 5 Q. And have you ever considered
 6 being an expert for the Department of
 7 Justice in cases not involving medical
 8 gender transition intervention?
 9 A. By "considered," do you -- can
 10 clarify what you mean by "considered"?
 11 Q. Sure. Have you served as an
 12 expert in other cases for the Department
 13 of Justice?
 14 A. No.
 15 Q. When were you first contacted
 16 about becoming involved in this Alabama
 17 case?
 18 A. I don't recall the date off the
 19 top of my head, but if I had to guess, it
 20 was in February of this year or perhaps
 21 -- no. It might have been slightly
 22 earlier, maybe January. I don't recall
 23 exactly.

Page 14

1 Q. But it was 20-- it was during
 2 the calendar year of 2024?
 3 A. I believe so, but I suppose it
 4 could have been at the end of 2023.
 5 Q. And what is your understanding
 6 of the purpose of your testimony?
 7 A. To rebut, to rebut, provide a
 8 rebuttal report for the defense reports,
 9 certain defense reports.
 10 Q. And what's your understanding of
 11 what you are rebutting?
 12 A. I am -- well, first, in terms of
 13 which reports, I am focusing -- or I
 14 focused my rebuttal on the reports of
 15 Drs. Kaliebe, Cantor, and Nangia and --
 16 although some of -- I also reviewed
 17 materials from some other experts, but I
 18 focused on those experts. And on my -- I
 19 focused on rebutting their contention
 20 that SB184 and gender-affirming care bans
 21 for minors in general are motivated by --
 22 are motivated exclusively by a desire to
 23 protect minors from experimental or

Page 15

1 potentially dangerous medical treatments.
 2 Q. Did you speak to anyone in the
 3 state of Alabama in the process of
 4 forming your opinions in this case?
 5 A. I did not.
 6 Q. I'm going to be showing you your
 7 report if I can get that to happen. This
 8 is the expert report you provided in this
 9 case. Is that right?
 10 A. That's correct.
 11 Q. Okay. And this is your
 12 signature here at the end?
 13 A. That is correct.
 14 Q. Okay. I'm going to introduce
 15 this as Exhibit 21.
 16 Here on page 30, paragraph 61,
 17 you say, "Defendants' expert reports make
 18 almost no reference to the state of
 19 Alabama or to SB184 specifically." You
 20 still agree with that statement?
 21 (Exhibit 21 was marked for identification
 22 and is attached.)
 23 A. I do.

Page 16

1 Q. Okay. And if you could look at
 2 footnote 24 here. And I can -- I can go
 3 down to the other page whenever.
 4 A. I see it.
 5 Q. Okay. So you say, "The primary
 6 exception to the national focus is Dr.
 7 Cantor's quotation of plaintiff expert
 8 Dr. Ladinsky's contention that SB184
 9 'will cause serious harms to my patients
 10 as well as other transgender youth in
 11 Alabama.'" And then on the next page,
 12 you say, "However, although Dr.
 13 Ladinsky's claim refers specifically to
 14 Alabama, Dr. Cantor's response to it is,
 15 like the rest of his report, couched in
 16 general terms."
 17 Do you still agree with that
 18 statement?
 19 A. I do.
 20 Q. So no defendant expert has
 21 opined as to the intent of any Alabama
 22 legislator in voting for or against
 23 SB184; correct?

Page 17

1 A. I did not notice any such
 2 contentions in -- specific to the
 3 intentions of the Alabama Legislature --
 4 the Alabama Legislature in the reports
 5 that I reviewed.
 6 Q. And no defendant expert has
 7 opined as to the intent of the Alabama
 8 governor in signing SB184; correct?
 9 A. I did not notice any such
 10 references in the reports I reviewed.
 11 Q. And so you are not rebutting in
 12 this report any opinion of a defendant
 13 expert as to the intent of the Alabama
 14 Legislature or governor in passing SB184?
 15 A. Can you repeat that question,
 16 please?
 17 Q. Yes. In your report in this
 18 case, you are not rebutting any opinion
 19 of a defendant expert as to the intent of
 20 the Alabama Legislature or governor in
 21 passing SB184; correct?
 22 A. I don't think that's entirely
 23 correct.

Page 18

1 Q. Well, you just testified that
 2 you are not aware of any defendant expert
 3 opining as to the intent of the
 4 legislature or the governor in passing
 5 SB184; correct?
 6 A. I didn't -- I opined that -- or
 7 I said that I didn't notice any specific
 8 references to the Alabama Legislature or
 9 the Alabama governor. That's correct.
 10 Q. And so you are not -- you are
 11 not opining as to the defendants'
 12 experts' opinions specifically as to the
 13 intent of the Alabama Legislature or the
 14 Alabama governor in passing SB184; right?
 15 A. The way I would characterize it
 16 is that the defendants' experts are
 17 putting forward a general justification
 18 for bans on gender-affirming care for
 19 minors that applies at least to all
 20 states if not beyond them and that that
 21 justification and implicit contention as
 22 to the motivations for such bans includes
 23 Alabama, or it included -- it's meant to

Page 19

1 include Alabama and cover Alabama even if
 2 evidence specific to Alabama was not
 3 prominently referenced in their reports.
 4 Q. And which defendant expert
 5 opined as to the intent of any state
 6 legislature in passing SB184?
 7 A. All three -- all three defense
 8 reports that I focused on put forward or
 9 advanced a justification for SB184. And
 10 as my report shows, this justification
 11 also was at least partially adopted by
 12 the legislature itself. So I view my
 13 report as responding to that -- that
 14 justification for bans on
 15 gender-affirming care for minors.
 16 Q. But the defendant expert reports
 17 that you're responding to do not claim
 18 that the Alabama Legislature adopted the
 19 justifications that you say those expert
 20 reports put forward for SB184; correct?
 21 A. I do not -- I believe it is
 22 correct that they do not state that the
 23 legislature adopted their justifications.

Page 20

1 Q. So no defendant expert has
 2 opined as to the reasons Alabama enacted
 3 SB184; correct?
 4 A. I'm sorry. Say that one more
 5 time?
 6 Q. Yeah. No defendant expert has
 7 opined as to the reasons Alabama enacted
 8 SB184; correct?
 9 A. I think I would characterize
 10 that slightly differently. I would say
 11 that -- as I previously said, that
 12 they're advancing a justification for
 13 such bans that doesn't explicitly
 14 reference the state of Alabama but is
 15 meant to include it. And so that's the
 16 way I would -- I would put it.
 17 Q. You say "meant to include it."
 18 Did you talk to the defendants' experts?
 19 A. I did not.
 20 Q. So, how do you know what a text
 21 that doesn't mention Alabama is meant to
 22 do?
 23 A. It's couched in terms that

Page 21

1 include the conditions that pertain in
 2 Alabama.
 3 Q. You can't identify a single
 4 sentence in any defendant expert report
 5 that opines as to the reasons Alabama
 6 enacted SB184; correct?
 7 A. A single sentence referencing
 8 Alabama specifically?
 9 Q. That's correct.
 10 A. I would say that I can identify
 11 many sentences that -- well, the whole --
 12 all of the reports are primarily intended
 13 to advance a justification for
 14 gender-affirming care bans for minors
 15 that apply to Alabama and are certainly
 16 intended to include Alabama as a case.
 17 But it is correct that the reports
 18 themselves very rarely mention Alabama
 19 specifically. So in that narrow sense, I
 20 can't point to a specific sentence that
 21 -- referencing Alabama that makes that
 22 claim.
 23 Q. So just to clarify, you can't

Page 22

1 point to a specific sentence opining as
 2 to the reasons Alabama enacted SB184?
 3 A. I can't point to a specific
 4 sentence referencing Alabama
 5 specifically; however, I can -- I regard
 6 the reports in general as covering
 7 Alabama in their -- including Alabama as
 8 a case under their -- that they're meant
 9 to include Alabama as a case. In other
 10 words -- sorry. You go ahead.
 11 Q. Could you identify the sentences
 12 where you believe the defendants' experts
 13 provide the reasons Alabama enacted
 14 SB184?
 15 A. I would need to see the defense
 16 reports.
 17 Q. You don't reference those
 18 sentences in your report?
 19 A. I see. Let me consult my
 20 report. Could I consult my report to see
 21 whether the quotations I have are
 22 sufficient to answer your question?
 23 Q. Sure.

Page 23

1 A. I have my report here next to
 2 me. Would you prefer that I look at your
 3 copy or look at the copy online?
 4 Q. You can look at your copy.
 5 That's probably easier.
 6 A. Okay. Thanks.
 7 (Witness reviews document.)
 8 A. Can you remind me what
 9 specifically you are -- you asked me to
 10 find a specific sentence referencing
 11 something, and could you clarify?
 12 Q. Yeah. Of the defendant expert
 13 -- the sentence you believe where a
 14 defendant expert opines as to the reasons
 15 Alabama enacted SB184.
 16 A. I regard, or I interpret each of
 17 these reports as intended to, among other
 18 things, argue, or opine that gender
 19 dysphoria should not be treated with
 20 gender- -- what is called -- with the
 21 sorts of treatments prohibited by SB184,
 22 but particularly hormonal, surgical
 23 treatments for minors, because they are

Page 24

1 experimental, because they are, quote,
 2 lacking in evidence of mental health
 3 improvement.
 4 There are many other examples
 5 that I could -- like specific quotations
 6 of the dangers involved in -- the
 7 putative dangers involved in
 8 gender-affirming care that I could put
 9 forward in addition to -- and so anyway,
 10 those two quotations I just had were from
 11 Nangia page 87 and Cantor page 74.
 12 But -- and -- but to take a step back,
 13 these reports are arguments against, or
 14 are -- and their whole purpose is a
 15 justification for why gender-affirming
 16 care is an experimental and potentially
 17 dangerous set of medical treatments that
 18 should therefore be prohibited.
 19 So I can point you to specific
 20 sentences that support that overall
 21 contention. For example, on page 7 of
 22 Kaliebe's report, his claim that
 23 gender-affirming care is an

Page 25

1 endorsement -- the endorsement of
 2 gender-affirming care by medical
 3 associations was due to politicization of
 4 the issue and not -- in efforts to
 5 silence scientific debate and not to a
 6 genuine scientific consensus in favor of
 7 those -- of those treatments. So those
 8 are examples of the specific claims that
 9 the reports used to build their general
 10 argument.
 11 Q. And those explanations set forth
 12 those experts' own views of SB184;
 13 correct?
 14 A. Is Christopher frozen? Oh, I'm
 15 sorry. I think I might have lost --
 16 Q. Yeah. You may have frozen for a
 17 minute. Yeah, that's fine.
 18 Those sentences you just gave --
 19 A. I'm sorry. Can you -- I'm
 20 sorry. What -- I lost you for a moment
 21 there. What did you just say?
 22 Q. The sentences you just read gave
 23 the experts' own views --

Page 26

1 THE COURT REPORTER: Do you want
 2 to go off the record, Christopher?
 3 MR. MILLS: Sure.
 4 (Discussion held off the record.)
 5 Q. (By Mr. Mills) So those
 6 sentences you just referred to from the
 7 defendants' expert reports, they set
 8 forth the defendants' experts' own views
 9 about SB184; correct? Sorry. I'll
 10 restart.
 11 The sentences you just referred
 12 to from the defendants' experts' reports
 13 set forth their own views about laws like
 14 SB184; correct?
 15 A. They are -- the sentences that I
 16 referenced were specifically about
 17 gender-affirming care as a set of medical
 18 treatments, and so I -- those particular
 19 sentences, I would need to review them in
 20 more detail to see exactly the context
 21 for them, but they certainly were
 22 referencing gender-affirming care for --
 23 as medical treatments, the kinds of

Page 27

1 treatments that are covered by SB184.
 2 Q. And so to go back to my
 3 question, you are unable to identify a
 4 sentence in the defendants' expert
 5 reports opining as to the reasons Alabama
 6 specifically enacted SB184. Is that
 7 right?
 8 A. It is correct that I -- there
 9 are -- that I haven't identified any
 10 sentences that specifically reference
 11 Alabama providing a justification for
 12 gender-affirming care bans.
 13 Q. And no defendant expert has
 14 opined as to the procedures Alabama
 15 followed in enacting SB184. Is that
 16 right?
 17 A. As far as I know, that is -- in
 18 terms of the defense reports that I
 19 reviewed, that is correct.
 20 Q. So you're not rebutting any
 21 defense opinion on the procedures Alabama
 22 followed in enacting SB184?
 23 A. That is correct.

Page 28

1 Q. And you're also not rebutting
 2 any defendant expert's opinion as to the
 3 history of regulations pertaining to
 4 transgender issues in Alabama. Is that
 5 right?
 6 A. It is correct that the defense
 7 experts don't make any direct claims
 8 about the history of transgender
 9 regulations or -- in Alabama.
 10 Q. And so you're not rebutting any
 11 defendants' expert's opinion as to the
 12 history of transgender regulations in
 13 Alabama; correct?
 14 A. That is correct.
 15 Q. And you're not rebutting any
 16 defendant expert opinion as to the
 17 history of LGBT regulations in Alabama;
 18 correct?
 19 (Witness reviews document.)
 20 A. I do think that some of the
 21 reports -- some of the claims of the
 22 reports that -- the defense reports that
 23 refer to the general rise of gender

Page 29

1 dysphoria and responses to it -- and
 2 appropriate responses to it are at least
 3 related to those questions, or those
 4 issues that -- the issue of how
 5 transgender and LGBT persons and rights
 6 are treated by the government, by the
 7 government of Alabama, and by
 8 implication, governments such as
 9 Alabama's.
 10 Q. Could you identify a sentence in
 11 any defendant expert reports that opines
 12 about the history of regulations
 13 pertaining to LGBT issues in Alabama
 14 specifically?
 15 A. There aren't any question -- or
 16 aren't any sentences that I could
 17 identify that refer to Alabama
 18 specifically.
 19 Q. And you agree that different
 20 states have different histories of
 21 regulations pertaining to LGBT issues?
 22 A. There are differences across
 23 states in how they regulate LGBT rights,

Page 30

1 yes.
 2 Q. So you aren't rebutting any
 3 defendant expert opinion as to Alabama's
 4 history of regulations pertaining to LGBT
 5 issues?
 6 A. Could you repeat that, please.
 7 Q. So you aren't rebutting any
 8 defendant expert opinion as to the -- as
 9 to Alabama's history of regulations
 10 pertaining to LGBT issues?
 11 A. As I said, the defense experts'
 12 claims are cast in general terms that in
 13 many cases could be said, or should be
 14 read as applying to the United States or
 15 states in general, among them Alabama.
 16 So I don't -- despite the lack of
 17 specific references to Alabama, I do
 18 think that many -- some of the statements
 19 that are contained in the reports are
 20 meant to apply to all states, or the
 21 country as a whole including Alabama.
 22 Q. And which sentence in
 23 defendants' expert reports discusses any

Page 31

1 history of regulations pertaining to LGBT
 2 issues?
 3 A. So I can reference -- so for
 4 example, Dr. Kaliebe provides a
 5 discussion of the rise of transgender --
 6 or of what he refers to as rapid-onset
 7 gender dysphoria as a nationwide or even
 8 international phenomenon. And several of
 9 the reports opine as to the appropriate
 10 response to -- appropriate responses to
 11 gender dysphoria, that gender dysphoria,
 12 for example, requires compassionate care
 13 and that the appropriate standard for
 14 medical treatment is psychosocial
 15 supports and psychotherapy. In those
 16 statements, for example, the experts are
 17 opining about a general phenomenon and
 18 the appropriate responses to it including
 19 the appropriate medical responses to it,
 20 what should be considered standard, what
 21 should be considered acceptable.
 22 Q. Those statements said nothing
 23 about the history of regulations

Page 32

1 pertaining to LGBT issues, did they?
 2 A. They're relevant to that history
 3 insofar as medical treatments are
 4 regulated by the government and standards
 5 of care are influenced by government --
 6 government regulations. And they're
 7 putting forward a position on how the
 8 phenomenon of rapid-onset gender
 9 dysphoria should be responded to.
 10 Q. So I'll ask my question again.
 11 None of those sentences said anything
 12 about the history of regulations
 13 pertaining to LGBT issues, did they?
 14 A. So I would -- I do not agree
 15 with that characterization, certainly not
 16 of the overall reports. If you could --
 17 for example, I believe Dr. Kaliebe
 18 references regulation of conversion
 19 therapy, or at least one of the reports
 20 does, and more generally, the history of
 21 experimental medical treatments of
 22 various sorts. So in order to answer
 23 this question very specifically, I think

Page 33

1 I would need to review those reports in
 2 more detail. I do not have the
 3 quotations at hand here in my report.
 4 Q. So you do not discuss any
 5 expert -- sorry. I'll start over.
 6 You do not discuss in your
 7 report any expert's -- defense expert's
 8 opinion as to the history of regulations
 9 pertaining to LGBT issues?
 10 A. Did you say I do not discuss in
 11 my report? Is that what you said?
 12 Q. That's right.
 13 A. I don't have any -- other than
 14 the quotes that I mentioned earlier
 15 about -- the quotes I mentioned earlier
 16 about rapid-onset gender dysphoria and
 17 the appropriate responses thereto, those
 18 are related to questions of how LGBT
 19 rights are regulated by the government;
 20 however, I don't have any other -- I
 21 don't believe that my report, although I
 22 can review it, contains any direct --
 23 other direct references to the history of

Page 34

1 LGBT -- the regulation of LGBT, I believe
 2 you -- was it history of LGBT regulations
 3 or rights?
 4 Q. Yeah. Regulations pertaining to
 5 LGBT issues.
 6 A. Uh-huh.
 7 Q. So you aren't rebutting any
 8 claim about the history of regulations
 9 pertaining to LGBT issues in Alabama. Is
 10 that right?
 11 A. I don't think that's correct
 12 insofar as the arguments that the defense
 13 experts make apply to Alabama.
 14 They're --
 15 Q. But I thought you just said they
 16 don't opine as to the history of
 17 regulations pertaining to LGBT issues.
 18 Maybe I'll ask this a different way.
 19 Does any defense expert opine as
 20 to any other law in Alabama's history or
 21 bill in Alabama's history?
 22 A. I don't think they specifically
 23 reference. I don't know for sure. I

Page 35

1 would need to review the reports to
 2 ensure that I was entirely correct on
 3 this. There are references, at least
 4 indirect references, to medical
 5 regulation in those reports. But as far
 6 as I can recall now, I do not believe
 7 there are any references to any other --
 8 specific references to Alabama laws or
 9 regulations.
 10 Q. And your report doesn't quote
 11 any defendants' expert referring to any
 12 specific law or regulation in Alabama
 13 other than SB184; correct?
 14 A. I don't have any direct quotes
 15 of Alabama -- from the expert reports
 16 referencing specific laws or regulations
 17 in Alabama. I believe that's correct.
 18 Q. Or paraphrases?
 19 A. I don't believe I have any
 20 paraphrases of statements that directly
 21 reference laws or regulations in Alabama.
 22 Q. You aren't rebutting any of the
 23 defendants' experts' opinions as to the

Page 36

1 actual motivation behind SB184's
 2 enactment; correct?
 3 A. I regard the expert reports as
 4 providing a justification for the passage
 5 of laws such as SB184, justifications
 6 that were also adopted in part by the
 7 supporters, the legislative supporters of
 8 SB184 specifically. So although the
 9 reports do not specifically make claims
 10 about why this bill was passed, it
 11 provide -- they provide an argument for
 12 why similar regulations generally should
 13 be passed.
 14 Q. Your report offers an opinion as
 15 to why this bill was passed; correct?
 16 A. It does offer an opinion about
 17 why this bill was passed.
 18 Q. So that opinion does not rebut
 19 any of defendants' experts' opinions as
 20 to the actual motivation behind SB184's
 21 enactment; correct?
 22 A. No. I think that the general
 23 arguments put forward by the defense

Page 37

1 experts for the passage of these laws in
 2 general apply in the specific case of
 3 Alabama.
 4 Q. So you think the justifications
 5 given by the defense experts were the
 6 actual motivation behind SB184's
 7 enactment?
 8 A. Can you say that again? I'm
 9 sorry. I missed the --
 10 Q. Yeah. So you're saying you
 11 believe that the justifications given by
 12 the defense experts were the actual
 13 motivation behind SB184's enactment?
 14 A. No. I don't -- not the
 15 exclusive motivation. However, similar
 16 justifications, certainly, some -- not
 17 certainly, but it is possible that, or
 18 probable that similar motivations were at
 19 play for legislative supporters, but more
 20 importantly, that similar justifications
 21 were put forward.
 22 Q. I had understood your opinion in
 23 this case to be that the justifications

Page 38

1 offered by the defendants' experts were
 2 not the actual motivations behind SB184's
 3 enactment. Is that correct?
 4 A. My opinion in this case is that
 5 the sorts of justifications put forward
 6 by the defense experts provide a partial,
 7 and I would say highly partial,
 8 presentation of the motivations and
 9 understood -- and purposes of the bill
 10 and that an examination of the broader
 11 context reveals that they are not the --
 12 certainly not the sole motivation, but
 13 the evidence suggests not the predominant
 14 one either.
 15 Q. Could you identify a sentence
 16 from any defendants' expert's opinion as
 17 to the actual motivations behind SB184's
 18 enactment?
 19 A. I can refer you back to some of
 20 my previous --
 21 Q. I'm not asking about the
 22 general.
 23 A. Yeah.

Page 39

1 Q. I'm asking about the actual
 2 motivations of SB184's enactment.
 3 A. Well, continuing to stipulate
 4 that I think that the general arguments
 5 made in favor of gender-affirming care
 6 are meant to be read as applying and are
 7 meant to imply -- or should be read as
 8 applying to the specific case of SB184,
 9 I -- I cannot point to a specific
 10 sentence. There are no specific
 11 sentences in the expert reports that
 12 refer to SB184 specifically or the
 13 motivations of the Alabama Legislature
 14 specifically.
 15 Q. So again, you aren't responding
 16 to any specific defendant expert opinion
 17 as to the actual motivation behind SB184?
 18 A. Insofar as SB184 is an example
 19 of a broader class of legislation, I
 20 believe that I am responding to
 21 justifications for it.
 22 Q. But you just said that your
 23 opinion as to their general

Page 40

1 justifications do not wholly explain the
 2 actual motivations of SB184. In fact, I
 3 think that's the whole thrust of your
 4 opinion in this case. So I'm asking,
 5 where in defendants' experts' reports
 6 that you're rebutting is the actual
 7 motivation behind SB184?
 8 A. Where specifically? Well, the
 9 argument is woven throughout the reports.
 10 They are --
 11 Q. The actual motivation?
 12 A. The actual motivation of -- when
 13 you say "actual motivation," you mean
 14 actual motivation of the Alabama
 15 Legislature?
 16 Q. That's right.
 17 A. The reports offer a general
 18 justification for bans on
 19 gender-affirming care and put forward an
 20 understanding of the purposes of such
 21 bans and, as such, advance an explanation
 22 for the passage of -- or a justification
 23 for the passage of such bans in general

Page 41

1 terms that could be read as applying to
 2 Alabama, but they do not specifically
 3 opine as to the motivations of the
 4 Alabama Legislature in passing SB184.
 5 Q. So you are rebutting any
 6 specific opinion as to the motivation of
 7 Alabama's enactment of SB184; correct?
 8 A. I am not rebutting any opinion
 9 that specifically references SB184 or the
 10 Alabama Legislature's motivations in
 11 passing it.
 12 Q. You are not offering an opinion
 13 on any discriminatory impact of SB184.
 14 Is that right?
 15 A. As I understand your question,
 16 discriminatory impact -- well, let me --
 17 could you please clarify what you mean by
 18 "discriminatory impact"?
 19 Q. You don't know of any person
 20 affected by SB184 since it took effect.
 21 Is that right?
 22 A. A name of a specific person? I
 23 don't know a name of a specific person in

Page 42

1 part because of the -- I don't know the
 2 name of a specific person, no.
 3 Q. You mentioned that Scott LaCombe
 4 provided research assistance. What did
 5 he do?
 6 A. He did the sort of standard work
 7 that a research assistant does in my
 8 field, primarily collecting and
 9 organizing datasets, or data on things
 10 such as state policies, searching for
 11 sources, doing -- in both academic
 12 literature and other secondary sources
 13 that I asked him -- on topics that I
 14 asked him to look into, that sort of
 15 thing.
 16 Q. And who is compensating him?
 17 A. I believe that the Department of
 18 Justice is.
 19 MR. MILLS: And, Counsel,
 20 defendants would request copies of any
 21 communications from Mr. LaCombe with
 22 facts or data that the expert used in
 23 arriving at his opinion.

Page 43

1 MR. FLETCHER: I'll object on
 2 the record for any request for
 3 communications on the grounds of
 4 privilege.
 5 MR. MILLS: That's squarely
 6 within Rule 26. We can discuss later,
 7 and we'll issue a subpoena if needed.
 8 Q. Did you interview or talk to
 9 anyone other than counsel and Mr. LaCombe
 10 in preparation for your report?
 11 A. No.
 12 Q. Do transgender people have
 13 gender dysphoria?
 14 A. I don't -- I'm not a medical
 15 expert, so I don't have an opinion on
 16 that.
 17 (Discussion held off the record.)
 18 Q. (By Mr. Mills) Before this case,
 19 you had never done any work related to
 20 medical gender transition of minors. Is
 21 that right?
 22 A. That is correct. No -- I
 23 suppose it depends what you mean by work.

Page 44

1 I had never done any expert witness work,
 2 if that's what you mean.
 3 Q. What other work had you done?
 4 A. Some of my general academic work
 5 and research covers areas that are
 6 related to that.
 7 Q. Have you ever published an
 8 article focused on LGBT laws or policies?
 9 A. LGBT laws and policies are an
 10 important component of several of my
 11 published articles. For example, on my
 12 2019, I think, American Political Science
 13 Review article on policy ideology in
 14 Europe, one of the applications is
 15 understanding the relationship between
 16 public opinion, or cultural conservatism
 17 in the public and LGBT-related
 18 policymaking.
 19 Q. That opinion, though -- that
 20 article is not focused solely on LGBT
 21 laws or policies?
 22 A. Not solely focused, no.
 23 Q. And you've never published any

Page 45

1 article solely focused on LGBT laws or
 2 policies?
 3 A. Not focused solely on those, no.
 4 Q. How many pages of the article
 5 you just mentioned were about LGBT laws
 6 or policies?
 7 A. That particular article, or
 8 would you like me to --
 9 Q. Yeah, that particular one.
 10 A. Okay. That's -- I'm not sure
 11 off the top of my head, but probably a
 12 couple of pages.
 13 Q. And how long was the article,
 14 roughly?
 15 A. You know, I'll look at my CV if
 16 it's okay so that I can give you a
 17 precise --
 18 Q. It's okay. It's okay. We'll
 19 move on.
 20 You've never published an
 21 article focused on the legislative intent
 22 behind a certain bill, have you?
 23 A. An article on the legislative

Page 46

1 intent behind a certain bill. I have not
 2 published an article focusing on
 3 legislative intent. It does appear in
 4 one of my books.
 5 Q. And you've never published an
 6 article focused on the legislative
 7 history of a certain bill?
 8 A. I would say the same -- the same
 9 answer applies.
 10 Q. You've never published an
 11 article about the concept of what you
 12 call anti-LGBT bias?
 13 A. Again, are you referring to an
 14 article that is focused solely on that
 15 subject?
 16 Q. That's right.
 17 A. I don't have any -- I have never
 18 published an article that focuses solely
 19 on that subject, no.
 20 Q. You've never taught a course
 21 focused on determining legislative intent
 22 behind a certain bill. Is that right?
 23 A. An entire course on that

Page 47

1 subject, no.
 2 Q. I'm going to show you SB184,
 3 which I'm marking as Exhibit 20. Sorry.
 4 Give me just one second.
 5 (Exhibit 20 was marked for identification
 6 and is attached.)
 7 A. Yeah.
 8 Q. Can you see it?
 9 A. I can, yes.
 10 Q. Okay. And you would agree this
 11 is the Alabama law that we're discussing
 12 and that your report is about here?
 13 A. That's what it appears to be,
 14 yes.
 15 Q. And you've reviewed it in
 16 preparation for your report?
 17 A. I don't believe -- oh, do you
 18 mean while I -- not -- yes. In
 19 preparation for my report, yes. Not in
 20 preparation for this deposition, though.
 21 Q. Sure. So I'm going down to
 22 Section 2 here. "The Legislature finds
 23 and declares" is how we start.

Page 48

1 A. Yes.
 2 Q. And then it lists -- let's see
 3 -- a number -- a number of items. I was
 4 hoping you could read through those
 5 and -- and sorry. You would agree that
 6 these are the legislative findings here
 7 in Section 2?
 8 A. That's what they appear to be.
 9 Q. I was going to ask if you could
 10 review these 16 findings, and my question
 11 is going to be whether, in your capacity
 12 as an expert in this case, you are
 13 disputing the correctness of any of these
 14 findings. So I can scroll down whenever
 15 you need me to.
 16 A. Sure. Would you like me to read
 17 them out loud or read them to myself?
 18 Q. You can just read them to
 19 yourself.
 20 A. Okay.
 21 (Witness reviews document.)
 22 A. Can you scroll down to (3)?
 23 Thank you.

Page 49

1 (Witness reviews document.)
 2 A. Can you scroll down to the next
 3 page?
 4 (Witness reviews document.)
 5 A. Can you scroll down to number
 6 (9), please?
 7 (Witness reviews document.)
 8 A. Can you scroll down to number
 9 (11), please?
 10 (Witness reviews document.)
 11 A. Can you scroll down to the next
 12 page?
 13 (Witness reviews document.)
 14 A. It ends with (16). Is that
 15 correct?
 16 Q. That's right.
 17 A. Let me just read (16) one more
 18 time, and then I'll be done.
 19 Q. Sure.
 20 (Witness reviews document.)
 21 A. Okay. I have read items (1)
 22 through (16).
 23 Q. So my question is whether, in

Page 50

1 your capacity as an expert in this case,
 2 you are disputing the correctness of any
 3 of these findings.
 4 A. No.
 5 Q. You have no evidence that any
 6 legislator who voted for SB184
 7 disbelieves any of these findings, do
 8 you?
 9 A. I have no evidence that any
 10 legislator who voted for the bill
 11 disbelieves them. Is that what you said?
 12 Q. That's right.
 13 A. Could you scroll back up to some
 14 of the earlier ones? I just want to make
 15 sure I remember. You can keep scrolling
 16 up. Thank you. Keep scrolling, please.
 17 You can stop, actually.
 18 Q. Yeah.
 19 (Witness reviews document.)
 20 A. I think it's fair to say that
 21 some of the remarks of -- or the remarks
 22 of some of the legislative supporters of
 23 SB184 are somewhat at variance with this

Page 51

1 characterization of -- as I'm reading it
 2 here, the sort of medicalized
 3 characterization of what is referred to
 4 as gender dysphoria based on -- so I'm
 5 not sure that it's entirely fair to say
 6 that I have no evidence that none of the
 7 -- that none of the legislative
 8 supporters of SB184 disagree with any of
 9 these statements.
 10 Q. Which legislator who voted for
 11 the bill, in your view, disbelieved one
 12 of these findings?
 13 A. I'm referring to my report if
 14 that's okay.
 15 Q. That's fine.
 16 A. Thank you.
 17 (Witness reviews document.)
 18 A. Well, I believe that some of
 19 Mack Butler's statements, Representative
 20 Mack Butler's statements, particularly
 21 his suggestion that individuals with
 22 gender dysphoria are pretending, or
 23 transgender-identified persons are

Page 52

1 pretending is inconsistent with the --
 2 some of -- items maybe, (2) and (3) here.
 3 Q. Other than Representative
 4 Butler, are you testifying that any other
 5 legislator who voted for SB184
 6 disbelieved any of these findings?
 7 A. I am not -- I don't have any
 8 affirmative evidence that I can think of
 9 right now that is contrary to that -- or
 10 that -- sorry. I don't have any
 11 affirmative evidence that I can refer to
 12 you right now that suggests that other --
 13 I guess I -- well, actually, let me
 14 rephrase that.
 15 I think that some of -- let me
 16 -- I'm sorry. Let me review my report,
 17 and then I will give you a more precise
 18 answer. One sec.
 19 (Witness reviews document.)
 20 A. The -- I think some of the
 21 remarks of Senator Shelnutt are also, in
 22 some respects, inconsistent with items
 23 (2) and (3) here, which present gender

Page 53

1 dysphoria as a medical diagnosis and --
 2 yes.
 3 Q. So other than Representative
 4 Butler and Senator Shelnutt, you aren't
 5 testifying that any other legislature --
 6 legislator who voted for the bill
 7 disbelieved any of these findings?
 8 A. I don't have any affirmative
 9 evidence, I don't think, on any other
 10 legislators.
 11 Q. Can protecting the health and
 12 safety of children be a legitimate state
 13 interest?
 14 A. I don't -- I think that "a
 15 legitimate state interest" is a legal
 16 term, so I don't have an opinion on that
 17 specifically. But protecting children,
 18 just speaking as a political scientist,
 19 is certainly a value or a motivation
 20 behind -- or a justification behind many
 21 pieces of legislation and laws.
 22 MR. FLETCHER: Counsel, we've
 23 been going about an hour and fifteen. Is

Page 54

1 this a good time for a break?
 2 MR. MILLS: Just one or two more
 3 if that works, and then we can take a
 4 break. Does that work?
 5 MR. FLETCHER: Is that okay with
 6 the witness?
 7 THE WITNESS: That's fine with
 8 me, yeah.
 9 Q. If these findings we just talked
 10 about are correct, would it be reasonable
 11 for a nonbiased legislator to vote for
 12 SB184?
 13 A. I'm sorry. Can you -- the
 14 findings we're talking about -- oh, the
 15 findings in the -- that we were reading
 16 through in SB184. Would it be reasonable
 17 if they -- if it were correct?
 18 MR. FLETCHER: I'm going to
 19 object to form of the question.
 20 Q. You can answer.
 21 A. I would -- I don't have an
 22 opinion on that, whether it would be
 23 reasonable, particularly without knowing

Page 55

1 the broader context. I think that -- so
 2 yeah. I don't have an opinion on the
 3 reasonableness of making that decision,
 4 but particularly without having a fuller
 5 context of what other facts of the
 6 case -- or the facts of the legislation
 7 in question were.
 8 Q. All right.
 9 MR. MILLS: Yeah. Now's a good
 10 time for a break, I think.
 11 (Break taken.)
 12 Q. (By Mr. Mills) All right. Could
 13 you name a member of the Alabama
 14 Legislature when SB184 was passed?
 15 A. Sure. Senator Shay Shelnett.
 16 Q. And could you name another?
 17 A. Senator Wes Allen.
 18 Q. And another?
 19 A. I don't know if I can name very
 20 many others off the top of my head.
 21 Q. How many members of the Alabama
 22 House are there?
 23 A. I actually don't recall off the

Page 56

1 top of my head.
 2 Q. And how many members of the
 3 Alabama Senate are there?
 4 A. I don't recall off the top of my
 5 head.
 6 Q. What was the vote on SB184 in
 7 the house?
 8 A. I don't remember exactly.
 9 Q. What about in the senate?
 10 A. I don't remember.
 11 Q. Have you ever talked to a person
 12 who was a member of the Alabama
 13 Legislature when SB184 was passed?
 14 A. I have not.
 15 Q. Have you ever talked to Governor
 16 Ivey?
 17 A. I have not.
 18 Q. So other than Representative
 19 Allen and Senator Shelnett, you don't
 20 know how any other member of the Alabama
 21 Legislature voted on SB184. Is that
 22 right?
 23 A. I don't remember off the top of

Page 57

1 my head. I have reviewed the roll call
 2 vote, but I don't remember off the top of
 3 my head the names of individual members
 4 and how they voted.
 5 Q. And you don't know why any other
 6 member of the Alabama Legislature voted
 7 or opposed SB184. Is that right?
 8 A. I have certain information about
 9 -- I can draw inferences about their --
 10 the legislature's understanding of the
 11 bill based on the statements of various
 12 legislators as well as the larger
 13 context, but I don't know for sure. I
 14 don't think anybody knows for sure why
 15 they do things.
 16 Q. So putting aside, again,
 17 Representative Allen and Senator
 18 Shelnett, you don't have any evidence of
 19 the subjective motivations of any other
 20 member of the Alabama Legislature in
 21 voting on SB184. Is that right?
 22 A. The -- no. Well, first of all,
 23 I have -- the quotations that I reference

Page 58

1 including by Representative Mack Butler,
 2 is it, are -- those are the specific
 3 quotations that I included in my report
 4 and that are available at the top of my
 5 head. But I take those to be indicative
 6 of what the legislature in general -- the
 7 sorts of motivations and understandings
 8 that were -- that members of the
 9 legislature were putting forward.
 10 Q. Okay. So setting aside those
 11 three people now -- Allen, Butler, and
 12 Shelnett -- you don't have any other --
 13 you don't know why any other specific
 14 member of the Alabama Legislature
 15 supported or opposed SB184. Is that
 16 right?
 17 A. Off the top of my head, I can't
 18 name any other legislators, but I have
 19 reviewed hearings and news reports and
 20 public statements by other -- that
 21 included statements by other members.
 22 But I don't -- I can't name them off the
 23 top of my head.

Page 59

1 Q. So this question isn't asking
 2 you to name them. I'm asking whether you
 3 know why any other member of the Alabama
 4 Legislature voted for or against SB184.
 5 A. I don't know for sure why
 6 anybody voted for -- for or against the
 7 bill.
 8 Q. Do you agree that what motivates
 9 one legislator to say something about a
 10 statute is not necessarily what motivates
 11 others in voting on it?
 12 A. Can you repeat that again.
 13 Q. Do you agree that what motivates
 14 one legislator to say something about a
 15 statute is not necessarily what motivated
 16 others to enact it?
 17 A. If I understand your question,
 18 you're -- let me repeat it so -- I'll
 19 tell you how I understand your question,
 20 and then I'll answer it.
 21 Your question is whether what
 22 one person says -- whether what motivates
 23 one person to say what they -- something

Page 60

1 about a bill is necessarily the same as
 2 the -- what motivates someone else to
 3 vote for the bill --
 4 Q. That is correct.
 5 A. -- as I -- and no, it is not
 6 necessarily the same.
 7 Q. Do you think that legislators
 8 balance competing interests when they
 9 vote on a bill?
 10 A. I think they often do, yes.
 11 Q. Do you think their choice to
 12 vote one way means that they ignored
 13 interests going the other way?
 14 A. Not necessarily.
 15 Q. What method of determining
 16 legislative intent did you use in this
 17 case?
 18 A. I wouldn't -- there's no one
 19 term for -- well, I actually didn't --
 20 sorry. Let me take a step back there.
 21 I don't think I opined on -- I
 22 didn't opine on the legislative intent
 23 behind the bill or determine -- I didn't

Page 61

1 determine the legislative intent, so I
 2 didn't -- I can't speak to the method I
 3 would have used to do that.
 4 Q. So you're not offering an
 5 opinion on the legislative intent behind
 6 SB184?
 7 A. I'm offering an opinion on the
 8 understandings -- the legislators'
 9 understanding of the purposes of the bill
 10 and of the considerations and motivations
 11 that they brought to bear in considering
 12 it.
 13 Q. And what is the difference
 14 between that and legislative intent?
 15 A. As I understand it, legislative
 16 intent has a specific legal meaning.
 17 Q. Okay. So, can we say
 18 "legislative purpose"? If I say that,
 19 would that be consistent with how you
 20 understand your opinion?
 21 A. The understandings of the
 22 legislative -- the purpose of the
 23 legislation, yes, that would be

Page 62

1 understood.
 2 Q. Okay. So, what method of
 3 determining legislative purpose did you
 4 use in this case?
 5 A. Understandings of the
 6 legislative purpose, I would say,
 7 understandings of the purpose -- I would
 8 say understandings of the purposes of the
 9 bill. I would say a combination of
 10 methods. You might say I -- in political
 11 science, you might say I took a
 12 multi-method approach that combined
 13 evidence, speech evidence from in the
 14 hearing -- in the course of -- from
 15 legislative supporters of the bill, of
 16 the -- of their justifications for it,
 17 both before the legislature and before
 18 the public, as well as contextual
 19 evidence, for example, on the broader
 20 context, the broader political context in
 21 Alabama, as well as the broader national
 22 context in the enactment of such bills
 23 in -- nationwide.

Page 63

1 Q. And where did that method come
 2 from?
 3 A. That's a standard set of
 4 approaches in -- or a standard approach
 5 in the discipline of political science,
 6 combining various pieces of often
 7 quantitative and qualitative evidence to
 8 evaluate competing explanations for a
 9 particular political outcome or a
 10 particular -- or evaluating different
 11 hypotheses.
 12 Q. And have you used this method
 13 before?
 14 A. My work often involves this sort
 15 of multi-method approach.
 16 Q. To determine an understanding of
 17 legislative purpose?
 18 A. To determine, or to evaluate
 19 competing explanations for the
 20 understandings and motivations of
 21 legislators, yes.
 22 Q. And which of your papers or
 23 other works uses this method to determine

Page 64

1 legislative purpose behind a particular
 2 law?
 3 A. The -- clarifying, again, that I
 4 mean understandings of the purpose of
 5 the -- of the law, the most extended --
 6 the most similar set of analyses occurs
 7 in my book *The Unsolid South* and in
 8 reviewing the legislative histories
 9 behind the passage of various pieces of
 10 or non-passage -- the legislative debates
 11 over various pieces of legislation. But
 12 different elements of the -- the specific
 13 methods that I -- or methods that I used
 14 in doing this appear in many of my works.
 15 Q. And what is the error rate of
 16 that method?
 17 A. The error rate? Can you give me
 18 a sense of what you mean by the error
 19 rate?
 20 Q. How would you understand error
 21 rate in statistics?
 22 A. Well, in statistics, error --
 23 one way of -- in statistics, there are

Page 65

1 usually two kinds of errors. There's a
 2 Type I error and Type II error and -- or
 3 false negative and false positive. And
 4 so there are really often considered, in
 5 that context, two kinds of error rates.
 6 Q. So, what would each of those
 7 error rates be for this method?
 8 A. Outside of a very well-defined
 9 statistical context, it's not possible to
 10 precisely characterize the rate of making
 11 a Type II versus Type I error, but I also
 12 would -- I think that the -- that kind of
 13 -- what that's called, a frequentist
 14 approach to statistical probability, or
 15 to probability. I actually don't think
 16 that that is an appropriate way --
 17 appropriate standard to apply in this
 18 context.
 19 Q. Are you saying this method could
 20 never produce an incorrect answer?
 21 A. No.
 22 Q. But you don't know how likely it
 23 is that the method would produce an

<p style="text-align: right;">Page 66</p> <p>1 incorrect answer?</p> <p>2 A. I don't think that -- I don't</p> <p>3 think that it is possible to precisely</p> <p>4 measure how -- what the probability of</p> <p>5 making an incorrect answer is, whether in</p> <p>6 this context or, actually, in -- but in</p> <p>7 many contexts as well. But particularly,</p> <p>8 I don't think it -- and specifically, I</p> <p>9 don't think it's possible to precisely</p> <p>10 characterize in this context.</p> <p>11 Q. You keep referring to</p> <p>12 understandings of the purposes of the</p> <p>13 law. What do you mean? Whose</p> <p>14 understandings?</p> <p>15 A. I mean the legislature as a</p> <p>16 whole's understanding as expressed</p> <p>17 collectively as well as the</p> <p>18 understandings of the particular</p> <p>19 legislators who supported SB184 as well</p> <p>20 as the governor who signed it.</p> <p>21 Q. So, do you believe that a</p> <p>22 multi-member body like the Alabama</p> <p>23 Legislature has a collective intent?</p>	<p style="text-align: right;">Page 68</p> <p>1 members of the Alabama Legislature, would</p> <p>2 you?</p> <p>3 A. As I said, I don't -- I'm not</p> <p>4 opining on the -- specifically on the</p> <p>5 legislative intent of the -- of the</p> <p>6 legislature.</p> <p>7 Q. You wouldn't say that the three</p> <p>8 members' statements you've identified</p> <p>9 demonstrate the understandings of the</p> <p>10 purposes of the law of the other over 130</p> <p>11 members of the Alabama Legislature?</p> <p>12 A. I would say that they provide --</p> <p>13 they provide evidence and are informative</p> <p>14 regarding the understandings of the</p> <p>15 legislature and of other supporters and</p> <p>16 are consistent with -- yeah, I think that</p> <p>17 they are informative regarding the</p> <p>18 legislature as a whole as well as other</p> <p>19 supporters.</p> <p>20 Q. How do you know that other</p> <p>21 supporters agreed with those statements?</p> <p>22 A. I don't know for -- I don't know</p> <p>23 for certain that each individual one</p>
<p style="text-align: right;">Page 67</p> <p>1 A. I don't have an opinion on</p> <p>2 intent specifically, but I do believe</p> <p>3 that it is possible to characterize the</p> <p>4 collective understandings of -- the</p> <p>5 purposes of a collective body, reasonably</p> <p>6 characterize them based on pieces of</p> <p>7 evidence, various pieces of evidence.</p> <p>8 Q. Is one of those pieces of</p> <p>9 evidence the law that they enact?</p> <p>10 A. Sure. That can be one piece of</p> <p>11 evidence, yes.</p> <p>12 Q. What other pieces of evidence</p> <p>13 would you consider?</p> <p>14 A. The various -- the public</p> <p>15 justifications and explanations they</p> <p>16 provided, that individual legislators</p> <p>17 provided, as well as contextual evidence</p> <p>18 based on what appear to be the factors</p> <p>19 more generally that predict adoption of</p> <p>20 such -- of such legislation.</p> <p>21 Q. Here, you wouldn't say that the</p> <p>22 three members' statements you refer to</p> <p>23 show the collective intent of the 140</p>	<p style="text-align: right;">Page 69</p> <p>1 does. But my review of the general</p> <p>2 coverage of the -- of the -- journalistic</p> <p>3 coverage of the -- of these debates as</p> <p>4 well as legislative hearings that I</p> <p>5 watched didn't provide me with any reason</p> <p>6 to doubt that these were informative</p> <p>7 about the motivations or understandings</p> <p>8 of other legislators.</p> <p>9 Q. If you had to pick what you</p> <p>10 believe to be the most telling evidence</p> <p>11 that the legislature had a discriminatory</p> <p>12 purpose in enacting SB184, what would it</p> <p>13 be?</p> <p>14 A. If I had to pick -- if I had to</p> <p>15 pick the single most telling piece of</p> <p>16 evidence that the -- well, to be clear, I</p> <p>17 am not opining on the discriminatory</p> <p>18 purpose of the -- or of the bill. But in</p> <p>19 the -- so I am a little unsure about how</p> <p>20 I should answer that. If I -- yeah, I'm</p> <p>21 unsure about how to answer that.</p> <p>22 Q. Sure. So you're not opining in</p> <p>23 this case that the Alabama Legislature</p>

Page 70

1 had a discriminatory purpose in enacting
 2 SB184?
 3 A. In the -- here, I think my -- I
 4 am a little unsure how to interpret
 5 "discriminatory" in this context. In the
 6 narrow sense of discriminating, making
 7 distinctions between different segments
 8 of the population, I -- if understood
 9 that way, I can offer an opinion on
 10 whether -- on discrimination but perhaps
 11 not in a legal sense of discrimination.
 12 Q. Broadly speaking, what is the
 13 opinion you are offering in this case?
 14 A. That the -- I have a number of
 15 opinions, so is it okay if I -- I would
 16 like to go through them more
 17 systematically.
 18 I am offering -- opining that
 19 Alabama has a long and consistent history
 20 of being relatively -- or enacting
 21 relatively restrictive policies towards
 22 LGBT rights and in more recent years has
 23 been at the forefront of restricting

Page 71

1 transgender rights on a variety of
 2 fronts. The adoption of gender-affirming
 3 care bans in particular, or
 4 gender-affirming care bans for minors in
 5 particular at the state level in U.S.
 6 states is very well predicted by a
 7 state's general stance on LGBT rights, or
 8 transgender rights specifically, in other
 9 domains but not well predicted by states'
 10 paternalism in healthcare and the degree
 11 of restrictiveness on an individual's
 12 healthcare choices.
 13 The questions of, or issues
 14 relating to sex, gender identity,
 15 transgender status were central to the
 16 legislature's understanding of the
 17 purpose of the law and that legislative
 18 supporters of SB184 considered it to be
 19 part of a broader effort to combat or
 20 address gender dysphoria or -- and defend
 21 more essentialist understandings of the
 22 relationship between gender and sex; that
 23 the -- that the legislature explicitly

Page 72

1 rejected an amendment clarifying that the
 2 law's restrictions are not meant to apply
 3 to psychotherapeutic treatments, which is
 4 consistent with the law being --
 5 expressing a more general hostility to
 6 gender nonconformity as opposed to
 7 targeting a very specific set of medical
 8 procedures and interventions; and
 9 finally, that in their deliberations and
 10 in hearings related to the bill, as well
 11 -- as well as in the public discussion
 12 related to the bill, the legislature
 13 heard from transgender Alabamians, their
 14 parents, their medical providers, their
 15 teachers about the potential harms of the
 16 bill and thus had the opportunity to
 17 foresee those harms as understood by that
 18 community.
 19 Q. Are you testifying that the
 20 Alabama Legislature enacted SB184 with an
 21 anti-transgender purpose?
 22 A. I believe -- I am testifying
 23 that the -- that central to many of --

Page 73

1 supporters, or supporters' understanding
 2 of the purpose of the bill was addressing
 3 the problem of gender dysphoria or
 4 transgender status and in a -- and they
 5 viewed it as part of a more general
 6 attempt to address that problem or target
 7 that population.
 8 Q. So, are you testifying that the
 9 legislature intended to target the LG- --
 10 the transgender population through SB184?
 11 A. If by "target" you mean -- or I
 12 mean -- by "target," I mean the
 13 population, or the problem towards which
 14 the bill was aimed, its target population
 15 was those people with transgender
 16 identification or more generally those
 17 with gender identities that did not
 18 conform to their sex assigned at birth.
 19 Q. And are you testifying that the
 20 legislature enacted SB184 to help that
 21 population of minors with gender
 22 dysphoria?
 23 A. I do believe that that is a

Page 74

1 possible motivation for some, one of --
 2 one of -- or some legislators.
 3 Q. And in your capacity as an
 4 expert in this case, are you testifying
 5 that that was not the Alabama
 6 Legislature's motivation in enacting
 7 SB184?
 8 A. Referring again to the
 9 understandings of the -- the purposes of
 10 the bill, as an expert, I think it is
 11 possible that multiple motivations were
 12 at play. But I believe that an important
 13 -- so I think -- I do agree that --
 14 sorry.
 15 I think multiple motivations
 16 could have been, or were at play, but
 17 that hostility to LGBT rights and
 18 transgender rights specifically is more
 19 consistent with the broader evidence --
 20 or is consistent with the broader
 21 evidence and the understanding of why --
 22 or the legislators' understanding of the
 23 purposes of the bill.

Page 75

1 Q. So to go back to my original
 2 question, if you had --
 3 A. Yeah.
 4 Q. -- to pick what you believe to
 5 be the most telling evidence that
 6 hostility to LGBT rights or transgender
 7 rights is the best explanation for the
 8 bill, what would that single piece of
 9 evidence be?
 10 A. I don't think this is a case
 11 where a single piece of evidence is
 12 dispositive, so I regard my argument as
 13 -- or that opinion as resting on many
 14 pieces of evidence that link together in
 15 ways that are difficult to separate. I
 16 would point to a combination -- no,
 17 that's a --
 18 Q. I didn't ask for a dispositive
 19 piece of evidence. I asked for what you
 20 think the single most telling piece of
 21 evidence would be.
 22 A. Okay.
 23 Q. So if you can't answer that,

Page 76

1 just tell me. But --
 2 A. Yeah. I think --
 3 Q. -- that's my question.
 4 A. I think that's -- I don't think
 5 I can answer that about a question in --
 6 a single piece of evidence in isolation.
 7 Q. The Alabama Legislature followed
 8 all constitutional procedures in enacting
 9 SB184; correct?
 10 MR. FLETCHER: Object to form.
 11 Q. You can answer.
 12 A. I don't have an opinion on that.
 13 I don't know.
 14 Q. You're not testifying as an
 15 expert in this case that the Alabama
 16 Legislature did not follow all
 17 constitutional procedures in enacting
 18 SB184, are you?
 19 A. By "constitutional procedures,"
 20 can you be more precise about what you
 21 mean by that?
 22 Q. Yeah. You know, how a bill
 23 becomes a law under the Alabama

Page 77

1 constitution. Are you testifying as an
 2 expert in this case that the Alabama
 3 Legislature and governor did not follow
 4 all of the Alabama constitutional
 5 procedures in enacting SB184 into law?
 6 A. As I understand it, the
 7 procedures followed by the legislature
 8 and the governor followed the procedures
 9 put forward in the Alabama law, or
 10 Alabama constitution.
 11 Q. And you aren't aware of any
 12 departures from the normal legislative
 13 procedures in enacting this legislation.
 14 Is that right?
 15 A. The only -- the only one that I
 16 could possibly count, as I understand it,
 17 consideration of an earlier iteration of
 18 SB184 was interrupted by COVID. So I do
 19 believe there were some departures from
 20 normal procedures as a result of that.
 21 But apart from that, I'm not aware of
 22 anything else.
 23 Q. The legislature held many

Page 78

1 hearings over several years on the topic
 2 at issue in SB184. Is that right?
 3 A. Yes.
 4 Q. And it took extensive testimony
 5 from all sides on this topic. Is that
 6 right?
 7 A. That's my understanding, yes.
 8 Q. Do you agree that the members of
 9 the Alabama Legislature were representing
 10 their constituents' views when they voted
 11 on SB184?
 12 A. I don't know for sure. I can't
 13 -- I can't opine as to whether they were
 14 representing their views.
 15 Q. Do you have any reason to
 16 believe they were not representing their
 17 views?
 18 A. In -- it is -- other than -- the
 19 general pattern based on my own, you
 20 know, research and experience and
 21 expertise, I know that it is often the
 22 case that individual legislators or even
 23 states will enact policies that are not

Page 79

1 supported by a majority of their
 2 constituents. So I think given that
 3 general possibility, I think there's a
 4 strong possibility that in this
 5 particular instance, at least some
 6 legislators and possibly the legislature
 7 as a whole were out of step with public
 8 opinion. But I have no specific evidence
 9 to -- with regard to SB184.
 10 Q. And in your capacity as an
 11 expert in this case, you are not
 12 testifying that the Alabama Legislature
 13 was not representing constituent views
 14 when they voted on SB184?
 15 A. I am not testifying to that,
 16 yes.
 17 Q. How many people do you know who
 18 live in Alabama?
 19 A. Currently? I don't know.
 20 Q. Anyone?
 21 A. Yes.
 22 Q. You do know someone who lives in
 23 Alabama?

Page 80

1 A. Yes.
 2 Q. How many people?
 3 A. I don't know off the top of my
 4 head.
 5 Q. Less than five?
 6 A. I've certainly met more than
 7 five.
 8 Q. When was the last time you
 9 talked to someone who lives in Alabama?
 10 A. Who lives in Alabama? I can't
 11 recall.
 12 Q. Have you ever been to Alabama?
 13 A. Yes.
 14 Q. How many times?
 15 A. I think twice, three times
 16 maybe.
 17 Q. And when was the most recent
 18 time?
 19 A. Maybe 15 years ago.
 20 Q. All right. I'm going to be
 21 showing you what I'm marking as Exhibit
 22 42. Now, this is a document from
 23 LegiScan. That was a source you relied

Page 81

1 on in your report. Is that right?
 2 (Exhibit 42 was marked for identification
 3 and is attached.)
 4 A. It is.
 5 Q. And this is the house roll call
 6 vote on SB184. Is that right?
 7 A. Let me take a moment to see. It
 8 does appear to be, yes.
 9 Q. And you would agree that SB184
 10 was passed by the house by a large
 11 majority. Is that right?
 12 A. Yes.
 13 Q. I can scroll down. Could you
 14 identify those persons who voted yes who
 15 you believe were motivated by a hostility
 16 toward LGBT or transgender rights?
 17 (Witness reviews document.)
 18 A. Will you scroll up again?
 19 (Witness reviews document.)
 20 A. No. I can't speak to the
 21 motivations of any of the specific
 22 legislators, definitively anyway, to
 23 the -- to the motivations of any specific

Page 82

1 legislator.
 2 Q. Representative Butler isn't on
 3 this roll call vote, is he?
 4 A. No.
 5 Q. And do you know why that is?
 6 A. I think he maybe didn't enter
 7 the legislature until 2020, until after
 8 the roll call perhaps.
 9 Q. So his views would have no
 10 relevance to SB184's enactment. Is that
 11 right?
 12 A. I disagree with that. No.
 13 Q. You think a person who was not
 14 in the Alabama Legislature's views shed
 15 light on the Alabama Legislature's
 16 understanding of the bill's purposes?
 17 A. I do. In the direct -- in the
 18 indirect sense of providing information
 19 on the general context for the
 20 consideration -- the general political
 21 and legislative context for the bill.
 22 Q. You didn't quote any other
 23 person in the state of Alabama for this

Page 83

1 general context?
 2 A. I didn't quote anyone else for
 3 the general context. I think my
 4 quotations of Senators Allen -- or sorry,
 5 Senator Shelnett and Representative Allen
 6 also provide information on the general
 7 context, as well as some of my quotations
 8 of -- from news reports or other -- or
 9 hearings and editorials that provide
 10 information on the context.
 11 Q. So putting aside the governor
 12 and the legislators and Mack Butler, you
 13 didn't identify any other statements by
 14 constituents related to SB184 that you
 15 believe demonstrate hostility to LGBT or
 16 transgender rights?
 17 A. Any other statements that --
 18 Q. Yes.
 19 A. -- demonstrate hostility to
 20 transgender rights? I'm sorry. Can you
 21 repeat that? Sorry. Say it again.
 22 Q. It's okay. We'll move on.
 23 I'm showing you now what I've

Page 84

1 marked as Exhibit 43. This is from the
 2 same source that you relied on. Would
 3 you agree this is the senate roll call
 4 vote on SB184?
 5 (Exhibit 43 was marked for identification
 6 and is attached.)
 7 A. Yes.
 8 Q. And you would agree that it also
 9 passed by a large majority?
 10 A. Yes.
 11 Q. And as with the house, are you
 12 able to identify any persons who voted
 13 yes who you believe voted based on a
 14 hostility towards LGBT or transgender
 15 rights?
 16 A. You said -- did you say "based
 17 on"?
 18 Q. Yes.
 19 A. Is that the term you used?
 20 I can't speak to the individual
 21 motivations of -- you know, definitively
 22 to the individual motivations or what
 23 they were based on. But I can say, for

Page 85

1 example, with respect to Senator
 2 Shelnett, that his -- well, the -- his
 3 statements evinced a skepticism toward
 4 and a hostility in the sense of
 5 opposition to gender nonconformity.
 6 Q. Anyone else on the list?
 7 A. I have no -- I can't speak
 8 directly to -- specifically to the other
 9 members off the top of my head, no.
 10 Q. How many minutes of legislative
 11 hearings and debates occurred for SB184
 12 and its house companion bill, SB266?
 13 A. I don't know.
 14 Q. How many minutes of those
 15 debates or hearings occurred for SB184's
 16 predecessor bills?
 17 A. I don't know.
 18 Q. And how many minutes of the
 19 hearings or debates on SB184 and its
 20 house companion bill, HB266, did you
 21 watch in real time?
 22 A. I watched none of them in real
 23 time.

Page 86

1 Q. So for your opinion in this
 2 case, you relied on a subset of
 3 recordings by nongovernmental entities?
 4 Is that right?
 5 A. In some cases, the -- it is --
 6 in all cases, the recordings themselves
 7 were archived by non- -- nongovernmental
 8 entities, as far as I know. The
 9 recordings themselves were generated, at
 10 least in some cases, by governmental
 11 entities.
 12 Q. But Alabama does not archive
 13 transcripts or recordings of legislative
 14 hearings or debates. Is that right?
 15 A. As far as I know.
 16 Q. And the recordings that you
 17 relied on, how many of them were there?
 18 A. The recordings that I relied on?
 19 I don't know off the top of my head, but
 20 I can refer to my report to list -- to
 21 count the numbers that I cited in this
 22 report.
 23 Q. Do you know what proportion of

Page 87

1 the overall debates or hearings those
 2 recordings capture?
 3 A. I don't know the exact
 4 proportion, no.
 5 Q. So your testimony is based on an
 6 unknown portion of legislative debate;
 7 right?
 8 A. An unknown portion. I reviewed
 9 enough to feel confident that a range of
 10 views were expressed. So I wouldn't say
 11 that the portion was entirely unknown.
 12 Q. Well, you just testified that --
 13 when I asked what portion of the overall
 14 debates did those recordings capture,
 15 that you didn't know. So your testimony
 16 is thus based on an unknown portion of
 17 debates; correct?
 18 A. Well, I believe you asked me
 19 what proportion I had watched, and I said
 20 I didn't know exactly, I think. And then
 21 I think you asked me, or I understood you
 22 as asking me whether -- what portion,
 23 which I took to be a less -- not a

Page 88

1 precise number but a kind of more general
 2 sense of the -- you know, a more
 3 qualitative statement about how much of
 4 the debate I was able to view. And in
 5 that sense, I don't think that's entirely
 6 unknown in the sense that I was able to
 7 view arguments in favor and against the
 8 bill.
 9 Q. And how do you know what you
 10 reviewed was representative of the
 11 overall debate?
 12 A. I don't know if it's perfectly
 13 representative.
 14 Q. This is not how you would
 15 analyze a legislative debate in an ideal
 16 world, is it?
 17 A. In an ideal world? In an ideal
 18 world, I would -- no. I would have --
 19 have infinite information.
 20 THE COURT REPORTER: I'm sorry.
 21 You would have what information?
 22 THE WITNESS: Infinite. Sorry.
 23 Q. How does your analysis take this

Page 89

1 limitation into effect?
 2 A. Into account?
 3 Q. Yeah. Sorry.
 4 A. Okay. By bringing together --
 5 this is what political science research
 6 is always like. In fact, it's what
 7 scientific research is always like. You
 8 have -- you don't have infinite
 9 resources. You don't have infinite data.
 10 You don't have infinite information.
 11 What you try to do is bring together
 12 multiple sources of information with
 13 different limitations and different
 14 advantages to come up with the most
 15 reliable inference.
 16 Q. You cannot provide a
 17 comprehensive legislative history of
 18 SB184 or its predecessor bills; correct?
 19 A. By "comprehensive," I think a
 20 comprehensive history would be
 21 impractical and impossible in any
 22 circumstance, but I am able to provide a
 23 comprehensive history of its

Page 90

1 consideration, you know, formal
 2 consideration in the legislature and
 3 progression through the legislative
 4 process and as well as of its precursor
 5 bills and able to provide a sufficient
 6 context for the broader legislative
 7 context or legislative history beyond the
 8 formal progression for my purposes.
 9 Q. In paragraph 58, you say, "This
 10 section is not intended to provide a
 11 comprehensive history of SB184." Are you
 12 now testifying otherwise?
 13 A. No.
 14 Q. Did you review the physical
 15 notes that accompanied SB184?
 16 A. I believe I did.
 17 Q. What did they say?
 18 A. I don't recall.
 19 Q. You didn't consider that in your
 20 analysis?
 21 A. It was not an important part of
 22 my analysis.
 23 Q. What year did medical gender

Page 91

1 transition interventions in minors come
 2 into use in the United States?
 3 A. I don't know the exact year.
 4 Q. Do you know approximately what
 5 year?
 6 A. When the -- I don't know when
 7 the first -- I don't know when the first
 8 medical intervention for minor or -- I
 9 also -- I think it might hinge exactly on
 10 how you're defining -- what was the term
 11 you used? Medical intervention? Sorry.
 12 Q. Medical gender transition
 13 interventions in minors.
 14 A. Medical gender trans- -- I
 15 don't think I have a precise enough
 16 handle on what exactly that means to give
 17 a guess. But I don't know when the very
 18 first such intervention -- or such
 19 treatment was applied.
 20 Q. What year did the use of puberty
 21 blockers or cross-sex hormones for the
 22 treatment of gender dysphoria in minors
 23 come into common use in the United

Page 92

1 States?
 2 A. Into common use?
 3 Q. Yeah.
 4 A. I don't know if you would
 5 consider it common today, but it has
 6 certainly become much more common in the
 7 last decade.
 8 Q. And the same question for
 9 Alabama. Do you know what year those
 10 treatments came into common use in
 11 Alabama?
 12 A. Well, I don't know if they're in
 13 common use in Alabama, so I can't -- I --
 14 I -- I don't know. But I also don't know
 15 exactly what you mean by "common use."
 16 Q. All right. What about use in
 17 general of more than five people?
 18 A. I don't know.
 19 Q. As far as you know, puberty
 20 blockers and cross-sex hormones to treat
 21 gender dysphoria in minors was not
 22 regularly used in Alabama until at least
 23 2015. Is that right?

Page 93

1 A. I believe that it has become
 2 more common in the last decade, so that
 3 is approximately -- certainly is more --
 4 more common in the last decade than it
 5 was previously if it was even used at all
 6 previously.
 7 Q. Is gender identity the same as
 8 sexual orientation?
 9 A. In a -- well, as you know, I'm
 10 not a -- I'm not a psychologist or -- but
 11 as it's understood in a political sense,
 12 gender identity and sexual orientation
 13 are distinct but closely related to one
 14 another and have often been conflated in
 15 the public mind as well as in scientific
 16 understandings.
 17 Q. SB184 does not regulate any
 18 issues pertaining to sexual orientation.
 19 Is that right?
 20 A. It doesn't directly regulate
 21 sexual orientation, no, as far as --
 22 Q. Your term -- your report uses
 23 the term "anti-LGBT bias."

Page 94

1 A. Uh-huh.
 2 Q. What does that mean?
 3 A. Can you refer to the specific
 4 spot where I used it? I can look it up
 5 in the report if you can just tell me the
 6 page, or you can show me.
 7 Q. So paragraph 19, page 9 would be
 8 a typical example.
 9 A. Oh, sorry. Paragraph 19.
 10 Q. At the end of the paragraph.
 11 (Witness reviews document.)
 12 A. Yes. What do I mean by it in
 13 that particular context?
 14 Q. Yes.
 15 A. I mean opposition to or -- yeah.
 16 I mean opposition or hostility towards
 17 LGBT persons, so lesbian, gay, bisexual,
 18 transgender persons, or hostility to
 19 providing expansive rights for those
 20 individuals.
 21 Q. What is "bias" as you use that
 22 term?
 23 A. By that term, I mean a stance,

Page 95

1 favorable or unfavorable, towards a group
 2 or their -- or their rights, their legal
 3 -- their legal --
 4 Q. Is it the same as -- is it the
 5 same as hatred of LGBT persons?
 6 A. No, it's not the same as hatred.
 7 Q. Is it the same as animus against
 8 LGBT persons?
 9 A. No, it is not the same.
 10 Q. How do you determine anti-LGBT
 11 bias?
 12 A. In this context, I am referring
 13 specifically to a state's sort of general
 14 policymaking stance towards LGBT
 15 individuals and whether it is relatively
 16 favorable to their rights and their
 17 status. So in -- it is a judgment based
 18 on the effect and meaning of the policies
 19 and -- the policies that are relevant in
 20 that context.
 21 Q. So by "anti-LGBT bias," you do
 22 not mean a purpose to discriminate
 23 against LGBT persons based on their

Page 96

1 status as LGBT?
 2 A. Some of the laws that are
 3 referred to in this case have I believe
 4 been found to, in a legal sense, be
 5 discriminating. But here, I mean more
 6 generally a stance that does -- that
 7 evinces a greater or lesser favorability
 8 or expansive interpretation of the rights
 9 of LGBT individuals.
 10 Q. Is every legislator's vote
 11 against a policy supported by some LGBT
 12 persons an expression of anti-LGBT bias?
 13 A. An expression of that? No.
 14 Q. How many LGBT persons would need
 15 to support a policy for that to be true?
 16 A. The -- my judgment here is not
 17 based solely on the patterns of support
 18 or opposition to a policy, or not
 19 primarily based on that, but rather on
 20 the meaning of the policy itself.
 21 Q. Does opposing a state religious
 22 freedom restoration act show
 23 anti-religion bias, as you use the term

Page 97

1 "bias"?
 2 A. Anti-religion? Can you tell me
 3 a little bit -- can you be more precise
 4 about the content of the provisions that
 5 you have in mind? The --
 6 Q. You're familiar with state
 7 religious freedom restoration acts.
 8 A. I am, although --
 9 Q. Correct?
 10 A. -- I am not -- I'm not exactly
 11 sure if it is a single standardized text.
 12 So, can you give me a more precise sense
 13 of the amendment you have in mind?
 14 Q. Sure. So let's take a state law
 15 that subjects to -- strict scrutiny is
 16 the legal term but just say more
 17 intensive review any state law or
 18 regulation that places a burden on
 19 religious exercise. Does opposing that
 20 type of law show anti-religion bias?
 21 A. If the -- taken by itself, it's
 22 very difficult to evaluate. As you've --
 23 you know, as you know, the -- there are

Page 98

1 multiple considerations at play in any
 2 given law, so I -- to answer that
 3 question I would need -- I think to
 4 answer that question more confidently, I
 5 think I would need to know more about the
 6 larger political context.
 7 Q. You said there are many
 8 considerations at issue for a particular
 9 law. Is that true of SB184?
 10 A. I think that is often the case,
 11 yes. Oh, and I think it is quite
 12 possible that it was the case in -- in
 13 SB184.
 14 Q. Your report uses the term
 15 "sexual minority." How do you define
 16 that term?
 17 A. I mean that to mean -- in that
 18 context, I mean -- I think -- well, let
 19 me -- let me refer to the exact context
 20 so that I can be precise. Can you tell
 21 me where that is?
 22 Q. It's also in paragraph 19.
 23 A. Okay. Thank you.

Page 99

1 Q. The second to last sentence.
 2 (Witness reviews document.)
 3 A. By sexual minorities, I mean --
 4 in this context, I mean individuals whose
 5 -- I meant this sort of as an
 6 encompassing term to include minorities
 7 whose sexual orientation and/or gender
 8 presentation or gender identity does not
 9 conform with the dominant or majority --
 10 dominant majority standard or -- yeah.
 11 Q. And are sexual minorities, as
 12 you defined it, included in your use of
 13 the term "LGBT"?
 14 A. Yeah. Yes. I -- yes. They --
 15 it is -- LGBT is -- I would consider
 16 those to be not exactly but roughly
 17 synonymous.
 18 Q. So your use of "LGBT" isn't
 19 necessarily limited to just lesbian, gay,
 20 bisexual, transgender.
 21 A. Right.
 22 Q. It includes other sexual
 23 minorities?

Page 100

1 A. I would say that, yeah, those
 2 are categories that are sort of like
 3 well-established categories that are easy
 4 to say, but they're also -- yeah. So
 5 there are gradations or other categories
 6 that I think might be included.
 7 Q. And sexual minorities generally
 8 would be included in that?
 9 A. Would be included -- I think
 10 that they're very highly overlapping
 11 categories. That's what I would say.
 12 Q. And in Obergefell, the Supreme
 13 Court said that viewing marriage as "a
 14 gender-differentiated union of man and
 15 woman" is a view that "long has been held
 16 and continues to be held in good faith by
 17 reasonable and sincere people here and
 18 throughout the world."
 19 Do you agree with that
 20 statement?
 21 A. I don't have an opinion on -- is
 22 it -- I don't have an opinion on that
 23 statement.

Page 101

1 Q. Do you believe that the only
 2 reason to support laws restricting
 3 marriage to between one man and one woman
 4 is anti-LGBT bias?
 5 A. The only reason? No. It is
 6 possible that someone could not have any
 7 bias against LGBT people and nevertheless
 8 support that.
 9 Q. Your report -- and this is on
 10 page 12 at the top -- uses the term "LGBT
 11 rights." How did you determine those
 12 rights?
 13 A. Those rights. I didn't
 14 determine the rights per se, but I --
 15 like in the sense of an exhaustive list
 16 of or definition of such rights. But the
 17 -- I took the -- I think we're refer --
 18 I'm sorry. Are we referring to the
 19 specific policies, LGBT policies in
 20 Figure 1, for example?
 21 Q. I'm just asking, you know,
 22 generally. You use this term "LGBT
 23 rights" in several different analyses

<p style="text-align: right;">Page 102</p> <p>1 here including Figure 1, and I'm just 2 asking what it means. 3 A. I see. That's -- in -- that's a 4 common way in political science of 5 referring to the claims and legal 6 statuses of -- or legal claims and 7 statuses of LGBT individuals and the 8 protections to which they're entitled 9 under the law. 10 Q. And how did you determine which 11 laws restrict LGBT rights? 12 A. Of the laws included in this -- 13 in this index, taking the index as -- 14 taking the policies as given, how did I 15 code them? 16 Q. No, no, no. I mean you say "a 17 relatively restrictive position." How 18 did you decide that a particular law 19 restricts LGBT rights? 20 A. In there, it was based on a -- 21 using -- based on my expertise as a 22 political scientist but based on the sort 23 -- of the literature, the larger academic</p>	<p style="text-align: right;">Page 104</p> <p>1 between two people and three or more 2 people. 3 Q. And it prohibits those people 4 who want to enter a marriage involving 5 three or more people; correct? 6 A. It prohibits those marriages, 7 yes. 8 Q. Laws that restrict marriage to 9 two human persons also discriminate 10 against those who wish to enter -- or 11 sorry. I'll rephrase. 12 Laws that restrict marriage to 13 two human persons also prohibit marriages 14 by those who wish to enter a marriage 15 involving a nonhuman animal. Is that 16 right? 17 A. They -- I -- that's a harder 18 question for me to answer. You're saying 19 discriminate against those marriages 20 or -- 21 Q. Against those people who want to 22 enter marriages involving a nonhuman 23 animal.</p>
<p style="text-align: right;">Page 103</p> <p>1 literature on how to think about -- 2 interpret these laws. So it was based on 3 an interpretation of the meaning of the 4 laws in question and whether they were 5 relatively restrictive towards or 6 relatively expansive towards LGBT rights 7 as well as sort of, in a supplementary 8 way, the empirical relationship among 9 these laws. 10 Q. Laws that restrict marriage to 11 two human persons discriminate against 12 those who wish to enter marriages 13 involving three or more people. Is that 14 right? 15 A. In -- 16 MR. FLETCHER: I'm going to 17 object to form. 18 Q. You can answer. 19 A. In the sense of -- not using the 20 legal definition of discriminate but in 21 the simple meaning of discriminate in the 22 sense of making distinctions between, the 23 law does make distinctions between unions</p>	<p style="text-align: right;">Page 105</p> <p>1 A. That does make -- it makes 2 distinctions among those kinds of unions, 3 or those proposed unions. But I think 4 now we may be stretching the definition 5 of -- like it may be a category mistake 6 to refer to those as unions, so I'm not 7 sure it makes sense to refer to that as 8 even discriminating. 9 Q. Those people who wish to enter 10 marriages involving three or more people 11 or involving a nonhuman animal are sexual 12 minorities. Is that right? 13 A. They were not the reference that 14 I was thinking about when I wrote "sexual 15 minorities"; however, I could imagine a 16 definition of sexual minorities that 17 was -- that would be defined so as to 18 include them. 19 Q. In fact, your definition of 20 sexual minority would include them, 21 wouldn't it? 22 A. I'd have to think about that. I 23 don't know if I -- it's not something</p>

<p style="text-align: right;">Page 106</p> <p>1 that I fully considered, so. But I'd 2 certainly think a reasonable case could 3 be made. 4 Q. So laws that restrict marriage 5 to two human persons exhibit anti-LGBT 6 bias as you've defined the terms. Is 7 that right? 8 A. I don't think that's fair. 9 Q. Why not? 10 A. Well, I think LGBT and sexual 11 minorities are slightly different. 12 They're not exactly coterminous with one 13 another. And when I wrote -- certainly, 14 when I wrote LGBT, I wasn't -- that's -- 15 I did not mean that necessarily to 16 indicate laws -- so yeah. So you said 17 laws that restrict marriage to two human 18 persons? 19 Q. Right. 20 A. I don't think it would be fair 21 to say that that, at least on its face, 22 restricts -- at least without further 23 context of the -- on the law, restricts</p>	<p style="text-align: right;">Page 108</p> <p>1 all states; right? 2 A. In the -- if we're being clear, 3 that I'm -- in my academic work prior to 4 this -- prior to this, my work on this 5 deposition, my collaborator and I for 6 that project did not include identical 7 policies that were identical across all 8 states. 9 Q. And so your analysis in this 10 case also excludes all laws that involved 11 identical policies across all states; 12 right? 13 A. In that particular context, yes. 14 Q. Right. And that choice was 15 arbitrary. Is that right? 16 A. No. 17 Q. It removes data points that 18 would suggest that Alabama's policies are 19 in line with those of other states, 20 doesn't it? 21 A. It does remove policies where 22 Alabama has the same policies as other 23 states.</p>
<p style="text-align: right;">Page 107</p> <p>1 the rights of LGBT individuals. 2 Can I just put in a request for 3 a break at some point when it's 4 convenient for you? 5 Q. Sure. Yeah. I've just got a 6 couple more -- 7 A. Okay. 8 Q. -- on this, and then we can take 9 a break. 10 In your analysis that we started 11 to speak about here of pre-Obergefell 12 laws, you excluded all policies that 13 involved identical policies across the 14 states. Is that right? 15 A. I didn't exclude them. They are 16 not included in the dataset that I was 17 using. 18 Q. You designed the dataset? 19 A. I helped. Well, I collaborated. 20 My collaborator and I created the 21 dataset, yes. 22 Q. So you excluded all the laws 23 that involved identical policies across</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. And the effect of that exclusion 2 would be to make Alabama's deviation from 3 other states' policies appear greater 4 than it is. Is that right? 5 A. No, I don't think so. It would 6 -- it would -- I mean, it depends on what 7 you mean by "appear." Do you mean appear 8 as in appear in a figure or -- I don't 9 think it's fair to say it would make them 10 appear if properly interpreted. 11 Q. Would Figure 1 on page 13, would 12 the lines be more close -- would the 13 lines be closer together if you included 14 policies -- laws that involved identical 15 policies across all states? 16 A. Well, let me clarify first what 17 "policy" means in this context. So a 18 policy is a policy option, so -- in this 19 particular context. So a given policy, 20 you can have different -- you can take 21 different policy options; right? 22 And so in some cases, having a 23 particular policy option means not having</p>

<p style="text-align: right;">Page 110</p> <p>1 a law on something; right? So this isn't 2 the case where there's an identical -- I 3 make this distinction because there's not 4 an -- there's not a one-to-one 5 relationship between a particular piece 6 of legislation and having a particular 7 policy on the books. So for that reason, 8 there's no -- so I just wanted to clarify 9 that.</p> <p>10 So this -- if you included 11 policy, say, designed as -- if you had a 12 sort of universal policy option that you 13 were defining sort of separately from 14 whether there's variation across states 15 and you included them in the denominator 16 of this figure, it would change the 17 number, so the numeric score of the 18 different states, by compressing all 19 states closer to the center, but it 20 wouldn't change the order of the states. 21 And if you expanded the -- if you just 22 simply fit the -- if you fit the scale of 23 the figure to match the empirical range</p>	<p style="text-align: right;">Page 112</p> <p>1 scale would -- would -- in terms of 2 the -- yeah. I don't think a proper 3 interpretation of that revised scale 4 would materially change the 5 interpretation of the relative 6 positioning of the states.</p> <p>7 MR. FLETCHER: Are we ready for 8 a break, Counsel? 9 MR. MILLS: Sure. 10 (Break taken.) 11 Q. (By Mr. Mills) Your analysis of 12 pre- and post-Obergefell policies 13 involves a series of policy-specific 14 indicators; right? 15 A. Yes. 16 Q. And your overall dataset 17 includes 186 policies. Is that right? 18 A. I'm sorry. You -- this was -- 19 this is the -- you're referring to the 20 dataset that -- that I used for -- that 21 undergirded Figure 1 pre- -- 22 pre-Obergefell; right? 23 Q. That's right.</p>
<p style="text-align: right;">Page 111</p> <p>1 of the data, it wouldn't change the 2 figure tremendously, I don't think.</p> <p>3 Q. So the effect of excluding 4 identical treatment across all the states 5 is to make state incongruence appear 6 greater. Correct? 7 A. I wouldn't use the word 8 "incongruence," no. 9 Q. Why not? 10 A. Well, I don't know what you mean 11 by "incongruence." Incongruent with 12 what? 13 Q. The other states. 14 A. Ah. I think it would change the 15 meaning of the scale in question. So 16 if -- an interpretation of that scale 17 that was attentive to the change in 18 meaning wouldn't change the -- wouldn't 19 change the interpretation of the relative 20 positioning of the states and how 21 different they are from each other. But 22 if -- yeah. So I don't think that a 23 proper interpretation of that revised</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Okay. I don't remember the 2 exact number of policies, but it's in 3 that neighborhood.</p> <p>4 Q. All right. And you don't know 5 what proportion of all state policies 6 that is, do you? 7 A. I think that defining the 8 universe of state policies is, I would 9 say, perhaps an impossible task and 10 perhaps not even a well-defined quantity. 11 And certainly, I've never seen an attempt 12 in the political science literature to 13 define it, so I don't -- so it's -- it 14 is -- I don't know if it's fair to 15 say that it's a -- I don't know if I can 16 precisely characterize how -- what 17 proportion of all policies it is, but it 18 is the most representative and expansive 19 policy dataset of its sort.</p> <p>20 Q. So my question was, you don't 21 know what proportion of all state 22 policies that is? 23 A. Well, and my answer to that is</p>

Page 114

1 that if the denominator to a proportion
 2 is not a well-defined quantity, you can't
 3 say -- be said to know or not know it. I
 4 don't think it's well defined.
 5 Q. If you don't know the
 6 denominator, your testimony is that you
 7 can't say whether you know the
 8 proportion?
 9 A. No. It's not that I don't know
 10 the denominator. I don't know if the
 11 denominator is a well-defined quantity.
 12 Q. So by necessity, you don't know
 13 the number of the denominator; correct?
 14 A. This may be --
 15 Q. Well, we'll move on.
 16 A. Yeah.
 17 Q. We'll move on. The point is you
 18 did not -- this is not a comprehensive
 19 set of all state policies; correct?
 20 A. It is not a comprehensive set of
 21 all state policies, no.
 22 Q. I'd like to show you now what
 23 I'm going to mark as Exhibit 15, which is

Page 115

1 -- are some pages from your most recent
 2 book. Oh, boy, here we go. Sorry.
 3 There we go.
 4 This is the cover of a book you
 5 recently published; right?
 6 (Exhibit 15 was marked for identification
 7 and is attached.)
 8 A. It is.
 9 Q. Okay. And these are just a few
 10 excerpts from that book.
 11 A. Sure.
 12 Q. I'm going to go down -- you know
 13 what? Sorry, give me one second.
 14 A. Yeah. Take your time.
 15 Q. We are going to come back to
 16 that one in just a minute. I had
 17 actually intended to show you a different
 18 dynamics article, which I'm marking as
 19 Exhibit 25. All right. There we go.
 20 This is an article you published
 21 about -- or that relies on the dataset
 22 we've been talking about; right?
 23 (Exhibit 25 was marked for identification

Page 116

1 and is attached.)
 2 A. Yeah. An earlier version of the
 3 same dataset, yes.
 4 Q. Yeah. And here on page 900 of
 5 the article, the highlighted portion, you
 6 say, "This measurement model enables us
 7 to make use of many indicators of policy
 8 liberalism, thus substantially reducing
 9 measurement error on the estimates of our
 10 construct of interest."
 11 How many policies would you
 12 consider necessary to sufficiently reduce
 13 measurement error?
 14 A. And there's no magic number,
 15 cutoff. It depends on many factors.
 16 Q. Would five be enough?
 17 A. It certainly could be enough for
 18 certain purposes, yes.
 19 Q. Measurement error at 5 policies
 20 would be far higher than at 140 policies.
 21 Is that right?
 22 A. It depends on the quality of the
 23 individual indicators and their -- the

Page 117

1 strength of their relationship with the
 2 quantity of interest.
 3 Q. Taking 5 policies that you --
 4 from this broader dataset would involve a
 5 higher measurement error than taking 140
 6 policies from the dataset?
 7 A. If I took five policies at -- if
 8 I sampled five policies at random from
 9 the dataset and made an indicator, or a
 10 measure out of those, that subset
 11 relative to the whole, that would
 12 certainly, in expectation, be a noisier
 13 indicator, yes -- a noisier measure.
 14 Sorry.
 15 Q. By "noisier," you mean
 16 measurement error would be higher?
 17 A. Yes.
 18 Q. So going back to your book, here
 19 -- this is Exhibit 15. On page 5 here,
 20 this highlighted statement says, "Given
 21 the constraints of data availability, we
 22 cannot claim to have constructed a random
 23 sample of state policies."

Page 118

1 Do you still agree with that
 2 statement?
 3 A. I do still agree.
 4 Q. And that is also true of the
 5 pre-Obergefell 13 policies you rely on in
 6 this case; it's not a random sample of
 7 state policies?
 8 A. It's not a random sample of all
 9 state policies, no.
 10 Q. Your book, this book, uses the
 11 term "policy-year combinations."
 12 A. Yes.
 13 Q. You'd agree that the overall
 14 dataset is missing about 60 percent of
 15 the data for all policy-year
 16 combinations?
 17 A. I don't recall the exact number,
 18 but it is -- that sounds like a -- I do
 19 believe we give the exact number in the
 20 book, so that sounds in the ballpark.
 21 Q. Okay. And your overall --
 22 sorry. I'll move this for a second.
 23 And your overall dataset labels

Page 119

1 all the policies you discuss here as
 2 cultural policies. Is that right?
 3 A. These are all a subset of
 4 cultural policies, yes.
 5 Q. And in a typical year in your
 6 overall dataset, data are available for
 7 only 27 of your 62 cultural policies. Is
 8 that right?
 9 A. I don't recall the number off
 10 the top of my head.
 11 Q. Does that sound wrong?
 12 A. It doesn't strike me as
 13 obviously wrong, no.
 14 Q. All right. Both your overall
 15 dataset and the datasets here are
 16 restricted to state positive statutory
 17 laws. Is that right?
 18 A. Can you say that -- "state
 19 positive statutory laws," is that what
 20 you said?
 21 Q. Right. Right. You know, those
 22 written statutes.
 23 A. Yes. They're -- yes. They're

Page 120

1 intended to be granted in statutory law,
 2 yeah.
 3 Q. And except --
 4 A. Written statutes.
 5 Q. Except for the Healthcare
 6 Freedom amendment, all the other policy
 7 indicators do not include constitutional
 8 provisions. Is that right?
 9 A. In that dataset?
 10 Q. In the ones you're using in this
 11 case.
 12 A. Oh, the ones I'm using in this
 13 case?
 14 Q. Well, I mean, both.
 15 A. Let me answer with respect to
 16 the -- the policies I'm using in this
 17 case, some of which come from the dataset
 18 that we have been talking about, I
 19 believe that is correct, that all the
 20 policies are statutory except for the
 21 constitutional amendment to which you
 22 referred.
 23 Q. And the policies also do not

Page 121

1 include administrative regulations;
 2 correct?
 3 A. That is correct. They're not
 4 intended to, anyway. Yes.
 5 Q. They don't include tort law?
 6 A. No tort law. Correct.
 7 Q. And they don't include court
 8 decisions?
 9 A. That's correct. Except insofar
 10 as -- a court decision can render a --
 11 you know, a statutory policy inoperable
 12 or -- or -- you know, and therefore can
 13 remove it from the dataset.
 14 Q. Did you --
 15 A. So for example, like a Supreme
 16 Court decision could declare all, for
 17 example, anti-sodomy laws
 18 unconstitutional.
 19 Q. But if a lower court invalidated
 20 a particular state law, did you factor
 21 that into your coding here or not?
 22 A. That is -- I don't -- I don't
 23 recall off the top of my head how we --

<p style="text-align: right;">Page 122</p> <p>1 what our coding decision was for state 2 court decisions that rendered a law -- 3 you know, that struck down a law. I 4 don't recall off the top of my head. 5 Q. Your overall dataset and your 6 datasets that you used here do not 7 include anything about legislative 8 intent. Is that right? 9 A. The datasets themselves are 10 composed solely of the laws and their -- 11 and a coding of their sort of -- a coding 12 of their -- of what policy option that 13 the law -- or the policy indicated. 14 Q. So they don't include votes on 15 specific policies; right? 16 A. Not the dataset that we're 17 talking about, no. 18 Q. Or legislative history? 19 A. The dataset itself doesn't 20 include anything on legislative history. 21 Q. And you don't know the 22 subjective intent of any legislator who 23 voted for or against the 186 policies in</p>	<p style="text-align: right;">Page 124</p> <p>1 individual policies but rather 2 aggregating many policies to estimate the 3 general liberal-to-conservative direction 4 of states' policymaking in a given 5 domain." 6 So that was the main goal of 7 your overall dataset. Is that right? 8 A. That's the main goal of this 9 measurement strategy described in this 10 chapter. 11 Q. But your pre-Obergefell dataset 12 in this case attempts to predict an 13 individual policy. Is that right? 14 A. You're referring to my report 15 now? 16 Q. Yes. 17 A. Yes. I used policymaking -- or 18 used measures of states' policy 19 orientation to predict adoption of 20 gender-affirming care bans. 21 Q. So, what differences in analysis 22 did you undertake in this case to change 23 your goal?</p>
<p style="text-align: right;">Page 123</p> <p>1 the 50 states; right? 2 A. Off the top of my head, I don't, 3 but I am sure there are instances where 4 it is reasonably clear. 5 Q. Do you think what a legislator 6 -- you just said "reasonably clear." Do 7 you think when a legislator votes for a 8 law that contains an explanation of the 9 law, that is a reasonably clear 10 explanation of the legislator's intent? 11 A. On its own, no. I think that 12 one would have to have -- I think there 13 are circumstances where it is reasonably 14 clear where an individual legislator 15 explained their reasoning in a way that 16 was, in the context, credible. The text 17 of the law would be but one piece of 18 evidence about that individual 19 legislator's state of mind. 20 Q. I'd like to go back to one of 21 your book pages. This is Exhibit 15 22 again, page 27. Here, the highlighted 23 portion, "our main goal is not predicting</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Well, the goal changed; 2 therefore, the analyses changed, so it 3 was not the other way around. But in 4 this -- in this book, our goal was to 5 understand the relationship -- I mean, 6 one of the broad goals of the book is to 7 understand the relationship between the 8 broad sort of ideological position or the 9 relative conservatism -- or liberalism is 10 the term we use -- of the -- of the 11 public in a given domain, the 12 relationship between that and the general 13 liberalism or conservatism of states' 14 policymaking in that domain. So that was 15 the goal in -- or one of the primary 16 goals of this book, and that necessitated 17 a particular set of analytic choices, 18 many. And the goal in this report was 19 different. 20 Q. What was the goal in this 21 report? 22 A. Well, the overall goal of this 23 report was to rebut the defense experts'</p>

Page 126

1 contention that -- and the -- that the
 2 SB184 and gender-affirming care bans in
 3 general were motivated by -- the
 4 predominant motivation was a
 5 paternalistic regard for the welfare --
 6 protect -- to protect minors from
 7 experimental medical treatments. And as
 8 part of rebutting that, the analysis that
 9 we're referring to, the policy analysis
 10 that we're referring to here used
 11 policymaking in other related areas to
 12 predict adoption of the -- of the policy
 13 in question.
 14 Q. And when you began this case,
 15 you started with the assumption that the
 16 defendants' experts were wrong?
 17 A. I didn't start with that
 18 assumption, no.
 19 Q. Going to page -- let's see.
 20 Figure 2.2 on Exhibit 15. Here, you list
 21 62 cultural policies. This doesn't
 22 include all the 13 policies in your
 23 pre-Obergefell dataset here, does it?

Page 127

1 A. I believe it does.
 2 Q. It does?
 3 A. I believe it does.
 4 Q. You don't know?
 5 A. I -- that's -- my understanding
 6 is I believe it does, yeah.
 7 Q. How did you choose the 13
 8 policies to include in your
 9 pre-Obergefell dataset here?
 10 A. By "here," you mean in my
 11 report?
 12 Q. That's right.
 13 A. There were a certain set of
 14 policies, state policies in the dataset
 15 that were classified as gay rights
 16 policies. They have a -- they were
 17 classified as -- or LGBT rights policies.
 18 And I chose all the policies that fell
 19 into that category.
 20 Q. And who designated them as LGBT
 21 policies to begin with?
 22 A. A combination of myself and my
 23 coauthor working on creating this -- we

Page 128

1 created -- we created this dataset over
 2 the course of many years but made that
 3 designation.
 4 Q. That choice to designate 13
 5 policies as LGBT policies was not
 6 peer-reviewed, was it?
 7 A. Choices aren't -- no -- single
 8 choices aren't peer-reviewed, but.
 9 Q. So the answer is no?
 10 A. Well, the choice was not that
 11 the -- I think it's fair to say that the
 12 choice was ratified by peer review as
 13 part of a larger project.
 14 Q. What other scholars have used
 15 these 13 policies to analyze the motives
 16 of a given legislature when passing a
 17 particular law?
 18 A. To analyze the motives? I don't
 19 know off the top of my head.
 20 Q. Do you know of any?
 21 A. I don't. I don't know.
 22 Q. So you don't know of any?
 23 A. I don't -- I don't -- I can't

Page 129

1 affirmatively think of a -- other --
 2 other scholars who have used these
 3 policies to opine on the motivations of
 4 other legislators, but I wouldn't be
 5 surprised if someone did. They've been
 6 used by a number of scholars.
 7 Q. What is the Type I and Type II
 8 error rate of your choice of 13 laws?
 9 A. I don't think a Type II/Type I
 10 error rate is a very -- is a well-defined
 11 concept in this context.
 12 Q. So there's no error rate of your
 13 selection of 13 laws?
 14 A. Error rate with respect to what?
 15 Q. You think these 13 laws
 16 perfectly encompass LGBT policies?
 17 A. By "perfectly encompass," do you
 18 mean include all LGBT-related policies?
 19 No.
 20 Q. Nor are they a perfectly random
 21 sample of all LGBT policies; correct?
 22 A. That is correct.
 23 Q. Do each of these 13 laws show

Page 130

1 anti-LGBT bias?
 2 A. Each of these 13 laws that I
 3 include are indicators of a state's
 4 relative hostility to or favorability
 5 towards LGBT rights and the status of LG-
 6 -- -- the legal status of LGBT
 7 individuals.
 8 Q. Is there any reason other than
 9 hostility towards LGBT rights or peoples
 10 that a person could support what you
 11 labeled the "restrictive position" on
 12 each of these 13 laws?
 13 A. I think in any -- it is
 14 definitely possible that -- for someone
 15 to -- for there to be other motivations
 16 at play.
 17 Q. How many other reasons could
 18 exist?
 19 A. I don't know if you can count,
 20 depending on how broadly you define
 21 "reasons," but there are many -- and for
 22 any given one of these laws and for any
 23 given vote on these laws, any -- you

Page 131

1 know, any number of arbitrary factors or
 2 idiosyncratic factors could be at play.
 3 Q. How many reasons to vote for
 4 these laws other than hostility towards
 5 LGBT persons did you consider?
 6 A. Did I consider in what context?
 7 Q. Arriving at your opinion in this
 8 case.
 9 A. For voting for these laws? I
 10 used these laws -- I'm sorry. So, did
 11 you say how many other motivations for --
 12 sorry. Can you repeat the question?
 13 Q. Yeah. You said there were many
 14 reasons other than hostility towards LGBT
 15 persons a person could support what you
 16 labeled the "restrictive position" on
 17 each of these laws. And I'm asking, how
 18 many of those other reasons did you
 19 consider?
 20 A. I didn't consider those
 21 motivations in selecting these laws.
 22 Like these laws are meant to be an
 23 indicator of a state's general propensity

Page 132

1 to restrict or expand LGBT rights and the
 2 status of LGBT persons. So
 3 considerations of the motivations of the
 4 legislators that passed these laws did
 5 not enter into my decisions about whether
 6 to include them.
 7 Q. I'm not asking about whether to
 8 include them. I'm asking -- you say that
 9 having all of them shows hostility toward
 10 LGBT rights, and I'm asking what other
 11 reasons did you consider for a -- in
 12 terms of why a person could support what
 13 you labeled the "restrictive position" on
 14 each of these laws?
 15 A. So I think if something can --
 16 these -- my decision to include these
 17 policies and use them as indicators of
 18 hostility to LGBT rights didn't hinge
 19 upon judgments about the reasons that any
 20 given legislator passed them. They're
 21 simply an indicator of -- they're simply
 22 indicators of the state's actual policies
 23 towards LGBT individuals and whether they

Page 133

1 were relatively restrictive or relatively
 2 expansive.
 3 Q. Again, I'm not asking how you
 4 picked them originally. I'm asking how
 5 you jumped from picking them to your
 6 conclusion that having them shows
 7 hostility toward LGBT persons.
 8 A. Well, hostility towards LGBT
 9 rights I think is probably a more
 10 accurate way of saying it. But this --
 11 what I would say is it's an indicator of
 12 a state's more general propensity to
 13 legislate on the basis of LGBT -- sorry,
 14 to restrict LGBT rights. And the
 15 indicators were chosen because they are
 16 substantively based -- you know, this is
 17 the sort of thing that we do in political
 18 science. When we want to create an index
 19 of some concept, we look for indicators
 20 that are related substantively to that
 21 context, and we make judgments about how
 22 to combine them.
 23 Q. So under your testimony, there

Page 134

1 are many reasons other than hostility
 2 toward transgender rights a person could
 3 support what you label the restrictive
 4 positions of each of these laws, but
 5 having each of -- having all of these
 6 laws shows the hostility toward LGBT
 7 rights?
 8 A. So there are, as I said, many
 9 idiosyncratic reasons why an individual
 10 legislator could --
 11 Q. That wasn't my question.
 12 A. No. I'm answering your
 13 question. Can I finish, or do you want
 14 to rephrase your question?
 15 Q. You can finish. But if we
 16 continue being evasive, I'm going to have
 17 to ask your counsel if we can extend this
 18 deposition to another day.
 19 MR. FLETCHER: Counsel, allow
 20 the witness to answer your question as it
 21 stands.
 22 MR. MILLS: The witness has
 23 given this same answer multiple times,

Page 135

1 and I'm going to object and strike it as
 2 nonresponsive.
 3 MR. FLETCHER: You want to
 4 repeat your question?
 5 MR. MILLS: I think he knows
 6 what the question is.
 7 A. So what I was going to explain
 8 was that there are many -- many factors
 9 that could affect individual legislators'
 10 response and -- but also that could
 11 influence the enactment of any given
 12 policy. And the advantage of combining
 13 them together is that you net out those
 14 idiosyncratic factors to isolate more
 15 clearly the signal that -- or the concept
 16 that -- or the factor that unites all of
 17 them.
 18 So I believe your question was
 19 about -- so I hope that answers your
 20 question, but if you --
 21 Q. (By Mr. Mills) So even if
 22 there's a release -- a reason that is not
 23 hostility toward LGBT rights to support

Page 136

1 each of these other laws, supporting all
 2 of them proves hostility toward LGBT
 3 rights. Is that your testimony?
 4 A. It doesn't prove it, but it is
 5 an indicat- -- taken together, it's a
 6 reliable indicator of general -- of a
 7 state's general policy hostility towards
 8 LGBT rights.
 9 Q. Because you think there could be
 10 no other reason to support each of these
 11 13 laws?
 12 A. No. That's not what I said.
 13 Q. Well, if there's a neutral
 14 explanation to support each of the 13
 15 laws and you haven't made any effort to
 16 rule out those explanations, how could
 17 you conclude that they show hostility
 18 towards LGBT rights?
 19 A. Let me make sure I understand
 20 what you say. You said each of these
 21 laws. So, are you -- so in the scenario
 22 you're imagining, there's -- I'll take
 23 that as you're saying that in each of

Page 137

1 these cases, there was a different or an
 2 alternative explanation for the adoption
 3 of the law other than LGBT -- hostility
 4 to LGBT rights.
 5 I think -- first of all, I
 6 think, empirically, that's unlikely, that
 7 there would be 13 independent alternative
 8 explanations. But then -- but again, I
 9 return to my point that the -- that
 10 the -- this indicator is -- or this
 11 measure is meant to capture a general
 12 propensity to restrict LGBT rights in
 13 general. It's not premised on judgments
 14 about the motivations behind individual
 15 legislators' decisions to support them.
 16 Q. You said empirically unlikely,
 17 but you also said you didn't consider any
 18 reasons that someone might -- other
 19 reasons that someone might support each
 20 of these 13 laws.
 21 On what basis do you say it's
 22 empirically likely that someone could
 23 support each of these other 13 laws on a

Page 138

1 basis that is not hostility toward LGBT
 2 rights?
 3 A. I -- it sounded -- I was basing
 4 that on my interpretation of your
 5 question or where you said in each of
 6 these laws, there was a -- I think you
 7 said some -- I can't remember your exact
 8 wording but something like alternative --
 9 independent explanation or alternative
 10 explanation or something. And it -- if
 11 -- what I would say is that it would be
 12 unlikely that there would be just a
 13 different alternative, like it could have
 14 -- an explanation for each of -- 13
 15 times, there would be an alternative
 16 explanation.
 17 But the other reason it's
 18 unlikely is that these laws are hardly --
 19 the states' stances on these laws are
 20 highly correlated with one another, so
 21 they form a reliable index, so they do
 22 share -- they do create a reliable index
 23 together.

Page 139

1 Q. What does that have to do with
 2 the reason they were enacted?
 3 A. Well, as I've said, my selection
 4 of these is not -- is not based on
 5 judgments about the -- I mean, if -- by
 6 "reason," do you mean the motivations of
 7 the legislature -- legislators involved?
 8 Q. By "reason," I mean whatever you
 9 mean when you say "hostility towards LGBT
 10 rights." If you want to call it a
 11 reason, if you want to call it a
 12 motivation, if you want to call it
 13 something else, I don't care.
 14 A. Yeah.
 15 Q. That's what you call it. I'm
 16 talking about reasons --
 17 A. Okay.
 18 Q. -- other than that.
 19 A. Okay. So I would say that these
 20 -- so okay. So on their face, all of
 21 these laws restrict transgender rights
 22 fairly trans- -- it is, I think, a
 23 reasonable interpretation of each of

Page 140

1 these rights to take a position on a
 2 relative favorability towards the status
 3 of -- legal status of LGBT individuals.
 4 And that is the -- substantively, the
 5 primary -- so that's what -- that's like
 6 the most natural interpretation on their
 7 face. And taken together, they form --
 8 they're very highly correlated with one
 9 another. And so I think they provide a
 10 very -- a reliable summary of a state's
 11 general stance towards LGBT rights.
 12 The source, the particular
 13 source, like the motivations behind the
 14 passage of individual laws could be --
 15 there could be different factors at play
 16 in each one. But regardless of the
 17 motivations or the reasons why the
 18 legislature passed it in each individual
 19 case, together they indicate a general
 20 propensity or gen- -- a state's general
 21 stance towards LGBT rights.
 22 Q. Let's take laws restricting
 23 minors from voting, driving, and getting

Page 141

1 a tattoo. Does that prove that states
 2 are motivated by anti-minor bias?
 3 A. No. It doesn't prove -- I mean,
 4 do you mean --
 5 Q. I'll rephrase. Does that show
 6 hostility toward minors' rights?
 7 A. I do think that states could be
 8 relatively favorable or not towards
 9 giving rights to minors. That doesn't
 10 tend to be a salient point of political
 11 conflict. So as a political scientist,
 12 it's, sort of on its face, a less obvious
 13 explanation for the passage of individual
 14 laws or -- but it certainly is possible
 15 for states to have -- take different
 16 positions on that, and it's also possible
 17 -- though I would have to investigate it
 18 -- for those policies to hang together
 19 enough to be highly -- associated with
 20 one another enough to form a coherent
 21 tendency in the state's policymaking.
 22 Q. So the difference is you can't
 23 imagine that states could independently

Page 142

1 decide to take what you label the
 2 restrictive policy on each of these 13
 3 laws for any reason apart from anti-LGBT
 4 bias?
 5 A. It's not that I can't imagine
 6 that they would do it for any other
 7 reason. It's just an indicator of their
 8 general stance towards LGBT rights. And
 9 so -- no, sorry. It's a -- yeah, it's a
 10 measure of their stance on LGBT rights
 11 and -- yeah, that's it.
 12 Q. I'm going to show you what I'm
 13 marking as Exhibit 19, which is an
 14 article you wrote with Christopher
 15 Warshaw entitled "Policy Preferences and
 16 Policy Change" -- sorry. I'll show you
 17 the first page.
 18 This is an article you wrote and
 19 published. Is that right?
 20 (Exhibit 19 was marked for identification
 21 and is attached.)
 22 A. Correct.
 23 Q. All right. Down here in

Page 143

1 footnote 16, it says the model "is
 2 dynamic in that policy liberalism is
 3 estimated separately in each year and the
 4 policy-specific intercepts are allowed to
 5 drift over time. If, instead, the
 6 intercepts are held constant, the
 7 policies of all states are estimated to
 8 have become substantially more liberal,
 9 especially before the 1980s."
 10 You agree that you used the same
 11 method here, restrictiveness analyzed in
 12 each year and only relative to other
 13 states' policies, in that year?
 14 A. Can you say that again?
 15 Q. Yeah. So in this case, your
 16 pre- and post-Obergefell analysis, you
 17 used the same approach estimating
 18 restrictiveness separately in each year
 19 and only relative to other states'
 20 policies in that year?
 21 A. In my report, you're referring
 22 to?
 23 Q. That's right.

Page 144

1 A. No. I don't think that's an
 2 accurate characterization.
 3 Q. Why's that?
 4 A. I am at least -- well, if some
 5 of -- I mean, you said relative to each
 6 states' in each year, I think. Is that a
 7 term you used?
 8 But the measures that I present
 9 here are not relative measures. They're
 10 not normed by -- by the sub mean in each
 11 year. They're meant to be --
 12 Q. I said you estimated
 13 restrictiveness relative to other states
 14 policies in that year. Correct?
 15 A. Oh, I see what you -- so the
 16 reason I was hung up is your use of the
 17 word "relative."
 18 So I would say that I estimated
 19 the restrictiveness of states' policies
 20 in each year. That would be -- yeah.
 21 And so the -- and they do put states
 22 relative to one another but in -- yeah.
 23 So that is correct. In a given year,

Page 145

1 that is correct, yes.
 2 Q. Yeah. I'm not trying to --
 3 A. Yeah. No, it's okay.
 4 Q. So your models here in this
 5 case, it's not -- restrictiveness is not
 6 a matter of historical positions across
 7 all state laws; correct?
 8 A. In this case, when I evaluate
 9 how restrictive a state's policies are in
 10 a given year, it depends only on the data
 11 in that year.
 12 Q. And you excluded years in which
 13 all states agreed? Is that right?
 14 A. Excluded policy years in which
 15 all states agreed.
 16 Q. Okay. And controversial
 17 policies are more likely to be subject to
 18 disagreement among the states. Is that
 19 right?
 20 A. Yes.
 21 Q. Your analysis here didn't
 22 include the federal government's laws.
 23 Is that right?

Page 146

1 A. "Here," you mean in the -- in
 2 the case?
 3 Q. That's right.
 4 A. It doesn't explicitly include
 5 them except insofar as federal -- mainly
 6 federal court decisions affected what
 7 laws were operable in each state.
 8 Q. On your pre-Obergefell dataset,
 9 which of these 13 policies did the
 10 federal government have in 2022? In
 11 other words, what would it have scored?
 12 A. I don't know off the top of my
 13 head.
 14 Q. Does the federal government have
 15 anti-LGBT bias?
 16 A. Does the federal government have
 17 anti-LGBT bias? What I would say -- does
 18 it have -- what I would say is that --
 19 that when I am referring to -- assuming
 20 you mean as I use that term in this
 21 report --
 22 Q. Yes.
 23 A. -- I would say that hostility

Page 147

1 towards -- anti-LGBT bias, I mean
 2 primarily hostility towards the rights
 3 and legal status of LGBT persons. And
 4 that's a relative term. So there are --
 5 one can always -- it's always possible
 6 for -- so to say bias, you have to say
 7 bias relative to what. And so I -- are
 8 you referring -- so in this case, I'm not
 9 sure what -- the reference point for your
 10 question about the federal government.
 11 So, to what should I be comparing the
 12 federal government to?
 13 Q. We'll move on.
 14 If the Eleventh Circuit read a
 15 federal law to prohibit employment
 16 discrimination based on LGBT status in
 17 2011, Alabama would have no need for an
 18 LGBT employment antidiscrimination law.
 19 Is that right?
 20 A. I don't know that that's true.
 21 Q. And yet you coded the absence of
 22 an LGBT employment antidiscrimination law
 23 as an LGBT-restrictive policy for

Page 148

1 Alabama?
 2 A. You're referring specifically to
 3 -- are you -- just to make sure I
 4 understand what you're referring to,
 5 you're referring, in 2011, to whether
 6 Alabama had a LGBT employment
 7 antidiscrimination law?
 8 Q. Correct.
 9 A. And you're saying if the
 10 Eleventh Circuit had struck that down --
 11 or sorry, had prohibited discrimination
 12 in employment, then that such a law would
 13 be irrelevant or unnecessary?
 14 Q. Correct.
 15 A. I'm not sure that that's the
 16 case. I don't know the scope of the
 17 decision that you're referring to. I
 18 don't know whether it was upheld by -- I
 19 don't know its -- I don't know its legal
 20 history, so I am -- I can't really opine
 21 on that.
 22 Q. So you didn't consider that case
 23 when coding the variables here; correct?

Page 149

1 A. So in -- so first of all, these
 2 variables were coded as part of a project
 3 that predated the report, to be clear,
 4 and as part of that coding process, we
 5 did not invalidate -- we did not drop
 6 that law as a result of the decision that
 7 you're referring to. Or that policy.
 8 Drop that policy is what I should have
 9 said.
 10 Q. The question wasn't whether you
 11 would drop the policy. The question was
 12 whether you would code the absence of an
 13 LGBT employment antidiscrimination law.
 14 A. No. We did not recode it from
 15 what the Alabama statute indicated.
 16 Q. So even though the absence of a
 17 particular policy might be irrelevant in
 18 reality because of a lower federal court
 19 or state court decision, you didn't
 20 consider that in your analysis?
 21 A. That is not how this dataset was
 22 coded, no.
 23 Q. So --

<p style="text-align: right;">Page 150</p> <p>1 A. Let me -- I'll be precise. So 2 the dataset did not take into account -- 3 did not change the coding of policies 4 based on a -- lower court decisions such 5 as the one you're referring to. 6 Q. And that would -- you would 7 agree that that failure to consider case 8 law affecting these policies increases 9 the likelihood of error of relying on 10 your coding of these policies to state a 11 general approach to transgender rights? 12 A. No, I don't agree with that. 13 Q. Why would Alabama have needed to 14 pass an employment discrimination law if 15 the Eleventh Circuit had already 16 prohibited employment discrimination 17 based on LGBT status? 18 A. I'm not saying that it needed 19 to, but it -- 20 Q. How could its failure to have 21 reflected its view on LGBT rights? 22 A. Some states have passed such 23 laws; other states have not. They do so</p>	<p style="text-align: right;">Page 152</p> <p>1 whether it would have remained in place. 2 States, for example -- yeah. And -- but 3 even -- yes, I stand by the decision that 4 keeping that coding is a -- provides a 5 more reliable measure of a state's 6 general stance on LGBT rights than 7 changing the coding. 8 Q. You think it's more reliable to 9 exclude the actual effects on LGBT people 10 in the state? 11 MR. FLETCHER: Object to form. 12 Q. You can answer. 13 A. I think it's a more reliable 14 indicator of the state's -- the state 15 government's -- in this case, the State 16 of Alabama's -- general stance on LGBT 17 rights given that the decision came from 18 a federal circuit that includes multiple 19 states. 20 Q. So in 2012, there was no reason 21 for Alabama not to pass an LGBT 22 employment antidiscrimination law other 23 than hostility towards LGBT rights?</p>
<p style="text-align: right;">Page 151</p> <p>1 for -- I'm not opining as to the need to 2 pass them or not, but they are 3 indicators, nevertheless, of the state's 4 general stance on LGBT policymaking. I 5 think removing it from -- changing the 6 coding based on a higher court decision 7 would actually introduce more error in 8 measures of Alabama's general propensity 9 in this area to restrict LGBT rights than 10 it would not. 11 Q. So you think Alabama's failure 12 to pass a law that would make no 13 practical difference for LGBT persons 14 demonstrates a hostility toward LGBT 15 rights? 16 MR. FLETCHER: Object to form. 17 Q. You can answer. 18 A. So I disagree with the basis for 19 -- I don't grant the -- I don't know it 20 to be true that passing that law would 21 have made no difference to LGBT rights. 22 As I said, I don't know the scope of the 23 decision you're referring to or its --</p>	<p style="text-align: right;">Page 153</p> <p>1 A. No. 2 Q. But you are saying that because 3 Alabama didn't use its scarce legislative 4 time to pass a virtue-signaling LGBT 5 employment nondiscrimination law in 2012 6 when that law would have had no effect 7 should be coded as restrictive? 8 MR. FLETCHER: Object to form. 9 THE WITNESS: Can I answer? 10 MR. FLETCHER: Of course. 11 A. Yes, I do think it should be 12 coded as restrictive. Even if a -- even 13 if it is purely symbolic, it is an 14 indicator of -- which I don't grant in 15 this particular case -- 16 Q. So, why do you treat U.S. 17 Supreme Court decisions differently? 18 A. Because they apply to all 19 states. Well, first of all, as a 20 practical matter, this was a decision 21 made -- we made in the -- 22 Q. I'm asking about reliability. 23 Why do you treat U.S. Supreme Court</p>

<p style="text-align: right;">Page 154</p> <p>1 decisions differently?</p> <p>2 MR. FLETCHER: Counsel, again,</p> <p>3 allow the witness to answer your</p> <p>4 question, and allow the witness the time</p> <p>5 to answer your question accurately.</p> <p>6 MR. MILLS: Okay. Would you</p> <p>7 agree to a second day of depositions,</p> <p>8 Counsel?</p> <p>9 MR. FLETCHER: Counsel, would</p> <p>10 you allow the witness to answer your</p> <p>11 question?</p> <p>12 MR. MILLS: If he'll answer it.</p> <p>13 A. Oh, okay. So I believe you</p> <p>14 were -- why do I treat -- why does the</p> <p>15 dataset treat Supreme Court decisions</p> <p>16 differently? Because by -- those are</p> <p>17 sort of a policy -- or sorry, a coding</p> <p>18 decision made in the course of</p> <p>19 constructing that dataset, in part, to --</p> <p>20 because it applied to -- it applied to</p> <p>21 all states; right? So it wiped away</p> <p>22 variation across states, but it also was</p> <p>23 a practical decision so that we didn't</p>	<p style="text-align: right;">Page 156</p> <p>1 report, including that policy in -- as</p> <p>2 passed by the legislature and not</p> <p>3 changing the coding based on the Eleventh</p> <p>4 Circuit, I do believe it provides a more</p> <p>5 reliable indicator of the -- of the -- of</p> <p>6 states' general stance on LGBT</p> <p>7 policymaking. But also, I -- there's a</p> <p>8 value in adhering to a -- there's a</p> <p>9 danger in making ad hoc decisions of that</p> <p>10 sort, and I wanted to adhere to the</p> <p>11 standards set forward in the dataset I</p> <p>12 was using.</p> <p>13 Q. Is a state's failure to appeal</p> <p>14 its same sex marriage prohibition after</p> <p>15 Obergefell evidence of hostility towards</p> <p>16 LGBT rights?</p> <p>17 A. I think it could be considered</p> <p>18 an indicator of relative favorability</p> <p>19 towards LGBT rights.</p> <p>20 Q. But you excluded that after</p> <p>21 Obergefell?</p> <p>22 A. Well, it's not included in the</p> <p>23 dataset.</p>
<p style="text-align: right;">Page 155</p> <p>1 continue to -- we didn't -- given that --</p> <p>2 you know, given the finite resources of</p> <p>3 the project, that we didn't collect</p> <p>4 information on laws that had been</p> <p>5 declared unconstitutional many years in</p> <p>6 the past. So that was a practical</p> <p>7 decision in the face of research</p> <p>8 considerations, but I think a reasonable</p> <p>9 one in the context of dataset collection.</p> <p>10 Q. And that choice, if disregarding</p> <p>11 the Eleventh Circuit decision makes your</p> <p>12 analysis more reliable, then</p> <p>13 incorporating Supreme Court decisions</p> <p>14 makes your analysis less reliable;</p> <p>15 correct?</p> <p>16 A. I wouldn't say -- first of all,</p> <p>17 we have to say reliability for what</p> <p>18 purpose. Remember that --</p> <p>19 Q. You used the term.</p> <p>20 A. It's true. And I just want to</p> <p>21 be clear about what context I'm referring</p> <p>22 to.</p> <p>23 So in the context of this</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. So you excluded it?</p> <p>2 A. It's not included in the</p> <p>3 dataset, so I didn't include it in my</p> <p>4 analysis.</p> <p>5 Q. In your pre-Obergefell analysis,</p> <p>6 as you discussed, you excluded policies</p> <p>7 any time all states agreed on a policy;</p> <p>8 right?</p> <p>9 A. The data -- the dataset I used,</p> <p>10 you're referring to the --</p> <p>11 Q. Yes.</p> <p>12 A. You're referring still to the</p> <p>13 pre-Obergefell analysis? Yes.</p> <p>14 Q. Right. Sorry. One second.</p> <p>15 Do you view it as hostility</p> <p>16 toward LGBT rights to allow agencies to</p> <p>17 refuse same-sex foster parents for</p> <p>18 religious reasons?</p> <p>19 A. I do believe that is an</p> <p>20 indication of the relative weight that</p> <p>21 states place on LGBT rights, yes.</p> <p>22 Q. Could there be other reasons for</p> <p>23 a state to allow agencies to refuse</p>

Page 158

1 same-sex foster parents for religious
 2 reasons?
 3 A. Yes. There could be multiple
 4 reasons, yeah.
 5 Q. Are you aware that the Supreme
 6 Court has held that agencies have their
 7 own free exercise rights when working
 8 with the state?
 9 A. I don't know what you're
 10 referring to.
 11 Q. So no matter what a state's law
 12 says, the free exercise clause may
 13 guarantee foster agencies the right to
 14 refuse certain parents for religious
 15 reasons; correct?
 16 MR. FLETCHER: I'll object to
 17 form.
 18 Q. You can answer.
 19 A. I don't know. I don't have an
 20 opinion on that. I don't know. I
 21 don't --
 22 Q. You didn't consider that when
 23 you coded state laws; correct?

Page 159

1 A. I don't think I fully understood
 2 what you were referring to. But if the
 3 -- if the -- if the -- if there were a
 4 Supreme Court decision that struck down a
 5 particular legislative provision or
 6 statutory provision, I mean, then that
 7 was incorporated into the policy -- or
 8 the -- sorry.
 9 If there was a Supreme Court
 10 decision that imposed policy uniformity
 11 across states, then that did affect the
 12 coding of the laws; but otherwise, it did
 13 not.
 14 Q. Your category of hate crimes, it
 15 doesn't consider whether state juries, as
 16 a matter of state common law, already
 17 impose additional punishments for hate
 18 crimes, does it?
 19 A. As a matter of state common law,
 20 it doesn't take into account
 21 state-by-state variation in the common
 22 law.
 23 Q. Would you agree that Alabama's

Page 160

1 policies have become significantly more
 2 liberal as an absolute matter over time?
 3 A. Are you referring to all of
 4 their policy -- like their policies in
 5 general?
 6 Q. Yes.
 7 A. All domains?
 8 Q. Yes.
 9 A. I think in many domains, that is
 10 true, yes. Most domains.
 11 Q. Including on LGBT issues?
 12 A. On LGBT issues, they have become
 13 more liberal over time. You used the
 14 word -- I can't remember. Did you say
 15 "substantially" or -- I can't remember
 16 what adjective you -- or sorry, adverb
 17 you applied to.
 18 Q. I may have used "significantly,"
 19 but you're welcome to --
 20 A. Okay. Yeah. I do believe they
 21 have become more liberal over time.
 22 Liberal in this context meaning more
 23 favorable, or more expansive towards LGBT

Page 161

1 rights.
 2 Q. In one of your other works, you
 3 talk about partisan effects. And you
 4 say: "Since about 1980, partisan effects
 5 have grown rapidly: electing Democrats
 6 now has an unambiguously positive impact
 7 on policy liberalism."
 8 Do you still agree with that
 9 statement?
 10 A. I do.
 11 Q. So I'm just going to show you
 12 that article if I could. Let's see if I
 13 can get it up.
 14 So this is an article you wrote
 15 with others on the policy effects of the
 16 partisan composition of state government.
 17 A. Yeah.
 18 Q. Is that right?
 19 A. It's a preprint of it. Yeah.
 20 Q. Yeah.
 21 A. So I assume that this is the
 22 same as the final draft.
 23 Q. And this is going to be marked

<p style="text-align: right;">Page 162</p> <p>1 as Exhibit 5. Let's see. Sorry. Let 2 me -- here we go. 3 Right at the top here, if you 4 can see it. 5 A. Uh-huh. 6 Q. The first sentence, "Evaluating 7 policy divergence between the parties 8 requires isolating the policy effects of 9 partisan composition from other 10 determinants of state policy; otherwise, 11 partisan effect estimates will be 12 biased." 13 And then if we could go back to 14 Exhibit 15, which is your book chapter 15 here. You say, "the causal effects of 16 party control on state policies, which 17 probably reached their nadir in the 1970s 18 and 1980s, have grown sharply in the 19 subsequent decades." 20 So you agree that partisan 21 effects may be a significant factor in 22 evaluating policy divergence? 23 (Exhibit 5 was marked for identification</p>	<p style="text-align: right;">Page 164</p> <p>1 sure I understand the context for that. 2 Q. Sure. I mean what you mean 3 whenever you say "policy divergence." 4 A. Got it. Yeah. So -- sorry. So 5 this is in the context of policy -- or 6 parties adopting different policy stances 7 and -- when in government. Yeah. So 8 sorry, repeat your question. 9 Q. So -- 10 MR. FLETCHER: We're looking at 11 a small excerpt of Exhibit 5? Is that 12 right? 13 MR. MILLS: That's right. 14 MR. FLETCHER: Thank you. 15 MR. MILLS: Yeah. 16 Q. You'd agree that comprehensively 17 evaluating policy divergence between the 18 states requires isolating the policy 19 effects of partisan composition from 20 other determinants of state policy? 21 A. I think this is the source of my 22 confusion because in this case, it's 23 policy divergence between parties, not</p>
<p style="text-align: right;">Page 163</p> <p>1 and is attached.) 2 A. Yes. 3 Q. And that, as you said in the 4 first article, failure to isolate those 5 effects could lead to biased results? 6 A. In specifically that -- you 7 mean -- sorry. "Failure to isolate those 8 effects," you mean the effects of party 9 control? 10 Q. That's right. 11 A. Yeah. That your -- yes. If you 12 don't isolate those effects from other 13 influences, your quantitative estimates 14 of the effects of party control might be 15 biased. 16 Q. And you would agree that 17 comprehensively evaluating policy 18 divergence between the states requires 19 isolating the policy effects of partisan 20 composition from other determinants of 21 state policy? 22 A. Could you -- when you say 23 "policy divergence," I just want to make</p>	<p style="text-align: right;">Page 165</p> <p>1 between states. So are you referring to 2 divergence between states or between 3 parties? 4 Q. Between states. 5 A. Oh. I don't think I agree with 6 your statement, so. But please ask it 7 one more time just -- I'm sorry. Please 8 ask it one more time. 9 Q. Sure. Would comprehensively 10 evaluating policy divergence between the 11 states require isolating the policy 12 effects of partisan composition from 13 other determinants of state policy? 14 A. No, I don't think so. 15 MR. FLETCHER: And we've been 16 going for over an hour now. Is this a 17 good time for a lunch break? 18 MR. MILLS: I'll be done with 19 this in just a minute. 20 MR. FLETCHER: Okay. 21 Q. You don't think partisan 22 composition is a determinant of state 23 policy?</p>

Page 166

1 A. No, I do think it is a
 2 determinant of state policy.
 3 Q. And your analysis here doesn't
 4 consider the policy effects of partisan
 5 composition. Is that right?
 6 A. "Here," you mean in my report?
 7 Q. That's right.
 8 A. It does not consider the effects
 9 of party composition.
 10 MR. MILLS: Okay. I think we
 11 can go off the record now.
 12 (Break taken.)
 13 Q. (By Mr. Mills) One of the bases
 14 of your opinions in this case is that the
 15 legislature in SB184 declined to adopt an
 16 express exemption for psychotherapeutic
 17 counseling; right?
 18 A. That is one of the facts cited
 19 in my case, yeah. Or in my brief or
 20 report. Sorry.
 21 Q. Sure. So I'm just showing you
 22 your report. Is that working?
 23 A. Yes.

Page 167

1 Q. Okay. So this is your report,
 2 Exhibit 21, that we discussed earlier.
 3 Here at the bottom of the page 8 under
 4 "Summary of opinions" you have, "Despite
 5 SB184's nominal focus on hormone and
 6 surgical treatments, the legislature
 7 explicitly declined to exempt
 8 psychotherapeutic treatments from the
 9 bill's restrictions, which is consistent
 10 with a general hostility to gender
 11 nonconformity per se."
 12 Do you still agree with that
 13 statement?
 14 A. I do.
 15 Q. And this is one of your -- one,
 16 two, three, four, five, six -- seven
 17 summary of opinions; right?
 18 A. If that's the number, yes. It's
 19 one of the main bullet points.
 20 Q. Okay. And then later in your
 21 report, you talk about -- page 34 to 35,
 22 paragraph 70 -- "Rep. Allen claimed to
 23 favor 'therapeutic treatment'" -- et

Page 168

1 cetera, et cetera. "The legislature,
 2 however, explicitly declined to exempt
 3 psychotherapeutic counseling from SB184's
 4 restrictions. In a voice vote, the
 5 Senate rejected an amendment by Sen. Tom
 6 Whatley clarifying that the bill was not
 7 meant to limit the therapeutic discretion
 8 of psychologists or counselors."
 9 And so that amendment is what
 10 you're talking about when you say that
 11 the legislature in SB184 declined to
 12 adopt an exemption for psychotherapeutic
 13 counseling; right?
 14 A. That's the amendment, yes.
 15 Q. If they had adopted that
 16 amendment exempting psychotherapy, would
 17 you agree that that adoption would be
 18 consistent with Representative Allen's
 19 claim to favor therapeutic treatment for
 20 transgender youth?
 21 A. I think I would agree with that,
 22 yes.
 23 Q. And would that be some evidence

Page 169

1 suggesting that the legislature's
 2 objection was not to transgender youth
 3 per se as you say in page 8?
 4 MR. FLETCHER: Object to form.
 5 A. I don't think I say "transgender
 6 youth per se."
 7 Q. I think the meaning is the same,
 8 but I will say it just as you say it.
 9 Would that be some evidence suggesting
 10 that the legislature's objection was not
 11 to gender nonconformity per se?
 12 A. If they had not -- if they had
 13 not -- if they had adopted that
 14 amendment, would that be evidence against
 15 general hostility to gender nonconformity
 16 per se?
 17 Q. Right.
 18 A. I do think I would have -- I
 19 would have interpreted that evidence.
 20 That would be one piece of evidence in
 21 that regard, yeah.
 22 Q. Okay. I am going to show you --
 23 let's see if I can handle all these

Page 170

1 files -- what I'm going to mark as
 2 Exhibit No. 37, and that's the Senator
 3 Whatley Amendment that we were just
 4 talking about. Give me just one second.
 5 Okay. So you would agree that
 6 this appears to be the Senator Whatley
 7 amendment to -- that we were just
 8 referring to and that your report
 9 discusses?
 10 (Exhibit 37 was marked for identification
 11 and is attached.)
 12 MR. FLETCHER: And I'll note for
 13 the record, we're looking at a zoomed-in
 14 excerpt of a particular document,
 15 Counsel. To the extent it's necessary --
 16 MR. MILLS: This is the whole
 17 document.
 18 A. Yeah. It's very short. This is
 19 the Whatley Amendment, yeah.
 20 Q. Right. Okay. And then Section
 21 6 here is the substance of the amendment.
 22 It says, "Nothing in this act shall be
 23 construed as limited or preventing

Page 171

1 psychologists" -- et cetera et cetera --
 2 "from rendering the services for which
 3 they are qualified by training or
 4 experience involving the application of
 5 recognized principles, methods, and
 6 procedures of the science and profession
 7 of psychology and counseling."
 8 Is that right?
 9 A. That's what it says, yes.
 10 Q. Okay. And do you know what
 11 SB184 says about psychotherapy?
 12 A. I don't remember off the top of
 13 my head exactly what it says.
 14 Q. Okay. Does SB184 prohibit
 15 psychotherapy?
 16 MR. FLETCHER: Object to form.
 17 Q. You can answer.
 18 A. Does it outright prohibit all
 19 psychotherapy? No.
 20 Q. Okay. We'll go back to Exhibit
 21 20, which I'll show you on the screen
 22 again. This is SB184 that we identified
 23 earlier. I'm just scrolling down to

Page 172

1 Section 6 of the enacted law.
 2 A. I see what you mean, yeah.
 3 Q. You'd agree this is
 4 substantively identical to the Whatley
 5 Amendment that you say the legislature
 6 rejected?
 7 A. It does appear to be, yeah.
 8 Q. So when you said the legislature
 9 declined to exempt psychotherapeutic
 10 counseling from SB184's restrictions in
 11 your report, that was incorrect, wasn't
 12 it?
 13 A. I'm not entirely sure from this
 14 context, so give me a second to think.
 15 (Witness reviews document.)
 16 A. Thanks for your patience. I'm
 17 just trying to find the location in my
 18 report where I refer to this.
 19 (Witness reviews document.)
 20 A. Go ahead. Oh, I'm sorry. I
 21 haven't answered.
 22 This particular language is very
 23 similar to the amendment, to the Whatley

Page 173

1 Amendment, yes, if not identical.
 2 Q. So your report was incorrect?
 3 A. I think -- can you scroll up to
 4 page 6 of the -- of the bill?
 5 Q. Page 6? Sure.
 6 A. Yeah.
 7 (Witness reviews document.)
 8 A. It -- thank you. Yes. I think
 9 that that same language was incorporated
 10 into the final bill, so I think -- I
 11 think that the final bill's -- the bill's
 12 intentions should be read in its
 13 totality. But you're right. It is
 14 correct that the -- that amendment was
 15 ultimately incorporated into the bill.
 16 Q. So your report was incorrect?
 17 A. I don't think it was -- it was
 18 incorrect insofar as I indicated that
 19 that language wasn't incorporated into
 20 the final bill.
 21 Q. And would you retract that
 22 bullet point summary opinion on page 8
 23 that we read?

Page 174

1 A. Let me review that opinion. One
 2 sec.
 3 (Witness reviews document.)
 4 A. I think I would qualify it, yes.
 5 Q. Does that mean retract it?
 6 A. I would change it.
 7 Q. Because it's wrong as currently
 8 stated?
 9 A. I would say that the statement
 10 that the legislature explicit -- I mean,
 11 the legislature did explicitly decline to
 12 exempt therapeutic treatments from an
 13 earlier version of the bill, but it did
 14 not do so for SB184. So I would retract
 15 that part.
 16 Q. How did this error appear in
 17 your report?
 18 A. I don't know exactly. I know
 19 how it -- the information was entered
 20 into the report following the legislative
 21 history of previous versions of the bill
 22 as well as secondary coverage of the bill
 23 and its precursors. And that's -- I

Page 175

1 missed the inclusion of that language in
 2 SB184 relative to SB10.
 3 Q. Did you read SB184 before
 4 writing your report?
 5 A. I did.
 6 Q. And were you the one who wrote
 7 in your report that the legislature
 8 exempt -- declined to exempt
 9 psychotherapeutic counseling from SB184's
 10 restrictions?
 11 A. I did write that, yes.
 12 Q. I'd like to show you one of the
 13 news articles you discuss in your report.
 14 I'm going to be marking it as Exhibit 39.
 15 And I will endeavor to share that.
 16 Okay. This is an article from
 17 Alabama.com -- I believe it's a
 18 Montgomery paper -- that you quoted and
 19 cited in your report. Do you recognize
 20 the article?
 21 (Exhibit 39 was marked for identification
 22 and is attached.)
 23 A. Is this The Birmingham News or

Page 176

1 the Montgomery article?
 2 Q. I believe it's -- it is unclear
 3 the way they have it listed. It's one of
 4 the Cason articles. You call it Cason c,
 5 I think.
 6 A. Got it.
 7 Q. 2021c. Let's see. Yeah, AL.
 8 Yeah, AL.com.
 9 So on page 2 here are some
 10 quotes from Senator Shay Shelnett, some
 11 of which you include.
 12 A. Yes.
 13 Q. So I believe you include this
 14 first sentence that's highlighted, "My
 15 definition," in your report?
 16 A. Yes. That selection is from
 17 that, I believe.
 18 Q. The remaining sentences say:
 19 "Science shows that children that are
 20 going through this gender dysphoria, most
 21 of them mature or grow out of this stage
 22 if they are given the chance. So why is
 23 (this bill) needed? It's just to stop

Page 177

1 these surgeries and these drugs on our
 2 children. It's to protect our children.
 3 That's my simple explanation."
 4 You didn't include this
 5 explanation from SB184's sponsor in your
 6 report; right?
 7 A. That's correct.
 8 Q. The senator's -- what he calls
 9 the simple explanation was that it
 10 protects our children. Is that right?
 11 A. That's what he says here, yeah.
 12 Q. Why didn't you include this
 13 explanation in your report?
 14 A. The purpose of my report was to
 15 provide information on aspects of the
 16 political context and legislative history
 17 of the bill that were neglected by -- and
 18 the rationales for the bill that were
 19 neglected by other sources, so I didn't
 20 purport to include every -- every piece
 21 of justification. I also didn't feel it
 22 was necessary to reiterate. I already
 23 acknowledged in my report that protection

Page 178

1 of children was a prominent theme in
 2 justifications for the bill, so I didn't
 3 feel it was necessary to add another
 4 quote to demonstrate that.
 5 Q. Was Senator Shelnutt lying here
 6 when he said that the simple explanation
 7 for the bill was to protect our children?
 8 A. I don't know if he was lying or
 9 not.
 10 Q. I'm going to go back to your
 11 report. This is Exhibit 21. I think it
 12 should have just showed up on your
 13 screen, I hope.
 14 A. Yes. I see it now.
 15 Q. Perfect. Okay. You can also
 16 look at your copy, either way.
 17 So this is on page 36, paragraph
 18 75. "From the beginning of its
 19 legislative journey, SB184's sponsors
 20 were aware of the criticism of the bill
 21 from the transgender community and their
 22 allies."
 23 And then the sentence right

Page 179

1 before the one I just read from paragraph
 2 74 at the end of that paragraph said,
 3 "SB184's supporters thus had good reason
 4 to anticipate the harm that the bill's
 5 passage would cause to the transgender
 6 population."
 7 Do you agree that SB184's
 8 sponsors and other legislators listened
 9 to individuals on both sides of the
 10 debate over SB184?
 11 A. Can you say that again?
 12 Q. Sure. Would you agree that
 13 SB184's sponsors and legislators who
 14 voted on SB184 listened to individuals on
 15 both sides of the debate over the bill?
 16 A. I am not -- when you say -- I'm
 17 not confident that they listened in the
 18 sense of attending to and giving their
 19 attention to, but --
 20 Q. You agree that they heard?
 21 A. Yes. I -- certainly, the
 22 legislature as a whole heard from
 23 supporters and critics.

Page 180

1 Q. And you are not testifying that
 2 because they sided with one side rather
 3 than the other, the resulting bill
 4 reflects hatred toward persons associated
 5 with the losing side?
 6 A. No, I am not testifying to that,
 7 no.
 8 Q. Would you say that claims of
 9 harm or potential harm raised by
 10 opponents of particular bills are pretty
 11 common?
 12 A. Yes.
 13 Q. Your report doesn't mention any
 14 statements made by non-legislator
 15 proponents of the bill, does it?
 16 A. Non-legislator proponents. No,
 17 it does not, I don't think.
 18 Q. You didn't consider -- sorry.
 19 Scratch that.
 20 Did you consider any statements
 21 made by people who said they were harmed
 22 by medical gender transition
 23 interventions?

Page 181

1 A. Did I consider them? I was
 2 aware of such statements.
 3 Q. And you were aware that the
 4 legislators heard such statements?
 5 A. I believe they did, yes.
 6 Q. Does your discussion here that
 7 we just read in paragraphs 74 and 75
 8 assume that criticisms of SB184 correctly
 9 predicted what you call "the harm that
 10 the bill's passage would cause to the
 11 transgender population"?
 12 A. Correctly predicted?
 13 Q. That's right.
 14 A. I think -- I don't -- not being
 15 -- I'm not a medical expert, so I can't
 16 speak definitively on that, or
 17 confidently on that, but -- yeah, so I
 18 can't -- I can't speak confidently on
 19 that.
 20 Q. So when you say the harm that it
 21 would cause, you're not saying that that
 22 harm was actually caused?
 23 A. Well, we don't know. I'm not

Page 182

1 saying definitively that it was caused,
 2 no.
 3 Q. So if I said SB supporters thus
 4 had good reason to anticipate the
 5 benefits that the bill's passage would
 6 cause to the transgender population, you
 7 wouldn't disagree with that statement
 8 either?
 9 A. The way I would phrase it is
 10 that the legislature had opportunity to
 11 hear about the potential benefits of the
 12 bill as well.
 13 Q. And you aren't assuming that the
 14 bill's opponents were correct about the
 15 harms they face while -- sorry. Scratch
 16 that.
 17 So you aren't assuming that the
 18 claims of harm or benefits were -- that
 19 one or the other was obviously true at
 20 the time of passage?
 21 A. Correct. I'm not claiming that
 22 one or the other was obviously true.
 23 Q. And you would agree that some

Page 183

1 people, including some people who are
 2 transgender, might find SB184 beneficial?
 3 MR. FLETCHER: Object, form.
 4 THE WITNESS: But I can still
 5 answer?
 6 MR. FLETCHER: Yes.
 7 A. That it's possible that some
 8 individuals that are transgender might
 9 find SB184 beneficial? I believe that is
 10 possible, yes.
 11 Q. Do you think that any child has
 12 ever been harmed by medical gender
 13 transition interventions in childhood?
 14 A. I don't know.
 15 Q. You've never heard of any person
 16 claiming to be harmed by medical gender
 17 transition interventions in childhood?
 18 A. I have heard -- I have heard
 19 reference to such claims.
 20 Q. Did you hear such claims in your
 21 review of the legislative hearings in
 22 this case?
 23 A. I believe I did, yes.

Page 184

1 Q. So, is it your testimony that
 2 because legislators did not agree with
 3 critics of the bill, they acted with
 4 hostility towards LGBT persons? Or
 5 sorry.
 6 Is it your testimony that
 7 because legislators did not agree with
 8 critics of the bill, they acted with
 9 hostility towards LGBT rights?
 10 MR. FLETCHER: Object to form.
 11 Q. You can answer.
 12 A. The hostility to LGBT rights but
 13 -- or specifically transgender rights in
 14 this context doesn't -- is a conclusion
 15 based on the totality of evidence, so it
 16 doesn't rest on -- I believe you said
 17 because they didn't agree with the
 18 critics of the bill.
 19 I believe that the criticisms of
 20 the bill lobbied by members of the
 21 transgender community likely to be
 22 affected by the bill and others likely to
 23 be directly affected by the bill is

Page 185

1 relevant to understanding its likely
 2 consequences. But my conclusion that it
 3 was relatively hostile towards LGBT
 4 rights or transgender rights specifically
 5 does not rest on that single piece of
 6 evidence.
 7 Q. And you ignored the fact that
 8 supporters of SB184 also came from the
 9 transgender community?
 10 A. I didn't ignore that fact, but
 11 it is not highlighted in my report
 12 because that's not the purpose of my
 13 report.
 14 Q. You only wanted to show the
 15 criticisms of SB184?
 16 A. My purpose in writing the report
 17 was to concentrate on the aspects of the
 18 legislative history that were missing
 19 from and the purposes of the bill that
 20 were -- the context for the bill that
 21 were missing from other pieces of
 22 information in the other expert reports.
 23 Q. You already said that the other

Page 186

1 expert reports had no legislative history
 2 from SB184, so I guess I don't really
 3 understand how that solves the problem.
 4 Would you care to clarify why
 5 you excluded testimony from SB184's
 6 supporters who were members of the
 7 transgender community?
 8 A. No. The purpose of the report,
 9 as I said and as we discussed earlier,
 10 was -- the defense experts' reports put
 11 forward a particular set of
 12 justifications for the bill that -- and
 13 the purpose of my report was to provide a
 14 fuller context, especially the aspects of
 15 the political context and the purposes of
 16 the bill that were missing from those
 17 reports.
 18 Q. I'm going to show you what I'm
 19 marking as Exhibit 38, which is one of
 20 the other AL.com exhibits that -- or
 21 rather stories that you cite in your
 22 report. This is from February 10, 2021.
 23 Do you recognize this article generally

Page 187

1 as something you discussed --
 2 A. I do.
 3 Q. -- in your report?
 4 (Exhibit 38 was marked for identification
 5 and is attached.)
 6 A. I do, yeah.
 7 Q. So this is on page 2 of the
 8 exhibit.
 9 A. Yes.
 10 Q. Sorry. Give me one second.
 11 A. Yeah, no problem.
 12 Q. I'm sorry. On page 3 of the
 13 exhibit, you see the highlighted
 14 testimony there from someone who has
 15 undergone sex reassignment surgery and
 16 considered it to be detrimental to his
 17 health. Is that right?
 18 A. Yes.
 19 Q. All right. Is there any law --
 20 sorry. Scratch that.
 21 A. Can I -- can I clarify my last
 22 answer? I see that Mr. Heyer said that
 23 he regretted his sex reassignment

Page 188

1 surgery. I don't know if it referred to
 2 his -- specifically the health effects of
 3 that, but he regretted it.
 4 Q. Sure. Okay. Back to your
 5 report on pages 23 to 24. This is
 6 Exhibit 21, which you have in front of
 7 her -- in front of you. I'm looking
 8 specifically at footnote 18, which is
 9 about multivariate regression analysis.
 10 Do you see that footnote?
 11 A. I do.
 12 Q. So you say, "only transgender
 13 restriction index has a positive and
 14 statistically significant coefficient
 15 estimate."
 16 Why is this information in the
 17 footnote?
 18 A. Why is it in a footnote? I
 19 thought it was an important piece of
 20 additional context that confirms the
 21 evidence presented in the main text.
 22 Q. If it were important, why isn't
 23 it in the main text?

Page 189

1 A. I don't -- I guess I -- I don't
 2 regard -- I mean, some things are just
 3 easier to put in footnotes if they repeat
 4 what is already said in the main text or
 5 confirm, but I thought it was useful.
 6 Q. Why didn't you report the table
 7 showing the results of your regression
 8 analysis?
 9 A. I thought that it would be
 10 easier to communicate via graphs than
 11 with a regression table.
 12 Q. There's no graph that shows the
 13 results of this regression analysis, is
 14 there?
 15 A. Not directly, but the main
 16 conclusion from the regression analysis,
 17 which is that only -- only the
 18 transgender restriction index is a
 19 positive predictor of adoption of
 20 gender-affirming care bans for minors,
 21 is -- that main result is contained in
 22 Figure, I think, 3.
 23 Q. Is it standard practice in your

Page 190

1 field to conduct a regression analysis,
 2 use the results of that analysis to
 3 support your opinions, but not disclose
 4 the actual figures from that analysis?
 5 A. It is occasionally. It's common
 6 to put supplementary -- refer to
 7 supplementary analyses in footnotes that
 8 confirm or -- yeah, the supplementary
 9 analysis and footnotes, yes.
 10 Q. What other variables did you
 11 control for in this regression?
 12 A. Just the three mentioned in the
 13 footnote.
 14 Q. Is it your view that these are
 15 the only three variables that could
 16 affect a state's adoption of a law like
 17 SB184?
 18 A. They're not the only possible
 19 variables, no.
 20 Q. Is there any published article
 21 that uses only these three variables to
 22 determine the likelihood of an adoption
 23 of a law like SB184?

Page 191

1 A. Just those three variables?
 2 Q. Correct.
 3 A. No, not that I'm aware of.
 4 Q. What is the error rate of using
 5 only these three variables?
 6 A. What do you mean by "error
 7 rate"?
 8 Q. What is the Type I error of
 9 using these three variables?
 10 A. Under the -- you're referring to
 11 under the assumption -- well, I -- that's
 12 very vaguely stated. But again, I don't
 13 think it's precisely quantifiable.
 14 Q. What was the positive
 15 coefficient estimate on transgender
 16 restriction index from your regression?
 17 A. It was on the logit scale, which
 18 is hard to interpret, or it was hard for
 19 me to convey. And I don't remember the
 20 exact magnitude, but I believe it was
 21 close to three.
 22 Q. And three would mean what?
 23 A. So taking for granted that I am

Page 192

1 trying to remember this off the top of my
 2 head, it would be -- one way to think
 3 about it would be that at its maximum
 4 slope, around 50 percent probability, the
 5 slope of the -- the relationship between
 6 one additional transgender policy and the
 7 probability of adoption would be very
 8 close to three-fourths. I think that
 9 would be -- so that's the difference in
 10 probability, which is a very strong
 11 relationship.
 12 Q. And at what level of statistical
 13 significance was this coefficient?
 14 A. Very statistically significant,
 15 so a p-value of, I believe, less than
 16 0.01. But perhaps -- but I think perhaps
 17 substantially smaller.
 18 Q. Did you run a regression in this
 19 case before you finalized any of these
 20 indexes?
 21 A. Did I run a regression before I
 22 finalized the indices?
 23 Q. Yes.

Page 193

1 A. No. I don't think so.
 2 Q. You don't claim -- you do not
 3 claim that this regression analysis
 4 proves causation, do you?
 5 A. What I would say is it sheds
 6 light on the credibility of competing
 7 explanations, which are -- which -- yeah,
 8 competing explanations for the -- for the
 9 passage of these laws.
 10 Q. So to go back to my question,
 11 you do not claim this regression shows --
 12 proves causation; correct?
 13 A. I wouldn't say "proves," no.
 14 Q. Using different numbers from the
 15 health insurance freedom rank you used
 16 could affect your regression results. Is
 17 that right?
 18 A. If the scores on -- if the state
 19 scores were different, would it affect
 20 the results?
 21 Q. That's right.
 22 A. It could -- it could change the
 23 -- it could change the coefficient

<p style="text-align: right;">Page 194</p> <p>1 estimates. I don't know if it would 2 qualitatively change the conclusions, but 3 yes. 4 Q. But it could? 5 A. Possible. 6 Q. The same for the other indices, 7 transgender restriction index, healthcare 8 paternalism index, changing those values 9 would change the results of the 10 regression; correct? 11 A. It could change the precise 12 estimates of the coefficients, yeah. 13 Q. What was the coefficient in your 14 regression analysis for healthcare 15 paternalism index? 16 A. You're referring to the -- in 17 the -- in the trivariate -- multivariate 18 regression? 19 Q. Yes. 20 A. It was very close to zero. 21 Q. Was it statistically 22 significant? 23 A. It was not.</p>	<p style="text-align: right;">Page 196</p> <p>1 A. That's right, so uh-huh. 2 Q. What was the coefficient for the 3 health insurance freedom rank? 4 A. I don't remember exactly, but it 5 was also statistically insignificant. 6 Q. You don't know whether it was 7 positive or negative? 8 A. I don't. But it was not 9 precisely estimated enough to conclude 10 either way. 11 Q. All right. I'm going to show 12 you an article you co-wrote. I'm marking 13 this as Exhibit 51. Do you recognize 14 this article? 15 (Exhibit 51 was marked for identification 16 and is attached.) 17 A. I do. It looks like a preprint 18 of -- 19 Q. Yes. Yes. It was a 20 presentation, I guess. 21 A. I think, yeah, this is a -- yes. 22 This is a earlier version of an article I 23 published, yeah.</p>
<p style="text-align: right;">Page 195</p> <p>1 Q. You found no statistically 2 significant link between healthcare 3 paternalism index and what you call 4 adoption of GAC for minors that suggests 5 that there is no relationship between 6 those variables. Is that right? 7 A. It suggests there's no 8 relationship once taking -- once having 9 taken into account transgender 10 restriction index. 11 Q. So that is inconsistent with the 12 conclusion that adoption of a GAC ban for 13 minors is inversely related to states' 14 paternalism in healthcare generally? 15 A. It's inversely related in a 16 bivariate sense but certainly not 17 positively related. 18 Q. When you say "inversely related 19 in a bivariate sense," the point of your 20 regression, though, is that when you 21 control for other variables, it appears 22 there's no relationship. Isn't that what 23 your regression suggests?</p>	<p style="text-align: right;">Page 197</p> <p>1 Q. Here on page 30 to 31, you have 2 several recommendations. You say, 3 "survey experiments can often be 4 confounded in ways similar to the 5 analogous observational studies. Best 6 practice for survey experiments is thus 7 similar to best practice for 8 observational studies." And then you 9 list seven sort of recommendations to 10 deal with potential confounding 11 variables. 12 You didn't employ any of these 13 recommendations in your regression design 14 here, did you? 15 A. Well, first, I would say that 16 these are -- although they're drawing an 17 analogy to observational studies, this 18 is -- these are recommendations 19 specifically for the design of a survey 20 experiment. So I don't know if they're 21 directly implementable, but, for example, 22 probably the closest analog, or form is 23 number 4, controlling for confounders.</p>

Page 198

1 I would also emphasize that the
 2 context of this study is slightly -- or
 3 the purposes of this study are slightly
 4 different from a context of this report
 5 in that the goal in this paper is
 6 specifically focused on, or more -- more
 7 focused on an unbiased estimation of
 8 causal effects rather than adjudicating
 9 among competing explanations, but.
 10 Q. So to go back to my question,
 11 you didn't employ any of these
 12 recommendations in your regression design
 13 here; right?
 14 A. No. I did. And number 4 is
 15 what I said I did.
 16 Q. And is it your testimony that
 17 you controlled for all potential
 18 confounding variables?
 19 A. It is not my contention that I
 20 did that, no.
 21 Q. You didn't control for partisan
 22 effects, did you?
 23 A. I did not control for

Page 199

1 partisanship, but I don't know if that
 2 would be an appropriate thing to control
 3 for.
 4 Q. You didn't consider it?
 5 A. It didn't seem to me to be an
 6 appropriate thing to control for.
 7 Q. Why not?
 8 A. It didn't seem directly relevant
 9 to adjudicating between the relative
 10 importance of the factors at interest
 11 here.
 12 Q. Is it your testimony that the
 13 two major political parties do not differ
 14 when it comes to laws implicating LGBT
 15 issues?
 16 A. They do differ.
 17 Q. This regression, you would never
 18 try and publish this in a peer-reviewed
 19 article, would you?
 20 A. This regression --
 21 Q. That's right.
 22 A. -- on its own?
 23 Q. That's right.

Page 200

1 A. I would feel comfortable having
 2 a footnote such as this in a -- in a
 3 peer-reviewed article.
 4 Q. So my question was whether you
 5 would seek to publish the regression,
 6 including the data and the results of the
 7 regression, in a peer-reviewed article.
 8 A. So I take -- I'm trying to
 9 answer your question in a way that makes
 10 sense to me, which is I wouldn't publish
 11 a regression by itself, but I would
 12 publish -- I could include a regression
 13 as part of a larger analysis, and I could
 14 imagine including, very easily including
 15 an analysis such as this in a
 16 peer-reviewed article.
 17 Q. And you think your peers would
 18 find this regression to be sufficiently
 19 rigorous?
 20 A. For the purposes to which I am
 21 putting it here, yes, I do.
 22 Q. The health insurance freedom
 23 metric you use, SB184 has nothing to do

Page 201

1 with health insurance policies. Is that
 2 correct?
 3 A. It's not -- I mean, it certainly
 4 is related to health insurance policies.
 5 I'm sure that health insurance policies
 6 are affected by what's legal in -- or
 7 health insurance, what health insurance
 8 will cover is affected by what's legal in
 9 a given state.
 10 Q. And is that how the Cato
 11 Institute's health insurance freedom rank
 12 assessed health insurance freedom, by
 13 what medical care was available in a
 14 particular jurisdiction?
 15 A. It was a composite measure of a
 16 number of different indicators, but they
 17 primarily related to I believe
 18 regulations of the health insurance
 19 market.
 20 Q. And that's not what SB184 is;
 21 correct?
 22 A. It's not directly related to
 23 that, no.

<p style="text-align: right;">Page 202</p> <p>1 Q. This metric you're using from 2 the Cato Institute has not been 3 peer-reviewed. Is that right? 4 A. I mean, pub- -- I am -- the 5 publication that I drew it from was not a 6 peer-reviewed publication. The authors 7 of that article have published related 8 work in peer-reviewed journals. 9 Q. All right. As we discussed 10 earlier, SB184 was enacted in 2022. Is 11 that right? 12 A. I believe so, yes. 13 Q. And you used the Cato 14 Institute's health insurance freedom rank 15 from 2013. Is that right? 16 A. That's correct. 17 Q. Are you aware that the Cato 18 Institute's analysis was updated in 2016, 19 2018, and 2021? 20 A. I was aware of that, yes. 21 Q. But you used the 2013 version 22 which you said ranked Alabama number 23 four; right?</p>	<p style="text-align: right;">Page 204</p> <p>1 One of the publications here did 2 contain an updated score, but I think 3 it's just -- I believe it was the 2021 4 version. But I decided to use the 5 earlier edition because Ruger and Sorens 6 indicate that the passage of the 7 Affordable Care Act rendered the most 8 recent measures less useful. 9 Q. You'd agree they continued 10 calculating measures of Health Insurance 11 Freedom? 12 A. I do believe they did, yes. 13 Q. So here in the 2018 report, if 14 you can see it, you have the Health 15 Insurance Freedom scores from 2018. I 16 can zoom in if you need me to. 17 A. I see it, yeah. 18 Q. You see that Alabama is ranked 19 25th in 2018? 20 A. I do see that. 21 Q. You didn't include that in your 22 report? 23 A. I didn't because Ruger and</p>
<p style="text-align: right;">Page 203</p> <p>1 A. I did. 2 Q. What was Alabama's ranking in 3 2018? 4 A. In 2018? I don't remember off 5 the top of my head. 6 Q. I'd like to show you what I'm 7 marking as Exhibit 24. This is the 2018 8 Cato Institute update of the analysis 9 from 2013. Let me get it over to you. 10 Did you review these updated 11 versions of the reports when writing your 12 report in this case? 13 (Exhibit 24 was marked for identification 14 and is attached.) 15 A. I looked for -- if I recall 16 correctly, I looked for -- I looked for 17 the more updated versions of the reports, 18 the ones that -- two of the ones that I 19 believe -- I think this is the case. Two 20 of the ones that had been updated didn't 21 contain exactly the information that I 22 wanted, but a third one did contain an 23 updated, a later -- sorry.</p>	<p style="text-align: right;">Page 205</p> <p>1 Sorens said that the variation across 2 states was highly compressed, which you 3 can see in this table here. There's very 4 little variation across states. 5 Q. And the 2018 measurements would 6 be closer to what the 2022 situation on 7 the ground would be than your 2013 8 measure. Is that right? 9 A. It would be closer in time? Is 10 that what you mean? 11 Q. Closer in accuracy. 12 A. I don't think closer in accuracy 13 from the purposes of this study, or for 14 this analysis. 15 Q. Because you were looking for 16 something where Alabama was ranked low? 17 MR. FLETCHER: Object. 18 A. No. Because I was looking for a 19 measure where the variation across states 20 wasn't artificially compressed by 21 national legislation. 22 Q. I'm now showing you what I'm 23 marking as Exhibit 7, which is the 2017</p>

Page 206

1 version of the Cato report. You'd agree
 2 this is the same report we've been
 3 looking at updated for 2021?
 4 (Exhibit 7 was marked for identification
 5 and is attached.)
 6 A. Yes.
 7 Q. Okay. And here on page 45 --
 8 not on page 45. Let's see. Here we are.
 9 Health insurance freedom, this
 10 is the same metric you discuss in your
 11 report. Is that right?
 12 A. I believe so, yeah.
 13 Q. And here in Table 9, the authors
 14 found -- this was in 2021 -- that Alabama
 15 was ranked 23rd. Is that right?
 16 A. Yes.
 17 Q. Tied for 20 -- tied for 23rd, I
 18 should say. So this -- this indicates a
 19 median, or medium degree of health
 20 insurance paternalism by 2021; right?
 21 A. Well, according to this
 22 compressed measure, yes.
 23 Q. And if you use this ranking,

Page 207

1 that could affect the cross-state
 2 logistic regression that you performed?
 3 A. It certainly could, yes.
 4 Q. It would also affect your graph
 5 showing states' ranking alongside
 6 adoption of laws like SB184; correct?
 7 A. It would certainly change it in
 8 detail. I'm not sure it would change it
 9 in -- qualitatively.
 10 Q. Are you aware that Cato has now
 11 published a 2023 report?
 12 A. I didn't -- I'm not sure I was
 13 aware of what the -- when the last one
 14 was.
 15 Q. But you didn't consider that
 16 report, though, did you?
 17 A. I'm not -- I'm not sure. When
 18 was it? I'm not sure.
 19 Q. Is not allowing minors to drive
 20 vehicles until a certain age paternalism,
 21 as you used the term?
 22 A. I think not allowing minors to
 23 drive until a certain age could be

Page 208

1 motivated in part by paternalism.
 2 Q. Is the same true of not allowing
 3 minors to drink alcohol?
 4 A. It could be, yeah. That's at
 5 least -- could be partly motivated by
 6 paternalism, yes.
 7 Q. Alabama's law permits adults to
 8 obtain medical gender transition
 9 interventions; correct?
 10 A. Say that again.
 11 Q. Alabama's law permits adults to
 12 obtain medical gender transition
 13 interventions; right?
 14 A. As I understand it, yes.
 15 Q. And you didn't consider that
 16 permission when devising your healthcare
 17 paternalism index; correct?
 18 A. I didn't consider it. I didn't
 19 consider including it.
 20 Q. You didn't include it?
 21 A. I did not include it.
 22 Q. So your index of healthcare
 23 paternalism that you created included

Page 209

1 four policies: no right to try, no
 2 personal vaccine exemption, no religious
 3 vaccine exemption, and no healthcare
 4 freedom amendment. Right?
 5 A. Yes. I believe, yes.
 6 Q. It's on page 20 of your report
 7 if you want to look at it.
 8 A. Yes, that's correct.
 9 Q. You chose these categories
 10 arbitrarily?
 11 A. Not arbitrarily, no.
 12 Q. How did you pick them?
 13 A. Well, as is common in political
 14 science, we -- I thought of a -- I was
 15 interested in measuring a concept. In
 16 this case, I was interested in creating a
 17 measure of a -- of healthcare paternalism
 18 in domains other than -- unrelated to
 19 transgender and LGBT rights generally to
 20 provide a -- a -- to aim to create a
 21 measure of that concept. And so I
 22 searched for readily available indicators
 23 of that concept that would divide states

Page 210

1 -- that would distinguish among states,
 2 and in particular, distinguish among
 3 states at various points in the -- in the
 4 continuum of healthcare paternalism. And
 5 so I identified these policies as useful
 6 indicators that I could create a scale
 7 from and a measure.
 8 Q. No peer-reviewed study uses
 9 these four specific categories. Is that
 10 right?
 11 A. That's correct. To my
 12 knowledge, there's no peer-reviewed study
 13 that specifically measures healthcare
 14 paternalism in state policymaking.
 15 Q. The first three categories are
 16 state statutory laws. Is that right?
 17 A. Yes.
 18 Q. They exclude judicial decisions?
 19 A. They do.
 20 Q. So if a judicial decision
 21 required a religious vaccine exemption
 22 but state statutory law does not, you
 23 would still code the state as

Page 211

1 parentalistic on that element?
 2 A. Yes.
 3 Q. The fourth category, healthcare
 4 freedom amendment, considers only
 5 constitutional law. Is that right?
 6 A. Constitutionally --
 7 constitutional provisions, yes.
 8 Q. None of these four categories of
 9 policies are limited to children. Is
 10 that right?
 11 A. That's correct.
 12 Q. Is there any reason other than
 13 healthcare paternalism a person could
 14 take what you labeled a paternalistic
 15 position on each of these categories?
 16 A. It's possible for there to be
 17 multiple motivations, yes.
 18 Q. How did you decide to rule out
 19 those other motivations?
 20 A. I didn't rule them out.
 21 Q. How did you decide, then, it was
 22 sound to treat them as an indication of
 23 paternalism?

Page 212

1 A. I think understanding their
 2 meaning on their face, or, you know, the
 3 meaning of these laws, they are -- each
 4 one involves an important element of
 5 paternalism or -- you know, versus -- or
 6 a tradeoff between paternalistic and
 7 libertarian choices. And so on there,
 8 taken together, I considered them to be a
 9 reliable index of this concept.
 10 Q. Many vaccination requirements
 11 are justified on the ground of negative
 12 externalities; correct?
 13 A. Yes.
 14 Q. And that's because one person's
 15 choice not to be vaccinated increases
 16 others' likelihood of catching the
 17 disease?
 18 A. Yes.
 19 Q. So a state's decision to require
 20 vaccination or allow exemptions is not
 21 purely a statement of its paternalism;
 22 correct?
 23 A. I agree with that.

Page 213

1 Q. So at least two of your four
 2 measures have a significant potential
 3 reason for enactment other than
 4 paternalism?
 5 A. Yes.
 6 Q. Why did you count -- sorry.
 7 I'll phrase it another way.
 8 If a state had a personal
 9 vaccine exemption, they would not
 10 necessarily need a religious vaccine
 11 exemption. Is that right?
 12 A. As I understand the coding of
 13 these laws, that a personal vaccine
 14 exemption encompasses a religious one.
 15 Q. So those two categories overlap?
 16 A. In the sense, they're nested.
 17 Q. But you counted them twice?
 18 A. Well, they're -- they separate
 19 states at different ends of the -- of the
 20 scale, so. Many more states have a
 21 religious exemption than a personal
 22 exemption, so they are indicators of --
 23 so for example, Alabama does not have a

Page 214

1 personal vaccine exemption, so it
 2 distinguish -- but it does have a
 3 religious one, so it distinguishes from
 4 different points on the scale.
 5 Q. Okay. I'm going to show you
 6 what I'm marking as Exhibit 4. This is a
 7 code book of the policies from your
 8 broader dataset. So on page 1, you list
 9 abortion policies. Access to
 10 contraceptives is the first one you list
 11 here. Refusing to allow pharmacists to
 12 dispense emergency contraception without
 13 a prescription is an example of
 14 healthcare paternalism as you've defined
 15 it; correct?
 16 (Exhibit 4 was marked for identification
 17 and is attached.)
 18 A. I would have to think about
 19 that. So this is a policy that restricts
 20 access to contraception or allows it.
 21 Can you scroll over so I can see the --
 22 Q. Sure, sure.
 23 A. -- policy description?

Page 215

1 (Witness reviews document.)
 2 A. I think it has an important -- I
 3 don't -- I don't -- I would have to think
 4 a little bit harder about the politics of
 5 access to contraception. But my
 6 understanding of the motivation for many
 7 of those laws, or anti-contraception laws
 8 in general is concern for -- is regarding
 9 -- is premised on -- it's similar to
 10 abortion in the sense that the fertilized
 11 egg is considered to be -- it's motivated
 12 for concern with -- for the fertilized
 13 egg, not necessarily for the person
 14 seeking the contraception.
 15 Q. How about the next one? Forced
 16 counseling before abortions.
 17 A. I think that abortion has a
 18 similar mixture of motivations, but with
 19 usually the primary motivation being
 20 regard for the well-being of the -- or
 21 the welfare of the fetus.
 22 Q. You don't think one motivation
 23 behind forced counseling before abortions

Page 216

1 is protecting the woman's own long-term
 2 mental and physical health?
 3 A. I don't consider that to be the
 4 predominant motivation, no.
 5 Q. How did you decide that?
 6 A. That's based on my understanding
 7 of the politics of abortion and the --
 8 and how these laws are and these policies
 9 are typically understood and debated in
 10 American politics.
 11 Q. Vaccines are predominantly
 12 paternalistic?
 13 A. I regarded them as a pure, more
 14 -- a better indicator here.
 15 Q. A waiting period for abortion,
 16 you don't think that can ever be
 17 motivated by protecting the woman's own
 18 long-term mental and physical health?
 19 A. I'm not saying that it couldn't
 20 ever be motivated by that.
 21 Q. What about requiring an
 22 ultrasound?
 23 A. Same answer.

Page 217

1 Q. If you had included any or all
 2 of these abortion policies, your results
 3 would have changed significantly,
 4 wouldn't they have?
 5 A. I imagine that they would have.
 6 Q. Because Alabama has most, if not
 7 all, of these policies?
 8 A. I believe so, yes.
 9 Q. So if you had included them,
 10 Alabama's baseline would have been much
 11 more paternalistic; correct?
 12 A. If I had regarded them as a good
 13 -- a reasonable -- reliable indicators
 14 of -- or good indicators of paternalism,
 15 that's the case.
 16 Q. On page 1 here under "Drug &
 17 Alcohol Policies," you include medical
 18 marijuana. In your healthcare
 19 paternalism index here, you omitted
 20 whether a state permits medical marijuana
 21 from your measure of healthcare
 22 paternalism; correct?
 23 A. I did.

Page 218

1 Q. Even though whether a state
 2 permits medical use of marijuana has an
 3 aspect of healthcare paternalism?
 4 A. Yes, it does.
 5 Q. And that omission would affect
 6 the rest of your analysis; correct?
 7 A. Yes.
 8 Q. On page 3, going down to
 9 miscellaneous policies, you have
 10 physician-assisted suicide?
 11 A. Yes.
 12 Q. That also -- that policy also
 13 has an aspect of healthcare paternalism.
 14 Would you agree?
 15 A. It has an aspect of it, yes.
 16 Q. And are you aware that Alabama
 17 prohibits physician-assisted suicide?
 18 A. It does not surprise me to learn
 19 that, no.
 20 Q. But you omitted this policy from
 21 your analysis?
 22 A. I did not include it. Correct.
 23 Q. Even though you had access to

Page 219

1 the data?
 2 A. Yes.
 3 Q. And this omission would affect
 4 the rest of your analysis; right?
 5 A. Yes. I would say -- I had
 6 access to the data after 2019, but yes.
 7 Q. So you'd agree, then, that your
 8 analysis does not comprehensively
 9 consider Alabama's healthcare
 10 paternalism?
 11 A. I don't know if I'd entirely
 12 agree with that.
 13 Q. Are you testifying that your
 14 analysis comprehensively considers
 15 Alabama's healthcare paternalism through
 16 these four categories?
 17 A. I think that there's a tradeoff
 18 between the comprehensiveness of how many
 19 indicators one includes and the quality
 20 and interpretability of the resulting
 21 index. And what I would say is that all
 22 of these policies involve -- or many of
 23 these policies involve some mix of

Page 220

1 considerations and are indicators of
 2 different -- different factors and -- but
 3 I regard the index that I created to be a
 4 useful and reliable one.
 5 Q. But you already testified that
 6 all of your four categories also
 7 implicate a mix of factors; correct?
 8 A. Did I? A mix of factors?
 9 Q. They are not necessarily
 10 motivated purely by paternalism?
 11 A. We were referring to the vaccine
 12 requirements, I think, specifically.
 13 Q. You think the other categories
 14 are only motivated by healthcare
 15 paternalism?
 16 A. I regard them as more -- do I
 17 think that they're only motivated by
 18 healthcare paternalism?
 19 Q. That's right.
 20 A. You're talking about "No right
 21 to try" and "No healthcare freedom
 22 amendment"?
 23 Q. Correct.

Page 221

1 A. I believe that they are
 2 relatively -- there are certain many
 3 motivations one could have for supporting
 4 such laws, but I regard them as
 5 reasonable indicators of healthcare
 6 paternalism.
 7 Q. Are you aware of a healthcare
 8 freedom amendment ever making a
 9 difference in any judicial case in the
 10 country?
 11 A. I believe that -- I believe that
 12 it has been -- I believe that it has been
 13 implicated in a few cases, yeah.
 14 Q. Which one?
 15 A. I believe that -- I'm not -- I'm
 16 not confident, but I believe that there
 17 was a case in which the -- there were
 18 arguments made to -- or related to
 19 abortion access.
 20 Q. Your healthcare paternal --
 21 paternalism index does not prove
 22 causation; correct?
 23 A. By itself, it doesn't prove

Page 222

1 causation, no.
 2 Q. It does not control for any
 3 variables. Is that right?
 4 A. It's an index. It doesn't --
 5 there's no way to control for things in
 6 an index.
 7 Q. Your analysis does not consider
 8 partisan effects?
 9 A. That's correct. It doesn't
 10 consider partisan effects.
 11 Q. Your analysis doesn't consider
 12 whether states are conservative or
 13 liberal?
 14 A. Whether they are conservative or
 15 liberal in -- could you -- can you be
 16 more precise what you mean by that?
 17 Q. Generally. Whether they are
 18 generally considered more conservative or
 19 liberal.
 20 A. It does not include any general
 21 measures of liberalism or conservatism of
 22 the state, no.
 23 Q. You'd agree that based on how

Page 223

1 you defined your healthcare paternalism
 2 index, relatively paternalistic states
 3 are also relatively liberal. Is that
 4 right?
 5 A. I don't know that to be true
 6 necessarily. I don't -- relatively
 7 paternalistic states in terms of
 8 healthcare paternalism?
 9 Q. In terms of your index.
 10 A. Ah, in terms of my index of
 11 healthcare paternalism? There is -- I
 12 believe it probably correlated with the
 13 liberalism of the state, yes.
 14 Q. Looking only at your healthcare
 15 paternalism index, that analysis is not
 16 capable of proving that SB184 is rooted
 17 in a restrictive stance toward gender
 18 identity or transgender persons; correct?
 19 A. Can you repeat that? I'm sorry.
 20 Which analysis were you referring to?
 21 Q. Your healthcare paternalism
 22 index.
 23 A. Yes.

Page 224

1 Q. That analysis --
 2 A. Yeah, go ahead and go.
 3 Q. That analysis is not capable of
 4 proving that SB184 is rooted in a
 5 restrictive stance toward gender identity
 6 or transgender persons; correct?
 7 A. If by that, you mean the
 8 analysis that -- that includes both
 9 healthcare paternalism and of -- and
 10 transgender restrictionism, I -- I agree
 11 that it doesn't prove causation. It
 12 merely informs our inferences about the
 13 relative credibility of competing
 14 explanations.
 15 Q. Would you submit this healthcare
 16 paternalism index to a peer-reviewed
 17 journal for publication?
 18 A. As it is, if I -- I would -- as
 19 we've discussed, you don't just submit
 20 a -- if I were -- if it were -- if we
 21 were -- if I were submitting a paper that
 22 was a stand-alone paper simply on
 23 measuring healthcare paternalism or

Page 225

1 focused primarily on that, no, I would --
 2 it would require much more elaborate
 3 analysis, but I would feel comfortable in
 4 including such an index in a -- as a
 5 supplementary analysis in a peer-reviewed
 6 journal, yes.
 7 Q. Your other analyses of pre- and
 8 post-Obergefell laws are also not capable
 9 of proving causation. Is that right?
 10 A. Right. If by "proving," you
 11 mean conclusively proving, no.
 12 Q. They cannot even prove
 13 correlation with any statistical
 14 significance, can they?
 15 A. What do you mean by that? You
 16 mean the correlation between what?
 17 Q. For example, pre-Obergefell
 18 policies and passage of SB184.
 19 A. Oh, I see. Well, they certainly
 20 can demonstrate a correlation between --
 21 between relative restrictiveness on LGBT
 22 rights and likelihood of passing -- and
 23 passage of gender-affirming care bans.

Page 226

1 Q. How do you know that?
 2 A. How do I know that? Based on my
 3 understanding, based on my knowledge of
 4 which states have gender-affirming care
 5 bans and which states have -- score high
 6 on LGBT rights restrictionism.
 7 Q. So you would say that would
 8 prove correlation at what level of
 9 statistical significance?
 10 A. I can't say that with such
 11 precision.
 12 MR. FLETCHER: Counsel, we've
 13 been going almost an hour fifteen. Is
 14 this a good time to take a break?
 15 MR. MILLS: Yeah. This works
 16 fine.
 17 (Break taken.)
 18 Q. (By Mr. Mills) All right. I'm
 19 going to show you what I'm marking as
 20 Exhibit 48. This is a video that you
 21 rely on in your report. Let me see if
 22 this is possible.
 23 All right. Can you see the

Page 227

1 screen?
 2 (Exhibit 48 was marked for identification
 3 and is attached.)
 4 A. I can, yes.
 5 Q. Okay. So I'll just play.
 6 (Video playing.)
 7 Q. And then I'm just going to
 8 fast-forward.
 9 So what I'm showing you is the
 10 video you relied on in your report that
 11 was an interview with Representative
 12 Allen. Is that right?
 13 A. Yes.
 14 Q. Okay. And did you watch this
 15 entire video?
 16 A. I believe I did, or the entire
 17 segment that included --
 18 Q. Sure.
 19 A. -- Representative Allen.
 20 Q. All right. I am going to show
 21 you another video that I'm marking as
 22 Exhibit 40, and this is going to be the
 23 video you rely on from a meeting of the

Page 228

1 Alabama Senate Healthcare Committee. If
 2 you will give me just a second. All
 3 right.
 4 (Exhibit 40 was marked for identification
 5 and is attached.)
 6 (Video playing.)
 7 Q. So this is the hearing from the
 8 senate healthcare committee that you
 9 discuss in your report. Is that right?
 10 A. I believe so, yes.
 11 Q. And from what they just said, it
 12 sounds like this was the third meeting on
 13 SB184 in that committee?
 14 A. I know that they referenced this
 15 is the third time that they'd -- I don't
 16 know if they were referencing SB184
 17 specifically or referencing a --
 18 referencing earlier iterations of the
 19 bill.
 20 Q. And you don't know what happened
 21 in those two prior meetings that they
 22 referred to here?
 23 A. I -- I don't believe so, no.

Page 229

1 Q. All right. Your report
 2 references only one other legislative
 3 hearing or debate on SB184 in terms of a
 4 video or transcript. Is that right?
 5 A. I don't know if that's right.
 6 There were at least two other videos, I
 7 believe, that are referred to, both on
 8 YouTube.
 9 Q. Yes. That's where the video we
 10 just watched came from.
 11 A. The one we just watched, didn't
 12 that come from Vimeo?
 13 Q. I'm not actually positive.
 14 Which YouTube reference are you referring
 15 to?
 16 A. The one where Senator Shelnett
 17 introduces -- there are two. Senator
 18 Shelnett introduces the Alabama
 19 Vulnerable Child Compassion and
 20 Protection Act. That's under Shelnett
 21 2020. And this is in the references.
 22 Q. Yeah.
 23 A. And then there's a similar one

Page 230

1 for Wes Allen, 2020. And there's also a
 2 Alabama House Judiciary Committee
 3 recording.
 4 Q. Yes. That's the one we're going
 5 to look at next.
 6 A. Okay.
 7 Q. The other two you just
 8 mentioned, Allen and Shelnutt, those were
 9 both from 2020, as you said. Is that
 10 right?
 11 A. I see. I see. So you're
 12 referring -- I'm sorry. Okay. I believe
 13 they were from 2020, yes.
 14 Q. Okay.
 15 A. So you're referring specifically
 16 to legislative hearings for SB184
 17 specifically?
 18 Q. That's right.
 19 A. I believe that those are the
 20 only hearings -- or the only video of
 21 those hearings that I referred to. Yes.
 22 Q. Okay. So I'm just going to show
 23 you what I'm marking as Exhibit 41, which

Page 231

1 is the house judiciary committee hearing
 2 that you were just referring to.
 3 (Exhibit 41 was marked for identification
 4 and is attached.)
 5 (Video playing.)
 6 Q. So you'd agree that this was the
 7 house judiciary -- one of the house
 8 judiciary committee hearings for SB184
 9 and its companion bill?
 10 A. I believe so.
 11 Q. And once again, it sounds like
 12 there was a prior public hearing by this
 13 committee. Is that right?
 14 A. I didn't actually hear that, but
 15 I will -- I believe that to be the case.
 16 Q. Okay. And you didn't review a
 17 video of that hearing. Is that right?
 18 A. The previous hearing?
 19 Q. That's right.
 20 A. Correct. I don't believe so.
 21 Q. Okay. I'm going to go to --
 22 (Video playing.)
 23 Q. So this is an exchange between

Page 232

1 Representative Allen and a committee
 2 member who seems to oppose SB184. Is
 3 that right?
 4 A. Yes. That's what it sounds
 5 like.
 6 Q. And this committee member agreed
 7 that Representative Allen's perception is
 8 that the bill is simply to protect
 9 children, didn't she?
 10 A. Could you repeat that? She did
 11 say "perception," but I don't know
 12 exactly what she was referring to. Would
 13 you mind just backing it up?
 14 Q. Sure. Yeah. Let's see. I can
 15 go back more if we need to. Let's see.
 16 (Video playing.)
 17 A. You're going to need to go back.
 18 Q. Sorry. Did you say you needed
 19 to go back further?
 20 A. Could you just -- yeah, just 20
 21 more seconds or something.
 22 Q. Sure. Of course it's not going
 23 to let me do that. Let's see.

Page 233

1 (Discussion held off the record.)
 2 (Video playing.)
 3 Q. (By Mr. Mills) So it goes on.
 4 But my question is --
 5 A. Yeah. I see the context. Can
 6 you repeat your question, though?
 7 Q. Yeah. So this committee member
 8 who's disagreeing with -- apparently
 9 disagreeing with Representative Allen on
 10 the bill agrees that Representative
 11 Allen's perception is that the bill is
 12 simply to protect children. Is that
 13 right?
 14 A. I mean, I think that her remarks
 15 could -- are somewhat open to
 16 interpretation about what exactly she's
 17 referring to as his perception and also
 18 whether she's granting that or really
 19 just sort of questioning it. But I think
 20 that is certainly one -- one
 21 interpretation of what -- what she said.
 22 Q. Okay. For your dataset, after
 23 2015, you created what you call a

Page 234

1 transgender restriction index. Is that
 2 right?
 3 A. Yes.
 4 Q. And you limited your
 5 consideration to six policies that
 6 purportedly restricted transgender
 7 rights. Is that right?
 8 A. Six -- yeah, six -- sorry.
 9 Six -- six -- or sorry, five policies
 10 that -- because it doesn't include
 11 gender-affirming care for minors, that I
 12 regarded as taking a position on the
 13 relative expansiveness or restrictiveness
 14 of transgender rights.
 15 Q. You omitted policies that
 16 expanded transgender rights. Is that
 17 right?
 18 A. Yes. They were not included in
 19 this analysis.
 20 Q. Even though you included those
 21 policies in your pre-Obergefell analysis?
 22 A. That's correct.
 23 Q. You also omitted policies about

Page 235

1 sexual orientation in this
 2 post-Obergefell analysis. Is that right?
 3 A. I tried to include the policies
 4 that specifically related to -- or I
 5 included policies that were specifically
 6 related to transgender issues. Some of
 7 them have some overlap with LGBT rights
 8 generally.
 9 Q. So your pre- and post-Obergefell
 10 datasets use different assumptions and
 11 data. Is that fair?
 12 A. They use different data. I
 13 don't know what you mean by "different
 14 assumptions," but they use different
 15 data.
 16 Q. Well, I assume it's your
 17 testimony that your pre -- that they
 18 measure different things; otherwise, the
 19 same policies would be included?
 20 A. The -- I what see you mean.
 21 They measure, I would say, slightly
 22 different -- slightly different things
 23 but very highly related concepts. But

Page 236

1 yes, this is a more specific measure of
 2 just transgender restrictionism.
 3 Q. Your choice of which policies to
 4 include in this dataset, these five
 5 policies, that was not peer-reviewed. Is
 6 that right?
 7 A. My choice of what to include?
 8 They were -- that choice was not
 9 peer-reviewed, no.
 10 Q. And you're not aware of any
 11 other analysis, published or otherwise,
 12 that uses those five policies in a
 13 similar way?
 14 A. In a similar way, I -- I am not
 15 -- well, I know that the paper referred
 16 to here by LaCombe, 2024, uses -- more
 17 generally uses these policies for a
 18 slightly more general analysis but not --
 19 but I'm not aware of any paper that uses
 20 just these five policies for the specific
 21 purpose of measuring transgender
 22 restrictionism.
 23 Q. And LaCombe's analysis doesn't

Page 237

1 use just those five policies. Is that
 2 right?
 3 A. It's a -- that's a subset of his
 4 larger dataset, correct.
 5 Q. I'd like to show you the LaCombe
 6 manuscript that you cite in your report
 7 if I could. I'm going to mark it as
 8 Exhibit 16. This is that manuscript;
 9 correct?
 10 (Exhibit 16 was marked for identification
 11 and is attached.)
 12 A. I'm actually -- I assume so, but
 13 I don't recognize it. But I assume so.
 14 Q. Okay. This manuscript has not
 15 been published anywhere, has it, to your
 16 knowledge?
 17 A. No.
 18 Q. It has not yet completed peer
 19 review? Is that right?
 20 A. That's correct. I believe it
 21 has been -- it has been presented at a
 22 political science conference, but it has
 23 not been published.

Page 238

1 Q. Is there any other analysis of
 2 which you're aware that relies on the
 3 methodology he uses in this manuscript?
 4 A. The methodology in the
 5 manuscripts or the methodology I used
 6 using the data from the manuscript?
 7 Q. I'll rephrase. Is there any
 8 other analysis besides yours in this case
 9 of which you're aware that uses the
 10 approach that he uses in this manuscript?
 11 A. I guess I am a little confused
 12 about what you mean by "the approach."
 13 If the -- the general approach of
 14 using --
 15 Q. Sure. I'll rephrase.
 16 A. All right.
 17 Q. The dataset he creates for this
 18 paper?
 19 A. Oh, okay. I am not aware of any
 20 other analysis that uses this particular
 21 dataset.
 22 Q. And this dataset, it says here
 23 at the bottom of this page, has over

Page 239

1 1,400 pieces of legislation?
 2 A. That's what it says there, yes.
 3 Q. And that's considerably more
 4 than the five policies you analyzed here?
 5 A. Fourteen hundred is more than
 6 five, yeah.
 7 Q. On page 2 to 3 here, he says at
 8 the bottom of page 2, "We find that more
 9 liberal public opinion and Democratic
 10 control is associated with more open
 11 policies, whereas Republican control is
 12 associated with more restrictive
 13 policies."
 14 Were you aware of this finding?
 15 A. This particular finding?
 16 Q. That's right.
 17 A. That. I mean, I'm aware of the
 18 -- more generally, the relationship
 19 between -- I mean, I'm aware of this
 20 general pattern.
 21 Q. Your post-Obergefell analysis in
 22 this case does not control for partisan
 23 effects. Is that right?

Page 240

1 A. That's correct.
 2 Q. I'm going to page 7 of the
 3 manuscript, the last full sentence. This
 4 just amplifies what we discussed earlier.
 5 "In all, the processes resulted in 1376
 6 policies, including 210 that were passed
 7 by the state legislatures."
 8 The group of five that you
 9 analyzed here appears nowhere in this
 10 manuscript. Is that right?
 11 A. The group of five? The six
 12 policies up here as a subset of the
 13 dataset that are restrictive. I don't
 14 know what you mean by this group of --
 15 designating this group of five for a
 16 separate analysis in this paper?
 17 Q. That's right.
 18 A. Not that I'm aware of.
 19 Q. Going to page 23, at the start
 20 of this paragraph, the first full
 21 paragraph: "One limitation encountered
 22 by this data collection process is how to
 23 measure de facto versus de jure policies.

Page 241

1 For example, Massachusetts has allowed
 2 non-binary citizens to use an 'X' for
 3 their gender on drivers licenses since at
 4 least 2019, but this was not codified as
 5 law until 2023." Then he gives some
 6 other examples.
 7 Your pre- and post-Obergefell
 8 datasets are also limited by this fact.
 9 Is that right?
 10 A. "This fact," the fact --
 11 Q. The difference between de facto
 12 and de jure policies.
 13 A. To the extent -- I mean, I -- to
 14 the extent that these -- that limitation
 15 is inherited by the data I use from
 16 this -- from this paper and to the extent
 17 that that limitation is relevant to my
 18 purposes here, I think it would, yes.
 19 Q. In your pre-Obergefell dataset,
 20 you coded whether a state's Medicaid pays
 21 for abortion, I believe? Oh, sorry. In
 22 your larger dataset, your overall dataset
 23 of 186 policies, you coded whether a

Page 242

1 state's Medicaid pays for abortion;
 2 correct?
 3 A. In the Caughey-Warshaw dataset?
 4 Q. That's right.
 5 A. I believe so, yes.
 6 Q. In the post-2015 dataset in this
 7 case, why didn't you code whether a
 8 state's Medicaid pays for medical gender
 9 transition for minors?
 10 A. It wasn't included in the
 11 dataset. Oh, that's not a -- I mean, for
 12 this particular purpose, I was interested
 13 in gender -- sorry,
 14 transgender-restrictive policies, so I --
 15 that wasn't -- I didn't regard that as --
 16 especially for this -- for the purposes
 17 of this analysis, I was interested in
 18 just describing the rise of policies that
 19 imposed new restrictive regulations on
 20 transgender persons and gender identity,
 21 so I didn't think that that counted under
 22 that definition.
 23 Q. Why not?

Page 243

1 A. I just -- why didn't I consider
 2 it that? Because these policies are
 3 newer policies that are sort of novel,
 4 newer policies that I would regard the --
 5 it's not -- it just wasn't included in --
 6 under that -- under that definition.
 7 It's a policy that sounds -- that, as you
 8 describe it, sounds more like a
 9 rights-expanding policy.
 10 Q. So, how do you distinguish
 11 between a state's refusal to pay for
 12 medical gender transition for minors as
 13 restrictive and a state's agreeing to pay
 14 for Medicaid medical gender transition
 15 for minors as not restrictive?
 16 A. In the -- it's not just that
 17 there's -- that there's -- it's not just
 18 that it's relatively restrictive or not.
 19 These are new transgender-restrictive
 20 policies that sort of -- that are
 21 diffusing across states. So that was the
 22 focus of this analysis.
 23 Q. You performed no statistical

Page 244

1 analysis using only this transgender
 2 restriction index, did you?
 3 A. Do you mean no statistical
 4 analysis examining -- using -- you said
 5 "using only"?
 6 Q. I mean, putting aside --
 7 A. That variable -- sorry. Go
 8 ahead.
 9 Q. Putting aside the regression
 10 that we've already talked about.
 11 A. Okay.
 12 Q. And just looking at the
 13 transgender restriction index, did you
 14 perform anything that you would call
 15 statistical analysis on that -- using
 16 that index?
 17 A. The only one was I calculated --
 18 I believe the only one I calculated -- I
 19 mean, in addition to basic descriptive
 20 statistics which are sprinkled throughout
 21 the text, in footnote 13 I referred to
 22 the Cronbach's alpha of these six
 23 policies.

Page 245

1 Q. And what does that tell us?
 2 A. That's a measure of the
 3 intercorrelations of the -- of the items
 4 and their -- thus their suitability for
 5 -- it's often used as an indicator of the
 6 suitability for composing an index.
 7 Q. But that doesn't show anything
 8 about either correlation or causation
 9 between the index and adopting what you
 10 call a GAC ban?
 11 A. Correct. That is -- well, it
 12 does include -- yeah. It's not -- it's
 13 not directly designed to assess that
 14 correlation. In this index, does
 15 include -- this analysis in footnote 13
 16 does include gender -- GAC for minors as
 17 part of the six items, so it is part of
 18 that analysis and part of -- a component
 19 of the Cronbach's alpha is the
 20 correlation between any given item and
 21 all the other items, so that is a
 22 component of this analysis, but it is not
 23 the focal conclusion from it.

<p style="text-align: right;">Page 246</p> <p>1 Q. And that analysis, or Cronbach's 2 alpha doesn't control for any other 3 variables. Is that right? 4 A. No. It's not intended to 5 control for other variables. 6 Q. Your sample of six policies is 7 not a randomized sample, is it? 8 A. A random sample of all -- of all 9 policies, gender -- 10 transgender-restrictive policies? It's 11 -- I don't think there's a well-defined 12 universe from which to sample such 13 policies, but it is -- so it's not a 14 random sample. 15 Q. And it necessarily doesn't 16 include everything in that universe? 17 A. Yes. Although I believe it is 18 reasonably complete, a reasonably 19 complete enumeration of policies that can 20 be coded comparably across states that 21 are transgender-restrictive policies. 22 Q. Alabama scored a 3 out of 5 on 23 this index. Is that right?</p>	<p style="text-align: right;">Page 248</p> <p>1 minors. Is that right? 2 A. Correct. I believe it was 8 3 percent, exactly. 4 Q. And were those states motivated 5 by hostility toward transgender persons? 6 A. Were they motivated? Were the 7 states motivated? I can't speak to their 8 motivations. 9 Q. But you're speaking to Alabama's 10 motivations? 11 A. Well, I'm speaking to 12 specifically the context for the -- are 13 you -- are you referring to like what 14 their motivations were for adopting this 15 specific -- or not adopting a ban on 16 gender-affirming care? 17 Q. No. I'm referring to the 8 18 percent who did adopt. 19 A. Oh, the 8 percent who did adopt. 20 I'm sorry. I haven't done a detailed 21 analysis of those particular states, so I 22 can't -- I can't speak to them 23 specifically.</p>
<p style="text-align: right;">Page 247</p> <p>1 A. That's correct. 2 Q. What was the average score among 3 all states? 4 A. I don't know what the average 5 score was off the top of my head, but it 6 was probably somewhere between 1 and 2. 7 Q. Why didn't you include that? 8 A. It was just not a piece of 9 information I included. 10 Q. On your graph on page 17, if you 11 have that in front of you. 12 A. I do. 13 Q. This is in your report, Exhibit 14 21. It shows that nearly 10 percent of 15 states with no other laws you identified 16 as restrictive prohibited medical gender 17 transition in minors. Is that right? 18 A. Can you say that again? I'm 19 sorry. I missed it. 20 Q. Sure. According to this graph, 21 about 10 percent of states with no other 22 laws you identified as restrictive 23 prohibited medical gender transition in</p>	<p style="text-align: right;">Page 249</p> <p>1 Q. Is the fact that some states 2 that scored a zero on your index also 3 adopted a ban, does that fact affect your 4 analysis of Alabama's motivation? 5 A. Does the fact that some states 6 with zero -- two states, I believe, with 7 a score of zero did adopt such a ban, 8 does it affect my conclusions about 9 Alabama's motivations? 10 Q. That's right. 11 A. I mean, only insofar as they can 12 -- insofar as they contribute to the 13 overall pattern of the relationship 14 between transgender restrictions in 15 other arenas and probability of adopting 16 gender-affirming care bans. 17 Q. I'm not sure I understand that 18 answer, so -- 19 A. I mean, they contribute to the 20 overall pattern in the data; right? 21 So -- and that's -- and it's the overall 22 pattern that I'm interpreting, or I'm 23 relying on in part to draw the</p>

Page 250

1 conclusions about Alabama specifically.
 2 So insofar as they can contribute to that
 3 overall pattern, yes, they do affect my
 4 inferences about Alabama.
 5 Q. And do they suggest that there
 6 could be reasons other than hostility
 7 toward transgender rights to adopt a ban
 8 on what you call gender-affirming care?
 9 A. I would say that they point to
 10 several possibilities. One is that, as
 11 we've already discussed, there are many
 12 potential motivations that could be in
 13 play at any given legislator or any given
 14 bill, but they also point to the
 15 transgender restriction index as being --
 16 as, like any measure, not a perfect
 17 measure of transgender restrictionism.
 18 And in this -- yeah, not a perfect
 19 measure of it.
 20 Q. Is adoption of what you call a
 21 gender-affirming care ban for minors
 22 predicted almost perfectly by a state's
 23 conservatism more broadly?

Page 251

1 A. I would imagine it is well
 2 predicted and -- but I can't speak to the
 3 exact predictiveness.
 4 Q. All of your analyses in this
 5 case ignore a state's broad conservatism
 6 or liberalism. Is that right?
 7 A. They focus specifically on
 8 transgender- or LGBT-related propensities
 9 or regulation of healthcare, healthcare
 10 paternalism.
 11 Q. So all of your analyses in this
 12 case ignore a state's broad conservatism
 13 or liberalism?
 14 A. They don't -- they don't take
 15 that into account.
 16 Q. And this is a potential
 17 confounding variable. Is that right?
 18 A. It depends on what -- what we're
 19 -- what we're speaking to here. In this
 20 particular case, I'm -- when you refer to
 21 a confounder, you have to think about the
 22 causal order of all -- the variables
 23 involved and a confounder with respect to

Page 252

1 what. The broader
 2 liberalism/conservatism of a state is, in
 3 part, a function of its position on or a
 4 consequence of its position on
 5 transgender -- transgender issues, LGBT
 6 issues.
 7 Q. Could it also be that a state's
 8 position on LGBT issues is a function of
 9 a state's conservatism or liberalism?
 10 A. It could be.
 11 Q. You can't exclude that
 12 possibility?
 13 A. I think they are -- yeah, I
 14 can't -- I can't exclude the possibility
 15 that -- I can't exclude that possibility
 16 entirely.
 17 Q. Is it your testimony that
 18 conservative -- conservatism in the
 19 United States shows hostility towards
 20 LGBT persons?
 21 A. By "conservatism," what do you
 22 mean by that?
 23 Q. I mean what you mean in your

Page 253

1 papers when you talk about a state's
 2 conservatism or liberalism.
 3 A. I think one aspect of -- I mean,
 4 when we're referring to the state policy
 5 conservatism, I think that one aspect of
 6 state policy conservatism, one component
 7 of it, or one determinant of it is a
 8 state's position on LGBT issues and how
 9 restrictive versus expansive they are.
 10 So they are related to one another.
 11 Q. I'm specifically asking about
 12 hostility towards LGBT persons.
 13 A. Oh.
 14 Q. Are conservatism --
 15 A. So I would say that a component
 16 of, certainly an indicator of
 17 conservatism, a component of conservatism
 18 can be relative hostility towards LGBT
 19 rights and the legal status of LGBT
 20 individuals.
 21 Q. And can a component of
 22 liberalism be hostility toward religious
 23 exercise?

Page 254

1 A. I could imagine -- I could
 2 imagine -- I could imagine liberalism
 3 being defined in that way. I don't know
 4 if that's a fair characterization of it
 5 in the United States.
 6 Q. But you think it's fair to say
 7 conservatives are hostile towards LGBT
 8 persons?
 9 A. Well, I didn't refer to
 10 conservatives. I was referring to state
 11 policy conservatism in one, and I was
 12 also referring to LGBT rights and legal
 13 status. And I do think it's fair to say
 14 that a component of especially cultural
 15 conservatism is a particular stance
 16 towards the rights and legal status of
 17 LGBT individuals.
 18 Q. And you disagree personally with
 19 that aspect of conservatism?
 20 A. I'm not -- I don't have an
 21 opinion on that. That's not part of my
 22 opinion in this case.
 23 Q. You're a Democrat?

Page 255

1 A. I believe I'm a registered
 2 independent.
 3 Q. Who did you vote for in the last
 4 election? Presidential election.
 5 A. The last presidential election,
 6 I voted for Joe Biden.
 7 Q. What about the one before that?
 8 A. I voted for -- what was that?
 9 That was Joe -- that was Hillary Clinton.
 10 Q. The one before that?
 11 A. Barack Obama.
 12 Q. Have you ever voted for a
 13 Republican at the federal level?
 14 A. I'm not sure. I don't think so.
 15 Q. There are many reasons bills may
 16 fail to pass. Is that right?
 17 A. Yes.
 18 Q. Even bills that might be
 19 supported by a majority of the state
 20 legislature in theory may not be passed
 21 because of procedural hurdles or
 22 competing priorities. Is that right?
 23 A. Yes.

Page 256

1 Q. Some state legislatures may be
 2 out of session for long periods of time.
 3 Is that right?
 4 A. Some -- it is true that some
 5 legislatures may be out of session for
 6 periods of time, yes.
 7 Q. How do your analyses in this
 8 case take those reasons that bills may
 9 fail into account?
 10 A. Take them into account? You're
 11 referring all of my analyses, or do you
 12 have a -- are you talking --
 13 Q. All of them.
 14 A. All of them? Well, one of the
 15 reasons for combining multiple indicators
 16 into a single index is to account for the
 17 fact that no one indicator is often a
 18 perfect measure of the concept of
 19 interest, in part because there are -- as
 20 you were referring to there, there might
 21 be a bias towards the status quo that
 22 makes it difficult to pass or that may
 23 prevent the passage of a law in a

Page 257

1 particular year or an idiosyncratic set
 2 of circumstances may prevent the passage
 3 of a bill in a particular year. So
 4 that's one of the reasons why it's
 5 important to take into account the
 6 multiple -- multiple indicators. I would
 7 also say that the legislative history of
 8 SB184 takes this into account as well by
 9 tracking the progress of similar bills in
 10 previous sessions.
 11 Q. You are not testifying here as
 12 to whether a majority of a state's
 13 citizens or legislators support, in
 14 theory, a particular policy, are you?
 15 A. "In theory"? What do you mean
 16 by that?
 17 Q. So you don't offer any opinion
 18 polls as evidence in this case; right?
 19 A. No opinion polls, no.
 20 Q. And you don't offer any opinions
 21 that legislators might have supported a
 22 policy that nonetheless failed to pass?
 23 In other words, when you code something,

Page 258

1 it's whether it passed or not. That's
 2 it.
 3 A. Correct.
 4 Q. So, is it fair to say you're
 5 using the bills -- sorry. Is it fair to
 6 say that using policies that might have
 7 failed for many reasons is a crude proxy
 8 for whether a state opposed that policy?
 9 A. I'm sorry. Can you repeat that?
 10 Q. Yeah. Is it fair to say that
 11 you are using policies that might have
 12 not been enacted for many reasons as a
 13 crude proxy for whether a majority in a
 14 state opposes that policy?
 15 A. I don't think that's fair to
 16 say. You're talking about a majority of
 17 the public?
 18 Q. That's right.
 19 A. I don't -- I don't think that
 20 I'm -- no. I don't agree with that.
 21 Q. Why?
 22 A. Well, I'm using the policies as
 23 an indicator of the government's general

Page 259

1 stance on and propensity to enact -- you
 2 know, for example, to enact LGBT-related
 3 rights, restrictions, not of the general
 4 public's.
 5 Q. Okay. But you would agree,
 6 then, that you're using a failure to
 7 enact a bill as a proxy for whether the
 8 legislature opposes that policy?
 9 A. If I were treating -- I mean, so
 10 the term "proxy" doesn't exactly have a
 11 technical meaning, but a proxy is usually
 12 used to -- I just want to be clear about
 13 terms here.
 14 So a proxy is usually used to
 15 refer to a single indicator that has --
 16 you know, is related to the concept of
 17 interest but isn't considered to be sort
 18 of a direct measure. If I were referring
 19 to a single one of these policies, I
 20 think that it might be more accurate to
 21 say that I was using a proxy. But I
 22 don't think that's a fair description of
 23 the indices that I construct.

Page 260

1 Q. I'd like to show you what I'm
 2 going to mark as Exhibit 49. This is an
 3 article you cite in your report from ABC
 4 News. "Alabama governor signs 'Don't Say
 5 Gay,' trans care and bathroom ban bills"
 6 is the headline. Do you recall this
 7 article?
 8 (Exhibit 49 was marked for identification
 9 and is attached.)
 10 A. I recognize the author. Let me
 11 just -- can I -- I'm going to refer to
 12 the --
 13 Q. Sure.
 14 A. -- my references and make sure I
 15 have the same one. Yes.
 16 Q. So I'm going down to page 2
 17 here. The highlighted portion, which
 18 I'll make larger, is a quote from the
 19 governor. And you included this first
 20 sentence in your report that's
 21 highlighted. You didn't include the
 22 sentence that follows that said, "We
 23 should especially protect our children

Page 261

1 from these radical, life-altering drugs
 2 and surgeries when they are at such a
 3 vulnerable stage in life."
 4 You didn't include that in your
 5 report; correct?
 6 A. The second statement?
 7 Q. That's right.
 8 A. I don't -- I'll have to -- it
 9 doesn't look like I did, no. I'm
 10 referring to page 34 of my report where I
 11 cite that source. So I don't -- I don't
 12 -- I did not include the second sentence,
 13 it looks like.
 14 Q. Why did you omit it?
 15 A. For the same reason as indicated
 16 before, that the -- in this context, I am
 17 talking about the sex- and gender-related
 18 justifications and particularly
 19 essentialists' views of sex. And so the
 20 second part wasn't relevant to my
 21 particular purposes in this -- in this
 22 context.
 23 Q. Okay. Was it also irrelevant to

Page 262

1 your determination of the governor's
 2 motivation in signing SB184?
 3 A. As I've said, the purpose of
 4 this report is to draw attention to the
 5 considerations and understandings that
 6 are under -- that are neglected in the
 7 reports to which I'm rebutting and the
 8 considerations that -- so additional
 9 considerations to provide a particular --
 10 provide a whole picture -- a more
 11 complete picture of the whole context.
 12 So I acknowledge that supporters place
 13 heavy emphasis on the safety and
 14 protection of children, and so I felt
 15 that it was not necessary to belabor that
 16 point.
 17 Q. How did you determine that
 18 regulation of medical gender transition
 19 interventions in minors imposes
 20 restrictions on transgender rights?
 21 A. How did I determine that?
 22 There, it's a -- I think that is a
 23 reasonable interpretation of the effect

Page 263

1 of the bill. It restricts the freedom of
 2 action of a certain population, and that
 3 population is transgender, and they're
 4 attempting to exercise their -- what
 5 might be considered a right to choose
 6 their own medical care related to
 7 transgender -- their transgender status.
 8 So I think that is a reasonable reading
 9 of the law.
 10 Q. Is it also a reasonable reading
 11 of the law that by promoting the ability
 12 of individuals to make an informed choice
 13 once they're an adult about life-altering
 14 surgeries promotes transgender rights?
 15 MR. FLETCHER: Object to form.
 16 Q. You can answer.
 17 A. That it promotes transgender
 18 rights?
 19 Q. That's right.
 20 A. I don't think that is a
 21 reasonable reading.
 22 Q. Why is that?
 23 A. I mean, one could argue from a

Page 264

1 paternalistic perspective that it
 2 promotes the welfare of transgender
 3 people, but I don't think couching it in
 4 rights term makes very much sense in this
 5 particular situation.
 6 Q. It could also promote their
 7 autonomy; correct?
 8 A. I -- that doesn't seem -- I
 9 don't see how that -- I don't see how
 10 restricting choices is -- can reasonably
 11 be read as promoting autonomy.
 12 Q. You don't think that adults know
 13 more about their desire for future
 14 fertility and sexual activity than a
 15 ten-year-old?
 16 MR. FLETCHER: Object to form.
 17 Q. You can answer.
 18 A. I don't have a -- I don't have
 19 an opinion on that.
 20 Q. So you can't envision any world
 21 in which a regulation of medical gender
 22 transition of minors promotes
 23 individuals' autonomy?

Page 265

1 A. I don't think that is the most
 2 natural way of describing -- I don't
 3 think that's a very natural way of
 4 describing. I can imagine an argument
 5 that had that form, but I don't think
 6 that -- you know, just thinking about it
 7 as you're describing it now, it doesn't
 8 sound like the most plausible way of
 9 characterizing -- plausible way of
 10 characterizing --
 11 Q. What about state prohibitions on
 12 minors receiving tattoos? Does that
 13 impose restrictions on human rights?
 14 A. I suppose it -- it depends what
 15 you mean by human rights. I mean, if you
 16 mean human rights in some sort of
 17 codified way like the UN Charter or
 18 something, I -- I don't know. I do think
 19 there -- it is a constraint on autonomy.
 20 And so, do I think it's a violation of
 21 human rights, restriction of human
 22 rights? I guess it depends on how one
 23 defines -- how one is thinking about what

Page 266

1 human rights means in that context.
 2 Q. Well, you used the term
 3 "transgender rights," so, you know. The
 4 tattoo law would apply to everyone's
 5 rights, which is why I used human rights,
 6 but that was --
 7 A. You mean sort of like youth
 8 rights or something maybe might be a
 9 better -- it could be.
 10 Q. Are you aware that the United
 11 States government, who is paying you
 12 here, is not challenging SB184's
 13 restriction on surgical interventions for
 14 transitioning minors?
 15 A. I'm sorry. Say that again. Am
 16 I aware that it is not challenging?
 17 Q. SB184's restriction on surgical
 18 interventions for transitioning minors.
 19 A. I don't know exactly what the
 20 position of the government is in this --
 21 in this particular case. I don't know
 22 exactly --
 23 Q. That is --

Page 267

1 A. Go ahead.
 2 Q. That is the position. Is -- in
 3 your view, is that because the United
 4 States government has hostility toward
 5 LGBT rights?
 6 MR. FLETCHER: Object to form.
 7 A. When you say "because," that
 8 would -- that makes it -- when one --
 9 when you say "because," it makes it
 10 sounds like that the primary explanation
 11 for that is hostility to LGBT rights, and
 12 I don't know enough about the context to
 13 render judgment on that, but I would be
 14 skeptical that that is the primary
 15 explanation.
 16 Q. By defending SB184, am I
 17 exhibiting hostility toward LGBT rights?
 18 MR. FLETCHER: Object to form.
 19 Q. You can answer.
 20 A. Well, when I'm referring to
 21 hostility towards LGBT rights in the
 22 context of my report, I'm referring to
 23 government policies, and I'm not -- I'm

Page 268

1 not opining on citizens' own treatment
 2 of -- certainly not ordinary citizens'
 3 own treatment of or attitudes towards
 4 LGBT individuals. So in the context of
 5 my report, I don't think it would make
 6 sense to regard you personally as -- I
 7 believe you said as displaying hostility
 8 towards LGBT rights.
 9 Q. So you're not testifying that
 10 any legislator in Alabama displayed
 11 hostility towards LGBT rights in voting
 12 on SB184?
 13 A. I think in expressing their --
 14 in their support for particular pieces of
 15 legislation and voting for it, I do think
 16 it would be fair in that context to
 17 characterize their actions as relatively
 18 supportive of LGBT -- or relatively
 19 supportive of LGBT rights versus
 20 relatively unsupportive of expanding
 21 them. So I do think that that is a fair
 22 characterization for legislators
 23 considering a particular bill in the

Page 269

1 context of a lawmaking process.
 2 Q. I'm showing you --
 3 A. I don't have -- sorry. Go
 4 ahead.
 5 Q. Go ahead.
 6 A. No. You go ahead.
 7 Q. I'm showing you what we
 8 previously marked as Exhibit 16, which is
 9 the LaCombe manuscript. I'll show you
 10 the top of it. I'm on page 2, the fourth
 11 sentence, starting with "Transgender
 12 minors in Oklahoma are unable to access
 13 proper healthcare because medical
 14 providers would immediately lose their
 15 license for providing gender-affirming
 16 care."
 17 So Mr. LaCombe views medical
 18 gender transition intervention in minors
 19 as "proper healthcare." Correct?
 20 MR. FLETCHER: I'll just remind
 21 the witness if he needs to review more of
 22 the document, he should feel free to
 23 request to do so.

Page 270

1 THE WITNESS: Thanks.
 2 A. I can't speak to -- I can't
 3 speak to Professor LaCombe's personal
 4 views, but I think that is a reasonable
 5 -- based on the context that I see here,
 6 I think that is a reasonable
 7 interpretation of what he means by
 8 "proper healthcare," that he means that
 9 to include gender-affirming care.
 10 Q. Do you view medical gender
 11 transition in minors as proper
 12 healthcare?
 13 A. I don't have an opinion on that.
 14 Q. You didn't note Mr. LaCombe's
 15 bias in your report, did you?
 16 MR. FLETCHER: Object to form.
 17 Q. You can answer.
 18 A. Did I note his bias in my
 19 report?
 20 Q. That's right.
 21 A. No.
 22 Q. Are you familiar with the World
 23 Health Organization?

Page 271

1 A. I am.
 2 Q. Okay. I'm going to be showing
 3 you what I've marked as Exhibit 44. All
 4 right. So you'll see this is a
 5 publication of the World Health
 6 Organization dated January 15, 2024.
 7 You -- I'm not trying to trick you here.
 8 You do not -- I don't believe you cite
 9 this in your report.
 10 (Exhibit 44 was marked for identification
 11 and is attached.)
 12 A. No.
 13 Q. Have you seen this document
 14 before?
 15 A. I don't believe so.
 16 Q. Okay. On page 3, under number
 17 5, it says, "Why will the guideline" --
 18 issued by the WHO -- "only cover adults
 19 and not children or adolescents?"
 20 And it says, "The scope will
 21 cover adults only and not address the
 22 needs of children and adolescents,
 23 because on review, the evidence base for

Page 272

1 children and adolescents is limited and
 2 variable regarding the longer-term
 3 outcomes of gender affirming care for
 4 children and adolescents."
 5 So in at least as of January of
 6 this year, the WHO believed that there
 7 was limited -- limited evidence regarding
 8 the longer term outcomes of
 9 gender-affirming care for children and
 10 adolescents; right?
 11 A. Based on the document that
 12 you're giving me, which I don't -- I
 13 don't know much about the context of this
 14 document, but that seems to be a
 15 reasonable reading of Point 5 on this --
 16 on this page.
 17 Q. And you're not testifying in
 18 your capacity as an expert that the WHO
 19 is wrong here, are you?
 20 A. It is wrong -- it is wrong to
 21 exclude from this review --
 22 Q. No. That the WHO is wrong about
 23 the evidence base for children and

Page 273

1 adolescents.
 2 A. No, I am not testifying about
 3 that.
 4 Q. That statement about the
 5 evidence base is consistent with SB184's
 6 legislative findings. Is that right?
 7 A. Consistent with? My read of
 8 those findings is that they emphasize --
 9 they have a more negative cast than --
 10 than this statement, which more
 11 emphasizes the limitedness and the
 12 variability of the evidence base. So --
 13 Q. I don't think that --
 14 A. Go ahead.
 15 Q. Do you believe that the WHO has
 16 hostility toward LGBT rights?
 17 A. Do I believe that the -- I don't
 18 know, actually. I'm not -- I'm not -- I
 19 know that -- I'm not an expert on the
 20 internal politics of the WHO, but I do
 21 know -- so I can't really speak. I
 22 haven't -- I haven't done specific
 23 research in that, so I don't really know.

Page 274

1 Q. All right. I'd like to show you
 2 now what I'm going to mark as Exhibit 54,
 3 which is a recent article from Forbes.
 4 And you see the headline there,
 5 "England Bans Puberty Blockers for
 6 Minors"?
 7 A. I do.
 8 Q. And the date is updated April
 9 18th, 2024?
 10 (Exhibit 54 was marked for identification
 11 and is attached.)
 12 A. I do.
 13 Q. Is England motivated by
 14 hostility towards LGBT rights?
 15 A. England, the government of
 16 England?
 17 Q. That's right.
 18 A. Without knowledge of this -- the
 19 context for this -- for this decision, I
 20 can't really speak to it.
 21 Q. You would agree that prohibiting
 22 puberty blockers is one of the aspects of
 23 SB184?

Page 275

1 A. Yes.
 2 Q. Are you familiar with Marci
 3 Bowers?
 4 A. I don't believe so.
 5 Q. She's the president of WPATH.
 6 Are you familiar with WPATH?
 7 A. I believe I've heard of WPATH,
 8 but I don't recall exactly what WPATH is.
 9 Q. All right. According to Dr.
 10 Bowers -- sorry. I'll show you this
 11 article so you can see it.
 12 A. Thank you.
 13 Q. This will be Exhibit 47. So
 14 this is an article in The Free Press that
 15 has an interview with Dr. Bowers. And
 16 I'm going to scroll down to show you
 17 pages 5 and 6 of this exhibit.
 18 (Exhibit 47 was marked for identification
 19 and is attached.)
 20 A. What's The Free Press?
 21 Q. I think it's an online news
 22 site.
 23 A. I see.

Page 276

1 Q. It's an article written by
 2 Abigail Shrier. Are you familiar with
 3 her?
 4 A. No.
 5 Q. So Bowers is a -- is the
 6 president of WPATH and a plastic surgeon
 7 who does gender transition surgeries.
 8 Here at the bottom of page 5, starting to
 9 quote, "Bowers told me she now finds
 10 early puberty blockade inadvisable."
 11 And then a little bit further
 12 down: "Honestly, I can't sit here and
 13 tell you that they" -- the results of
 14 surgeries -- "have good or" -- "have
 15 better -- or even as good -- results.
 16 They're not as functional. I worry about
 17 their reproductive rights later. I worry
 18 about their sexual health later and
 19 ability to find intimacy."
 20 Dr. Bowers elsewhere says that
 21 puberty blockade has a negative affect on
 22 the ability to orgasm.
 23 Do you think Dr. Bowers spoke

Page 277

1 out of a hostility for LGBT rights?
 2 MR. FLETCHER: Object to form.
 3 Q. You can answer.
 4 A. I don't really know anything
 5 about the context for this, so I can't
 6 speak to it.
 7 Q. According to Dr. Bowers,
 8 preventing minors from obtaining puberty
 9 blockers could lead to better long-term
 10 surgical outcomes for transgender
 11 persons; correct?
 12 MR. FLETCHER: Object to form.
 13 Q. You can answer.
 14 A. Preventing -- sorry. Preventing
 15 -- sorry. You said preventing access to
 16 puberty blockers could lead to better
 17 long-term?
 18 Q. Surgical outcomes.
 19 A. Shoot. I don't see where she
 20 says that. Blockade -- oh, blockade.
 21 (Witness reviews document.)
 22 A. I mean, it's really hard for me
 23 to interpret this out of context. I'm

Page 278

1 sorry.

2 Q. So you didn't consider the

3 possibility, again, that long-term

4 outcomes could be improved under a law

5 like SB184 for transgender persons?

6 MR. FLETCHER: Object to form.

7 Q. You can answer.

8 A. I considered that possibility.

9 Q. And did you agree with it or

10 disagree with it?

11 A. I regarded it as a possibility.

12 Q. Yet you coded SB184 as

13 restrictive of transgender rights?

14 A. Yes. I think that is a

15 reasonable coding.

16 Q. Even though, in your view, it is

17 possible that SB184 could improve the

18 long-term lives of transgender people?

19 MR. FLETCHER: Object to form.

20 A. I think that those are separate

21 considerations, rights. One could, I

22 believe, make an argument for almost any

23 rights restriction that it is in the best

Page 279

1 interest of or somehow serves -- is in

2 the -- would serve the welfare of the

3 person being restricted. And I also

4 think that it is at least possible that

5 in many, many instances, such rights

6 restriction could benefit at least some

7 individuals whose rights are being

8 restricted. So I think that is a

9 possibility in this case, but I think my

10 decision to code policies as being

11 restrictive of transgender rights was

12 based on my interpretation of their

13 effect, which was to constrain the

14 choices and restrict the rights of the

15 individuals involved separate from

16 whether those rights restrictions were in

17 the -- could be argued to be in the best

18 interest of the people involved.

19 Q. Yet you still considered it

20 sound to use evidence of what you call

21 restricting transgender rights as proof

22 of hostility towards transgender rights?

23 MR. FLETCHER: Form.

Page 280

1 A. Well, I think restrict -- I

2 think that restricting is certainly

3 defensible, or I certainly think that

4 is -- I don't know the term you used, but

5 defensible or something -- to treat

6 actual restrictions on transgender rights

7 as evidence of hostility towards

8 transgender rights, yes.

9 Q. Would you also agree that a

10 policy that leads to better outcomes for

11 transgender people would be a very

12 strange way to express hostility towards

13 transgender rights?

14 MR. FLETCHER: Form.

15 A. I believe that many rights

16 restrictions, and even in some

17 circumstances, overt -- I believe that

18 many rights restrictions are -- no, I --

19 sorry. It would be a very strange way of

20 expressing hostility to transgender

21 rights if to -- to support a bill that

22 was -- support a policy that would lead

23 to better outcomes? I think, setting

Page 281

1 aside or, you know, stipulating that

2 there's no -- it's not clear that SB184

3 would actually result in better outcomes.

4 I think it is often the case that rights

5 restrictions are motivated in such a way,

6 so I don't think that is especially

7 strange.

8 Q. You keep changing the focus from

9 transgender persons to transgender

10 rights, so could you just clarify? Are

11 you testifying to anything in any way in

12 any opinion about the Alabama

13 legislature's or the Alabama governor's

14 or the State of Alabama's hostility

15 toward transgender persons in enacting

16 SB184?

17 A. Yes. So the focus of my report

18 is on the -- on hostility -- on the

19 hostility to transgender rights, but the

20 -- at least some of the motivations of --

21 well, first of all, the bill itself is

22 part of a broader -- a broader political

23 context of a multifaceted effort to

Page 282

1 restrict transgender rights in a variety
 2 of domains and that that is -- that
 3 under -- that the -- part of the
 4 motivation, part of the understanding of
 5 the purposes of that broader effort, of
 6 which SB184 is part, is to defend
 7 against -- defend traditional -- or
 8 sorry, essentialist notions of the
 9 relationship between sex and gender and
 10 against gender nonconformity, against
 11 gender dysphoria, and against, you know,
 12 what is sometimes called transgenderism
 13 as a social phenomenon. And at least
 14 some of the statements of the legislative
 15 supporters seemed hostile to the very
 16 idea that -- the notion that someone
 17 could be genuinely -- or deny the
 18 legitimacy of identifying as or being
 19 transgender. So I think that they are --
 20 there's a larger context in which SB184
 21 is embedded that -- and part of that
 22 context is hostility towards gender
 23 nonconformity as a practice, as a social

Page 283

1 phenomenon per se.
 2 Q. And it's your testimony that a
 3 policy that promotes long-term life
 4 outcomes for transgender people shows
 5 hostility toward transgender persons?
 6 MR. FLETCHER: Object to form.
 7 A. It is -- no, that is not my
 8 opinion. That in this -- are we talking
 9 about a hypothetical policy that could --
 10 that is -- that I -- you can tell me
 11 with -- that I know with certainty would
 12 promote the interests of someone, or are
 13 we referring to SB184?
 14 Q. Well, you already testified that
 15 you're not testifying as to the
 16 scientific long-term effects of the
 17 treatments at issue in SB184, but you
 18 seem to be assuming, in offering your
 19 opinion about hostility, that there are
 20 not long-term positive effects for
 21 transgender people. So I'm asking you,
 22 why did you make that assumption?
 23 MR. FLETCHER: Object to form.

Page 284

1 A. It's in a -- I'm not making that
 2 assumption. I'm basing that on the
 3 larger political context of a
 4 multifaceted legislative effort to
 5 regulate transgender individuals, many of
 6 which have nothing or have little to do
 7 or nothing to do with the putative
 8 interests of transgender people in
 9 particular. So I think in the context,
 10 in the larger political context, it's not
 11 reasonable to assume, as you seem to be
 12 doing, that SB184 is in the interest and
 13 would serve the long-term best interests
 14 of the transgender population. But I'm
 15 not opining definitively either way
 16 regarding the medical effects of the
 17 treatments. I'm going to leave that to
 18 the medical experts.
 19 Q. So when you keep going back to
 20 the broader context, you are assuming
 21 once again that all of those other
 22 policies were only adopted based on the
 23 same hostility that you theorize occurred

Page 285

1 here.
 2 MR. FLETCHER: Object to form.
 3 Q. Is that correct?
 4 MR. FLETCHER: Object to form.
 5 A. I'm not assuming that, no.
 6 MR. FLETCHER: Counsel, we've
 7 been going for --
 8 Q. They could all be --
 9 MR. MILLS: I'm not finished.
 10 Q. So again, all of those other
 11 policies could be justified on other
 12 grounds other than hostility towards
 13 transgender persons. Is that right?
 14 MR. FLETCHER: Object to form.
 15 A. When -- anytime looking at any
 16 individual policy in isolation, it's
 17 possible without additional context to
 18 argue that it could be motivated by
 19 multiple considerations. But here, we
 20 see a pattern of -- of action, both in
 21 terms of enacted policies and in terms of
 22 legislative initiatives, as well as in
 23 terms of the long-term orientation or

Page 286

1 tradition of policymaking in Alabama, and
 2 taking that all together, I think that
 3 even if it's possible in an individual
 4 case to -- to offer an alternative
 5 explanation, the idea that there is
 6 nothing holding together all of these --
 7 that these are separately motivated is
 8 not plausible in light of the totality of
 9 the evidence.
 10 Q. You didn't examine any other
 11 individual policy you discuss for other
 12 reasons that might explain their adoption
 13 other than hostility towards transgender
 14 rights; correct?
 15 MR. FLETCHER: Form.
 16 A. When you say I didn't examine, I
 17 did examine, for example, whether
 18 healthcare paternalism was a good
 19 predictor --
 20 Q. I'm asking about other
 21 individual policies.
 22 A. So other --
 23 Q. So let's take a sports ban. You

Page 287

1 didn't consider whether a state might
 2 rationally want to prohibit boys from
 3 playing in girls' sports?
 4 A. By "boys," do you mean
 5 biologically assigned at birth boys?
 6 Q. I mean biological boys.
 7 MR. FLETCHER: And I'll object
 8 to the form.
 9 MR. MILLS: If you could stop
 10 interrupting, Counsel. None of these are
 11 valid form objections.
 12 Q. You can answer.
 13 A. Okay. The -- so the -- you're
 14 asking whether I asked for -- in the case
 15 of -- I believe it is -- there -- there
 16 are multiple rationales that could be put
 17 forward for any policy, and then there
 18 are certainly policy -- rationales that
 19 could be put forward for -- for -- excuse
 20 me -- for a sports ban on transgender
 21 athletes.
 22 It's -- again, it's the pattern
 23 of action across multiple -- across

Page 288

1 multiple domains that suggests that --
 2 and also the fact that not all states --
 3 many states have not adopted such -- such
 4 policies. Some -- many have, but many
 5 haven't. So it's not compelling, in my
 6 view, to attribute it to factors that are
 7 in some way common to all states.
 8 Q. And you say that even though
 9 your report and opinion in this case does
 10 not analyze any other reason for adoption
 11 of any other policy domain that you
 12 referred to?
 13 A. "Any other policy domain," you
 14 mean -- you mean -- you're referring to
 15 other policies aside from
 16 gender-affirming care bans, I don't
 17 consider other reasons for -- that they
 18 might have been --
 19 Q. Correct.
 20 A. No. I take them as -- for
 21 example, in the case of restrictions on
 22 LGBT rights, I take that to be an
 23 indicator of a state's -- or sorry, a

Page 289

1 measure of a state's relative propensity
 2 to engage to restrict those rights. Yes.
 3 I take them as a direct measure of that.
 4 Q. Okay. I think your counsel is
 5 asking for a break. Sorry. I just
 6 wanted to get through that exchange.
 7 A. No. That's okay. That made
 8 sense.
 9 (Break taken.)
 10 Q. (By Mr. Mills) In paragraph 51
 11 on page 26 of your report, you were
 12 talking about Alabama legislation. And
 13 you say, "many evince a clear hostility
 14 towards" -- "to transgender status or
 15 gender nonconformity per se."
 16 Which laws or bills are you
 17 testifying evince a clear hostility
 18 towards -- to transgender status or
 19 gender nonconformity per se?
 20 (Witness reviews document.)
 21 A. So I think in this context, I'm
 22 referring to a -- more of a broader -- a
 23 broader what you might say political

Page 290

1 movement or -- that -- that is expressed
 2 in various particular ways. Some of
 3 those ways -- one particular
 4 manifestation is in the form of SB184,
 5 which targets a particular set of medical
 6 treatments related to gender-affirming
 7 care. But there is a clear pattern of
 8 addressing or making it more -- lives
 9 more difficult or restricting the choices
 10 of transgender students -- or I mean,
 11 sorry, students or -- or transgender
 12 persons generally in many different
 13 contexts. So for example, HB322, which
 14 makes it more difficult to change one's
 15 sex, defines it as what's written on
 16 someone's birth certificate, that forbids
 17 any discussion of gender identity or
 18 sexual orientation as well; the
 19 transgender sports bans, not only for
 20 minors, but also for public college
 21 students. The remarks particularly of
 22 Mack Butler around his effort to expand
 23 restrictions on discussing transgender

Page 291

1 topics or gender identity in schools, his
 2 remarks evince a -- a -- opposition to or
 3 a hostility toward a transgender --
 4 transgender persons in general, regarding
 5 transgender identification as a mental
 6 defect, and wanting to keep transgender
 7 people away from children, period.
 8 Similarly, HB401, which defines the
 9 definition of sexual conduct to include
 10 male or female impersonators, which can
 11 fairly straightforwardly be interpreted
 12 as including transgender individuals
 13 perhaps but certainly drag performers.
 14 So I think it's not any one. I
 15 think that the strain of hostility to
 16 gender nonconformity is an important one
 17 that underlies many of these enacted
 18 bills but also the proposed
 19 legislation --
 20 Q. So --
 21 A. -- in various ways.
 22 Q. Just to be more specific, you
 23 say "many evince a clear hostility to

Page 292

1 transgender status or gender
 2 nonconformity per se."
 3 Does SB184 evince a clear
 4 hostility towards transgender status or
 5 gender nonconformity per se?
 6 A. SB184? If considered in
 7 isolation, I would not consider it to be
 8 clear, but it's in the context of the
 9 larger -- in the context, reading in the
 10 context of other -- other legislative
 11 efforts as well as just the larger
 12 political context, I think it is -- it is
 13 certainly indicative of a gender -- of a
 14 general hostility towards transgender
 15 identification per se.
 16 Q. So when you say, "many evince,"
 17 you're not referring to individual
 18 things, you're just --
 19 A. I'm referring to individual
 20 bills, and I'm referring to bills and
 21 legislative proposals that, on their --
 22 in the context of all the others, provide
 23 evidence of hostility to gender

Page 293

1 nonconformity per se.
 2 Q. But you don't say "in the
 3 context of all the others." You say,
 4 "many evince." That makes it sound like
 5 each one evinces a clear hostility. So
 6 is that true as to SB184, all of the
 7 bills you just mentioned, some of which
 8 were not enacted, the sports ban? Is
 9 that true as to each one of them?
 10 A. So I would say that if you were
 11 viewing each one in isolation, the
 12 evidence would be less clear, that
 13 they -- they would be more ambiguous as
 14 to whether they are evincing hostility to
 15 transgender status per se. But --
 16 Q. And that's because there are
 17 other reasons? Sorry.
 18 A. That's because it's -- it's
 19 more -- it's more possible in an
 20 individual -- in examining an individual
 21 case to posit that there are other
 22 motivations at play here. The very
 23 absence of other efforts would be

Page 294

1 affirmative evidence that this is not a
 2 part of a general targeting of
 3 transgender persons or transgender
 4 rights. In general, it's about a very
 5 specific set of circumstances.
 6 Q. Let's talk about Representative
 7 Butler. Did Representative Butler amend
 8 his bill HB130 to include the U.S. Space
 9 & Rocket Center?
 10 A. I actually don't know if he did
 11 that. I only know that he had announced
 12 it or that he said he was planning to.
 13 Q. You didn't investigate that?
 14 A. Well, at the time of my writing
 15 of this report, I hadn't seen information
 16 indicating whether he had done that yet.
 17 Q. And you still haven't?
 18 A. I haven't updated my report
 19 since writing it.
 20 Q. I'd like to show you what I'm
 21 marking as Exhibit 28, which is the
 22 enacted version of the bill you were just
 23 discussing, HB130.

Page 295

1 So you agree this shows
 2 engrossed to HB130, the bill by
 3 Representative Butler and others, and
 4 that's the bill you discuss in your
 5 report?
 6 (Exhibit 28 was marked for identification
 7 and is attached.)
 8 A. Yes. Do you know what the date
 9 is for this bill, or for this
 10 engrossment?
 11 Q. I could go down to the bottom.
 12 A. Okay. Great. Thank you.
 13 Q. Yeah. So here we have in
 14 Section 1 the substance of the bill,
 15 which says that, "An individual or group
 16 of individuals providing classroom
 17 instruction," et cetera, "shall not
 18 engage in classroom discussion or
 19 instruction regarding sexual orientation
 20 or gender identity in a manner that is
 21 not age appropriate or developmentally
 22 appropriate for students in accordance
 23 with state standards."

Page 296

1 A. Is Section -- is the underlined
 2 Section (b) also an inclusion in the --
 3 is that also a change in the -- is the
 4 underlined section the new section that's
 5 being added to the statute?
 6 Q. Do you know?
 7 A. I don't. But that's how I read
 8 -- that would be how I would read this
 9 document. That's what I would assume,
 10 but --
 11 Q. Sure. Yeah, that's fine. So
 12 that (b) is "No teacher, or other K-12
 13 employee, may display a flag or other
 14 insignia relating to or representing
 15 sexual orientation or gender identity in
 16 a classroom or on the property of a
 17 public K-12 school." And that's the end.
 18 So it doesn't include the U.S.
 19 Space & Rocket Center?
 20 A. This version of the bill doesn't
 21 include it.
 22 Q. And this bill would prohibit all
 23 discussion and all insignia related to

Page 297

1 sexual orientation and gender identity
 2 regardless of sexual orientation or
 3 gender identity?
 4 A. That's how I read this text,
 5 that no teacher or public K-12 employee
 6 may display a symbol -- a flag or other
 7 symbol that -- relating to or
 8 representing sexual orientation or gender
 9 identity, which I would take to ban, say,
 10 insignias that indicate a openness to or
 11 tolerance of sexual orientation or gender
 12 identity like a pride flag or something.
 13 Q. It would also ban a cisgender
 14 pride flag?
 15 A. I actually don't know exactly
 16 how it would be interpreted in context.
 17 But by "cisgender pride flag," what are
 18 you -- I'm not familiar with something
 19 like that. Is that a phenomenon?
 20 Q. I'm just asking, is the bill
 21 limited to expressions of support for
 22 LGBT positions, or does it cover all
 23 sexual orientations and all gender

Page 298

1 identities?
 2 MR. FLETCHER: Object to form.
 3 A. It's hard for me to know how
 4 this would be interpreted in context.
 5 But as you -- as you know, there are many
 6 facially neutral -- or there are -- you
 7 have to read the -- I don't know how this
 8 would be applied in context, but I
 9 imagine that the empirical impact of this
 10 -- the actual binding impact of this law
 11 would be towards restricting certain
 12 displays of support for sexual -- for
 13 LGBT identification.
 14 Q. You've never studied that?
 15 A. Have I -- I never studied that?
 16 Well, I have studied --
 17 Q. You're saying empirical impacts
 18 of HB130.
 19 A. I understand -- no. I mean, I
 20 am -- HB130 has not yet -- is only just
 21 being -- been passed, so we can't study
 22 it empirically now. But I can make
 23 judgments based on my understanding of

Page 299

1 American politics and on how these sorts
 2 of restrictions, the likely impact of
 3 these sorts of restrictions. And so in
 4 this case, I would have an expectation
 5 about its likely impact.
 6 Q. Is there any reason a legislator
 7 could support HB130 other than hostility
 8 toward LGBT rights?
 9 MR. FLETCHER: Objection.
 10 A. Any other reason, is it
 11 possible? No obvious other reason. When
 12 you say -- I suppose there could be -- if
 13 you're thinking about deeper reasons,
 14 there could be a deeper reason for
 15 someone being hostile to LGBT rights or
 16 LGBT individuals or LGBT identities.
 17 It's hard for me -- I'm having a hard
 18 time thinking of an alternative
 19 explanation that doesn't in some way
 20 involve a hostility toward sexual
 21 orientation or gender identity. But it
 22 does -- I could imagine such a law in a
 23 different context having that effect. It

Page 300

1 depends somewhat on the context of the
 2 implementation of the law.
 3 Q. All right. I'd like to show you
 4 an article you cited in your report. I'm
 5 going to mark it as Exhibit 29. And this
 6 is from the -- I think it's called the
 7 1819 News.
 8 (Exhibit 29 was marked for identification
 9 and is attached.)
 10 A. 1819 News, yes.
 11 Q. Let me just pull that up. Okay.
 12 This is the -- this is the article you
 13 cite in your report for your quotations
 14 from Representative Butler. Is that
 15 right?
 16 A. I will have to check that. Do
 17 you know what --
 18 Q. Page 52 of your report.
 19 A. Page 52. Thank you. Oh, page
 20 -- are you sure it's 52?
 21 Q. It might be paragraph 52.
 22 A. Oh, paragraph 52.
 23 Q. Yeah. Sorry. Paragraph 52. My

Page 301

1 bad. Article by Poor.
 2 A. Yeah, Poor. I think -- yes.
 3 Q. This article -- I'll scroll down
 4 a bit -- refers to a "Space Camp
 5 controversy." Your report doesn't
 6 mention Space Camp. Why is that?
 7 A. Space Camp, you mean -- I don't
 8 know.
 9 Q. Do you know what the -- what
 10 this -- this article says "the Space Camp
 11 controversy." Do you know what that is?
 12 A. I think I do, in broad terms.
 13 Q. And what's your understanding of
 14 that controversy?
 15 A. My understanding is that there
 16 was a controversy around the employment
 17 of an employee at the U.S. Space & Rocket
 18 Center and which holds, I suppose -- I
 19 guess a Space Camp that I assume that --
 20 I don't know much more about the details
 21 off the top of my head other than there
 22 was a transgender employee who was, I
 23 suppose, I would guess was an employee of

Page 302

1 the Space Camp or was working with the
 2 Space Camp.
 3 Q. And it's your belief that the
 4 controversy was just about that
 5 individual's employee -- employment with
 6 Space Camp? Is that what you're
 7 testifying?
 8 A. That was my understanding of the
 9 -- and as well as more generally, their
 10 proximity to children.
 11 Q. Okay. I'm going to introduce
 12 what I'm marking as Exhibit 30, which is
 13 a previous news article from the 1819
 14 News. This is not one that you cite in
 15 your report, to my knowledge. This is
 16 from March 2024. You agree this appears
 17 to be about the same controversy as the
 18 last article we were just talking about?
 19 (Exhibit 30 was marked for identification
 20 and is attached.)
 21 A. I do believe this sounds like
 22 the same controversy.
 23 Q. Okay. So let's see. Sorry. I

Page 303

1 know I'm jumping around.
 2 So the highlighted portion here
 3 on page 2, a Facebook post from a
 4 Huntsville-based man that has circulated
 5 around social media states that the
 6 father -- the man "was planning to send
 7 his daughter to space camp before
 8 discovering that a self-identified
 9 transgender individual, Molly Bowman,
 10 would act as team lead and a hall monitor
 11 in the girls' dormitories."
 12 If I could go down to page 3.
 13 "Screenshots from the Twitter page
 14 contained pictures of Bowman in space
 15 camp regalia, along with a lot of sexual
 16 commentary."
 17 Going on to page 4, this is a
 18 quote from the father. "All I thought
 19 was that [Bowman] was a hall monitor, but
 20 then I heard that he had walked into the
 21 girl's room. I thought that was
 22 extreme."
 23 And then the next page: "In a

Page 304

1 recorded conversation between Yarbrough
 2 and Space Camp vice president Robin
 3 Soprano, Bowman was confirmed as an
 4 employee and that Bowman would have
 5 access to the girls' floor. Throughout
 6 the nearly nine-minute conversation,
 7 Soprano gave evasive answers to
 8 Yarbrough's questions. During the call,
 9 Soprano stated that there were
 10 specifically male and female floors, but
 11 continued to give evasive answers when
 12 explicitly asked about Bowman's level of
 13 access."
 14 If I could go down to the bottom
 15 of that page 5. "Bowman's Twitter page
 16 is replete with sexualized content, along
 17 with photos of him in his space camp
 18 regalia with the caption 'Butch coded
 19 space queer.'"
 20 Two pages -- sorry. Page 6
 21 here, the tweet's apparently from the
 22 employee. "Somedays i just wish I was a
 23 boy that had a pussy unstead a girl that

Page 305

1 has a dick."
 2 The next page, 7 to 8.
 3 Yesterday [sic] "I ordered like 10 of
 4 these stickers from @ellenfromnowon and
 5 today, I placed the last one in my
 6 collection. Next week I get to start
 7 teaching kids about space. I hope they
 8 see my edc notebook and feel proud to be
 9 themselves in this big universe," with a
 10 picture of a "gender is a universe"
 11 rainbow sticker.
 12 Page 9, you have a tweet about
 13 apparently a sexual interaction which I'm
 14 not going to read.
 15 Page 13, you have a tweet, "I
 16 want srs" -- which is evidently sex
 17 reassignment surgery -- "because my dick
 18 gives me super dysphoria."
 19 "Also me: I want srs so I can
 20 flex and get new kinds of piercings."
 21 Were you aware of this material?
 22 A. "This material" meaning these
 23 had I reviewed these -- these posts?

Page 306

1 Q. Everything I just read from this
 2 article.
 3 A. I was not aware of their
 4 details, no.
 5 Q. You don't think it's relevant to
 6 assess the reactions of individuals, what
 7 they're reacting to?
 8 A. You mean -- I'm sorry. Say that
 9 again. I don't think it's relevant, this
 10 evidence is not relevant? Is that what
 11 you're asking?
 12 Q. You were assessing
 13 Representative Butler's reactions to this
 14 incident, and I'm asking, you don't think
 15 it's relevant to assess what he was
 16 reacting to?
 17 A. I would -- I mean, relevant. I
 18 do think it is -- I don't know if I would
 19 have included this material in my report,
 20 if that's what you mean. I don't think
 21 it's relevant to my conclusions here.
 22 Q. Do you believe that the only
 23 basis on which to be concerned about this

Page 307

1 biological male and female spaces at
 2 Space Camp is hostility toward LGBT
 3 persons?
 4 A. Do I believe it's the only
 5 reason?
 6 Q. That's right.
 7 A. I don't. And it's not the only
 8 possible reason, no.
 9 Q. Do you believe that the father
 10 of this little girl who wanted to attend
 11 Space Camp has expressed a reasonable
 12 concern?
 13 A. One, it depends on the context
 14 in which -- can you scroll back up to the
 15 beginning of how the father describes the
 16 interplay? I also -- I'm just taking on
 17 board that this -- that this article on
 18 1819 News is an accurate description of
 19 events.
 20 Q. You relied on 1819 News. But
 21 that's fine. We can --
 22 A. I did. And I felt comfortable
 23 doing so because even though it has a --

Page 308

1 it has a right wing bias, it was -- I
 2 didn't think that that bias would affect
 3 the accuracy of transcripts, words that
 4 were -- the context of the quote in which
 5 I was quoting it.
 6 Q. And that's also why you relied
 7 on liberal publications like Mother Jones
 8 and the Movement Advancement Project?
 9 A. I actually relied on a mix of
 10 liberal and conservative justifications,
 11 and I made sure to evaluate them each in
 12 the context of the reliability of what
 13 information I was gleaning from them.
 14 Q. So my question was, do you
 15 believe that the father --
 16 A. Yeah. I was going to -- let me
 17 just read this part. I know you -- you
 18 can ask your question again, but I just
 19 wanted to read this again.
 20 Q. Sure. Go ahead.
 21 (Witness reviews document.)
 22 A. Thank you. So ask your question
 23 again.

Page 309

1 Q. Yeah. Do you believe that the
 2 father of this little girl who wanted to
 3 attend space camp has expressed a
 4 reasonable concern?
 5 A. I don't know the context well
 6 enough to know if this was reasonable or
 7 not.
 8 Q. From what you've read.
 9 A. I really don't know enough. But
 10 from what it -- what it sounds like here,
 11 Yarbrough first became concerned upon
 12 learning that the person was transgender,
 13 so that -- and then was prompted to
 14 investigate further. I don't know what
 15 the policies of Space Camp are for
 16 monitoring the social media accounts of
 17 its employees and basing decisions on
 18 employment based on those posts, but --
 19 and so I really -- I can't say if this
 20 particular concern is reasonable or not.
 21 Q. You would have no concerns
 22 whatsoever with your daughter attending a
 23 camp with this biological man on her

Page 310

1 sleeping floor?
 2 A. So -- so that's not part of my
 3 testimony today. But I do actually
 4 happen to have a six-year-old daughter,
 5 and I would feel comfortable.
 6 Q. Your report on page 26 says that
 7 Representative Butler's comments came
 8 "Merely upon learning of this employee's
 9 existence." That's not true, is it?
 10 A. That is -- my -- I don't know
 11 whether that is -- I am not as -- I am
 12 not confident that that is true.
 13 Q. Would you like to correct your
 14 report?
 15 A. Is that something that I would
 16 officially do?
 17 Q. I'm just asking if you would
 18 like to do that on this point.
 19 A. If I were to delete a word, I
 20 would delete "merely."
 21 Q. And you feel that that would
 22 include all relevant context for
 23 understanding your opinion?

Page 311

1 A. I think that would be a
 2 reasonable summary of the overall
 3 context. Perhaps I would include -- it's
 4 possible that I would include a footnote
 5 clarifying the specific context.
 6 Q. If we could go back to Exhibit
 7 29, which -- did it go back on your
 8 screen?
 9 A. I'm sorry. Which one?
 10 Q. Go back to the earlier article.
 11 A. Yes. 1819 News, yeah.
 12 Q. Yeah. I'm on page 3. The first
 13 highlighted portion is a quote by
 14 Representative Butler: "If the schools
 15 and/or Space Camp are not already
 16 engaging in discussions of sexual
 17 identity or sexual orientation, then no
 18 harm, no foul. Nothing changes."
 19 Do you agree with that
 20 statement?
 21 MR. FLETCHER: Object to form.
 22 A. I don't agree with that change
 23 -- I don't agree with that statement.

Page 312

1 Q. Why not?
 2 A. I think that imposing explicit
 3 regulations with penalties on a -- in a
 4 particular situation can have a chilling
 5 effect in ways that go beyond the, you
 6 know, nominal target of the -- of the
 7 regulation or the law.
 8 Q. The next highlighted portion
 9 says: "We're not worried about adults
 10 seeing such as that. But protect the
 11 children."
 12 You edited that quotation out of
 13 your report. Is that right?
 14 A. I didn't --
 15 MR. FLETCHER: Object to form.
 16 A. I didn't edit it out. I
 17 included other parts of it. This is a
 18 long article, and I included selected
 19 parts that I thought were sufficient to
 20 convey the meaning that I -- the
 21 information that I wished to convey. I
 22 will, however -- if you return back --
 23 would you return back to that -- that

Page 313

1 spot.
 2 This larger context of this --
 3 of this sentence, if I were to include
 4 this sentence in the -- if I had wanted
 5 to include this sentence in my report, I
 6 would have included the whole paragraph,
 7 which seems to suggest that the very act
 8 of transgender people wanting to interact
 9 with children is somehow nefarious. So I
 10 would want to include that whole context.
 11 Q. On page 4, the highlighted
 12 portion says: "We absolutely love these
 13 people. We don't want to hurt anybody or
 14 offend anybody."
 15 You think Representative Butler
 16 is lying?
 17 A. Do I think that he's telling the
 18 truth that we all absolutely love these
 19 people?
 20 Q. That's right.
 21 A. "We"? I don't even know who
 22 "we" --
 23 Q. Okay. Let's assume "we" is the

Page 314

1 royal "we," meaning him. Do you think
 2 that he's lying that he loves these
 3 people?
 4 A. I don't know whether he's lying
 5 or not or what's inside his head when he
 6 made that statement.
 7 Q. You quote in your report the
 8 previous part of this paragraph, not the
 9 full paragraph, saying, "Up until Obama,
 10 it was always a mental defect."
 11 Do you know if Representative
 12 Butler is correct that transgenderism was
 13 classified as a mental health diagnosis
 14 until 2012?
 15 A. I don't -- I don't know if
 16 that's what he's referring to, but I -- I
 17 don't know when it was -- you said what
 18 was -- what was classified as a mental
 19 health diagnosis?
 20 Q. Transgenderism.
 21 MR. FLETCHER: Object to form.
 22 A. Transgenderism was referred to
 23 -- oh. Oh, you mean -- I don't know what

Page 315

1 transgender -- that's not -- I don't
 2 exactly know what transgenderism means in
 3 this context. I thought -- I don't think
 4 of transgenderism as being a sort of
 5 individual medical condition, but maybe
 6 it has that meaning in some contexts.
 7 Q. I'd like to show you what I'm
 8 going to mark as Exhibit 31. This is an
 9 article from MSNBC news. The headline is
 10 "Being transgender no longer a 'mental
 11 disorder': APA," which is the American
 12 Psychiatric Association.
 13 This article, as you can see,
 14 was published on December 4th, 2012.
 15 "Transgender people," it says in the
 16 second paragraph, "will now be diagnosed
 17 with 'gender dysphoria.'"
 18 "'Gender identity disorder,'" it
 19 says, "has been listed as a mental
 20 disorder since the third edition of the
 21 DSM more than 20 years ago."
 22 So Representative Butler was
 23 correct that being transgender was

Page 316

1 classified as a mental health diagnosis
 2 until 2012?
 3 (Exhibit 31 was marked for identification
 4 and is attached.)
 5 MR. FLETCHER: Object to form.
 6 A. I believe he used the word
 7 "mental defect." I don't think that is
 8 synonymous with a mental health
 9 diagnosis.
 10 Q. The DSM is called the Diagnostic
 11 and Statistical Manual of Mental
 12 Disorders. Are you playing semantics,
 13 Dr. Caughey?
 14 MR. FLETCHER: Object to form.
 15 A. I mean, I don't know -- am I
 16 playing semantics? I'm trying to be
 17 accurate with my language and precise
 18 about --
 19 Q. So you would agree that it was a
 20 mental disorder until 2012?
 21 A. That's what you're telling me
 22 based on -- I believe that if it was
 23 changed in the -- by "it" here, I think

Page 317

1 we mean transgender identification was
 2 classified in the DSM as a disorder. I
 3 don't know that for a fact. I'm not an
 4 expert in psychology. So I -- but that's
 5 my interpretation. I think that's
 6 reasonable. I think that's what that
 7 article said, but I don't know for sure.
 8 Q. But you included the remark "Up
 9 until Obama, it was always a mental
 10 defect" in an effort to make
 11 Representative Butler out to be a bigoted
 12 idiot; correct?
 13 MR. FLETCHER: Object to form,
 14 Counsel.
 15 Q. You can answer.
 16 A. No.
 17 Q. Why did you include it?
 18 A. I included it in the context of
 19 the other remarks as indication of -- as
 20 indicators of Mack Butler's general
 21 discomfort with or hostility towards the
 22 notion of someone being transgender.
 23 He's quoting this approvingly with the

Page 318

1 implication that, I suppose -- I don't
 2 know why Obama is mentioned there, but I
 3 assume that that sort of makes it sound
 4 like it was a political decision to, and
 5 not a medical one. So it sounds like
 6 he's casting legitimate -- or casting
 7 aspersions on the -- or sorry. He's
 8 undermining the -- casting doubt on the
 9 legitimacy of that diagnosis, or that
 10 change in the DSM, if that's what he's
 11 referring to.
 12 Q. I'd like to ask you about the
 13 law that you mentioned. This is HB391.
 14 And I'm going to introduce that as
 15 Exhibit 32.
 16 (Exhibit 32 was marked for identification
 17 and is attached.)
 18 A. HB391?
 19 Q. Yes. And can you see that on
 20 your screen?
 21 A. I can.
 22 Q. I'm going to scroll down to page
 23 4 of this. "A public K-12 school may not

Page 319

1 allow a biological female to participate
 2 on a male team if there is a female team
 3 in a sport. A public K-12 school may
 4 never allow a biological male to
 5 participate on a female team."
 6 This law doesn't refer to
 7 transgender status; correct?
 8 A. Well, this particular sentence
 9 does not.
 10 Q. It classifies only based on
 11 biological sex. Is that right?
 12 A. I mean, in the context of -- I
 13 mean, the words here do not refer to
 14 gender -- gender identity. The larger
 15 context, I think, is tied to that.
 16 Q. No matter what one's gender
 17 identity is, one's participation is
 18 classified by biological sex?
 19 A. In this -- in the two sentences
 20 that you have highlighted here, there's
 21 no mention of gender identity, so it is
 22 based on biological -- so it depends on
 23 how biological female is defined. But --

Page 320

1 and that's linked, obviously, to the
 2 official definitions of biological sex in
 3 other -- in law and in other legislation.
 4 But as it's -- there is -- the words here
 5 don't refer to gender identity.
 6 Q. And this provision doesn't ban
 7 anyone from playing sports. Is that
 8 correct?
 9 A. This -- I don't know. I mean,
 10 this -- this particular two sentences
 11 that I see don't seem to --
 12 Q. You cited this bill in your
 13 report; correct?
 14 A. Yes.
 15 Q. So, are you saying that you
 16 don't know what's in the bill?
 17 A. Well, you just brought it up here,
 18 and I couldn't --
 19 Q. Sure. So Section 1 is findings.
 20 You see that?
 21 A. Yeah.
 22 Q. And so we'll skip the findings
 23 for now. Section 2 is the operative --

Page 321

1 MR. FLETCHER: Would you please
 2 let the witness read the --
 3 MR. MILLS: Yeah. I'm going
 4 through it. I'm going through it.
 5 MR. FLETCHER: Let the record
 6 reflect the findings --
 7 MR. MILLS: No. I'm not asking
 8 about the findings.
 9 MR. FLETCHER: -- has time to
 10 read the findings --
 11 MR. MILLS: I'm not asking about
 12 the findings.
 13 MR. FLETCHER: You're asking
 14 about the bill. Obviously, the
 15 findings --
 16 MR. MILLS: No. I'm not asking
 17 about the findings. Please stop
 18 interrupting or we're going to have to
 19 continue this deposition for a second
 20 day. If the witness needs to know about
 21 the findings, he can ask. Please stop
 22 interrupting, Counsel.
 23 Q. (By Mr. Mills) You see 2(a), the

Page 322

1 substantive provision here?
 2 A. I do.
 3 Q. There's not really many
 4 additions or subtractions, which is why I
 5 didn't focus on it. But you're welcome
 6 to look at it if that would be helpful.
 7 A. I've read it. You can scroll
 8 down.
 9 Q. And then you see the rest of the
 10 bill here.
 11 A. Right.
 12 Q. So I've focused on the main
 13 addition of HB391, which is number 2
 14 here.
 15 A. Right.
 16 Q. But you agree it classifies
 17 individuals' participation on teams by
 18 biological sex; correct?
 19 A. Yes.
 20 MR. FLETCHER: Object.
 21 A. That's right.
 22 Q. And so when your report uses the
 23 term "transgender sports ban," that

Page 323

1 reflects your bias that men should be
 2 able to play in women's sports. Is that
 3 right?
 4 MR. FLETCHER: Object to form,
 5 Counsel.
 6 Q. You can answer.
 7 A. No. No, it does not. In my
 8 references to particular sorts of
 9 policies, I use sort of commonly --
 10 common labels for them. So for example,
 11 for conscience laws, I refer to them as
 12 conscience laws because that's how
 13 they're commonly -- most commonly
 14 referred to. And the most common and
 15 sort of shorthand for these sorts of laws
 16 is transgender sports ban. It's banning
 17 -- yeah, that's the reason I use that
 18 term.
 19 Q. By "common," you mean among --
 20 among what group?
 21 A. I mean in the public discourse.
 22 Q. You think conservative groups
 23 use the term "transgender sports ban"?

Page 324

1 A. I imagine that there are
 2 differences in -- there are always going
 3 to be differences in different groups.
 4 And obviously, labels for laws are a --
 5 are, for example, like the Vulnerable
 6 Child and -- Compassion and Protection
 7 Act, we refer to it as that because that
 8 is the label that the -- that it has come
 9 to be known by, but opponents of it don't
 10 necessarily refer to it that way.
 11 Q. But you'd agree this law does
 12 not actually ban anyone from playing
 13 sports?
 14 A. If there's no -- my reading here
 15 is if there's no male team available at a
 16 public K through 12 school, there's no
 17 carveout for a biological male being able
 18 to participate on a female team. So I
 19 can imagine a circumstance in which a
 20 biological male couldn't participate in
 21 sports.
 22 Q. And you think that the reason
 23 would be this law bans it, not because

Page 325

1 there's not a team?
 2 A. Oh, well, that -- that there's
 3 not a team? Well, this -- this other --
 4 absent the law, if I understand it
 5 correctly, the male would be at least
 6 legally permitted to participate on the
 7 female team, but the law would prohibit
 8 that, if I understand correctly.
 9 Q. Okay. The law permits
 10 biological females to participate on a
 11 male team if there is no female team;
 12 correct?
 13 A. That is -- I believe that's
 14 correct, yeah.
 15 Q. Does this permission suggest
 16 that something other than hostility
 17 towards transgender persons motivated the
 18 bill?
 19 A. That the -- the -- if the female
 20 team -- that -- specifically that clause?
 21 Q. That's right.
 22 A. "Something other"? I don't
 23 think it undermines the -- treating this

Page 326

1 bill as an indicator of -- obviously, for
 2 any law, there are multiple rationales,
 3 multiple motivations. But I don't think
 4 it really undermines the -- treating this
 5 as an indicator of -- of relative
 6 hostility towards transgender rights or
 7 openness.
 8 Q. Even though it allows some
 9 transgender participation on the other
 10 biological sex team?
 11 A. Yeah. There's always -- every
 12 -- you know, any policy choice is always
 13 -- you can think of it as a point and a
 14 space, you know, cut -- dividing -- it
 15 could be more or less severe. So it's
 16 not the most severe.
 17 Q. But it couldn't possibly be that
 18 the Alabama Legislature wanted to protect
 19 biological females from biological males
 20 in sports; right?
 21 A. Did you say "it couldn't
 22 possibly be"?
 23 Q. Yeah.

Page 327

1 A. No. I think that's a possible
 2 motivation for this law.
 3 Q. Caitlyn Jenner has supported
 4 sex-based distinctions in sports leagues.
 5 Why do you, a white cisgender male, know
 6 better than Caitlyn Jenner why people
 7 support or oppose boys in girls' sports?
 8 MR. FLETCHER: Object to form.
 9 Q. You can answer.
 10 MR. FLETCHER: Argumentative.
 11 Q. You can answer.
 12 MR. FLETCHER: Completely
 13 irrelevant.
 14 Q. You can answer.
 15 A. I'm sorry. Why do I know
 16 better? Well, why do I -- sorry. Why do
 17 I know better than Caitlyn Jenner what's
 18 the -- what's the right policy in this
 19 case? I'm not opining on what's the
 20 right policy. I'm opining as a political
 21 scientist on the interpretation of and
 22 meaning of these laws, so.
 23 Q. So you think Caitlyn Jenner has

Page 328

1 hostility towards transgender persons?
 2 MR. FLETCHER: Object to form,
 3 mischaracterizes testimony,
 4 argumentative.
 5 MR. MILLS: Please stop
 6 interrupting. You can say "objection"
 7 and then be quiet.
 8 A. I don't -- I don't -- I don't
 9 know very much about Caitlyn Jenner,
 10 honestly. But I am resting my opinions
 11 on this case on my training as a
 12 political scientist, and in certain
 13 respects, that gives me better expertise
 14 than Caitlyn Jenner.
 15 Q. I'd like to show you an article
 16 you cited in your report from the
 17 Montgomery Advertiser. I'm going to mark
 18 this as Exhibit 34. This is about the
 19 top political stories of 2023.
 20 (Exhibit 34 was marked for identification
 21 and is attached.)
 22 A. I'm sorry. Did you say page 24?
 23 Q. No, no, no. Sorry. I'm

Page 329

1 introducing it as --
 2 A. Oh, I'm sorry.
 3 Q. And that's not even what I
 4 meant. I'm introducing it as Exhibit 34.
 5 A. Got it.
 6 Q. So here is that article. This
 7 is an article you relied on in your
 8 report; correct?
 9 A. I believe so, yes.
 10 Q. So you relied on this opinion
 11 piece from the Montgomery Advertiser in
 12 forming your analysis?
 13 A. Yes. I -- this piece is an
 14 opinion piece, and I relied on it, yes.
 15 Q. I'd like to scroll down to where
 16 it talks about this law, apparently, on
 17 page 3. You see the highlighted portion
 18 there?
 19 A. Yes.
 20 Q. The last sentence -- the
 21 headline number 3 is "Alabama politicians
 22 target LGBTQ+ people." The third
 23 sentence is, "A three-judge panel earlier

Page 330

1 this year allowed Alabama's ban on
 2 gender-affirming care to go into effect,
 3 a decision currently under appeal."
 4 Are you aware that the
 5 three-judge panel decision referenced
 6 here was the appellate decision in this
 7 case?
 8 A. I was not aware of that.
 9 Q. Do you believe that that
 10 decision was an attack on LGBTQ+ people
 11 as this column suggests?
 12 A. The -- what I relied on this
 13 piece for was highlighting the salience
 14 of -- on legislation -- proposed
 15 legislation and enacted legislation
 16 targeting LGBT individuals. So I don't
 17 have an opinion on the decision in that
 18 particular case.
 19 Q. Do you believe the three judges
 20 who rendered that decision have hostility
 21 toward LGBT rights?
 22 A. I don't have an opinion on that.
 23 Q. And do you believe that they

Page 331

1 hate transgender people?
 2 A. I don't have an opinion on that.
 3 Q. The district judge in this case
 4 allowed the State of Alabama to receive
 5 internal e-mails from the federal
 6 government, HHS. Does he have an
 7 anti-LGBT bias?
 8 A. I'm sorry. Can you say that
 9 again? The district judge allowed
 10 certain e-mails?
 11 Q. Allowed the defendants in this
 12 case to receive internal e-mails from HHS
 13 including from Admiral Rachel Levine.
 14 Does the district judge have anti-LGBT
 15 bias?
 16 A. And HHS in this context is
 17 Department of Health and Human Services?
 18 Q. That's right.
 19 A. The U.S. Depart- --
 20 Q. That's right.
 21 A. I don't -- I don't have an -- I
 22 don't have an opinion on that.
 23 Q. Do you believe that evangelical

Page 332

1 Christians are bigoted?
 2 A. Do I -- do I believe that all --
 3 that evangelical Christians are bigoted
 4 across the board? No.
 5 Q. You don't assert that your
 6 analysis here proves that the Alabama
 7 Legislature acted out of anti-transgender
 8 bias, do you?
 9 A. Out of anti -- acted out of
 10 anti-transgender bias. I believe that --
 11 you're talking about the passage of SB184
 12 specifically?
 13 Q. That's right.
 14 A. I believe that -- that the --
 15 that the passage of 184 -- or SB184 was
 16 an expression -- was -- was an -- was
 17 part of a larger effort targeting
 18 transgender individuals or -- and
 19 transgender rights specifically, and it
 20 was designed or intended, as part of that
 21 effort, to be a -- a -- the defense of
 22 essentialists' understandings of sex and
 23 gender, at least in part, and that was

Page 333

1 understood to be part of the purpose of
 2 the bill and that a -- that at least some
 3 of the justifications for this larger
 4 assault evince more general hostility
 5 towards genre nonconformity per se.
 6 Q. I'd like to read you a quote.
 7 "I believe marriage is between a man and
 8 a woman. I am not in favor of gay
 9 marriage."
 10 Does this statement evince
 11 anti-LGBT bias?
 12 A. I do believe that it is -- well,
 13 I don't know about that particular -- it
 14 depends what the -- what the context for
 15 "I believe that" -- the second statement,
 16 "I believe that marriage is between a man
 17 and a woman." But in the larger context
 18 for that quote, if I am recalling
 19 correctly, if it's from Representative
 20 Wes Allen -- is that correct?
 21 Q. Uh-huh.
 22 A. -- that it's in the context of
 23 his declining to sign all marriage

Page 334

1 licenses out of an unwillingness to
 2 participate in, or just give his legal
 3 approbation to marriages between same-sex
 4 couples. And so taken in that context,
 5 that is an expression of hostility to the
 6 rights of LGBT or LG- -- you know,
 7 same-sex couples.
 8 Q. When President Obama said the
 9 same quote, it didn't evince anti-LGBT
 10 bias?
 11 MR. FLETCHER: Counsel, I
 12 believe we're at time. Is that -- I
 13 would like to request a time from the
 14 court reporter.
 15 THE COURT REPORTER: We are past
 16 seven hours.
 17 MR. FLETCHER: I'll have a
 18 limited redirect. If we could take a
 19 five-minute break, that would ensure that
 20 I can make it as efficient as possible
 21 for us to get out of here.
 22 (Break taken.)
 23

Page 335

1 EXAMINATION BY MR. FLETCHER:
 2 Q. Good afternoon, Dr. Caughey.
 3 A. Good afternoon.
 4 Q. As you know, I'm James Fletcher,
 5 representing the United States in this
 6 matter. I'm going to ask you some
 7 questions in response to the testimony
 8 you gave earlier.
 9 Now, first of all, do you opine
 10 on the legislative intent behind passing
 11 SB184?
 12 A. No.
 13 Q. Do you opine on any legislators'
 14 individual intent in passing SB184?
 15 A. No.
 16 Q. Do you opine on any legislator's
 17 individual motivation in passing SB184?
 18 A. No.
 19 Q. Does your report opine on the
 20 legislative findings of SB184?
 21 A. The legislative findings? It
 22 references one of the findings, but it
 23 doesn't opine on their validity.

Page 336

1 Q. And you testified earlier that
 2 you're a political scientist. Can you
 3 just describe generally, what is it that
 4 political scientists like you do?
 5 A. Well, I am a -- a political
 6 scientist like me, I study primarily
 7 American politics. And in my research
 8 role, I combine my background, knowledge,
 9 and training on -- in political science,
 10 both on the theoretical side and on the
 11 substantive side, to -- with original
 12 data collection and analyses of
 13 qualitative data, quantitative data to --
 14 for a variety of purposes. Sometimes I
 15 am just interested in measuring something
 16 as well as I can. But usually, I'm using
 17 those measures to understand the
 18 relationships between and -- and
 19 understand the explanations or posit
 20 explanations or evaluate explanations for
 21 a particular political phenomenon.
 22 Q. And how does that compare to the
 23 work you did for this report?

Page 337

1 A. Largely very similar. I did
 2 background research in the scholarly
 3 literature, in the secondary or
 4 journalistic literature. I did some
 5 theoretical work conceptualizing relevant
 6 variables, measuring those variables, and
 7 evaluating the relationships between them
 8 with an eye towards adjudicating between
 9 different hypotheses or explanations,
 10 rival explanations.
 11 Q. Okay. And you testified earlier
 12 about what was and was not included in
 13 your healthcare paternalism index. Do
 14 you consider that index to be a reliable
 15 indicator of the state's healthcare
 16 paternalism?
 17 A. I do.
 18 Q. Why?
 19 A. It's composed of multiple items,
 20 each of which is related to, or
 21 conceptually related to -- conceptually
 22 covers the -- the theoretical meaning of
 23 paternalism. But -- but in addition to

Page 338

1 that, by accumulating across four such
 2 indicators that cover the range of --
 3 that distinguish states at different
 4 levels of paternalism, it provides us
 5 with a useful and reliable way of
 6 distinguishing states' relative weight
 7 they put on medical paternalism versus
 8 medical freedom.

9 Q. Okay. Thank you for your time
 10 Doctor.

11 MR. FLETCHER: And thank you,
 12 Madam Court Reporter and counsel. That
 13 concludes my questioning. I believe that
 14 was five minutes or four minutes. And we
 15 can ask the court reporter.

16 THE COURT REPORTER: Yeah.
 17 4:23.

18 MR. MILLS: Nothing further.
 19


20 END OF DEPOSITION
 21 (5:40 p.m. Eastern)
 22
 23

Page 339

1 CERTIFICATE
 2 STATE OF ALABAMA)
 3 COUNTY OF JEFFERSON)

4 I hereby certify that the above
 5 and foregoing proceeding was taken down
 6 by me by stenographic means, and that the
 7 content herein was produced in transcript
 8 form by computer aid under my
 9 supervision, and that the foregoing
 10 represents, to the best of my ability, a
 11 true and correct transcript of the
 12 proceedings occurring on said date at
 13 said time.

14 I further certify that I am
 15 neither of counsel nor of kin to the
 16 parties to the action; nor am I in
 17 anywise interested in the result of said
 18 case.

19 
 /s/ Lane C. Butler
 20 LANE C. BUTLER, RPR, CRR, CCR
 21 CCR# 418 -- Expires 9/30/24
 22 Commissioner, State of Alabama
 23 My Commission Expires: 2/11/25

Page 340

1 Dr. Devin Caughey
 2
 3 May 13, 2024
 4 RE: Boe, Brianna, Et Al. v. Marshall, Steven T., Et Al.
 5 5/1/2024, Dr. Devin Caughey (#6671365)
 6 The above-referenced transcript is available for
 7 review.
 8 Within the applicable timeframe, the witness should
 9 read the testimony to verify its accuracy. If there are
 10 any changes, the witness should note those with the
 11 reason, on the attached Errata Sheet.
 12 The witness should sign the Acknowledgment of
 13 Deponent and Errata and return to the deposing attorney.
 14 Copies should be sent to all counsel, and to Veritext at
 15 LITSUP-GA@VERITEXT.COM
 16 Return completed errata within 30 days from
 17 receipt of testimony.
 18 If the witness fails to do so within the time
 19 allotted, the transcript may be used as if signed.
 20
 21
 22 Yours,
 23 Veritext Legal Solutions
 24
 25

Page 341

1 Boe, Brianna, Et Al. v. Marshall, Steven T., Et Al.
 2 Dr. Devin Caughey (#6671365)
 3 ERRATA SHEET
 4 PAGE___ LINE___ CHANGE_____
 5 _____
 6 REASON_____
 7 PAGE___ LINE___ CHANGE_____
 8 _____
 9 REASON_____
 10 PAGE___ LINE___ CHANGE_____
 11 _____
 12 REASON_____
 13 PAGE___ LINE___ CHANGE_____
 14 _____
 15 REASON_____
 16 PAGE___ LINE___ CHANGE_____
 17 _____
 18 REASON_____
 19 PAGE___ LINE___ CHANGE_____
 20 _____
 21 REASON_____
 22 _____
 23 _____
 24 Dr. Devin Caughey Date
 25

1 Boe, Brianna, Et Al. v. Marshall, Steven T., Et Al.
2 Dr. Devin Caughey (#6671365)
3 ACKNOWLEDGEMENT OF DEPONENT
4 I, Dr. Devin Caughey, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10
11 _____

12 Dr. Devin Caughey Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20__.

16

17

18

19 _____

20

21

22

23

24

25

NOTARY PUBLIC

EXHIBIT 80

Policy - short description	Code in policies dataset	Date Range of available data	Policy - longer description
Abortion Policies			
Access for contraceptives	w_ec_access	1974-2019	Can pharmacies dispense emergency contraception without a prescription? (0 if the state has restricted access to EC by allowing pharmacists to refuse to dispense it; 1 if there is no law either restricting or expanding
Forced counseling before abortions	abortion_consent_1973_1991	1973-1991	Does the state mandate counseling before an abortion (pre-Casey)?
Forced counseling before abortions	abortion_consent_1992_2014	1992-2019	Does the state mandate counseling before an abortion (post-Casey)?
Legal Abortion Pre-Roe	abortion_reform_preroc	1967-1973	Did the state allow abortion before Roe v. Wade?
Parental Notification/Consent Required	w_abortion_parental_notice_1983_2014	1983-2019	Does the state require parental notification or consent prior to a minor obtaining an abortion? (1=notification; 2=consent)
Partial Birth Abortion Ban	abortion_partial_birth	1997-2000	Does the state ban late-term or partial birth abortions?
Medicaid for Abortion	abortion_medicaid	1981-2019	Does the state's Medicaid system pay for abortions?
Waiting Period	w_abortion_waiting_period	1973-2019	Does a state require a 24 hour or more waiting period for abortions? (1=24 or 48 hour, 2=72 hour)
Ultrasounds required	w_abortion_ultrasound	1996-2019	Does a state require providers to offer an ultrasound (1 = required; 2=required to be performed and described to mother)
Criminal Justice Policies			
Age Span Provisions for Statutory Rape	drugs_boehmke_statrapage	1950-1998	Does a state adopt an age span provision into its statutory rape law which effectively decriminalizes sexual activity between similar-aged teens?
Death Penalty	death_penalty	1936-2019	Has the state abolished the death penalty? Has the state made aggravated animal cruelty a first- or second-offense felony? (1 if there is a felony charge after repeated incidents; 2 if there is a felony charge on the first incident of animal abuse/cruelty/torture.)
Animal Cruelty	w_animal_cruelty_felony	1936-2018	
Drug & Alcohol Policies			
State Prohibition Laws	drugs_alcohol_state_prohibition	1936-1965	Does the state prohibit hard alcohol consumption?
Beer Keg Registration Requirement	drugs_boehmke_kegreg	1978-2018	Does the state require the registration upon purchase of a beer keg?
Decriminalization and Legalization of Marijuana	w_drugs_marijuana_legalization	1973-2019	Is marijuana possession legal? (1=decriminalized and punished via fine; 2=legal)
Medical Marijuana	drugs_medical_marijuana	1996-2019	Is it legal to use marijuana for medical purposes?
Minimum Legal Drinking Age 21	drugs_boehmke_mlda21	1936-1985	Does the state have a minimum legal drinking age of 21?
Smoking ban - workplaces	drugs_smoking_ban_workplaces	1995-2019	Does the state ban smoking in all workplaces?
Smoking ban - restaurants	drugs_smoking_ban_restaurants	1995-2019	Does the state ban smoking in restaurants?
Zero Tolerance for Underage Drinking	drugs_boehmke_zerotol	1983-1995	Does the state have a Zero Tolerance law for blood alcohol levels <0.02 for individuals under age 21?
Education Policies			
Allow Ten Commandments in Schools	w_education_biblereading	1936-2019	Does the state allow the Ten Commandments to be posted in educational institutions? (1 if the state has a policy permitting the Ten Commandments to be displayed on state/public property; 2 if the law mandates it is posted in a public institution/school.)
Ban on Corporal Punishment in Schools	education_corporal_punishment_ban	1936-2019	Does the state ban corporal punishment in schools?
Education Spending Per Pupil	z_education_expenditures_per_pupil	1936-2009	What is the per capita spending on public education per pupil based on daily average attendance? Does the state have a mandatory moment of silence period at the beginning of each school day? (1 if a period for reflection or prayer at the beginning of each day is permissible; 2 if state has a mandatory period for reflection or prayer at the beginning of each day)
Moment of Silence Required	w_education_moment_of_silence	1957-2019	
Per Student Spending on Higher Ed.	z_education_higher_edu_spending	1988-2013	What is the per student subsidy for higher education?
Teacher Degree Required - High School	education_teacher_cert_hs	1936-1969	In what year does the state require high school teachers to hold a degree?
Teacher Degree Required - Elementary	education_teacher_cert_elementary	1936-1969	In what year does the state require elementary school teachers to hold a degree?
School for Deaf	education_schoolfordeaf	1936-1950	School for Deaf
State Library System	education_librarysystem	1980-1948	State Library System
Charter Schools	education_charter_schools	1991-2019	Does the state allow charter schools?
Vouchers	education_vouchers	1990-2019	Does the state allow school vouchers?
Environmental Policies			
Air Pollution Control Acts (Pre-CAA)	w_environment_air_pollution_control	1947-1970	Does the state have an air pollution control act? (Pre-Clean Air Act Amendments) (1=any air pollution legislation and 2=state agency regulating air pollution)
Bottle Bill	environment_bottlebill	1970-2019	Does the state require a deposit on bottles paid by the consumer and refunded when the consumer recycles?
CA Car Emissions Standard	environment_ca_car_emissions_standards	2003-2019	Does the state adopt California's Car emissions standards (which are more stringent than the federal level)?
Electronic Waste Recycling Program	environment_electronic_waste	2000-2019	Does the state have a recycling program for electronic waste? Does the state have an endangered species act? (0: State allows federal endangered species act to hold instead of state provisions/there are no state provisions; 1: State has a less stringent protection program in place; 2: State's program meets or exceeds federal guidelines under section 6 of the US ESA)
Endangered Species Act	w_environment_endangered_species	1969-2014	
Environmental Protection Act	environment_state_nepas	1969-2019	Does the state have its own version of the federal National Environmental Policy Act?
Greenhouse Gas Cap	environment_ghg_cap	2006-2019	Does the state have a binding cap on greenhouse gas emissions in the utility sector?
Public Benefit Fund	environment_publicbenefit_funds	1996-2019	Does the state have a public benefit fund for renewable energy and energy efficiency?
Renewable Portfolio Standard	w_environment_state_rps	1982-2019	Does a state have an RPS? (1 if RPS is voluntary 2 if mandatory) Does the state have a tax credit for residential solar installations? (0: No legislation; 1: State approved local option; 2: State mandated credit or exemption system)
Solar Tax Credit	w_environment_solar_taxcredit	1975-2018	
Gambling Policies			
Casinos Allowed	gambling_casinos	1977-2019	Does the state allow casinos?
Lottery Allowed	gambling_lottery_adoption	1964-2019	Does the state have a lottery?
Gay Rights Policies			

Exhibit
004

Ban on Disc. Against Gays In Public Accommodations and Gay Marriage	w_gayrights_public_accommodations w_gayrights_civilunions_marriage	1989-2019 2000-2012	Does the state ban discrimination against gays by public accommodations? (1 indicates a ban on discrimination based on sexual orientation. 2 indicates a ban based on sexual orientation and gender identify.) Does the state allow civil unions or gay marriage (ordinal)? (1=civil unions, 2=gay marriage) Does the state ban credit discrimination against gays? (1 indicates a ban on discrimination based on sexual orientation. 2 indicates a ban based on sexual orientation and gender identify.)
Credit Discrimination against Gays	w_gayrights_credit_discrimination	1989-2019	Does the state ban housing discrimination on basis of sexual orientation (1 indicates a ban on discrimination based on sexual orientation. 2 indicates a ban based on sexual orientation and gender identify.)
Housing Discrimination against Gays	w_gayrights_housing_discrimination	1992-2019	Does a state ban local governments from enacting protections for gays from discrimination?
Local Anti-Discrimination Laws	gayrights_ban_localprotections	2011-2019	Does a state ban local schools from enacting protections for gays from discrimination?
Local Anti-Discrimination Laws on Educational Institutions	gayrights_ban_localprotections_schools	1988-2019	Does the state forbid employment discrimination on the basis of sexual orientation and/or sexual identity? (1 indicates a ban on discrimination based on sexual orientation. 2 indicates a ban based on sexual orientation and gender identify.)
Employment Disc. Protections for Gays	w_gayrights_employment_discrimination	1982-2019	Are hate crimes explicitly illegal in the state?
Hate Crimes Ban - Gays	gayrights_hatecrimes	1999-2019	Does the state forbid sodomy?
Sodomy Ban	gayrights_ban_sodomy	1962-2003	Does the state forbid conversion therapy for minors?
Conversion Therapy Ban	gayrights_ban_conversiontherapy	2012-2019	Does the state allow gay couples to become foster parents? (0=allow adoption agencies to refuse gay foster parents for religious reasons; 1=no law; 2=explicit protections)
Foster Parents	w_gayrights_fosterparents	2002-2019	
Gun Control Policies			
Assault Weapon Ban	guncontrol_assaultweapon_ban	1989-2019	Are assault weapons banned in the state?
Background check gun purchases from dealers	w_guncontrol_bc_dealers	1936-1993	Does the state require a background check on gun purchases from dealers? (1 if background check required for handguns; 2 if required for rifles/long guns)
Background check for private sales	w_guncontrol_bc_privatesales	1936-2019	Does the state require a background check on privately-sold guns? (1 if background check required for handguns; 2 if required for rifles/long guns)
Gun Dealer Licenses	guncontrol_licenses_dealers	1936-2019	Does the state have any license requirements for manufacturers or dealers?
Gun Purchases - Waiting Period	w_guncontrol_waitingperiod	1936-2019	Does the state have a waiting period for gun purchases? (1 if law applies to handguns only; 2 if laws applies to all firearms, including rifles and shotguns)
Open Carry Law for Guns	guncontrol_opencarry	1961-2019	Is there an open carry law for guns?
Saturday Night Special	guncontrol_satnightspecial_ban	1974-2019	Does the state ban "Saturday Night Special" handguns?
Stand your ground law	guncontrol_stand_your_ground	1993-2019	Does the state have a "stand your ground" law?
Gun Registration	w_guncontrol_registration_requirement	1936-2014	Does the state have registration requirement for guns? (1 if law applies to handguns only; 2 if laws applies to all firearms, including rifles and shotguns)
Immigration Policies			
English is official language	immigration_english_language	1970-2019	Is English the state's official language?
Instate tuition for Immigrants	immigration_instate_tuition_illegalimmigrants	2001-2019	Does the state allow in-state tuition for illegal immigrants?
E-verify	w_immigration_everify	2006-2019	Does the state have an e-verify policy? (1=state contractors, 2=all)
Immigrants drivers license	immigration_driverslicense	1993-2019	Does the state grant drivers licenses to immigrants?
Sanctuary States Policy	w_immigration_sanctuary_states	1987-2019	Does the state pre-empt (0) cities on sanctuary policy or bar cooperation with ICE (2)?
Labor Rights Policies			
Age discrimination ban	labor_age_discrimination	1936-2019	Does the state ban age discrimination?
Anti-Injunction Act	labor_antiinjunction_laws	1936-1966	Does the state have an anti-injunction law?
Collective Bargaining - State Employees	labor_collective_bargaining_stateemployees	1965-2019	Does the state have collective bargaining rights for state government employees?
Collective Bargaining - Teachers	labor_collective_bargaining_teachers	1959-2019	Does the state have collective bargaining rights for local teachers?
Disability Discrimination Ban	w_labor_state_ada	1965-1990	Does the state ban discrimination against disabled people? (1=antidiscrimination law; 2=reasonable accommodation law; see Jolls and Prescott (2004))
Merit System for State Employees	labor_merit_system	1936-1953	Does the state have a merit system for state employees?
Minimum Wage above Federal Level	labor_minwage_abovefed	1968-2019	Is the state's minimum wage above the federal level?
Minimum Wage for Men	labor_minimumwage_men	1944-1968	Does the state have a minimum wage for men?
Minimum Wage for Women	labor_minimumwage_women_anymajorindustry	1936-1980	Does the state have a minimum wage for women?
Prevailing Wage Law	labor_prevaling_wage_laws	1936-2019	Does the state have prevailing wage laws?
Right to Work law	labor_right_to_work	1944-2019	Is the state a right-to-work state?
State Pension System Established	labor_state_retirement_system	1936-1960	Does the state have a pension system?
Temporary Disability Insurance	labor_state_disability_insurance	1945-2019	Does the state have a temporary disability insurance program?
Unemployment Compensation	z_labor_unemployment_compensation	1937-2019	What is the maximum weekly amount of unemployment benefits?
Workers Compensation	labor_workers_compensation	1936-1947	Has the state established workers compensation?
Child Labor (14-15)	x_labor_childlabor_workpermitage	1936-1939	Does the state require employment certificates for child labor (14 and 15)?
Labor Relations Acts	w_labor_relations_acts	1937-1966	Does the state have a Labor Relations Act? (1=patterned after Taft-Hartley Act; 2=patterned after Wagner Act)
Licensing Policies			
Chiropractor Licensing	licenses_chiropractors	1936-1951	Chiropractor Licensing
Dentist Licensing	licenses_dentists	1936-1951	Dentist Licensing
Architect Licening	licenses_architects	1936-1951	Architect Licening
Beautician Licensing	licenses_beauticians	1936-1951	Beautician Licensing

Pharmacist Licensing	licenses_pharmacists	1936-1951	Pharmacist Licensing
Engineer Licensing	licenses_engineers	1936-1951	Engineer Licensing
Nurse Licensing	licenses_nurses	1936-1951	Nurse Licensing
Accountant Licensing	licenses_accountants	1936-1951	Accountant Licensing
Real Estate Licensing	licenses_real_estate	1936-1951	Real Estate Licensing
Misc. Regulatory Policies			
Anti-sedition laws	regulation_sedition_laws	1936-1955	Does the state have anti-sedition laws?
Ban the box	regulation_ban_the_box	1998-2019	Does the state ban private employers from asking about criminal convictions during hiring?
Forced sterilizations	regulation_forced_sterilizations	1945-1974	Does the state have a forced sterilization program?
Grandparents' Visitation Rights	regulation_boehmke_grandvist	1964-1987	Does the state have a law guaranteeing grandparents' visitation rights?
Hate Crimes Ban	regulation_hate_crimes	1981-2019	Are hate crimes explicitly illegal in the state?
Urban Housing - Enabling Federal Aid	regulation_housing_enabling_federal_aid	1936-1953	Does the state have a law enabling federal housing aid?
Urban Housing - Direct State Aid	regulation_housing_directstateaid	1939-1951	Does the state provide direct aid for urban housing?
Living Wills	regulation_boehmke_livingwill	1976-1992	Does the state have a law permitting individuals control over the use of heroic medical treatment in th event of a terminal illness?
Pain and Suffering Limits in Lawsuits	regulation_pain_suffering_limits	1975-2019	Are there limits on damages for pain and suffering in lawsuits?
Physician-assisted suicide	regulation_physician_suicide	1998-2019	Does the state allow physician-assisted suicide?
Planning Laws Required for Local Gov.	regulation_boehmke_cogrowman	1961-2007	Does a state have a law authorizing or requiring growth-management planning?
Protections Against Compelling Reporters	regulation_boehmke_shield	1936-2013	Does the state have a Shield Law protecting them from revealing their sources?
Rent Control Prohibition	regulation_rent_control	1950-2019	Does state prohibit the passage of rent control laws in its cities or municipalities?
Religious Freedom Restoration Act	regulation_rfra	1993-2019	Did the state pass the Religious Freedom Restoration Act?
State Debt Limitation	regulations_state_debt_limitations	1936-1966	Does the state constitution restrict state debt issuance?
Municipal Home Rule	regulations_homerule	1936-1961	Enables cities to adopt a home rule charter that acts as the city's basic governing document over local issues.
Lemon Laws	regulations_lemonlaw	1970-2019	Did the state pass a law protecting consumers who purchase automobiles which fail after repeated repairs?
Utility Regulation	regulation_utility_jurisdiction	1936-1960	State Commission with rate-setting authority over electricity utilities
Racial Discrimination Policies			
Requires segregation in schools	race_school_segregation	1936-1953	Does the state require segregation in public schools?
Ban on Interracial Marriage	race_interracial_marriage_banned	1936-1967	Does the state have a law banning interracial marriages?
Banning discrimination in public accom.	w_race_disc_public_accommodations2	1964-2019	Does the state pass a law (with administrative enforcement) banning discrimination in public accommodations (post-CRA)? (1 indicates that individuals had to bring lawsuits to enforce the ban on discrimination, while 2 indicates that there was a state agency that enforced the ban on discrimination.)
Banning discrimination in public accom. (p	w_race_disc_public_accommodations1	1936-1963	Does the state pass a law (with administrative enforcement) banning discrimination in public accommodations (pre-CRA)? (1 indicates that individuals had to bring lawsuits to enforce the ban on discrimination, while 2 indicates that there was a state agency that enforced the ban on discrimination.)
Fair Employment Laws	race_fair_employment_commissions	1945-1964	Does the state have a fair employment law?
Fair Employment Laws (post-1964)	race_fair_employment_commissions_post1965-2019	1965-2019	Does the state have a fair employment law? (post-1964)
Fair Housing - Private Housing	w_race_fair_housing_private	1959-1968	Does the state ban discrimination in private housing? (1 if any fair housing law; 2 if includes owner-occupied housing OR excludes Owner- Occupied Housing, but includes All Real Estate Broker Activities
Fair Housing - Public Housing	race_boehmke_fhpub	1937-1965	Does the state ban discrimination in public housing?
Fair Housing - Urban Renewal Areas	race_boehmke_fhurb	1945-1964	Does the state have urban renewal areas?
Tax Policies			
Cigarette Tax	cig_taxes_binary	1936-1946	Does the state have a cigarette tax?
Cigarette Tax Rate	z_cigarette_taxes	1947-2019	What is the state's tax on a pack of cigarettes?
Earned Income Tax Credit	earned_income_taxcredit	1988-2019	Does the state have an earned income tax credit?
Income Tax	income_taxes	1936-2019	Does the state have an income tax?
Income tax rate - wealthy	x_tax_rate_rich	1977-2018	What is the state individual income tax rate for an individual that makes more than 1.5 million real dollars?
Sales Tax	sales_taxes_binary_pre1946	1936-1945	Does the state have a sales tax?
Sales tax rate	x_sales_taxes	1946-2019	What is the sales tax rate?
Tax Burden	x_tax_burden	1977-2010	What is the state's tax burden (per capita taxes/per capita income)?
Top Corporate tax rate	x_top_corporateincometaxrate	1941-2019	What is the top corporate tax rate?
Corporate Income Tax	corporate_incometax	1936-1940	Is there a corporate income tax?
Estate Tax	estate_tax	2009-2019	Is there a state estate tax?
Transportation Policies			
Controlled Access Highways	transportation_controlledaccesshighways	1937-1946	Controlled Access Highways
Bicycle Helmets Required	regulation_bicycle_helmets	1985-2019	Does the state require that people use helmets while on bicycles?
Mandatory Seat Belts	regulation_mandatory_seatbelts	1984-2019	Does the state require the usage of seat belts (either primary or secondary enforcement)?
Motorcycle helmets required	regulation_motorcycle_helmets	1967-2019	Does the state require the usage of helmets by people on motorcycles?
Mandatory Car Insurance	regulation_mandatory_car_insurance	1945-2019	Does the state require drivers to obtain car insurance?
Welfare Policies			
Medicaid expansion as part of ACA	medicaid_expansion	2014-2019	
AFDC - Benefits for Average Family	z_ssi_afdc_families_payments	1936-1992	What is the average level of benefits per family under the Aid for Families with Dependent Children program?
AFDC-UP Policy	afdc_up	1961-1990	What is the average level of benefits under the Aid for Families with Dependent Children program?

Aid to Blind - Payments per Recipient	z_ssi_blind_payments	1936-1965	What is the average monthly payment per recipient for the permanently blind or disabled?
Aid to Disabled - Payments per Recipient	z_ssi_disabled_payments	1951-1965	What is the average monthly payment per recipient for the permanently blind or disabled?
Aid to Blind - Payments per Recipient	z_ssi_blind_payments_post1965	1966-1972	What is the average monthly payment per recipient for the permanently blind or disabled? (post-1965)
Aid to Disabled - Payments per Recipient	z_ssi_disabled_payments_post1965	1966-1972	What is the average monthly payment per recipient for the permanently blind or disabled? (post-1965)
CHIP - Eligibility Level for Children	x_chip_children	1988-2012	What is the CHIP eligibility level for children?
CHIP - Eligibility Level for Infants	x_chip_infants	1998-2018	What is the CHIP eligibility level for infants?
General Assistance Payments Per Case	z_ssi_ga_payments_per_case	1937-1963	What is the average monthly payment per case for general assistance (an early form of welfare)?
General Assistance Payments Per Recipient	z_ssi_ga_payments_per_recipient	1964-1980	What is the average monthly payment per recipient for general assistance (an early form of welfare)?
CHIP - Eligibility Level for Pregnant Women	x_chip_pregnantwomen	1998-2012	What is the CHIP eligibility level for pregnant women?
Medicaid - Eligibility for Pregnant Women	x_chip_pregnantwomen_prebba	1990-1997	What is the Medicaid eligibility level for pregnant women?
Old Age Assistance - Payments per Recipient	z_ssi_old_age_payments	1936-1965	What is the average monthly payment per recipient per recipient for old age assistance?
Old Age Assistance - Payments per Recipient	z_ssi_old_age_payments_post1965	1965-1972	What is the average monthly payment per recipient per recipient for old age assistance? (post-1965)
Senior Prescription Drugs	boehmke_snrpresc	1975-2001	Does the state provide pharmaceutical coverage or assistance for seniors who do not qualify for Medicaid?
State Adoption of Medicaid	medicaid_stateadoption	1966-1983	Does the state have a Medicaid program?
TANF - Average Payments per Family	z_tanf_paymentsperfamily	2006-2010	What is the average monthly level of benefits per family under the Temporary Aid for Needy Families program?
TANF - Initial Eligibility Level	z_tanf_initialelig	1996-2017	What is the initial eligibility level for benefits for a family of three under the Temporary Aid for Needy Families Program?
TANF - Max Payments	z_tanf_maxpayment	1990-2017	What is the maximum level of benefits under the Temporary Aid for Needy Families program for a family of three with no income?
Womens' Rights Policies			
Equal Pay For Females	genderrights_gender_equal_pay	1936-1972	Does the state have a law providing for equal pay for women working in the same job?
Equal Right Amendment Ratified	genderrights_era_ratification	1972-2019	Has the state ratified the Equal Rights Amendment?
Jury Service for Women	genderrights_jury_service	1936-1967	Can women serve on juries?
State Equal Rights Law	genderrights_state_eras	1971-2019	Has the state passed a state-level equivalent to the Equal Rights Amendment?
Gender Discrimination Laws	genderrights_gender_discrimination_laws	1961-1964	Does the state ban hiring discrimination on the basis of gender?
Gender Discrimination Laws (post-1964)	genderrights_gender_discrimination_laws_p	1965-2019	Does the state ban hiring discrimination on the basis of gender? (post-1964)
No Fault Divorce	genderrights_nofault_divorce	1966-2019	Do states have a no-fault divorce policy?

The Policy Effects of the Partisan Composition of State Government

Devin Caughey* Christopher Warshaw† Yiqing Xu‡

September 28, 2015

[Word Count: 9,964]

Abstract

How much does it matter which party controls the government? There are a number of reasons to believe that the partisan composition of state government should affect policy. But the existing evidence that electing Democrats instead of Republicans into office leads to more liberal policies is surprisingly weak, inconsistent, and contingent. We bring clarity to this debate with the aid of a new measure of the policy liberalism of each state from 1936-2014, using regression-discontinuity and dynamic panel analyses to estimate the policy effects of the partisan composition of state legislatures and governorships. We find that until the 1980s, partisan control of state government had negligible effects on policy liberalism, but that since then partisan effects have grown markedly. Even today, however, the policy effects of partisan composition pale in comparison to the policy differences across states. They are also small relative to the partisan divergence in legislative voting records.

We thank participants at the 2014 MPSA Conference and seminar participants at MIT, Rochester, Yale, and Duke for feedback on previous versions of this manuscript. We are grateful for feedback on earlier drafts of this manuscript from Thad Kousser, Jens Hainmueller, Andy Hall, Danny Hidalgo, Dan Hopkins, Chris Tausanovitch, and Eric Schickler. We appreciate the research assistance of Melissa Meek, Kelly Alexander, Aneesh Anand, Tiffany Chung, Emma Frank, Josef Kolman, Mathew Peterson, Charlotte Swasey, Lauren Ullmann, and Amy Wickett. We also appreciate the willingness of Frederick Boehmke and Carl Klarner to generously share data. We are grateful for support from the School of Humanities, Arts, and Social Sciences at MIT. All mistakes, however, are our own.

*Assistant Professor, Department of Political Science, MIT, caughey@mit.edu

†Assistant Professor, Department of Political Science, MIT, cwarshaw@mit.edu

‡PhD Candidate, Department of Political Science, MIT, xyq@mit.edu

In 1948, the Ohio Democratic Party gained control of state government for the first time since the Great Depression. With the popular Frank Lausche at the top of their ticket, the Democrats defeated the incumbent Republican governor and won majorities in both houses of the legislature. During their two years of unified control, however, Ohio Democrats failed to pass any major new liberal policies. In fact, Governor Lausche, a fiscal conservative who had defeated a more liberal Democrat in the primary, actually proposed a budget that reduced state expenditures from their level under his Republican predecessor (*Time* 1956; Usher 1994). Six decades later, in 2012, North Carolina Republicans experienced a similar triumph with the election of Governor Pat McCrory, which completed the GOP takeover of the state initiated two years earlier with its capture of the legislature. Republicans took advantage of their newfound control by passing a flood of conservative legislation: cutting unemployment insurance, repealing the estate tax, “flattening” the income tax, relaxing gun laws, and tightening restrictions on abortion (Fausset 2014; Davey 2014).

Which of these two cases better exemplifies the policy consequences of the partisan composition of state government? Does electing Democrats rather than Republicans have little effect on the ideological orientation of state policies? Or does the partisanship of state officials cause dramatic policy shifts? The scholarly literature exhibits little consensus on these questions. Many classic studies of state politics emphasize the exceedingly weak or even negative cross-sectional correlations between state policy liberalism and Democratic control of state offices (e.g., Hofferbert 1966; Garand 1988; Erikson, Wright, and McIver 1993). More recent studies, employing panel analyses and other stronger research designs, have uncovered partisan policy effects for certain offices, on some policies, in a subset of states, or under particular conditions (e.g., Besley and Case 2003; Kousser 2002; Leigh 2008; Fredriksson, Wang, and Warren 2013). In sum, the evidence for policy effects of party control is weak, inconsistent, and contingent.

We build upon and clarify this ambiguous literature, improving on previous research in three major ways. First, we use a much more comprehensive policy measure, the policy liberalism scale developed by Caughey and Warshaw (Forthcoming), which is estimated from a dataset of nearly 150 policies covering each year between 1936 and 2014. Second, we use more credible identification strategies. Specifically, we estimate the effects of Democratic governors and state legislatures using two designs: the electoral regression-discontinuity (RD) design, which exploits variation in party control induced by very close elections, and dynamic panel analysis, which exploits year-specific partisan variation within states. These designs enable us to isolate the causal effects of partisan control from other time-varying determinants of state policy. Third, we are the first study to examine temporal heterogeneity in partisan effects on policy. This allows us to assess whether the parties have polarized not only in their roll-call records and other forms of position taking (e.g., Ansolabehere, Snyder, and Stewart 2001; McCarty, Poole, and Rosenthal 2006), but also in the actual *policies* that they implement in office.

We find that partisan effects on state policy, for both governors and state legislatures, have in fact increased substantially over time. Before the 1980s, the partisan composition of state governments had little-to-no causal impact on the liberalism of state policies. Only in the past quarter century have partisan effects become detectable, with their magnitude growing steadily through the end of the period covered by our data. We find, in short, that both Ohio in 1948 and North Carolina in 2012 were typical of the eras in which they occurred.

These findings reconcile a number of inconsistencies in the previous literature and contribute to our knowledge of both state and national politics. First, our results provide the first well-identified evidence that the partisan composition of government affects the overall ideological orientation of state policies. Second, by documenting the growth of party effects since the 1980s, we help reconcile classic studies that find

no party effects with more recent evidence that party control does matter for at least some policies. Finally, these findings imply that the actual policies implemented by Democrats and Republicans have polarized along with their roll-call records.

At the same time, the substantive magnitude of partisan effects should not be exaggerated. Even today, for example, electing a Democratic rather than Republican governor should be expected to increase monthly welfare payments by only \$1–2 per recipient, and to increase by just half a percentage point the proportion of policies on which a state has the liberal policy option. These effects are small relative to policy differences across states. They are also small relative to the partisan divergence in legislative voting records. These results thus partially assuage the normative concern that partisan polarization has led to extreme policy swings, degrading the congruence between policy outcomes and citizens' preferences (e.g., Bafumi and Herron 2010; Lax and Phillips 2011).

The remainder of this paper is organized as follows. We first discuss the substantive and theoretical background for our inquiry. We then turn to empirics, beginning with a description of our annual measure of state policy liberalism. Next, we estimate the policy effects of Democratic governors and state legislatures using RD and dynamic panel analyses. The penultimate section offers an interpretation of our empirical results, followed by a brief conclusion.

Substantive Background

Although the relationship between state policies and the partisanship of state officials is a longstanding focus of the state politics literature, there is no consensus regarding the causal effects of partisan control on state policy. Most classic studies find little association between states' policies and the partisanship of their officials.¹ Hofferbert

1. Other studies find conditional effects of party control in a subset of states (e.g., Brown 1995; Dye 1984).

(1966), for example, finds “no significant relationship” between “the party in power and public policy” on welfare issues. Winters (1976) finds that party control of state government makes “little or no difference” for tax burdens and spending benefits. Hanson (1984) finds no significant effects of party control on the scope of Medicaid programs, while Plotnick and Winters (1985) find no effect of party control on AFDC benefits. Some studies even find Democratic party control and liberal policies to be *negatively* correlated across states (e.g., Erikson, Wright, and McIver 1993; Barrilleaux 1997; Lax and Phillips 2011).

These cross-sectional studies, however, are hampered by two important methodological limitations. First, they lack a credible identification strategy. As a result, their findings about the effect of party control on policy could be biased by any number of omitted variables that are correlated with partisan control of government (economic conditions, public opinion, etc.). Second, their findings are all based on a single slice of time, and sometimes a single policy area. For instance, Erikson, Wright, and McIver (1993) is based on data from the 1980s, while Lax and Phillips (2011) is based on data from the 2000s. As a result, it is hard to know whether each study’s results are generalizable to other time periods or policy areas.

A smaller literature has used time-series cross-sectional data to examine policy effects using more credible causal identification strategies. On the whole, these studies have found “weak and oftentimes conditional” evidence that party control affects state policies (Kousser and Phillips 2009, 70). Besley and Case (2003), for example, estimate a two-way fixed-effects model of four state policy indicators and find a mix of liberal, conservative, and indeterminate effects of Democratic governors and legislatures. Alt and Lowry (1994) use a structural-equation model of state fiscal policy and conclude that Democrats in non-Southern states spend only slightly more than Republicans when they control state government, though these differences are magnified when deficit carryovers are allowed. More recent studies that employ electoral

RD designs find similarly ambiguous and contingent effects. Fredriksson, Wang, and Warren (2013) find that re-electable Democratic governors increase taxes but term-limited ones *decrease* them. Leigh (2008) examines a total of eight policy indicators and finds significant effects on just one (minimum wages), leading him to conclude that governors “behave in a fairly non-ideological manner” (256). Each of these studies, however, focuses on only a handful of policies. Thus, it is hard to know what to make of their mixed and ambiguous results. Moreover, it is difficult to assess whether their results generalize to the larger policy agenda in the states.

In sum, the state politics literature exhibits little agreement regarding the policy effects of partisan control of state government. There continues to be a vigorous debate about whether it matters for policy whether Democrats or Republicans control the governorship and state legislature. In the sections that follow, we seek to bring clarity to this debate with both new theory and evidence on the effects of the partisan composition of state government on policy.

Theoretical Framework

Like Erikson, Wright, and McIver (1993) and many other works on state politics, we adopt a model of two-party competition over a one-dimensional policy space as our basic theoretical framework. We assume that parties and their candidates, due to their own ideological motivations and those of their core supporters, care about affecting policy outcomes as well as winning elections. We also assume that election outcomes are uncertain. Under these conditions, we should expect the policy positions of candidates from opposing parties to diverge from each other (Roemer 2001, 72). In contrast to the classic Downsian result that policy reflects the median voter regardless of who wins the election, our framework thus predicts that equilibrium policy will depend on the outcome of the election, resulting in policy effects of partisan control.

Although we expect the partisan outcome of elections to have at least some effect on the ideological orientation of state policies, the magnitude of policy effects—that is, the degree of policy divergence between the parties—should differ depending on several factors. First, policy effects should depend on the degree of ideological polarization between the parties. If the candidates and core supporters of one party have very different preferences, they will seek to implement very different policies in office. Second, candidates should adopt more moderate (and thus electorally appealing) policy positions to the extent that they value holding office in itself, not simply as a means to ideological policy ends (Calvert 1985; Bernhardt, Duggan, and Squintani 2009).² Third, the policy effects of party control of a given government institution should depend on that institution’s influence over the policymaking process. Governors, for example, cannot simply implement their ideal point, but rather must compromise with a legislature in which the opposing party probably has at least some influence (compare with the analysis of presidential policy effects in Alesina, Londregan, and Rosenthal 1993). Policy effects in the legislature should further depend on the degree to which the majority party can use its control to skew policy outcomes away from the median legislator in the chamber (e.g., Cox, Kousser, and McCubbins 2010).

Over the past half century, all of the above factors have moved in the direction of larger policy effects. In recent decades, the policy positions of Democratic and Republican politicians have become more ideologically distinct from each other and more internally homogeneous (McCarty, Poole, and Rosenthal 2006). In response, citizens have increasingly sorted themselves into the ideologically “correct” party (Fiorina and Abrams 2008). At the same time, the non-policy benefits of holding office have declined as patronage-oriented machines have been replaced by an activist base of issue-oriented “amateurs” (Wilson 1962; Layman, Carsey, and Horowitz 2006). Since candidates are often drawn from their party’s activist pool, office-holders themselves

2. Convergence may unravel, however, if candidates cannot credibly commit to moderate policies (Alesina 1988).

have probably become more policy-motivated and ideologically extreme, in part because both parties have become less hospitable to politicians, such as Frank Lausche and his Republican contemporary Nelson Rockefeller, who hold sincerely moderate views (Van Houweling 2012; Thomsen 2014). Finally, congressional parties have leveraged their greater homogeneity into strong formal mechanisms of party discipline and control, enhancing the majority’s influence over policymaking (Aldrich and Rohde 2000). Partisan polarization has been most extensively documented at the national level, but there is ample evidence that polarization has increased at the state level as well (e.g., Shor and McCarty 2011). The aggregate consequence of these shifts has been to increase the distance between the policy positions of candidates from opposing parties and to enhance their desire and capacity to achieve their ideological policy goals once in office.

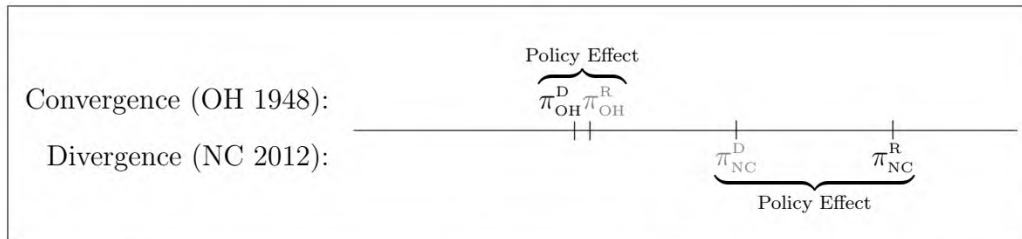


Figure 1: Partisan convergence and divergence in a left–right policy space. π_e^p denotes where state policy would be located following a victory by party p in election e . Gray indicates losing candidates, for which π_e^p is not observed, and $\pi_e^R - \pi_e^D$ is the policy effect of election e . The potential policy outcomes above the line illustrate a case of policy convergence, where the election outcome has little effect (e.g., Ohio 1948), and those below the line illustrate policy divergence (e.g., North Carolina 2012).

Using a stylized representation of the gubernatorial elections in Ohio 1948 and North Carolina 2012, Figure 1 illustrates our theoretical framework and its relationship to our empirical quantities of interest. Following our general theoretical framework, the figure places policy outcomes on a single left–right dimension. In each election e , π_e^p denotes how conservative state policy *would be* following a victory by party p , net of status quo bias, compromise with other actors, and other policy

determinants. Of course, since each election has but one winner, we can observe only one of the two potential policy outcomes. Our theoretical focus is the set of counterfactual differences $\tau_e = \pi_e^R - \pi_e^D$, each of which is the *policy effect* of party control of a given office or body (in Figure 1, the governorship) in the year following the election. In Ohio 1948, a case of near-total policy convergence, the policy effect was very small, whereas in North Carolina 2012 the parties diverged much more and the policy effect was accordingly much larger.

Notice that observed policy differences between states can easily provide a misleading portrait of policy effects. In Figure 1, for example, both of Ohio's potential policy outcomes are more liberal than those of North Carolina, so the observed difference $\pi_{NC}^R - \pi_{OH}^D$ is an over-estimate of the policy effects for both states. The observed difference would have been even more misleading had the opposite candidates won, since policy would actually have been more *conservative* under a Democratic governor in North Carolina (π_{NC}^D) than under a Republican in Ohio (π_{OH}^R). Avoiding the bias caused by differences in the median voter and other confounders requires a policy measure that is available over many years as well as research designs that isolate the casual effect of party control from other policy determinants, both of which we describe in the following sections.

An Annual Measure of State Policy Liberalism

Studies of state policy generally employ one of two measurement strategies: they either analyze a series of policy-specific indicators, or they construct composite measures intended to summarize the general orientation of state policies (Jacoby and Schneider 2014, 568). There are a number of downsides of focusing on policy-specific indicators. Most importantly, policy-specific indicators do not cover the full universe of policy domains and thus lack content validity as summaries of states' overall policy

orientation (Adcock and Collier 2001, 537). Another downside of focusing solely on a few continuous policies like taxes and expenditures is that categorical policies—such as the abortion restrictions enacted by North Carolina Republicans after the 2012 election—are ignored. Finally, relying on a few noisy policy indicators leads to a substantial loss of statistical power. The combination of multiple outcome variables and low statistical power can easily lead to inferential errors about effect magnitudes because only a few unusually large point estimates will pop out as significant (Gelman, Hill, and Yajima 2012). It is thus unsurprising that studies focusing on individual policies have typically found significant (sometimes large) partisan effects on a few policies but null results for many others. For the same reasons, studies of city policies have often found similar patterns of results (e.g., Ferreira and Gyourko 2009; Gerber and Hopkins 2011).

To address these problems, many studies of state policy rely on indices, factor scores, or other holistic summaries of the liberalism of state policies (e.g., Hofferbert 1966; Klingman and Lammers 1984; Erikson, Wright, and McIver 1993). Such composite measures substantially reduce measurement error and thus increase statistical power if, as seems reasonable with state policies, the indicators on which they are based tap into a single latent variable (Ansolabehere, Rodden, and Snyder 2008). In addition, composite measures of policy liberalism often come closer to capturing the outcome of interest, which is usually not a specific policy domain but rather the overall ideological orientation of state policies. The disadvantage of the composite approach has been the difficulty of constructing time-varying measures of state policy liberalism. As a consequence, all existing analyses of the determinants of state policy liberalism employ cross-sectional designs inimical to credible causal inferences.

In our analysis, we utilize the dynamic measure of state policy liberalism recently developed by Caughey and Warshaw (Forthcoming), who use a dataset of nearly 150 policies to estimate a policy liberalism score for each state in each year between

1936 and 2014. The policy liberalism scores are estimated using a dynamic Bayesian factor-analytic model for mixed data, which allows the inclusion of both continuous and ordinal indicators of state policy (over 80% of the variables in the policy dataset are ordinal, mainly dichotomous).³

The policy dataset underlying the policy liberalism scores is designed to include all politically salient state policy outputs on which comparable data are available for at least five years.⁴ It covers a wide range of policy areas, including social welfare (e.g., AFDC/TANF benefit levels), taxation (e.g., income tax rates), labor (e.g., right-to-work), civil rights (e.g., fair housing laws), women’s rights (e.g., jury service for women), morals legislation (e.g., anti-sodomy laws), family planning (e.g., ban on partial birth abortion), the environment (e.g., state endangered species acts), religion (e.g., public schools allowed to post Ten Commandments), criminal justice (e.g., death penalty), and drugs (e.g., marijuana decriminalization). Despite the diversity of policies, there is little evidence that policy variation across states is multidimensional, and the global measure correlates highly with domain-specific indices of policy liberalism. Data on at least 43 different policies are available in every year, enough to estimate policy liberalism quite precisely.⁵

Table 1 provides a sense of how policy liberalism corresponds to substantive differences across states in 1950 and 2010. Mississippi and Massachusetts, which bookend the policy liberalism scale throughout the period, are included for both years; the other three states in each year were chosen because their policy liberalism differ

3. The model, which extends that of Quinn (2004), is dynamic in that policy liberalism is estimated separately in each year and the policy-specific intercepts (or “difficulties”) are allowed to drift over time. If, instead, the intercepts are held constant, the policies of all states are estimated to have become substantially more liberal, especially before the 1980s. Each policy’s factor loading (or “discrimination”), which captures how “ideological” the policy is, is held constant over time.

4. Unlike many studies, the dataset explicitly excludes social outcomes (e.g., incarceration or infant-mortality rates) as well as more fundamental government institutions (e.g., legislative term limits).

5. For further details on the policy liberalism measure, see Sections A.1–A.3 of the and Caughey and Warshaw (Forthcoming).

Table 1: Illustrative Policies of Selected States, 1950 and 2010

Year = 1950							
	Policy Liberalism	Pct. Lib.	Women on Juries	Labor Anti-Injunction	Housing Aid	Fair Empl. Commiss.	AFDC Benefit
MS	-1.35	28%	No	No	No	No	\$460
DE	-0.94	30%	Yes	No	No	No	\$642
MT	0.05	44%	Yes	Yes	No	No	\$838
WI	0.93	56%	Yes	Yes	Yes	No	\$1028
MA	1.33	62%	Yes	Yes	Yes	Yes	\$1036
Year = 2010							
	Policy Liberalism	Pct. Lib.	Corporal Punish. Ban	Prevailing Wage Law	Medicaid Abortion	Greenhouse Gas Cap	TANF Benefit
MS	-2.29	17%	No	No	No	No	\$253
VA	-0.89	33%	Yes	No	No	No	\$262
NV	-0.13	45%	Yes	Yes	No	No	\$304
MN	1.13	66%	Yes	Yes	Yes	No	\$323
MA	2.02	77%	Yes	Yes	Yes	Yes	\$352

from each other by about one standard deviation.⁶ The second column indicates the percentage of dichotomous policies on which the state had the liberal option.⁷ (On average, a one-unit change in policy liberalism increases a state’s percentage of liberal policies by 14 points.) The next four columns provide examples of highly discriminating dichotomous policies of varying “difficulty,” and the rightmost column provides an example of a continuous policy, average monthly AFDC/TANF benefits per recipient family.⁸

Figure 2 plots the policy liberalism time series of every state between 1936 and 2014, with blue and red loess lines for states with Democratic and Republican governors, respectively. Strikingly, until the end of the 20th century states with Democratic governors actually had more conservative policies than Republican-controlled states (the patterns for state legislatures are similar). The figure thus confirms the classic

6. The policy liberalism scores have zero-mean and unit-variance across state-years. In a typical year, the cross-sectional SD is around 0.9.

7. There are 41 dichotomous policies available in 1950 and 45 in 2010.

8. The welfare benefits are expressed in 2012 dollars and are adjusted for cost-of-living differences among states.

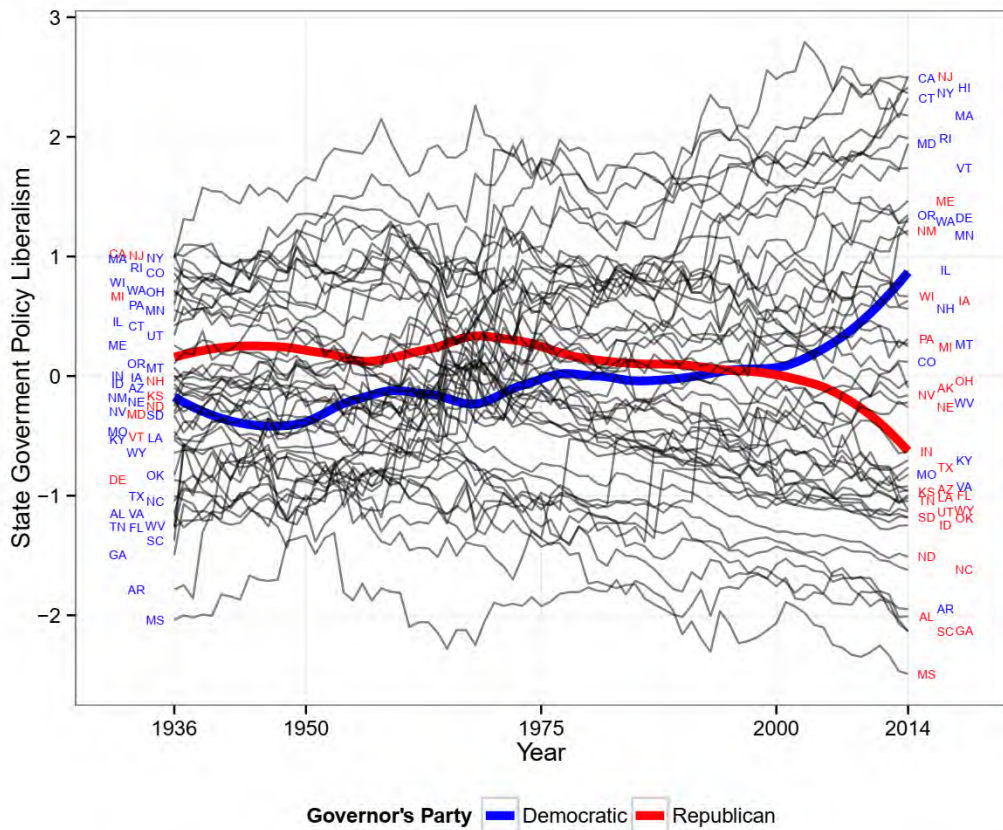


Figure 2: Yearly state policy liberalism, 1936–2014. Blue and red loess lines indicate the average policy liberalism of states with, respectively, Democratic and Republican governors.

finding of a weakly negative relationship between state policy liberalism and Democratic control. Since 2000, however, party control has become aligned with state politics, and the gap in policy liberalism between Democratic- and Republican-controlled states has rapidly widened. This pattern is only partially driven by the realignment of the South; even in the non-South, Republican states were at least as liberal as Democratic ones until the late 1990s. Whether this increasing correlation is causal—and not simply the result of a better match between ideology and partisanship—is the subject of the empirical analyses in the next section.

Empirical Analysis of Policy Effects

Evaluating policy divergence between the parties requires isolating the policy effects of partisan composition from other determinants of state policy; otherwise, partisan effect estimates will be biased. The public's ideological mood, for example, may affect policy not only through partisan turnover but also through the anticipatory responsiveness of incumbents (Stimson, MacKuen, and Erikson 1995), introducing spurious correlation into naive estimates of partisan effects. In order to isolate the policy effects of partisan composition *per se*, we rely on two identification strategies. The first is an RD design, which exploits the exogenous variation in party control induced by narrowly decided state legislative and gubernatorial elections. Intuitively, extremely close elections may be thought of as coin flips that randomly install one party's candidate into office, independent of all other policy determinants. Our second identification strategy is a dynamic panel analysis, which exploits over-time variation within states while controlling for national trends and states' recent history of policy liberalism. We use the RD design to establish our basic findings and then follow up with dynamic panel analysis, whose greater statistical efficiency allows us to examine these findings with greater nuance and precision.

Regression-Discontinuity Analysis

Electoral regression-discontinuity (RD) designs exploit the fact that a sharp electoral threshold, 50% of the two-party vote share, determines which party controls a given office (Lee 2008; Pettersson-Lidbom 2008). The validity of the RD design hinges on the assumption that only the winning candidate—and not the distribution of units' potential outcomes—changes discontinuously at the threshold. Unlike U.S. House elections, where incumbents appear to have an advantage in very close elections (Caughey and Sekhon 2011), our analysis of state legislative and gubernatorial

elections uncovers no statistically significant pre-treatment discontinuities. Following Calonico, Cattaneo, and Titiunik (2014b), we estimate both pre- and post-treatment discontinuities with local linear regression, using a bandwidth chosen to minimize mean-square-error (MSE) and adjusting confidence intervals to account for bias in the local-linear estimator.

RD for Governor

Consistent with Folke and Snyder (2012) and Eggers et al. (2015), we find no significant discontinuities in the partisan composition of the state government at the time of the gubernatorial election (Supplementary Information, Table A3). The only worrisome covariate is contemporaneous *Policy Liberalism*, which is somewhat higher where the Democrat barely won. The difference is nearly significant when the variable is residualized within state and year, but the imbalance disappears when *Policy Liberalism* is converted to a first difference.⁹ In light of the better balance on first-differenced *Policy Liberalism* as well as for increased statistical efficiency, we estimate treatment effects on changes in policy liberalism rather than on levels.

Figure 3 illustrates the estimation of the policy effects of Democratic governors (as opposed to Republican governors) using the electoral RD design. In the top panel, the dependent variable is change in policy liberalism between the year of the governor’s election and the governor’s first year in office (i.e., the year after the election). The bottom panel presents the same estimate for the governor’s second year in office. The point estimates are based on triangular-kernel local linear regression in an MSE-optimal bandwidth, and the confidence intervals have been recentered and expanded to account for the leading term of the bias in the local-linear estimator (Calonico, Cattaneo, and Titiunik 2014a, 2014b).

9. The imbalance also disappears if we residualize *Policy Liberalism* using a regression with lagged dependent variables. Lee and Lemieux (2010, 331–3) suggest residualizing or differencing the dependent variable in RD designs as a way to increase statistical efficiency.

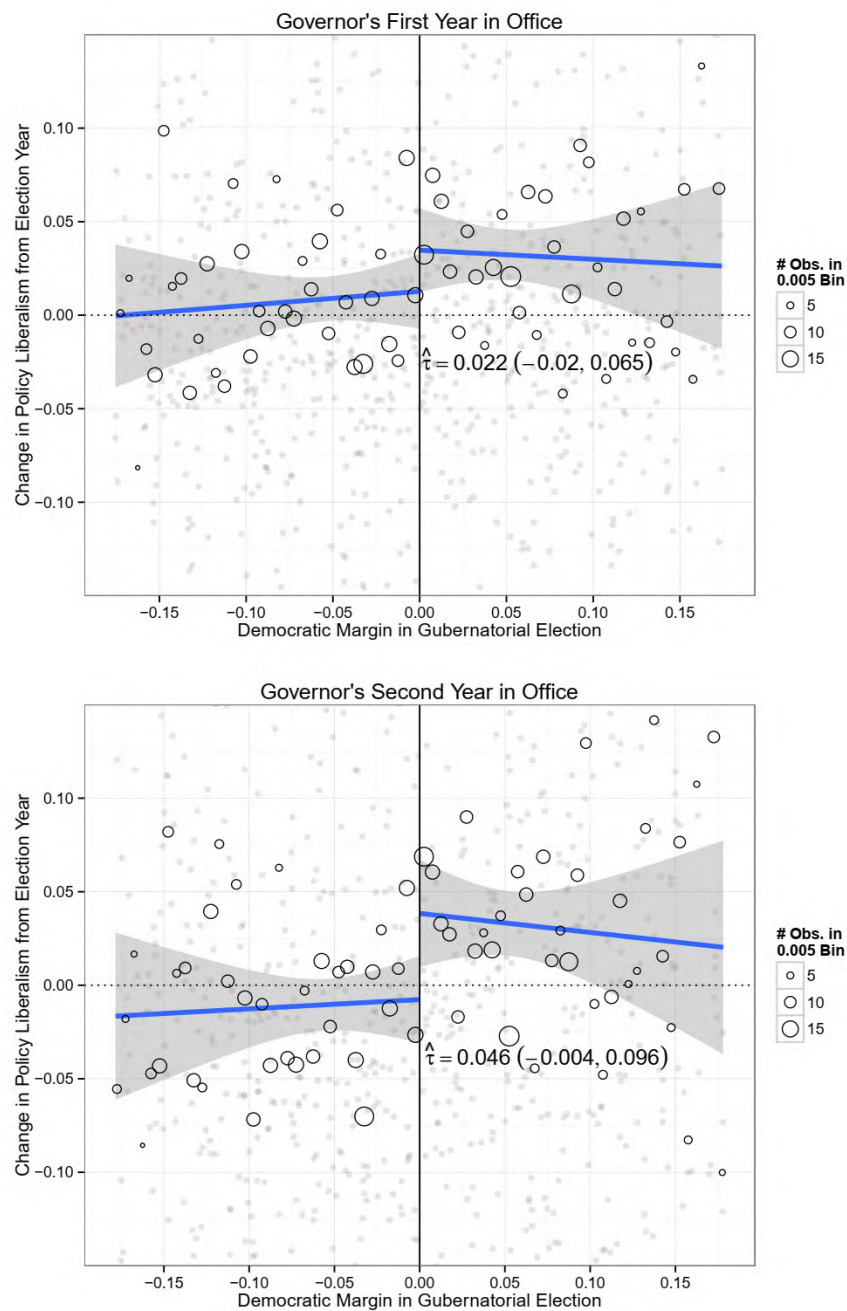


Figure 3: RD estimate of the effect of electing a Democratic governor on change in policy liberalism after the governor's first (top) and second (bottom) years in office. Estimates are based on local linear regression, with MSE-optimal bandwidths and robust confidence intervals calculated by `rdrobust`. Hollow circles are means in 0.5% bins. Shaded 95% confidence intervals are based on conventional standard errors.

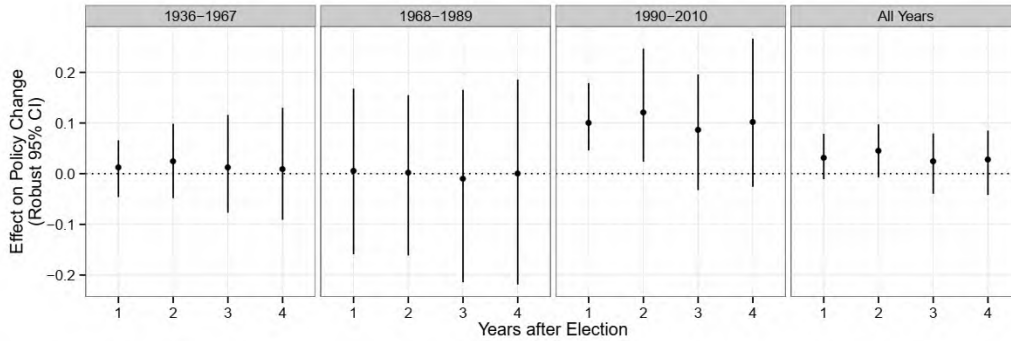


Figure 4: Growth in gubernatorial policy effects over time. Each panel reports the RD estimate of the effect of electing a Democratic governor on change in policy liberalism, one through four years after the election. The left three panels report results separately for different ranges of elections years.

As the top panel shows, the RD estimate for governors' first year in office is small ($\hat{\tau}_1 = 0.022$) and indistinguishable from zero. By the second year, the point estimate is twice as large ($\hat{\tau}_2 = 0.046$) and the robust confidence interval just barely covers zero. Relative to the variation in policy liberalism across states, these effect estimates are quite small. Even the largest plausible average effect, which the confidence interval suggests is around 0.07 per year, is less than one-tenth the cross-sectional standard deviation of *Policy Liberalism*.¹⁰ Substantively, a 0.07 increase in policy liberalism implies a one-point increase in a state's percentage of liberal policies.

These local average treatment effect (LATE) estimates, however, conceal important heterogeneity in the treatment effects. Like the cross-sectional correlations plotted in Figure 2, the policy consequences of electing a Democratic governor have grown markedly, especially in recent decades. As Figure 4 shows, before the 1990s electing Democratic governors did little to change policy liberalism: the RD estimates are small and statistically indistinguishable from 0. Only for governors elected since 1990

10. The point estimates are larger if *Policy Liberalism* itself is the dependent variable, but they are statistically significant only if *Policy Liberalism* is residualized using two-way fixed-effects ($\hat{\tau}_1 = 0.11$, $\hat{\tau}_2 = 0.14$). Adding lagged dependent variables to the residualizing regression yields point estimates very close to the estimates for change in policy liberalism but a little more precisely estimated. Given this fact and the pretreatment differences in lagged policy liberalism reported in Table A3, we have the most confidence in the estimates with change in policy liberalism as the dependent variable.

are the estimated effects clearly positive (in the first two years). Figure 4 also indicates that there is no evidence that the policy effects cumulate over time. Rather, the full policy effect seems to be accomplished by the governor's second year in office.¹¹

RD for State House

Descriptively, the cross-sectional relationship between policy liberalism and Democratic control of the state house and senate looks very similar to the relationship Figure 2 shows for governor: negative until around 1975, then non-existent until the end of the 20th century, when a strong positive association quickly emerged. However, this growing association in recent years could be due to an increase in the effect of public opinion or other changes in the political environment. Therefore, as we did for governors, we apply an RD design to estimate the causal effects of barely electing a Democratic majority in the state house (the lower chamber of the state legislature). We do not examine the state senate because typically only a portion of senate seats are up for election in a given year. Because majority control of the legislature is a function of many elections rather than just one, however, we must construct a more complex assignment variable than in the gubernatorial RD.

The specific approach we follow is the multidimensional RD (MRD) design described by Feigenbaum, Fourinaies, and Hall (2015), which combines information from multiple close legislative elections.¹² The assignment variable they suggest is the Euclidean distance between a vector of district-level electoral results and the electoral results required for majority status. The first step in constructing this variable is to determine the number of seats (m) short of majority status the minority party is

11. Note that some governors have two-year terms and others have four-year terms.

12. For related multidimensional approaches to RD, see Reardon and Robinson (2012), Wong, Steiner, and Cook (2013), and Folke (2014). An alternative design would be to use Democratic seat share as the assignment variable rather than a function of electoral results. We explored this design and found that it yields poor balance on important covariates, suggesting that seat share is too discrete and manipulable to be used as an RD assignment variable.

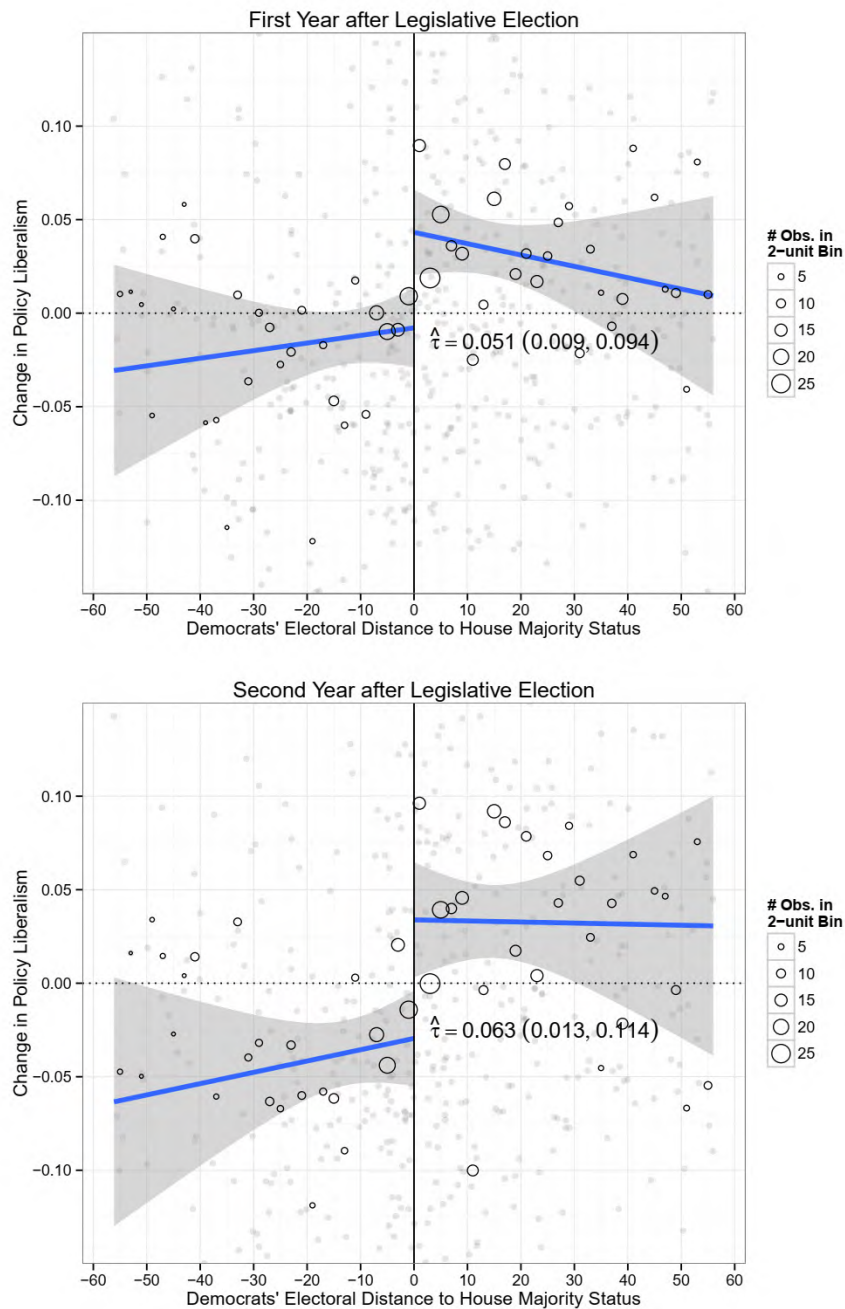


Figure 5: RD estimates of the policy effects of electing a Democratic majority in the state house. The assignment variable (horizontal axis) is the Euclidean distance to electing a Democratic majority, expressed in terms of percentage points. In the top panel the outcome is change in policy liberalism between the election year and one year after the election, and in the bottom panel it is change after two years.

after a given election.¹³ Then, obtain the Euclidean distance from majority status by summing the squares of the margins in the minority party’s m closest losses in that election. Multiply this measure by -1 if the Democrats are in the minority. For example, if the Democrats are $m = 2$ seats short of a majority and the margins in their two closest losses are respectively 3% and 4%, then the value of the assignment variable is $-1 \times \sqrt{3^2 + 4^2} = -5$.

Using data from Klarner et al. (2013), we are able to implement the multidimensional RD design for state house elections between 1968 and 2012.¹⁴ None of the covariates exhibit statistically significant discontinuities, though the estimates are somewhat less precise than in the gubernatorial RD (Supplementary Information, Table A4). Figure 5 plots the RD estimates of the policy effects of narrowly elected Democratic house majorities one and two years after the legislative election. The estimates are about the same magnitude as those for governor. The RD estimate for the first year of a state legislature is 0.051. By the second year, the point estimate is a bit larger ($\hat{\tau}_2 = 0.063$). However, Figure 6 shows that only since 1990 has narrowly electing a Democratic house majority caused an increase in policy liberalism.

Dynamic Panel Analysis

Given its transparent and testable identifying assumptions, the RD design is an appealing mode of causal inference, but its emphasis on observations near the RD threshold restricts the effective sample size. Thus to increase statistical power we complement and extend the RD analysis reported above with an analysis that exploits within-state partisan variation in the full panel of state-years.

The crucial identifying assumption in the panel analysis is that the statistical model characterizes the counterfactual outcome each state would have exhibited un-

13. We estimate majority status based on the two-party seat share.

14. Since multi-member house districts cause complications for the design, state-years with multi-member districts are dropped from the analysis. We also drop Nebraska, which has a nonpartisan unicameral legislature.

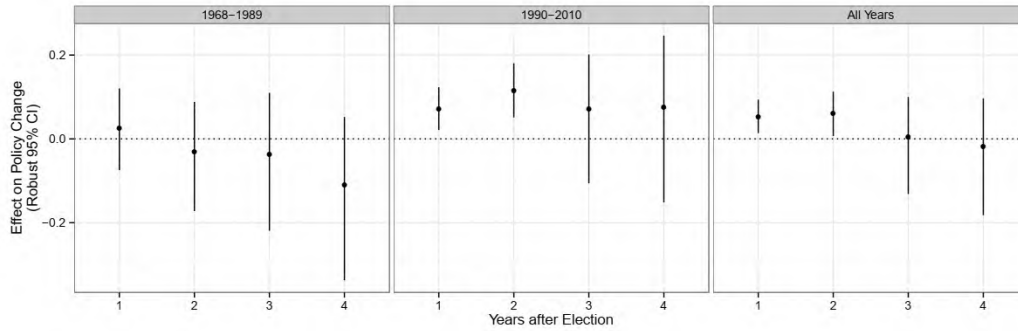


Figure 6: Growth in legislative policy effects over time. Each panel reports the RD estimate of the effect of electing a majority-Democratic legislature on change in policy liberalism, one through four years after the election. The left two panels report results separately for different ranges of elections years.

der a different treatment assignment (i.e., a governor of the opposite party).¹⁵ If unobserved confounding across states were constant across time and year-specific shocks affected all states equally, then the effect of a Democratic governor would be identified under a two-way fixed-effect (FE) model,

$$y_{it} = \delta Gov_{it} + Maj_{it}^H + Maj_{it}^S + \alpha_i + \xi_t + \epsilon_{it}, \quad (1)$$

where Gov_{it} indicates a Democratic governor; Maj_{it}^H indicates a Democratic house majority; Maj_{it}^S indicates a Democratic senate majority; and α_i and ξ_t are, respectively, state- and year-specific intercepts. The model specified by Equation (1), which is used by Besley and Case (2003) and others, assumes that the timing of shifts in party control is uncorrelated with time-varying state-specific determinants of policy liberalism (Angrist and Pischke 2009, 243–4). One obvious concern of applying this model is that lagged dependent variables (LDVs) are potential confounders. This is because state policies change incrementally, and thus are highly correlated over time; meanwhile, policy outcomes could also affect the partisan composition of state

15. For details see Supplementary Information, Section A.8.

government. We therefore estimate dynamic panel models of the following form:

$$y_{it} = \delta Gov_{it} + Maj_{it}^H + Maj_{it}^S + \sum_{l=1}^L \rho_l y_{i,t-l} + \alpha_i + \xi_t + \epsilon_{it}, \quad (2)$$

where $y_{i,t-l}$ is state i 's policy liberalism l years before t and ρ_l is the coefficient on the l -th lag. The FE-LDV estimator of δ in (2) is known to be biased when the number of time periods T is small (Nickell 1981), but when T is large, as it is in our case, the bias is a minor concern (Beck and Katz 2011; Gaibullov, Sandler, and Sul 2014). Non-stationarity is not a problem in our application either, and all of the panel results reported in this paper are qualitatively robust to alternative estimation strategies.¹⁶

Table 2 shows the results from the dynamic panel analysis. We first report gubernatorial estimates based on the conventional two-way FE model without LDVs in column (1). The standard errors (SEs) are clustered at the state level.¹⁷ The two-way FE estimates suggest that Democratic (as opposed to Republican) governors increase state policy liberalism by 0.065,¹⁸ and that Democratic control of the state house and senate increases it by 0.166 and 0.259, respectively.

The estimates shrink dramatically, however, if we control for LDVs. Column (2) reports the results from our preferred baseline specification, a FE-LDV model with two lagged terms, as specified by Equation (2) with $l = 2$.¹⁹ Under this specification, the estimated immediate effects of a Democratic governor, Democratic control of the

16. For details on non-stationarity, see Supplementary Information, Section A.5. We also explored a variety of alternative strategies to account for time-varying confounding, including state-specific time trends and a latent factor approach to interactive fixed effects (e.g., Bai 2009; Gaibullov, Sandler, and Sul 2014; Xu 2015). For details, see Supplementary Information, Section A.7. All diagnostic criteria indicate, however, that linear, quadratic, or even cubic time trends do not account for the dynamics of policy liberalism as well as LDVs do, and that latent factors are not necessary once LDVs are included.

17. Using heteroskedasticity- and autocorrelation-robust standard errors (Beck and Katz 1995) or bootstrapping standard errors (blocked at the state level) both yield similar results to clustering. The same is true for columns (2) and (3).

18. Among the 3,630 state year observations, only 29 have independents as governors. Dropping these observations does not change our main finding at all.

19. The gubernatorial estimate remain very stable if we control for more than two LDVs; see Supplementary Information, Section A.6.

Table 2: Policy Effects of Democratic Control the Governorship, State House, and State Senate

<i>Outcome variable</i>	Policy liberalism				
	Full sample			Non-south	South
	(1)	(2)	(3)	(4)	(5)
Democratic governor	0.065 (0.032)	0.012 (0.004)	0.016 (0.007)	0.011 (0.005)	0.019 (0.010)
Democratic house majority	0.166 (0.052)	0.029 (0.006)	0.043 (0.014)	0.032 (0.007)	0.013 (0.015)
Democratic senate majority	0.269 (0.057)	0.021 (0.006)	0.005 (0.013)	0.022 (0.006)	-0.023 (0.016)
Democratic house majority × senate majority			0.001 (0.018)		
Democratic governor × house majority			-0.037 (0.017)		
Democratic governor × senate majority			0.011 (0.016)		
Democratic governor × house majority × senate majority			0.027 (0.022)		
Two lagged terms of the outcome variable		x	x	x	x
State and year fixed effects		x	x	x	x
Observations	3,630	3,630	3,630	2,782	848
States	49	49	49	38	11
R-squared	0.870	0.987	0.987	0.982	0.943

Note: In columns (1)-(3), robust standard errors clustered at the state level are in the parentheses; in columns (4) and (5), Huber-White robust standard errors are reported because clustered standard errors severely underestimate uncertainties with small numbers of clusters. The state of Nebraska is dropped out of the sample. Coefficients statistically significant at the 5% level are in bold font type.

house, and Democratic control of the senate are 0.012, 0.029, and 0.021, respectively.²⁰ All three estimates remain highly statistically significant, but the point estimates are an order of magnitude smaller. This suggest that FEs alone do not adequately account for within-state trends in policy liberalism and are likely to overestimate policy effects (for further evidence on this point, see Supplementary Information, Section A.7).

It is important to note that the effect of a Democratic legislative majority has a

²⁰ In a dynamic panel model, a treatment will affect not only the contemporaneous outcome, but also outcomes in future periods through the channel of the LDVs. The effect on the contemporaneous outcome is often called the “immediate” effect.

different interpretation in the dynamic panel analysis than in the RD analysis. In the RD design, the estimand is the LATE of electing a bare Democratic majority rather than a bare Republican majority. In the dynamic panel analysis, however, the estimand conflates the effect of chamber control *per se* with that of seat share since the party in control typically has more than a bare majority. This conceptual difference notwithstanding, the estimates for majority control barely change if we control for seat share because share has little independent association with policy liberalism (Supplementary Information, Section A.10). Indeed, for both state house and governor, the dynamic panel and RD estimates correspond very closely, suggesting that parties receive little additional policy benefit if they win control by a larger-than-bare margin.

Table 2 also explores the possibility that the policy effects of one institution depend on party control of other institutions. We might expect, for example, that capturing the governorship yields greater policy benefits if the same party also controls both houses of the legislature. As column (3) indicates, however, there is no clear evidence of positive interaction effects between the coefficients. Figure 7 presents these results visually. The x -axis lists four configurations of partisan control of the two chambers of the state legislature, and the y -axis plots the estimated policy effects of that legislative configuration under Republican (red) and Democratic (blue) governors. All the effects are relative to the baseline of unified Republican control (gray dashed line). Though the estimates are noisy due to multicollinearity and should thus be treated cautiously, the plot suggests that the marginal effect of party control is roughly additive for each institution. The estimated effect of unified Democratic relative to unified Republican control (rightmost point) is 0.07, which approximately equal to the sum of the three main effects in column (2) of Table 2.

Finally, we examine whether the results differ between the South and non-South. As column (4) of Table 2 shows, the results for the non-South are substantively

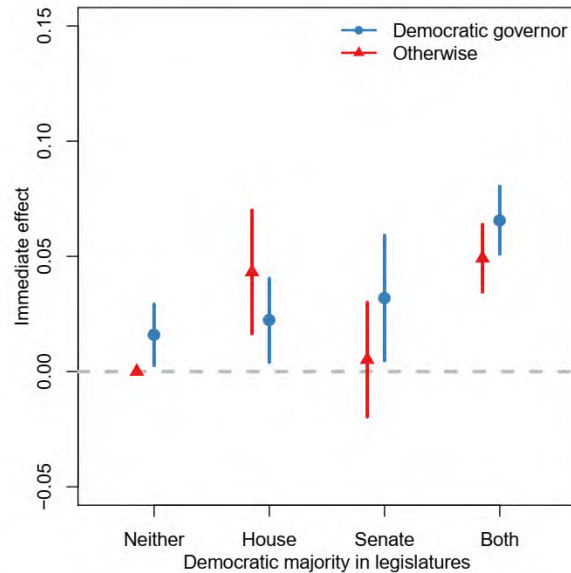


Figure 7: Predicted policy effects of different configurations of Democratic control, relative to the baseline of unified Republican control (red triangle).

similar (and statistically indistinguishable) from those for the whole sample. This makes sense because both the RD and dynamic panel analyses implicitly place greater weight on competitive states (those with closer elections and more alternation in party control) and until recently state politics in the South was dominated by the Democratic party. Due to the lack of partisan variation in Southern states, the estimates for the South are very imprecise, and none is distinguishable from zero.

Finally, we look again at heterogeneity in party effects over time, which the dynamic panel model allows us to examine more precisely than the RD design permits. To do so, we estimate a modified version of the model in (2) that allows δ to vary smoothly as a function of time.²¹ As Figure 8 shows, the effect of Democratic control has evolved in parallel across the three institutions. Consistent with the era-specific

21. Specifically, we estimate models of the following form:

$$y_{it} = \alpha_i + \xi_t + \rho_1 y_{i,t-1} + \rho_2 y_{i,t-2} + k(t) \cdot Gov_{it} + Maj_{it}^H + Maj_{it}^S + \epsilon_{it}$$

where $k(\cdot)$ is a function of time t . We estimate $k(\cdot)$ using local linear regressions with default bandwidths (span = 0.75) using the `loess` package in R that control for house and senate majority statuses as well as past outcomes and fixed effect. The uncertainty estimates are obtained via block bootstrapping of 1,000 times to account for potential serial dependence in the error structure.

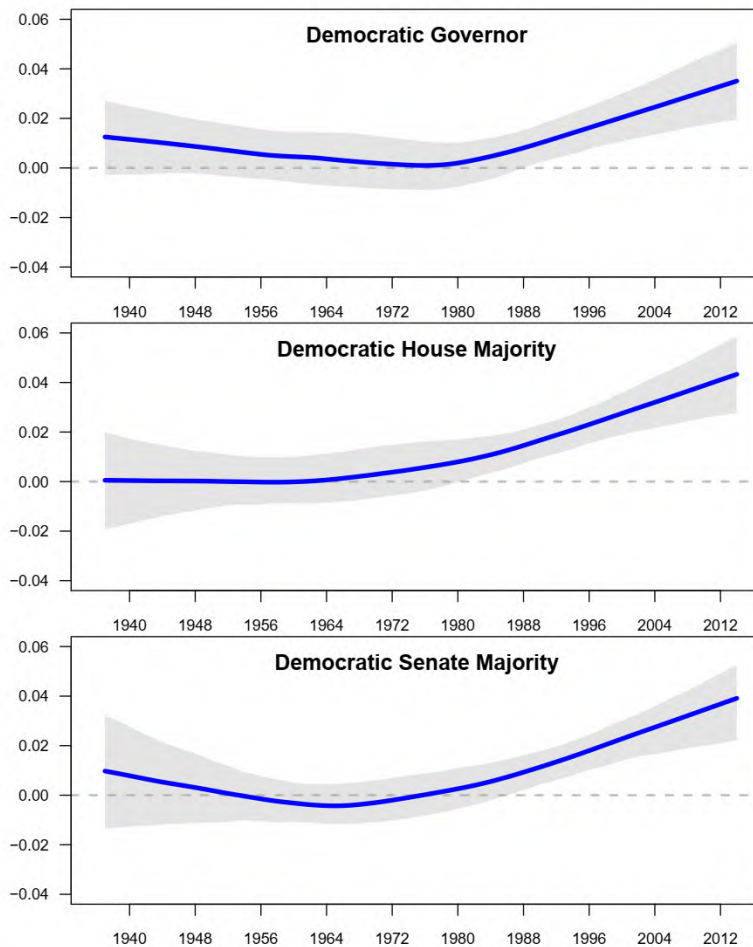


Figure 8: Evolution of the policy effects of Democratic control of the governorship (top), state house (middle), and state senate (bottom).

RD estimates in Figures 4 and 6, the dynamic panel analysis indicates that the policy effects of Democratic control of the governorship and state legislature were small and statistically insignificant through the 1970s. These findings are consistent with the null findings in the classic studies conducted using data from this time period.

In the 1980s, however, the effects of Democratic control took off and continued to increase through the end of the period. These findings are also consistent with the larger effect sizes in state politics studies that focus on the impact of party control in recent years. By the second decade of the 21st century, the estimates for three

institutions were all around 0.04—larger than ever before, though still about one-twentieth the size of the standard deviation across states.

Discussion and Implications

Overall, our results indicate that until the 1970s, electing Democratic rather than Republican governors and legislatures had negligible effects of the liberalism of state policies. Since about 1980, however, partisan effects have grown rapidly: electing Democrats now has an unambiguously positive impact on policy liberalism. In other words, the parties have increasingly diverged in the policies they implement in office. The substantive magnitude of contemporary policy effects, however, should not be overstated. In 2010, for example, Democratic governors, houses, and senates are each estimated to increase policy liberalism by around 0.04 per year (see Figure 8). As Table 1 suggests, an effect of this size would be expected to increase a state’s percentage of liberal policies by a small amount, on the order of 0.5%. Or, to take an important welfare policy, it would increase average monthly TANF benefits per recipient family by a little over \$1.²²

Another way to evaluate the substantive magnitude of partisan effects on policy is to compare them with the cross-sectional difference across states. The estimated policy effect of a switch in unified party control is one-twentieth the size of the typical difference between states, suggesting that many decades of Republican governors and legislatures would be required to make the policies of Massachusetts as conservative as those of Mississippi.²³ Party effects loom larger when compared to within-state

22. Calculated based on the linear association between policy liberalism and TANF benefits in 2010.

23. This hypothetical comparison glosses over two complications. First, Massachusetts Republicans are less conservative than Mississippi Republicans, so party effects may differ across states (see Erikson, Wright, and McIver 1993, however, for evidence that the within-state divergence of the parties does not vary strongly with state liberalism). The second complication is that the comparison ignores any endogenous political response to changes in policy liberalism. We have both theoretical (e.g., Alesina and Rosenthal 1995) and empirical (e.g., Folke and Snyder 2012) reasons to believe

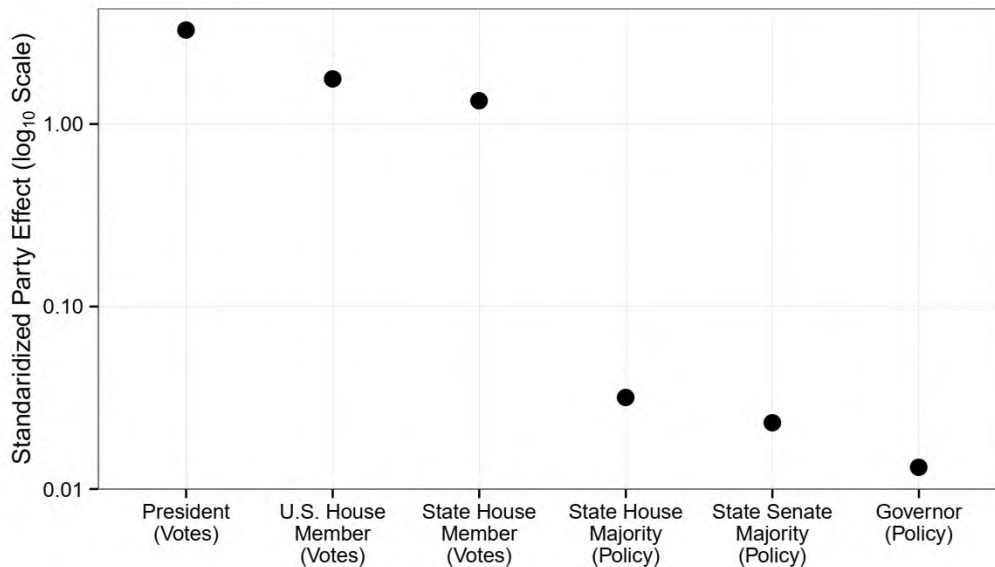


Figure 9: Position effects and policy effects. The right three quantities are counterfactual differences in roll-call ideal points between Republicans and Democrats occupying the same office. The left three are analogous estimated effects of party control on state policy liberalism. For comparability, each of the estimates is standardized by the cross-sectional standard deviation of the dependent variable. The vertical axis is on the \log_{10} scale, so each line represents an effect ten times larger than the line below it.

variation, yet they still are an order of magnitude smaller than the typical yearly fluctuation in a state's policy liberalism.

As a final point of comparison, consider the focus of most research on partisan polarization: the difference between candidates' policy positions, as measured by their roll-call records, campaign platforms, or financial supporters (e.g., Poole and Rosenthal 1984; Ansolabehere, Snyder, and Stewart 2001; Lee, Moretti, and Butler 2004; Bonica 2014). We can call such differences *position effects*. Numerous studies have found that party affiliation is by far the most powerful predictor of politicians' policy positions, at both the national and the state level (e.g., Shor and McCarty 2011). Figure 9 confirms this finding, showing that there is a difference of 1 to 4

that voters will respond to rightward (leftward) changes in state policy by electing more Democrats (Republicans) to state office.

standard deviations in the ideal points of otherwise similar presidents, U.S. House members, and state house members from opposing parties (left three dots).²⁴

By contrast, analogously standardized policy effects are nearly two orders of magnitude smaller.²⁵ Of course, the two sets of quantities are not fully comparable—some are defined at the individual level, others at the level of the office or body—and standardizing the estimates does necessarily not put them on the same scale as each other, let alone the same scale as citizens.²⁶ But the vast differences in magnitude between position and policy effects cannot help but cast a very different light on partisan polarization. In particular, they call into question the concern that alternation in party control leads to “wide swings in policy” that “do not well represent the interests of middle-of-the-road voters” (Poole and Rosenthal 1984, 1061). Whether due to status quo bias, the necessity of compromise, or the realities of policymaking as opposed to symbolic position taking, the effects of party control appear much less dramatic by the metric of actual policy outcomes.

Conclusion

Policy—what governments actually do—is arguably the ultimate metric of representation (Soroka and Wlezien 2010, 10). Our focus on policy outcomes, as opposed to position-taking, thus offers a useful alternative perspective on political parties’ role in American democracy. It turns out that for much of the 20th century the par-

24. The ideal point measure for the U.S. House and president is DW-NOMINATE (Poole and Rosenthal 2007). The House estimate based on an RD design (estimates based on two-way fixed effects or any other estimator are very similar); the president estimate is simply the raw difference between Democratic and Republican president-years since 1936. The figure for the state house is based on the matching estimate of intra-district partisan divergence in ideal points reported in Table 2 of Shor and McCarty (2011, 548).

25. These are the estimates reported in column (2) of Table 2, divided by the standard deviation of policy liberalism across states in a typical year.

26. It is worth noting that the standardized difference in the median U.S. House member between Democratic and Republican control is about 0.5—still ten times larger than the largest policy effect. As for joint scaling, not only are the survey data required to do so unavailable, but as Lewis and Tausanovitch (2015) note, such joint scaling requires heroic statistical assumptions that are difficult to justify.

tisan composition of state governments had little impact on the liberalism of state policies. This finding is broadly consistent with Erikson, Wright, and McIver's conclusion a quarter century ago that the Democratic and Republican parties in each state "respond to state opinion—perhaps even to the point of enacting similar policies when in . . . control" (1989, 743). In the intervening years, however, the policies implemented by the parties within each state have diverged much more clearly, increasing the importance of partisan selection relative to electoral anticipation as a mechanism of responsiveness (Stimson, MacKuen, and Erikson 1995; Lee, Moretti, and Butler 2004).

The growing importance of partisan selection raises the concern that state policies have become *over-responsive* to citizens' preferences, degrading other measures of representation (Lax and Phillips 2011; see also Matsusaka 2001). While our results do not speak directly to citizens' preferences, they do suggest a note of caution toward attempts to generalize from dyadic roll-call responsiveness to collective policy responsiveness (cf. Weissberg 1978). Even if the policy *positions* of politicians from different parties "leapfrog" over those they represent (Bafumi and Herron 2010), policy *outcomes* may be much less volatile. Democrats and Republicans may disagree consistently and even violently, but the policy consequences of electing one over the other pales in comparison to the policy differences across states.

References

- Adcock, Robert, and David Collier. 2001. "Measurement Validity: A Shared Standard for Qualitative and Quantitative Research." *American Political Science Review* 95 (3): 529–546.
- Aldrich, John H., and David W. Rohde. 2000. "The Consequences of Party Organization in the House: The Roles of the Majority and Minority Parties in Conditional Party Government." In *Polarized Politics: Congress and the President in a Partisan Era*, edited by J. R. Bond and R. Fleisher, 37–72. Washington, DC: CQ Press.
- Alesina, Alberto. 1988. "Credibility and Policy Convergence in a Two-Party System with Rational Voters." *American Economic Review* 78 (4): 796–805.
- Alesina, Alberto, John Londregan, and Howard Rosenthal. 1993. "A Model of the Political Economy of the United States." *American Political Science Review* 87 (1): 12–33.
- Alesina, Alberto, and Howard Rosenthal. 1995. *Partisan Politics, Divided Government, and the Economy*. New York: Cambridge UP.
- Alt, James E., and Robert C. Lowry. 1994. "Divided Government, Fiscal Institutions, and Budget Deficits: Evidence from the States." *American Political Science Review* 88 (4): 811–828.
- Angrist, Joshua David, and Jörn-Steffen Pischke. 2009. *Mostly Harmless Econometrics: An Empiricist's Companion*. Princeton, NJ: Princeton University Press.

- Ansolabehere, Stephen, Jonathan Rodden, and James M. Snyder Jr. 2008. "The Strength of Issues: Using Multiple Measures to Gauge Preference Stability, Ideological Constraint, and Issue Voting." *American Political Science Review* 102 (2): 215–232.
- Ansolabehere, Stephen, James M. Snyder Jr., and Charles Stewart III. 2001. "Candidate Positioning in U.S. House Elections." *American Journal of Political Science* 45 (1): 136–159.
- Bafumi, Joseph, and Michael C. Herron. 2010. "Leapfrog Representation and Extremism: A Study of American Voters and Their Members in Congress." *American Political Science Review* 104 (3): 519–542.
- Bai, Jushan. 2009. "Panel Data Models with Interactive Fixed Effects." *Econometrica* 77 (4): 1229–1279.
- Barrilleaux, Charles. 1997. "A Test of the Independent Influences of Electoral Competition and Party Strength in a Model of State Policy-Making." *American Journal of Political Science* 41 (4): 1462–1466.
- Beck, Nathaniel, and Jonathan N. Katz. 1995. "What To Do (and Not To Do) with Time-Series Cross-Section Data." *American Political Science Review* 89 (3): 634–647.
- . 2011. "Modeling Dynamics in Time-Series–Cross-Section Political Economy Data." *Annual Review of Political Science* 14:331–352.
- Bernhardt, Dan, John Duggan, and Francesco Squintani. 2009. "The Case for Responsible Parties." *American Political Science Review* 103 (4): 570–18.
- Besley, Timothy, and Anne Case. 2003. "Political Institutions and Policy Choices: Evidence from the United States." *Journal of Economic Literature* 41 (1): 7–73.

- Bonica, Adam. 2014. "Mapping the Ideological Marketplace." *American Journal of Political Science* 58 (2): 367–386.
- Brown, Robert D. 1995. "Party Cleavages and Welfare Effort in the American States." *American Political Science Review* 89 (1): 23–33.
- Calonico, Sebastian, Matias D. Cattaneo, and Rocío Titiunik. 2014a. *rdrobust: Robust Data-Driven Statistical Inference in Regression-Discontinuity Designs*. R package version 0.70. <http://CRAN.R-project.org/package=rdrobust>.
- . 2014b. "Robust Nonparametric Confidence Intervals for Regression-Discontinuity Designs." *Econometrica* 82 (6): 2295–2326.
- Calvert, Randall L. 1985. "Robustness of the Multidimensional Voting Model: Candidate Motivations, Uncertainty, and Convergence." *American Journal of Political Science* 29 (1): 69–95.
- Caughey, Devin, and Jasjeet S. Sekhon. 2011. "Elections and the Regression Discontinuity Design: Lessons from Close U.S. House Races, 1942–2008." *Political Analysis* 19 (4): 385–408.
- Caughey, Devin, and Christopher Warshaw. Forthcoming. "The Dynamics of State Policy Liberalism, 1936–2012." *American Journal of Political Science*.
- Cox, Gary W., Thad Kousser, and Mathew D. McCubbins. 2010. "Party Power or Preferences? Quasi-Experimental Evidence from American State Legislatures." *Journal of Politics* 72 (3): 799–811.
- Davey, Monica. 2014. "Campaigning to Extend, or End, One-Party Rule." *New York Times*, October 30. <http://nyti.ms/1zP2gOW>.
- Dye, Thomas R. 1984. "Party and Policy in the States." *Journal of Politics* 46 (4): 1097–1116.

- Eggers, Andrew C., Anthony Fowler, Jens Hainmueller, Andrew B. Hall, and James M. Snyder Jr. 2015. “On the Validity of the Regression Discontinuity Design for Estimating Electoral Effects: New Evidence from Over 40,000 Close Races.” *American Journal of Political Science* 59 (1): 259–274.
- Erikson, Robert S., Gerald C. Wright, and John P. McIver. 1989. “Political Parties, Public Opinion, and State Policy in the United States.” *American Political Science Review* 83 (3): 729–750.
- . 1993. *Statehouse Democracy: Public Opinion and Policy in the American States*. New York: Cambridge University Press.
- Fausset, Richard. 2014. “North Carolina, in Political Flux, Battles for Its Identity.” *New York Times*, September 23. <http://nyti.ms/1oeYCUc>.
- Feigenbaum, James J., Alexander Fourinaies, and Andrew B. Hall. 2015. “The Majority Party Disadvantage: Revising Theories of Legislative Organization.” Working paper. Available at https://dl.dropboxusercontent.com/u/11481940/FFH_majority_disadvantage.pdf.
- Ferreira, Fernando, and Joseph Gyourko. 2009. “Do Political Parties Matter? Evidence from U.S. Cities.” *Quarterly Journal of Economics* 124:399–422.
- Fiorina, Morris P., and Samuel J. Abrams. 2008. “Political Polarization in the American Public.” *Annual Review of Political Science* 11 (1): 563–588.
- Folke, Olle. 2014. “Shades of Brown and Green: Party Effects in Proportional Election Systems.” *Journal of the European Economic Association* 12 (5): 1361–1395.
- Folke, Olle, and James M. Snyder Jr. 2012. “Gubernatorial Midterm Slumps.” *American Journal of Political Science* 56 (4): 931–948.

- Fredriksson, Per G., Le Wang, and Patrick L. Warren. 2013. "Party Politics, Governors, and Economic Policy." *Southern Economic Journal* 80 (1): 106–126.
- Gaibulloev, Khusrav, Todd Sandler, and Donggyu Sul. 2014. "Dynamic Panel Analysis under Cross-Sectional Dependence." *Political Analysis* 22 (2): 258–273.
- Garand, James C. 1988. "Explaining Government Growth in the U.S. States." *American Political Science Review* 82 (3): 837–849.
- Gelman, Andrew, Jennifer Hill, and Masanao Yajima. 2012. "Why We (Usually) Don't Have to Worry About Multiple Comparisons." *Journal of Research on Educational Effectiveness* 5 (2): 189–211.
- Gerber, Elisabeth R., and Daniel J. Hopkins. 2011. "When Mayors Matter: Estimating the Impact of Mayoral Partisanship on City Policy." *American Journal of Political Science* 55 (2): 326–339.
- Hanson, Russell L. 1984. "Medicaid and the Politics of Redistribution." *American Journal of Political Science*:313–339.
- Hofferbert, Richard I. 1966. "The Relation between Public Policy and Some Structural and Environmental Variables in the American States." *American Political Science Review* 60 (1): 73–82.
- Jacoby, William G., and Saundra K. Schneider. 2014. "State Policy and Democratic Representation." In *The Oxford Handbook of State and Local Government*, edited by Donald P. Haider-Markel. Oxford UP.
- Klarner, Carl, William Berry, Thomas Carsey, Malcolm Jewell, Richard Niemi, Lynda Powell, and James Snyder. 2013. *State Legislative Election Returns (1967–2010)*. ICPSR34297-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2013-01-11. doi:10.3886/ICPSR34297.v1.

- Klingman, David, and William W. Lammers. 1984. "The 'General Policy Liberalism' Factor in American State Politics." *American Journal of Political Science* 28 (3): 598–610.
- Kousser, Thad. 2002. "The Politics of Discretionary Medicaid Spending, 1980–1993." *Journal of Health Politics, Policy and Law* 27 (4): 639–672.
- Kousser, Thad, and Justin H. Phillips. 2009. "Who Blinks First? Legislative Patience and Bargaining with Governors." *Legislative Studies Quarterly* 34 (1): 55–86.
- Lax, Jeffrey R., and Justin H. Phillips. 2011. "The Democratic Deficit in the States." *American Journal of Political Science* 56 (1): 148–166.
- Layman, Geoffrey C., Thomas M. Carsey, and Juliana Menasce Horowitz. 2006. "Party Polarization in American Politics: Characteristics, Causes, and Consequences." *Annual Review of Political Science* 9 (1): 83–110.
- Lee, David S. 2008. "Randomized Experiments from Non-Random Selection in US House Elections." *Journal of Econometrics* 142 (2): 675–697.
- Lee, David S., and Thomas Lemieux. 2010. "Regression Discontinuity Designs in Economics." *Journal of Economic Literature* 48 (2): 281–355.
- Lee, David S., Enrico Moretti, and Matthew J. Butler. 2004. "Do Voters Affect Or Elect Policies? Evidence From the U. S. House." *Quarterly Journal of Economics* 119 (3): 807–859.
- Leigh, Andrew. 2008. "Estimating the Impact of Gubernatorial Partisanship on Policy Settings and Economic Outcomes: A Regression Discontinuity Approach." *European Journal of Political Economy* 24 (1): 256–268.

- Lewis, Jeffrey B., and Chris Tausanovitch. 2015. *When Does Joint Scaling Allow For Direct Comparisons of Preferences?* Working paper available at <http://idealpoint.tahk.us/papers/lewisTausanovitch.pdf>, May 1.
- Matsusaka, John G. 2001. "Problems with a Methodology Used to Evaluate the Voter Initiative." *Journal of Politics* 63 (4): 1250–1256.
- McCarty, Nolan, Keith T. Poole, and Howard Rosenthal. 2006. *Polarized America: The Dance of Ideology and Unequal Riches*. Cambridge, MA: MIT Press.
- Nickell, Stephen. 1981. "Biases in Dynamic Models with Fixed Effects." *Econometrica* 49:1417–1426.
- Pettersson-Lidbom, Per. 2008. "Do Parties Matter for Economic Outcomes? A Regression-Discontinuity Approach." *Journal of the European Economic Association* 6 (5): 1037–1056.
- Plotnick, Robert D., and Richard F. Winters. 1985. "A Politico-Economic Theory of Income Redistribution." *American Political Science Review* 79 (2): 458–473.
- Poole, Keith T., and Howard Rosenthal. 1984. "The Polarization of American Politics." *Journal of Politics* 46 (4): 1061–1079.
- . 2007. *Ideology & Congress*. New Brunswick, NJ: Transaction Publishers.
- Quinn, Kevin M. 2004. "Bayesian Factor Analysis for Mixed Ordinal and Continuous Responses." *Political Analysis* 12 (4): 338–353.
- Reardon, Sean F., and Joseph P. Robinson. 2012. "Regression Discontinuity Designs with Multiple Rating-Score Variables." *Journal of Research on Educational Effectiveness* 5 (1): 83–104.
- Roemer, John E. 2001. *Political Competition: Theory and Applications*. Cambridge, MA: Harvard UP.

- Shor, Boris, and Nolan McCarty. 2011. "The Ideological Mapping of American Legislatures." *American Political Science Review* 105 (3): 530–51.
- Soroka, Stuart N., and Christopher Wlezien. 2010. *Degrees of Democracy: Politics, Public Opinion, and Policy*. New York: Cambridge UP.
- Stimson, James A., Michael B. MacKuen, and Robert S. Erikson. 1995. "Dynamic Representation." *American Political Science Review* 89 (3): 543–565.
- Thomsen, Danielle M. 2014. "Ideological Moderates Won't Run: How Party Fit Matters for Partisan Polarization in Congress." *Journal of Politics* 76 (3): 786–797.
- Time*. 1956. "The Lonely One." February 20, 22.
- Usher, Brian. 1994. "The Lausche Era, 1945–1957." Chap. 2 in *Ohio Politics*, edited by Alexander P. Lamis with the assistance of Mary Anne Sharkey, 18–41. Kent, OH: Kent State University Press.
- Van Houweling, Robert P. 2012. "Parties as Enablers: Individual Incentives for Partisan Legislative Organization." Unpublished book manuscript.
- Weissberg, Robert. 1978. "Collective vs. Dyadic Representation in Congress." *American Political Science Review* 72 (2): 535–547.
- Wilson, James Q. 1962. *The Amateur Democrat: Club Politics in Three Cities*. Chicago: University of Chicago Press.
- Winters, Richard. 1976. "Party Control and Policy Change." *American Journal of Political Science* 20 (4): 597–636.
- Wong, Vivian C., Peter M. Steiner, and Thomas D. Cook. 2013. "Analyzing Regression-Discontinuity Designs with Multiple Assignment Variables: A Comparative Study of Four Estimation Methods." *Journal of Educational and Behavioral Statistics* 38 (2): 107–141.

Xu, Yiqing. 2015. "Generalized Synthetic Control Method for Causal Inference with Time-Series Cross-Sectional Data." Working paper. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2584200.

A Supplementary Information for “The Policy Effects of the Partisan Composition of State Government”

Appendix: Table of Contents

A.1 Policy Liberalism Data	A-2
A.2 Measurement Model for Policy Liberalism	A-6
A.3 Validation: Government Policy Liberalism	A-8
A.4 Continuity of Pre-Treatment Covariates in RD Designs	A-15
A.5 Concerns of Unit Roots and Inconsistency	A-16
A.6 The Number of Lagged Terms	A-18
A.7 Adding State-specific Time Trends	A-19
A.8 Dynamic Effects of Partisan Composition	A-21
A.9 Variation in Partisan Compositions	A-24
A.10 Disentangling Seat Share and Majority Status	A-26

A.1 Policy Liberalism Data

Policy	Years	Description
Abortion Policies		
Access to Contraceptives	1974-2014	Can pharmacies dispense emergency contraception without a prescription?
Forced Counseling	1973-1991	Does the state mandate counseling before an abortion (pre- <i>Casey</i>)?
Forced Counseling	1992-2014	Does the state mandate counseling before an abortion (post- <i>Casey</i>)?
Legal Abortion Pre-Roe	1967-1973	Did the state allow abortion before Roe v. Wade?
Parental Notification/Consent Required	1976-1982	Does the state require parental notification or consent prior to a minor obtaining an abortion? (pre- <i>Akron</i>)
Parental Notification/Consent Required	1983-2014	Does the state require parental notification or consent prior to a minor obtaining an abortion? (post- <i>Akron</i>)
Partial Birth Abortion Ban	1997-2007	Does the state ban late-term or partial birth abortions?
Medicaid for Abortion	1981-2014	Does the state's Medicaid system pay for abortions?
Criminal Justice Policies:		
Age Span Provisions for Statutory Rape	1950-1998	Does a state adopt an age span provision into its statutory rape law which effectively decriminalizes sexual activity between similar-aged teens?
Death Penalty	1936-2014	Has the state abolished the death penalty?
Probation	1936-1939	Has the state established probation?
Drug & Alcohol Policies:		
Beer Keg Registration Requirement	1978-2013	Does the state require registration upon purchase of a beer keg?
Decriminalization of Marijuana Possession	1973-2014	Is marijuana possession a criminal act?
Medical Marijuana	1996-2014	Is it legal to use marijuana for medical purposes?
Minimum Legal Drinking Age 21	1936-1985	Does the state have a minimum legal drinking age of 21?
Smoking Ban - Workplaces	1995-2014	Does the state ban smoking in all workplaces?
Smoking Ban - Restaurants	1995-2014	Does the state ban smoking in restaurants?
Zero Tolerance for Underage Drinking	1983-1995	Does the state have a Zero Tolerance law for blood alcohol levels less than 0.02 for individuals under age 21?
Education Policies:		
Allow Ten Commandments in Schools	1936-2013	Does the state allow the Ten Commandments to be posted in educational institutions?
Ban on Corporal Punishment in Schools	1970-2014	Does the state ban corporal punishment in schools?
Education Spending Per Pupil	1936-2009	What is the per capita spending on public education per pupil based on daily average attendance?
Moment of Silence Required	1957-2014	Does the state have a mandatory moment of silence period at the beginning of each school day?
Per Student Spending on Higher Ed.	1988-2013	What is the per student subsidy for higher education?
Teacher Degree Required - High School	1936-1963	In what year did the state require high school teachers to hold a degree?
Teacher Degree Required - Elementary	1936-1969	In what year did the state require elementary school teachers to hold a degree?
School for Deaf	1936-1950	School for Deaf
State Library System	1980-1948	State Library System
Environmental Policies:		
Air Pollution Control Acts (Pre-CAA)	1947-1967	Does the state have an air pollution control act (Pre-Clean Air Act)?
Bottle Bill	1970-2014	Does the state require a deposit on bottles paid by the consumer and refunded when the consumer recycles?
CA Car Emissions Standard	2003-2012	Does the state adopt California's Car emissions standards (which are more stringent than the federal level)?
Electronic Waste Recycling Program	2000-2014	Does the state have a recycling program for electronic waste?
Endangered Species Act	1969-2014	Does the state have an endangered species act?
Environmental Protection Act	1969-2014	Does the state have its own version of the federal National Environmental Policy Act?
Greenhouse Gas Cap	2006-2014	Does the state have a binding cap on greenhouse gas emissions in the utility sector?
Public Benefit Fund	1996-2014	Does the state have a public benefit fund for renewable energy and energy efficiency?
Solar Tax Credit	1975-2014	Does the state have a tax credit for residential solar installations?

Description of Policies A1 Continued from previous page		
Policy	Years	Description
Gambling Policies:		
Casinos Allowed	1977-2012	Does the state allow casinos?
Lottery Allowed	1964-2014	Does the state have a lottery?
Gay Rights Policies:		
Ban on Disc. Against Gays In Public Accommodations	1989-2014	Does the state ban discrimination against gays by public accommodations?
Civil Unions and Gay Marriage	2000-2012	Does the state allow civil unions or gay marriage (ordinal)?
Employment Disc. Protections for Gays	1982-2014	Does the state forbid employment discrimination on the basis of sexual orientation and/or sexual identity?
Hate Crimes Ban - Gays	1999-2014	Are hate crimes explicitly illegal in the state?
Sodomy Ban	1962-2003	Does the state forbid sodomy?
Gun Control Policies:		
Assault Weapon Ban	1989-2014	Are assault weapons banned in the state?
Background check - gun purchases from dealers	1936-1993	Does the state require a background check on gun purchases from dealers?
Background check for private sales	1936-2014	Does the state require a background check on privately-sold guns?
Gun Dealer Licenses	1936-2014	Does the state have any license requirements for manufacturers or dealers?
Gun Purchases - Waiting Period	1923-2014	Does the state have a waiting period for gun purchases?
Open Carry Law for Guns	1961-2014	Is there an open carry law for guns?
Saturday Night Special	1974-2013	"Does the state ban "Saturday Night Special" handguns?"
Stand Your Ground	1993-2014	"Does the state have a "stand your ground" law?"
Gun Registration	1936-2014	Does the state have a registration requirement for guns?
Immigration Policies:		
English as official language	1970-2014	Is English the state's official language?
In-state Tuition for Immigrants	2001-2014	Does the state allow in-state tuition for illegal immigrants?
Labor Rights Policies:		
Age discrimination ban	1936-1999	Does the state ban age discrimination?
Anti-Injunction Act	1936-1966	Does the state have an anti-injunction law?
Collective Bargaining - State Employees	1966-1996	Does the state have collective bargaining rights for state government employees?
Collective Bargaining - Teachers	1960-1996	Does the state have collective bargaining rights for local teachers?
Disability Discrimination Ban	1965-1990	Does the state ban discrimination against disabled people?
Merit System for State Employees	1936-1953	Does the state have a merit system for state employees?
Minimum Wage above Federal Level	1968-2012	Is the state's minimum wage above the federal level?
Minimum Wage for Men	1944-1968	Does the state have a minimum wage for men?
Minimum Wage for Women	1936-1980	Does the state have a minimum wage for women?
Prevailing Wage Law	1936-2014	Does the state have prevailing wage laws?
Right to Work law	1944-2014	Is the state a right-to-work state?
State Pension System Established	1936-1960	Does the state have a pension system?
Temporary Disability Insurance	1945-2014	Does the state have a temporary disability insurance program?
Unemployment Compensation	1937-2014	What is the maximum weekly amount of unemployment benefits?
Workers Compensation	1936-1947	Has the state established workers compensation?
Child Labor (14-15)	1936-1939	Does the state require employment certificates for child labor (14 and 15)?
Labor Relations Act	1937-1966	Does the state have a Labor Relations Act?
Licensing Policies:		
Chiropractor Licensing	1936-1951	Chiropractor Licensing
Dentist Licensing	1936-1951	Dentist Licensing
Architect Licensing	1936-1951	Architect Licensing
Beautician Licensing	1936-1951	Beautician Licensing
Pharmacist Licensing	1936-1951	Pharmacist Licensing
Engineer Licensing	1936-1951	Engineer Licensing
Nurse Licensing	1936-1951	Nurse Licensing
Accountant Licensing	1936-1951	Accountant Licensing
Real Estate Licensing	1936-1951	Real Estate Licensing
Miscellaneous Regulatory Policies:		
Anti-sedition laws	1936-1955	Does the state have anti-sedition laws?
Forced sterilizations	1945-1974	Does the state have a forced sterilization program?
Grandparents' Visitation Rights	1964-1987	Does the state have a law guaranteeing grandparents' visitation rights?
Hate Crimes Ban	1981-2014	Are hate crimes explicitly illegal in the state?
Urban Housing - Enabling Federal Aid		Does the state have a law enabling federal housing aid?
Urban Housing - Direct State Aid		Does the state provide direct aid for urban housing?

Description of Policies A1 Continued from previous page

Policy	Years	Description
Living Wills	1976-1992	Does the state have a law permitting individuals control over the use of heroic medical treatment in th event of a terminal illness?
Pain and Suffering Limits in Lawsuits	1975-2012	Are there limits on damages for pain and suffering in lawsuits?
Physician-assisted Suicide		Does the state allow physician-assisted suicide?
Planning Laws Required for Local Gov.	1961-2007	Does a state have a law authorizing or requiring growth-management planning?
Protections Against Compelling Reporters to Disclose Sources	1936-2013	Does the state have a Shield Law protecting them from revealing their sources?
Rent Control Prohibition	1950-2014	Does state prohibit the passage of rent control laws in its cities or municipalities?
Religious Freedom Restoration Act	1993-2014	Did the state pass the Religious Freedom Restoration Act?
State Debt Limitation	1936-1966	State Debt Limitation
Municipal Home Rule	1936-1961	Municipal Home Rule
Lemon Laws	1970-2014	Did the state pass a law protecting consumers who purchase automobiles which fail after repeated repairs?
Utility Regulation	1936-1960	State Commission with rate-setting authority over electricity utilities
Racial Discrimination Policies:		
Requires segregation in schools	1936-1953	Did the state require segregation in public schools?
Ban on Interracial Marriage	1936-1967	Did the state have a law banning interracial marriages?
Ban discrimination in public accommodations	1936-1963	Did the state pass a law (with administrative enforcement) banning discrimination in public accommodations (pre-CRA)?
Ban discrimination in public accommodations	1964-2010	Did the state pass a law (with administrative enforcement) banning discrimination in public accommodations (post-CRA)?
Fair Employment Laws	1945-1964	Does the state have a fair employment law?
Fair Employment Laws (post-1964)	1965-2014	Does the state have a fair employment law? (post-1964)
Fair Housing - Private Housing	1959-1968	Does the state ban discrimination in private housing?
Fair Housing - Public Housing	1937-1965	Does the state ban discrimination in public housing?
Fair Housing - Urban Renewal Areas	1945-1964	Does the state have urban renewal areas?
Tax Policies:		
Cigarette Tax	1936-1946	Does the state have a cigarette tax?
Cigarette Tax Rate	1947-2014	What is the state's tax on a pack of cigarettes?
Earned Income Tax Credit	1988-2014	Does the state have an earned income tax credit?
Income Tax	1936-2014	Does the state have an income tax?
Income tax Rate - Wealthy	1977-2012	What is the state individual income tax rate for an individual that makes more than 1.5 million real dollars?
Sales Tax	1936-1945	Does the state have a sales tax?
Sales Tax Rate	1946-2014	What is the sales tax rate?
Tax Burden	1977-2010	What is the state's tax burden (per capita taxes/per capita income)?
Top Corporate Tax Rate	1941-2014	What is the top corporate tax rate?
Corporate Income Tax	1936-1940	Is there a corporate income tax?
Gasoline Tax	1936-1929	Is there a gasoline tax?
Estate Tax	2009-2014	Is there a state estate tax?
Transportation Policies:		
Controlled Access Highways	1937-1946	Did the state pass a law to create controlled-access highways?
Bicycle Helmets Required	1985-2014	Does the state require that people use helmets while on bicycles?
Mandatory Seat Belts	1984-2014	Does the state require the usage of seat belts (either primary or secondary enforcement)?
Motorcycle Helmets Required	1967-2014	Does the state require the usage of helmets by people on motorcycles?
Mandatory Car Insurance	1945-1986	Does the state require drivers to obtain car insurance?
Welfare Policies:		
AFDC - Benefits for Avg Family	1936-1992	What is the average level of benefits per family under the Aid for Families with Dependent Children program?
AFDC-UP Policy	1961-1990	What is the average level of benefits under the Aid for Families with Dependent Children program?
Aid to Blind - Payments per Recip.	1936-1965	What is the average monthly payment per recipient for the permanently blind or disabled?
Aid to Disabled - Payments per Recip.	1951-1965	What is the average monthly payment per recipient for the permanently blind or disabled?
Aid to Blind - Payments per Recip.	1966-1972	What is the average monthly payment per recipient for the permanently blind or disabled? (post-1965)
Aid to Disabled - Payments per Recip.	1966-1972	What is the average monthly payment per recipient for the permanently blind or disabled? (post-1965)

Description of Policies A1 Continued from previous page

Policy	Years	Description
CHIP - Eligibility Level for Children	1988-2012	What is the CHIP eligibility level for children?
CHIP - Eligibility Level for Infants	1998-2012	What is the CHIP eligibility level for infants?
General Assistance Payments Per Case	1937-1963	What is the average monthly payment per case for general assistance (an early form of welfare)?
General Assistance Payments Per Recip.	1964-1980	What is the average monthly payment per recipient for general assistance (an early form of welfare)?
CHIP - Eligibility Level for Pregnant Women	1998-2012	What is the CHIP eligibility level for pregnant women?
Medicaid - Eligibility for Pregnant Women	1990-1997	What is the Medicaid eligibility level for pregnant women?
Old Age Assis. - Payments per Recip.	1936-1965	What is the average monthly payment per recipient per recipient for old age assistance?
Old Age Assis. - Payments per Recip.	1965-1972	What is the average monthly payment per recipient per recipient for old age assistance? (post-1965)
Senior Prescription Drugs		Does the state provide pharmaceutical coverage or assistance for seniors who do not qualify for Medicaid?
State Adoption of Medicaid	1966-1983	Does the state have a Medicaid program?
TANF - Avg Payments per Family	2006-2010	What is the average monthly level of benefits per family under the Temporary Aid for Needy Families program?
TANF - Initial Elig. Level	1996-2013	What is the initial eligibility level for benefits for a family of three under the Temporary Aid for Needy Families Program?
TANF - Max Payments	1990-2013	What is the maximum level of benefits under the Temporary Aid for Needy Families program for a family of three with no income?
Womens' Rights Policies:		
Equal Pay For Females	1936-1972	Does the state have a law providing for equal pay for women working in the same job?
Equal Right Amendment Ratified	1972-2014	Has the state ratified the Equal Rights Amendment?
Jury Service for Women	1936-1967	Can women serve on juries?
State Equal Rights Law	1971-2014	Has the state passed a state-level equivalent to the Equal Rights Amendment?
Gender Discrimination Laws	1961-1964	Does the state ban hiring discrimination on the basis of gender?
Gender Discrimination Laws (post-1964)	1965-2014	Does the state ban hiring discrimination on the basis of gender? (post-1964)
No Fault Divorce	1966-2014	Do states have a no-fault divorce policy?

A.2 Measurement Model for Policy Liberalism

Our measurement strategy treats state policies as indicators of a latent trait, government policy liberalism, which varies across states and years. Several characteristics of our policy dataset make it a poor fit for conventional latent-variable methods such as classical factor analysis. First, state policy data are irregularly available over time, so most years contain a large amount of missing data. Second, whereas factor analysis is designed for continuous indicator variables, most of our policy indicators are dichotomous or ordinal. Third, we wish to account for and take advantage of the time-series structure of the dataset by pooling some but not all parts of the model across time periods.

We address these complications using a Bayesian latent-variable model (LVM) tailored to this application (Caughey and Warshaw, Forthcoming). We model policy liberalism as a latent trait θ_{st} that varies across states and years. For each state s and year t , we observe a mix of J continuous and ordinal indicators of policy liberalism, denoted $\mathbf{y}_{st} = (y_{1st}, \dots, y_{jst}, \dots, y_{Jst})$, whose distribution is governed by a corresponding vector of latent variables \mathbf{y}_{st}^* . We model y_{jst}^* as a function of θ_{st} and item-specific parameters α_{jt} and β_j :

$$y_{jst}^* \sim N(\beta_j \theta_{st} - \alpha_{jt}, \psi_j^2). \quad (3)$$

The discrimination parameter β_j indicates how “ideological” policy j is, and the difficulty parameter α_{jt} captures the baseline liberalism of policy j in year t .

We accommodate data of mixed type by changing the link function between latent and observed variables (Quinn 2004). If policy indicator j is continuous, we assume y_{jst}^* is directly observed (i.e., $y_{jst} = y_{jst}^*$), just as in the conventional factor analysis model. If policy indicator j is ordinal, we treat the observed y_{jst} as a coarsened realization of y_{jst}^* whose distribution across $K_j > 1$ ordered categories is determined

by a set of $K_j + 1$ thresholds $\boldsymbol{\tau}_j = (\tau_{j0}, \dots, \tau_{jk}, \dots, \tau_{j,K_j})$. As in an ordered probit model, the probability that y_{jst}^* is observed as $y_{jst} = k$ is

$$\Pr(\tau_{j,k-1} < y_{jst}^* \leq \tau_{jk} \mid \beta_j \theta_{st} - \alpha_{jt}) = \Phi(\tau_{jk} - [\beta_j \theta_{st} - \alpha_{jt}]) - \Phi(\tau_{j,k-1} - [\beta_j \theta_{st} - \alpha_{jt}]), \quad (4)$$

where Φ is the standard normal CDF. Dichotomous variables are a special case of ordinal variables with $K_j = 2$ categories (“0” and “1”). The conditional probability that dichotomous y_{jst} falls in the second category (i.e., “1”) is

$$\Pr(\tau_{j1} < y_{jst}^* \leq \tau_{j2} \mid \beta_j \theta_{st} - \alpha_{jt}) = \Phi(\beta_j \theta_{st} - \alpha_{jt}), \quad (5)$$

which is identical to the usual probit item-response model (Quinn 2004, 341).

Another feature of our measurement model is that it bridges the estimates over time so that the liberalism of a state in one year can be directly compared to its liberalism in another year. In order to do this, we model the evolution of the item parameters using a dynamic linear model (Martin and Quinn 2002). We use a local-level model to model the evolution of the difficulty parameter, α_{jt} using a “random walk” prior: $\alpha_{jt} \sim N(\alpha_{j,t-1}, \sigma_\alpha^2)$. If there are no new data for an item in period t , then this transition model acts as a predictive model, imputing a value for α_{jt} . The transition variance σ_α^2 controls the degree of smoothing over time. Setting $\sigma_\alpha^2 = \infty$ is equivalent to estimating α_{jt} separately each year, and $\sigma_\alpha^2 = 0$ is the same as assuming no change over time. We take the more agnostic approach of estimating σ_α^2 from the data, while also allowing it to differ between continuous and ordinal variables.

A.3 Validation: Government Policy Liberalism

In this appendix, we provide more systematic evidence for the validity of our measure of state government policy liberalism based on the analysis in Caughey and Warshaw (Forthcoming). We do so by documenting our estimates' empirical relationship with alternative measures of policy liberalism, what Adcock and Collier (2001) refer to as “convergent” validation. Then we examine their association with other, theoretically related concepts (“construct” validation, in their terminology). Finally, we provide evidence that a one-dimensional model adequately captures the systematic variation in states' policies. Overall, we find strong evidence that our estimates are valid measures of state policy liberalism.

Convergent Validation

If our estimates provide a valid measure of policy liberalism, they should be strongly related to other (valid) measures of the same concept. Since ours is the first time-varying measure of state policy liberalism, we must content ourselves with examining the cross-sectional relationship between our measure and ones developed by other scholars at various points in time. Figure A1 plots the cross-sectional relationships between our measure of policy liberalism and six existing measures:

- “liberalness”/“welfare orientation” rank *circa* 1957 (Hofferbert 1966)²⁷
- welfare-education liberalism in 1962 (Sharkansky and Hofferbert 1969)²⁸
- policy liberalism *circa* 1973 (Klingman and Lammers 1984)²⁹

27. This index is based on mean per-recipient expenditures for 1952–61 for aid to the blind, old age assistance, unemployment compensation, expenditure for elementary and secondary education, and aid to dependent children. We compare Hofferbert's (1966) scale with our measure of state policy liberalism in 1957 since this is the midpoint of the years he includes in his index.

28. This index is based on about twenty education and welfare policies. Note, however, that this index also includes several social outcomes, such as school graduation rates.

29. This index is based on data measured at a variety of points between 1961 and 1980 on state innovativeness, anti-discrimination policies, monthly payments for Aid to Families with Dependent Children (AFDC), the number of years since ratification of the Equal Rights Amendment for Women, the number of consumer-oriented provisions, and the percentage of federal allotment to the state for

- policy liberalism *circa* 1980 (Wright, Erikson, and McIver 1987)³⁰
- policy liberalism in 2000 (Gray et al. 2004)³¹
- policy liberalism in 2006 (Sorens, Muedini, and Ruger 2008)³²

Each panel plots the relationship between our policy liberalism estimates (horizontal axis) and one of the six existing measures listed above. A loess curve summarizes each relationship, and the bivariate correlation is given on the left side of each panel.

Notwithstanding measurement error and differences in data sources, our estimates are highly predictive of other measures of policy liberalism. The weakest correlation, 0.76 for Hofferbert (1966), is primarily the result of a few puzzling outliers (Washington, for example, is the seventh-most conservative state on Hofferbert’s measure, whereas Wyoming is the ninth-most liberal). In addition, all the relationships are highly linear. The only partial exception is for Sorens, Muedini, and Ruger (2008), whose measure of policy liberalism does not discriminate as much between Southern states as our measure, resulting in a flat relationship at the conservative end of our scale.

In short, the very strong empirical relationships between our policy liberalism scale and existing measures of the same concept provide compelling evidence for the validity of our measure. It is worth noting that most of the existing scales were constructed explicitly with the goal of differentiating between liberal and conservative

Title XX social services programs actually spent by the state. We compare Klingman and Lammers’s (1984) scale with our measure of state policy liberalism in 1973 since this is the midpoint of the years they include in their index.

30. This measure is based on state education spending, the scope of state Medicaid programs, consumer protection laws, criminal justice provisions, whether states allowed legalized gambling, the number of years since ratification of the Equal Rights Amendment for Women, and the progressivity of state tax systems. We compare Wright, Erikson, and McIver’s (1987) scale with our measure of state policy liberalism in 1980 since this is roughly the midpoint of the years they include in their index.

31. This index is based on state firearms laws, state abortion laws, welfare stringency, state right-to-work laws, and the progressivity of state tax systems.

32. This is the first principal component uncovered by Sorens, Muedini, and Ruger’s (2008) analysis of over 100 state policies. They label this dimension “policy liberalism” and give the label “policy urbanism” to the second principal component.

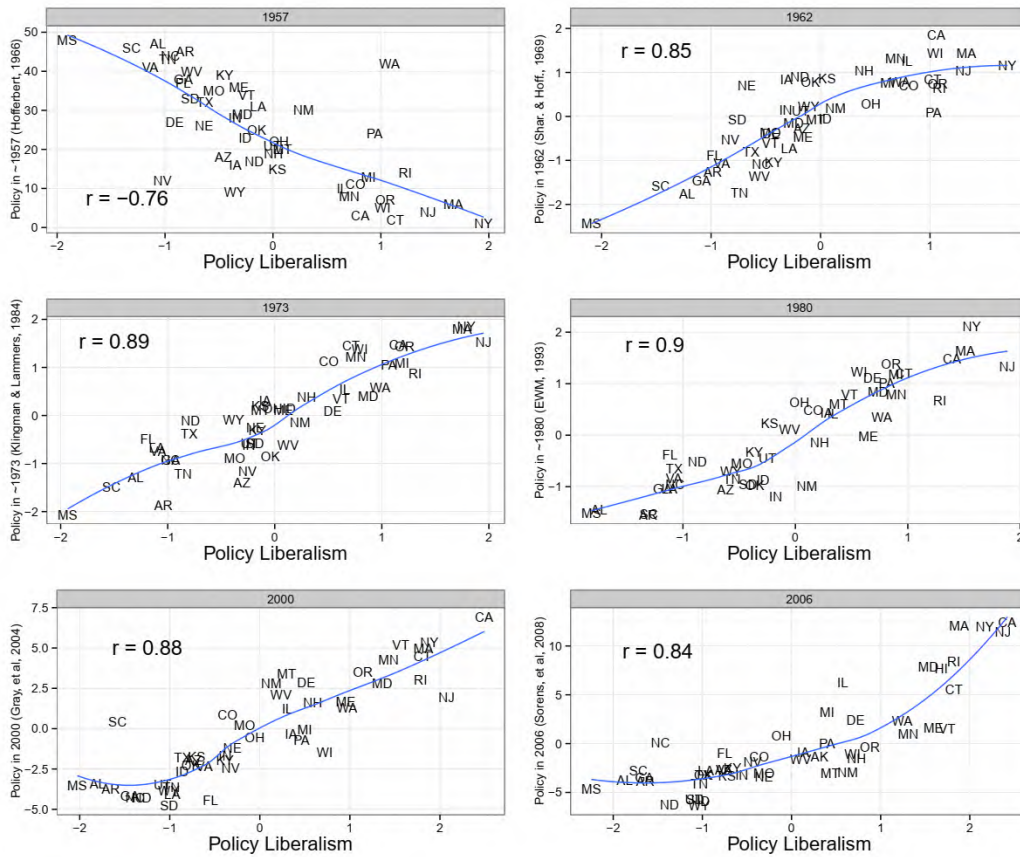


Figure A1: Validation of our Policy Measure: Correlation with Previous Policy Indices states. Thus their tight relationship with our measure, which is based on a much more comprehensive policy dataset and was estimated without regard to the ideological content of the policy indicators,³³ suggests in particular that we are on firm ground in calling our latent dimension “policy liberalism.”

Construct Validation

We provide further evidence for the validity of our measure by demonstrating its association with measures of concepts theoretically related to policy liberalism, a procedure Adcock and Collier (2001) refer to as “construct validation.” First, we examine the relationship between mass political attitudes and state policy liberalism.

33. This is true except for the hard coding required to identify the latent scale.

Previous work shows that the liberalism of state publics have a strong cross-sectional association with state policy liberalism (Wright, Erikson, and McIver 1987; Erikson, Wright, and McIver 1993; Lax and Phillips 2011). Unfortunately, there is no extant survey-based measure of state ideology that extends back to 1936, so we instead use Democratic presidential vote share to proxy for mass liberalism (see, e.g., Ansolabehere, Snyder, and Stewart 2001; Canes-Wrone, Brady, and Cogan 2002). Consistent with past work, we focus on the Democratic presidential vote share in non-southern states.

Figure A2 shows the correlation of our dynamic measure of policy liberalism with the the Democratic candidate's state-level vote share in every presidential election year from 1936 to 2014. As expected, the two measures are highly correlated across the entire time period. Moreover, the relationship between public opinion and policy liberalism increases in strength over time, mirroring the growing alignment of policy preferences with partisanship and presidential voting at the individual level (Fiorina and Abrams 2008, 577–82).

Dimensionality

Our one-dimensional model of state policies implies that a single latent trait captures systematic policy variation across states. This is not to say that it captures *all* policy differences, but it does imply that once policies' characteristics and states' policy liberalism are accounted for, any additional variation in state policies is essentially random. This assumption would be violated if there were instead multiple dimensions of state policy, as some scholars have claimed. Given that roll-call alignments in the U.S. Congress were substantially two-dimensional for much of the 20th century (Poole and Rosenthal 2007), it is not unreasonable to suspect that state policies might be as well. As we demonstrate, however, a one-dimensional model captures state policy variation surprisingly well, and there is little value to increasing the complexity of

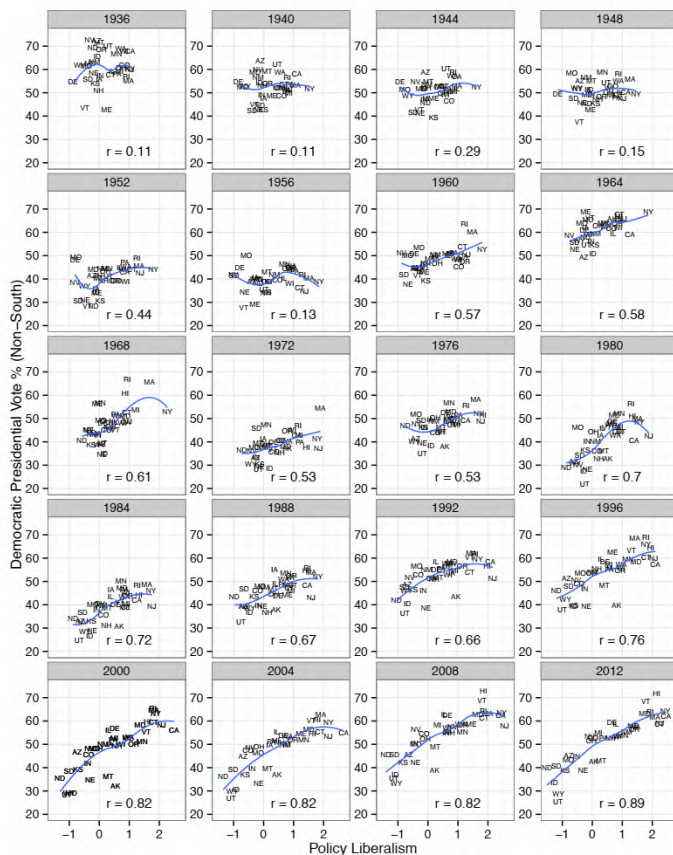


Figure A2: Relationship between State Policy Liberalism and Democratic Presidential Vote Share in the Non-South.

Table A2: Correlations between policy liberalism scales estimated using economic, social, racial, and all policies. The unit of analysis is the state-year. The racial policy scale is estimated for the 1950–70 period only.

	All	Economic	Social
Economic	0.92		
Social	0.84	0.69	
Racial	0.86	0.68	0.55

the model by adding further dimensions.

We can explore this question at a higher level of generality by scaling state policies within each of three broad issue domains: economic, social, and racial.³⁴ Policy cleavages in the mass public and in the U.S. Congress are often considered to differ across these domains, especially earlier in the 1936–2014 period (e.g., Poole and Rosenthal 2007). As the first column of the correlation matrix in Table A2 shows, however, each domain-specific scale is strongly related to the policy liberalism scale based on all policies. The domain-specific scales are also highly correlated with each other, with the correlation being weakest for racial and social policies (estimated for 1950–70 only). On the whole, Table A2 provides strong evidence that variation in state policies is one-dimensional and does not vary importantly across issue domains.

As a further piece of evidence, we show that allowing for multiple latent dimensions does not substantially improve our ability to predict policy differences between states. As our measure of model fit we use percentage correctly predicted (PCP), which for binary variables is the percentage of cases for which the observed value corresponds to its model-based predicted value (0 or 1).³⁵ Based on this method, we find little

34. Because cross-state variation in civil rights policies is concentrated in the 1950–70 period, we estimate the racial policy dimension for these two decades only.

35. In order to include ordinal and continuous variables in this calculation, we convert them into binary variables by dichotomizing them at a threshold randomly generated for each variable. We estimate one and two-dimensional probit IRT models separately in each year using the R function `ideal` (Jackman 2012), which automatically calculates PCP. We then evaluate how much the second dimension improves PCP (adding dimensions cannot decrease PCP).

evidence that adding dimensions improves our ability to account for the data. In the average year, a one-dimensional model correctly classifies 82% of all dichotomized policy observations. Adding a second dimension increases average PCP by only 1.5 percentage points. This improvement in model fit is less than the increase in fit that is used in the congressional literature as a barometer of whether roll-call voting in Congress has a one-dimensional structure (Poole and Rosenthal 2007, 33–4).

Taken as a whole, the evidence supports two conclusions. First, a single latent dimension captures the vast majority of policy variation across states across disparate policy domains. This is true even at times when national politics was multidimensional. Second, the approximately 20% of cross-sectional policy variation not captured by a one-dimensional model does not seem to have a systematic structure to it, or at least not one that can be described by additional dimensions.

A.4 Continuity of Pre-Treatment Covariates in RD Designs

A.4.1 RD for Governor

Table A3: Covariate continuity tests for the gubernatorial RD design, estimated using the default local-linear regression bandwidth (BW) and robust confidence intervals calculated by `rdrobust` (Calonico, Cattaneo, and Titiunik 2014). All are covariates measured in the year of the election. Residual Policy Liberalism is the residuals from a regression of *Policy Liberalism* on intercepts for state and year. Change in Policy Liberalism is measured relative to the year before the election.

	BW	Est	CI	Pr > z
Democratic Governor	0.23	-0.08	(-0.24, 0.08)	0.31
Dem. Majority in House	0.16	0.00	(-0.17, 0.18)	0.96
Dem. Seat Share in House	0.14	-0.01	(-0.08, 0.07)	0.86
Dem. Majority in Senate	0.17	-0.03	(-0.21, 0.14)	0.69
Dem. Seat Share in Senate	0.13	-0.00	(-0.08, 0.07)	0.94
Policy Liberalism (level)	0.15	0.06	(-0.23, 0.37)	0.65
Policy Liberalism (residual)	0.14	0.08	(-0.02, 0.23)	0.10
Policy Liberalism (change)	0.21	-0.02	(-0.06, 0.02)	0.29

A.4.2 RD for State House

Table A4: Covariate continuity tests for the state house RD design, estimated using the default local-linear regression bandwidth (BW) and robust confidence intervals calculated by `rdrobust` (Calonico, Cattaneo, and Titiunik 2014). All are covariates measured in the year of the election. Residual Policy Liberalism is the residuals from a regression of *Policy Liberalism* on state and year intercepts. Change in Policy Liberalism is measured relative to the year before the election.

	BW	Est	CI	Pr > z
Democratic Governor	52	0.07	(-0.11, 0.25)	0.44
Dem. Majority in House	31	0.12	(-0.11, 0.28)	0.39
Dem. Seat Share in House	34	0.02	(-0.02, 0.04)	0.41
Dem. Majority in Senate	55	0.05	(-0.14, 0.19)	0.74
Dem. Seat Share in Senate	69	0.03	(-0.01, 0.06)	0.17
Policy Liberalism	51	-0.06	(-0.34, 0.19)	0.57
Residual Policy Liberalism	42	0.03	(-0.06, 0.14)	0.39
Change in Policy Liberalism	72	0.02	(-0.04, 0.08)	0.55

A.5 Concerns of Unit Roots and Inconsistency

We address two potential concerns related to the TSCS models that we present in the main text. First, one might be worried that the high temporal dependence in the policy measure may indicate unit roots (i.e. the autoregressive coefficient equals 1) in the data generating process. Potential non-stationarity of the outcome variable may lead to implausible inference of the causal quantities. Second, as mentioned above, since we include both state fixed effects and past outcomes in the model, demeaned error is correlated with the past outcomes, which leads to biased estimates in finite samples (the bias goes away as T approaches infinity).

To address the first concern, we transform the outcome variable by taking a first difference and estimate the following models suggested by (Phillips and Moon 2000):

$$\Delta y_{it} = (\rho_1 - 1)y_{i,t-1} + \delta Gov_{it} + \beta Maj_{it}^H + \gamma Maj_{it}^S + \alpha_i + \xi_t + \epsilon_{it}, \quad (6)$$

or

$$\Delta y_{it} = (\rho_1 - 1)y_{i,t-1} + \rho_2 y_{i,t-2} + \delta Gov_{it} + \beta Maj_{it}^H + \gamma Maj_{it}^S + \alpha_i + \xi_t + \epsilon_{it}, \quad (7)$$

in which $\Delta y_{it} = y_{it} - y_{i,t-1}$ is the first difference of the outcome variable. Column (1) in Table A5 reports the estimation result of Equation (6) using a *within* estimator. It shows that $(1 - \hat{\rho}_1)$ is negative and statistically different from zero, a sign that a unit root does not exist, and the estimates of partisan composition coefficients are almost identical to those in Table 2.

Next, we use a generalized methods of moments (GMM) approach to address the concern of correlation between $y_{i,t-1}$ and the demeaned error term (Arellano and Bond, 1991). The basic idea of the GMM approach is to use the outcome variable in even early periods to instrument the past outcomes included in the model with the assumption of exclusion restriction that these early terms affect the current outcome only through the recent past outcomes. In column (2), for example, we use the

policy measures lagged for 2 to 4 years to instrument last year’s policy measure. The estimated coefficient of the partisan composition are similar to those in column (1).³⁶ In columns (3) and (4), we re-do the analysis by estimating Equation (7). In column (4), we use the policy measures lagged for 3 to 5 years to instrument the past outcomes in the previous two years. The main results remain qualitatively the same.

Table A5: Alternative Estimation Strategies

<i>Outcome variable</i>	Δ Policy liberalism (<i>t</i>)			
	FE (1)	GMM (2)	FE (3)	GMM (4)
Democratic governor	0.012 (0.004)	0.019 (0.005)	0.012 (0.004)	0.018 (0.005)
Democratic house majority	0.028 (0.006)	0.031 (0.008)	0.030 (0.006)	0.032 (0.008)
Democratic senate majority	0.022 (0.006)	0.021 (0.008)	0.020 (0.006)	0.019 (0.009)
Policy liberalism (<i>t-1</i>)	-0.051 (0.007)	-0.076 (0.014)	-0.142 (0.016)	-0.154 (0.048)
Policy liberalism (<i>t-2</i>)			0.097 (0.016)	0.089 (0.043)
State and year fixed effects	x	x	x	x
Observations	3,632	3,632	3,586	3,586
States	49	49	49	49

Note: Robust standard errors clustered at the state level are in the parentheses. The state of Nebraska is dropped out of the sample. The outcome variable is the first difference of the policy measure. In column (2), the outcome variable lagged for 2 to 5 periods are used as instruments for the lagged outcome variable. In column (3), the instruments are the outcome variable lagged for 3 to 6 periods. Partisan composition of the state government and year and state dummies are treated as exogeneous. Coefficients statistically significant at the 5% level are in bold font type.

36. We use the one-step approach to avoid under-estimation of the standard errors. We do not use all available past outcomes to avoid problems caused by too many instruments. The instruments are used in both the level and first-difference equations. Our results hold for various specifications (e.g., the choice of instruments) and GMM options.

A.6 The Number of Lagged Terms

In this section, we show that our main finding is robust to adding more lagged terms of the dependent variable. We report the gubernatorial estimates based on two-way FE models with varying numbers of lags. All standard errors (SEs) are clustered at the state level. In column (1) of Table A6, a two-way FE model without LDVs is employed. In columns (2)–(5), we estimate FE-LDV models with first- through fourth-order lags. We find that the estimates of the key independent variables barely change once two lagged terms are included and the third- and fourth-order lags have limited predictive power of the dependent variable. Therefore, to avoid over-fitting, we use the FD-LDV model with two lagged terms as the baseline specification.

Table A6: Policy Effects of Democratic Control: Number of Lagged Terms Included

<i>Outcome variable</i>	Policy liberalism				
	(1)	(2)	(3)	(4)	(5)
Democratic governor	0.065 (0.032)	0.013 (0.004)	0.012 (0.004)	0.012 (0.004)	0.012 (0.004)
Democratic house majority	0.166 (0.052)	0.029 (0.006)	0.029 (0.006)	0.030 (0.006)	0.031 (0.006)
Democratic senate majority	0.269 (0.057)	0.023 (0.006)	0.021 (0.006)	0.020 (0.006)	0.019 (0.006)
Policy liberalism (<i>t-1</i>)		0.948 (0.007)	0.851 (0.017)	0.857 (0.017)	0.856 (0.017)
Policy liberalism (<i>t-2</i>)			0.104 (0.017)	0.085 (0.023)	0.084 (0.023)
Policy liberalism (<i>t-3</i>)				0.013 (0.020)	-0.019 (0.025)
Policy liberalism (<i>t-4</i>)					0.036 (0.019)
State and year fixed effects	x	x	x	x	x
Observations	3,678	3,677	3,630	3,584	3,538
States	50	50	49	49	49
R-squared	0.870	0.987	0.987	0.987	0.987

Note: Robust standard errors clustered at the state level are in the parentheses. Coefficients statistically significant at the 5% level are in bold font type.

A.7 Adding State-specific Time Trends

In this subsection, we add unit-specific time trends to a conventional two-way fixed-effect model to explore alternative model specifications. We find that, even when we control for a cubic time trend for each state, the coefficients of partisan governors and state legislatures are still all positive and broadly consistent with the estimates reported in the main text (e.g. table 2, column 2). However, the standard errors are much larger than those in Table 2, indicating improper model specifications that causes inefficiency, and potentially inconsistency.

Table A7: Two-way Fixed-effect Models with Time Trends

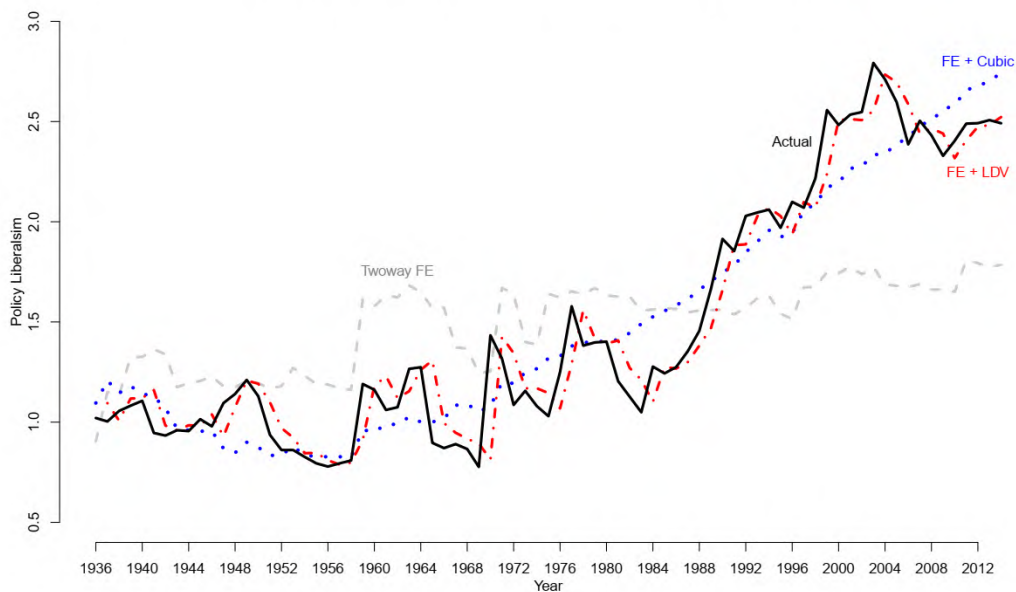
<i>Outcome variable</i>	Policy liberalism			
	(1)	(2)	(3)	(4)
Democratic governor	0.065 (0.032)	0.005 (0.016)	0.010 (0.013)	0.018 (0.012)
Democratic house majority	0.166 (0.052)	0.084 (0.023)	0.083 (0.023)	0.082 (0.020)
Democratic senate majority	0.269 (0.057)	0.038 (0.032)	0.017 (0.033)	0.001 (0.033)
State and year fixed effects	x	x	x	x
State-specific linear time trends		x		
State-specific quadratic time trends			x	
State-specific cubic time trends				x
Observations	3,903	3,903	3,903	3,902
States	50	50	50	50
R-squared	0.851	0.952	0.965	0.986

Note: Robust standard errors clustered at the state level are in the parentheses. Coefficients statistically significant at the 5% level are in bold font type.

This specification problem is further illustrated in Figure A3, in which several model fits are drawn for political liberalism in California (estimations are based on all available data, not just California). The three models include a conventional two-way fixed-effect model (**Twoway FE**), a model of two-way fixed-effect plus unit-specific cubic time trends (**FE + cubic**), and a model of two-way fixed-effect plus two lagged dependent variables (**FE + LDV**, our main specification). All models include three dummy variables indicating a democratic governor, a democratic state house

majority, and a democratic state senate majority. It is quite clear from Figure A3 that fixed-effect models without incorporating LDVs (even when flexible time trends are added) provide much worse fits than a model that controls for LDVs.

Figure A3: Model Fits: The Example of California



A.8 Dynamic Effects of Partisan Composition

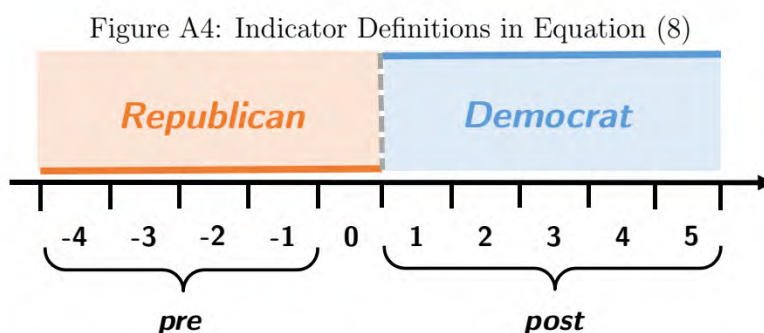
The identifying assumption of the dynamic panel model we use states that in the absence of the treatment, the average outcome of treated units would have been similar to that of the control units after fixed effects and lagged dependent variables are controlled for. In other words, after conditioning on fixed effects and past outcomes (and perhaps partisan control of the legislatures), the evolution of policy liberalism in state A that elects a Democratic governor should be indistinguishable, at least by expectation, from that of a state that elects a non-Democratic governor had not the Democrat governor been elected in state A.

To shed some light on the validity of this assumption, we investigate the dynamic changes of the immediate effect of partisan composition on state liberalism, which partly serves as a placebo test. If, for example, we can show that the estimated coefficients of indicators of future partisan composition has no effect on the current policy measure (because the change has not happened yet), we will have more confidence in the validity of the identifying assumption stated above. Therefore, we estimate the following model:

$$\begin{aligned}
 y_t = & \sum_{r=1}^4 \delta'_r GovPre_{r,it} + \sum_{s=1}^5 \delta_s GovPost_{s,it} + \delta^0 GovRest_{it} \\
 & + \sum_{u=1}^4 \beta'_u HsPre_{u,it} + \sum_{v=1}^5 \beta_v HsPost_{v,it} + \beta^0 HsRest_{it} \\
 & + \sum_{q=1}^4 \gamma'_q SenPre_{q,it} + \sum_{w=1}^5 \gamma_w SenPost_{w,it} + \gamma^0 SenRest_{it} \\
 & + \rho_1 y_{i,t-1} + \rho_2 y_{i,t-2} + \alpha_i + \xi_t + \epsilon_{it}.
 \end{aligned} \tag{8}$$

in which $GovPre_{r,it}$ is a binary indicator that equals one when year t is r year(s) before the election year in which a Democratic governor is elected and zero otherwise—for example, if 2014 is the year in which a Democrat won the governor election in state

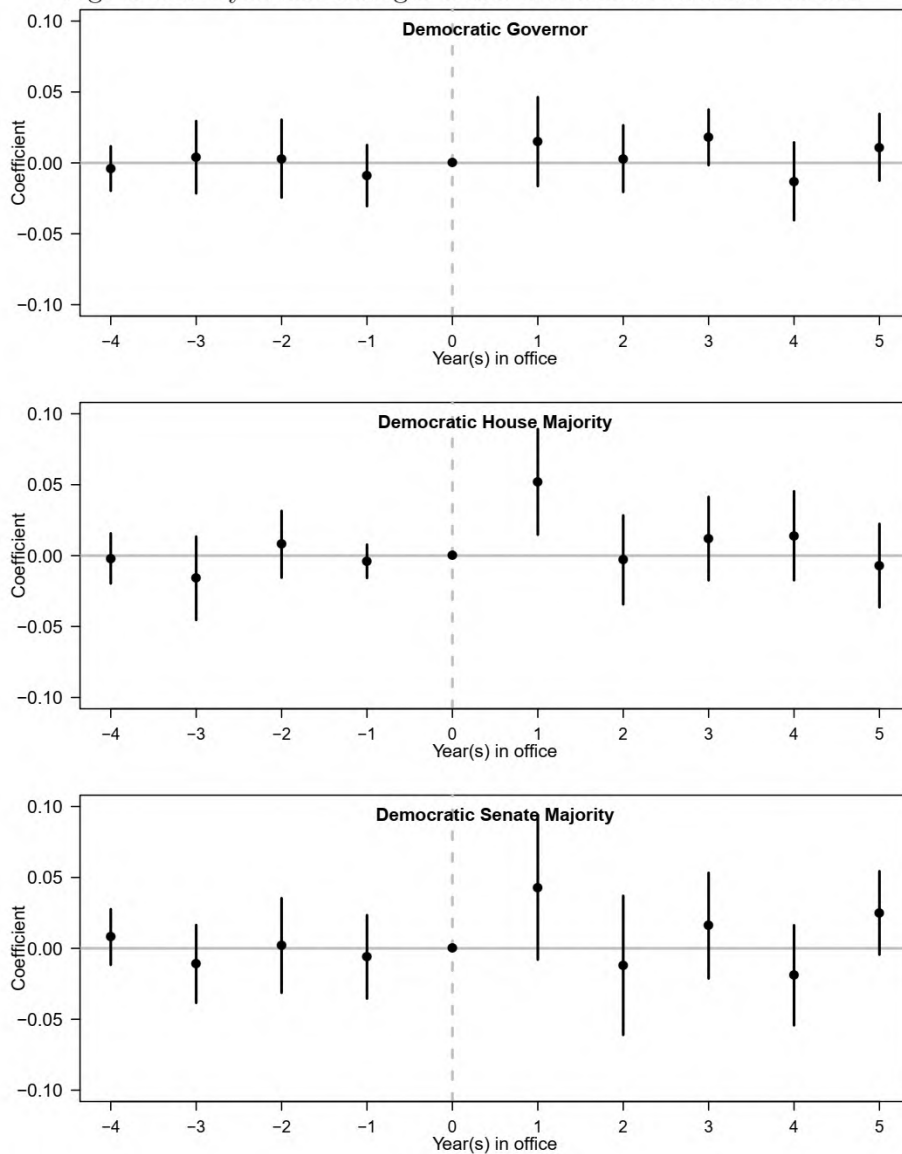
i , $GovPre_{1,i,2013}$ would equal one because 2013 is one year before the election year; $GovPost_{s,it}$ is a binary indicator that takes value one when year t is s year(s) after the year in which a Democratic governor is elected and zero otherwise; and $GovRest_{it}$ is a dummy variable that equals one if year t is more than four years before, or more than five years after, a governor election that puts a Democrat in office. $HsPre_{u,it}$, $HsPost_{v,it}$, $HsRest_{it}$, $SenPre_{q,it}$, $SenPost_{w,it}$, and $SenRest_{it}$ are defined in a similar fashion. The definitions of the pre- and post- indicators are illustrated in Figure A5.



Again, we include only two lagged terms of the dependent variable and standard errors are clustered at the state level. Nebraska is not included as before. The results are shown in Figure A5. The y-axes in the three panels are the coefficients of immediate policy effect of a Democratic governor, a Democratic house majority status, and a Democratic senate majority status, respectively. The omitted category in each panel is the election year (e.g. the year in which a Democrat governor is elected) and is marked as “0” in the panels in Figure A5.

Figure A5 shows that, in all three panels, the coefficients of dummy variables indicating years before Democrats’ taking office or controlling state legislatures are very close to zero (the trend is virtually flat). After the election year, however, we see immediate jumps for the effect of Democratic governors, house majority, as well as senate majority. The effects after the first years bump around but mostly remain positive. Consistent with previous results, the effect of Democratic house majority is

Figure A5: Dynamic Changes of the Immediate Partisan Effects



bigger than that of a Democratic governor and a house majority. The investigation of the evolution of policy effects of partisan composition lends us confidence in the identification strategy of using TSCS models with fixed effects and lagged dependent variables to estimate the effect of government partisanship on state policies.

A.9 Variation in Partisan Compositions

Table A8 calculates the variation in the key independent variables—Democratic control of the governorship, state house, and state senate—in the full sample, in the samples of non-Southern and Southern states, and across different time periods. The variance of a variable is decomposed into *within* variance, variance within a state over time, and *between* variance, variance (of the each state’s variable mean) between states. Because we control for state fixed effects in all regressions, our dynamic panel analyses exploit variation within states.

Table A8 shows that (1) in the full sample, the within variation in the Democratic control of the governorship remains relatively stable over time, while the within variation in the Democratic control of the state house and state senate increase after the 1990’s; (2) the within variation in all three variables remain stable in non-Southern states over time; (3) since Democrats controlled state legislatures in the South before the 1990’s, there are no variation in the two variables during this period. (2) and (3) indicate that the increased variation in the Democratic control of the house and senate almost entirely come from the 11 Southern states.

Hence, the main variation our identification strategies rely upon mostly come from the non-Southern states. We show in Table 2 that dropping observations of the 11 Southern states does not affect our main results. Moreover, apparently the fact that we find almost zero partisan effects on policy in the early period is not due to lack of variation in the independent variables in that period.

Table A8: Variation in Partison Compostions

	<i>All States</i>			<i>Non-south</i>			<i>South</i>		
	Governor	House	Senate	Governor	House	Senate	Governor	House	Senate
1936-1967									
Mean	0.596	0.581	0.537	0.480	0.453	0.395	0.994	1.000	1.000
Within variance	0.158	0.093	0.086	0.202	0.122	0.113	0.005	0.000	0.000
Between variance	0.084	0.150	0.164	0.050	0.130	0.133	0.000	0.000	0.000
Within %	65.4	38.3	34.5	80.1	48.3	45.9	97.4	NA	NA
1968-1990									
Mean	0.603	0.689	0.661	0.570	0.598	0.560	0.723	1.000	1.000
Within variance	0.144	0.078	0.081	0.185	0.102	0.106	0.170	0.000	0.000
Between variance	0.098	0.139	0.146	0.053	0.142	0.144	0.033	0.000	0.000
Within %	59.6	36.0	35.8	77.6	41.7	42.3	83.6	NA	NA
1991-2014									
Mean	0.452	0.547	0.520	0.467	0.527	0.493	0.397	0.616	0.615
Within variance	0.143	0.118	0.114	0.182	0.102	0.100	0.202	0.173	0.161
Between variance	0.105	0.132	0.138	0.068	0.151	0.153	0.042	0.070	0.085
Within %	57.8	47.0	45.1	72.8	40.3	39.5	82.6	71.1	65.5
All Years									
Mean	0.554	0.602	0.568	0.502	0.519	0.474	0.734	0.883	0.885
Within variance	0.220	0.144	0.143	0.229	0.158	0.158	0.191	0.097	0.095
Between variance	0.027	0.098	0.104	0.022	0.096	0.097	0.004	0.006	0.007
Within %	89.2	59.5	57.8	91.4	62.2	61.8	97.8	93.8	92.9

A-25

A.10 Disentangling Seat Share and Majority Status

The dynamic panel models reported in the main text do not identify the effect of Democratic majority status *per se*. In particular, it is possible that the differences between majority-Democratic and majority-Republican legislative chambers are due only to differences in the preferences of pivotal voters (Krehbiel 1998) and not to the agenda-setting or other powers of the majority party (Aldrich and Rohde 2000; Cox and McCubbins 2005). Our data do not allow us to cleanly distinguish between preference-based and party-procedural accounts. However, under the assumptions that Democratic seat share is a good proxy for the liberalism of pivotal voters and that status quos are fairly widely distributed, Krehbiel’s preference-based account implies that Democratic seat share should directly increase policy liberalism. If the parties are ideologically polarized the share–policy relationship will probably be steepest when the party division is close, but it should be positive throughout the range of seat share. Party-based accounts do not rule out the independent influence of preferences, but they suggest that the effect of majority status itself should dominate that of seat share.

With these theoretical expectations in mind, consider the models summarized in Table A9, which include measures of Democratic house and senate seat shares (recentered at 0.5) in addition to the three indicators of partisan control. The coefficient estimates for the party-control variables (top three rows) are almost completely stable across specifications. The effect of a Democratic house majority is estimated to be twice as large as that of a Democratic governor, with the senate estimate falling somewhere in between. The linear effect of seat share, however, is always indistinguishable from 0, regardless of whether share is entered separately by chamber or allowed to differ by majority status.

To evaluate the possibility of a non-linear relationship between chamber seat share and policy liberalism, we estimate the following semiparametric model for each cham-

Table A9: Disentangling Share and Control

<i>Outcome variable</i>	Policy liberalism			
	(1)	(2)	(3)	(4)
Democratic governor	0.011 (0.004)	0.011 (0.004)	0.011 (0.004)	0.011 (0.004)
Democratic house majority	0.024 (0.008)	0.027 (0.006)	0.026 (0.008)	0.025 (0.008)
Democratic senate majority	0.019 (0.006)	0.015 (0.009)	0.016 (0.009)	0.015 (0.009)
Democratic house seat share	0.026 (0.026)		0.012 (0.032)	0.010 (0.042)
Democratic senate seat share		0.027 (0.027)	0.018 (0.033)	0.059 (0.038)
Democratic house seat share * house majority				0.008 (0.068)
Democratic senate seat share * senate majority				-0.065 (0.054)
Two lagged terms of the outcome variable	x	x	x	x
State and year fixed effects	x	x	x	x
Observations	3,630	3,630	3,630	3,630
States	49	49	49	49
R-squared	0.987	0.987	0.987	0.987

Note: Robust standard errors clustered at the state level are in the parentheses. The state of Nebraska is dropped out of the sample. Coefficients statistically significant at the 5% level are in bold font type.

ber $c \in \{\text{house, senate}\}$:

$$y_{it} = f(\text{Share}_{c,it} \mid \text{Maj}_{c,it} = 0) + f'(\text{Share}_{c,it} \mid \text{Maj}_{c,it} = 1) \quad (9)$$

$$+ \rho_1 y_{i,t-1} + \rho_2 y_{i,t-2} + \alpha_i + \xi_t + \delta \text{Gov}_{it} + \gamma \text{Maj}_{c',it} + \epsilon_{it},$$

where $c \neq c'$. The semi-parametric functions $f(\cdot)$ and $f'(\cdot)$ allow policy liberalism to vary non-linearly as a function of Democratic seat share in chamber c . We estimate the model in (9) using a two-step procedure. The first step is to regress y_{it} on the parametric components of the model: the LDVs, the fixed effects, and the indicators for Democratic control of the governorship and of the other legislative chamber (c'). The second step is to estimate the semi-parametric functions by applying local linear

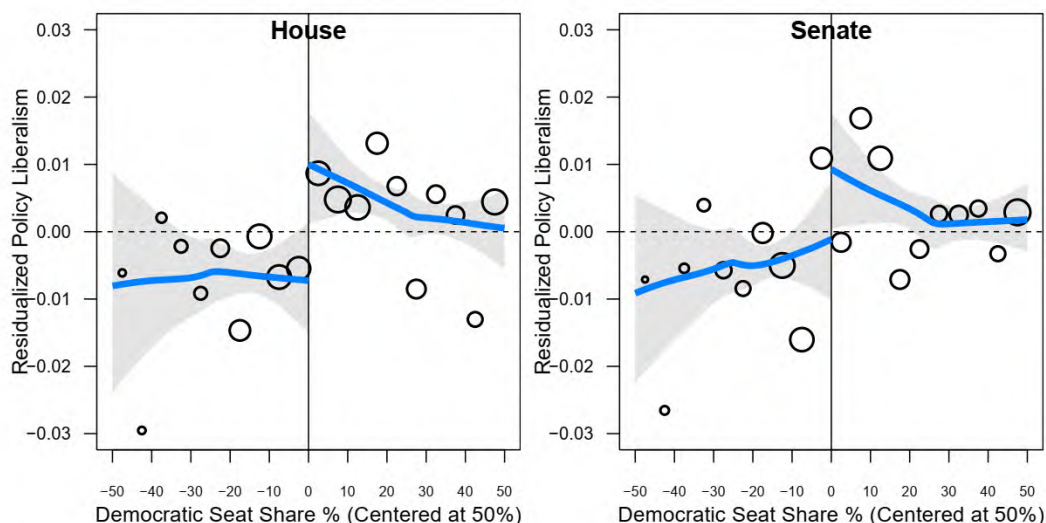


Figure A6: The policy effects of Democratic two-party seat share in the state house (left) and senate (right). The y -axes plot the residuals from regressions of policy liberalism on the parametric components of the model in (9). Blue lines indicate loess fits, and shaded regions conventional 95% confidence intervals.

regression to the residuals from the first estimation step. Uncertainty estimates are produced using state-level block bootstraps of the entire procedure.

Figure A6 displays the results estimating the semiparametric model in the house (left panel) and senate (right panel). Although the plots in this figure look similar to an RD design, they differ in that under the identification assumptions in the FE-LDV model, the difference between any pair of points has a causal interpretation, not just the gap at the threshold itself. The results for the state house are fairly unambiguous. In line with the house RD results, the policy effect of moving from a narrow Republican house majority to a narrow Democratic one is robust and statistically significant. The relationship between policy liberalism and Democratic seat share, however, is almost completely flat, consistent with the close-to-zero coefficients on house share in Table A9.

The patterns for state senate are less clear. In particular, there is a discrepancy between the loess fits, which imply a significant positive effect of gaining majority

control, and the local averages on either side of the threshold, which imply a negative effect. These discrepancies suggest that our conclusions regarding the senate should be interpreted more cautiously than those for the governor and house. Nevertheless, the results for both the senate and the house support two conclusions. First, controlling for year-specific common shocks, partisan control of other government institutions, and each state's long-term mean and recent history, policy liberalism is higher when Democratic Party control a legislative chamber than when the Republicans do. Second, except by giving Democrats majority control of the chamber, there is little affirmative evidence that Democratic seat share increases policy liberalism.

References for Appendix

- Adcock, Robert, and David Collier. 2001. “Measurement Validity: A Shared Standard for Qualitative and Quantitative Research.” *American Political Science Review* 95 (3): 529–546.
- Aldrich, John H., and David W. Rohde. 2000. “The Consequences of Party Organization in the House: The Roles of the Majority and Minority Parties in Conditional Party Government.” In *Polarized Politics: Congress and the President in a Partisan Era*, edited by J. R. Bond and R. Fleisher, 37–72. Washington, DC: CQ Press.
- Ansolabehere, Stephen, James M. Snyder Jr., and Charles Stewart III. 2001. “Candidate Positioning in U.S. House Elections.” *American Journal of Political Science* 45 (1): 136–159.
- Calonico, Sebastian, Matias D. Cattaneo, and Rocio Titiunik. 2014. *rdrobust: Robust Data-Driven Statistical Inference in Regression-Discontinuity Designs*. R package version 0.70. <http://CRAN.R-project.org/package=rdrobust>.
- Canes-Wrone, Brandice, David W. Brady, and John F. Cogan. 2002. “Out of Step, Out of Office: Electoral Accountability and House Members’ Voting.” *American Political Science Review* 96 (1): 127–140.
- Caughey, Devin, and Christopher Warshaw. Forthcoming. “The Dynamics of State Policy Liberalism, 1936–2012.” *American Journal of Political Science*.
- Cox, Gary W., and Mathew D. McCubbins. 2005. *Setting the Agenda: Responsible Party Government in the U.S. House of Representatives*. New York: Cambridge University Press.

- Erikson, Robert S., Gerald C. Wright, and John P. McIver. 1993. *Statehouse Democracy: Public Opinion and Policy in the American States*. New York: Cambridge University Press.
- Fiorina, Morris P., and Samuel J. Abrams. 2008. "Political Polarization in the American Public." *Annual Review of Political Science* 11 (1): 563–588.
- Gray, Virginia, David Lowery, Matthew Fellowes, and Andrea McAtee. 2004. "Public Opinion, Public Policy, and Organized Interests in the American States." *Political Research Quarterly* 57 (3): 411–420.
- Hofferbert, Richard I. 1966. "The Relation between Public Policy and Some Structural and Environmental Variables in the American States." *American Political Science Review* 60 (1): 73–82.
- Jackman, Simon. 2012. *pscl: Classes and Methods for R Developed in the Political Science Computational Laboratory, Stanford University*. Department of Political Science, Stanford University. R package version 1.04.4. <http://pscl.stanford.edu>.
- Klingman, David, and William W. Lammers. 1984. "The 'General Policy Liberalism' Factor in American State Politics." *American Journal of Political Science* 28 (3): 598–610.
- Krehbiel, Keith. 1998. *Pivotal Politics: A Theory of U.S. Lawmaking*. Chicago: University Of Chicago Press.
- Lax, Jeffrey R., and Justin H. Phillips. 2011. "The Democratic Deficit in the States." *American Journal of Political Science* 56 (1): 148–166.
- Martin, Andrew D., and Kevin M. Quinn. 2002. "Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999." *Political Analysis* 10 (2): 134–153.

- Phillips, Peter C. B., and Hyungsik R. Moon. 2000. "Nonstationary Panel Data Analysis: An Overview of Some Recent Developments." *Econometric Reviews* 19 (3): 263–286.
- Poole, Keith T., and Howard Rosenthal. 2007. *Ideology & Congress*. New Brunswick, NJ: Transaction Publishers.
- Quinn, Kevin M. 2004. "Bayesian Factor Analysis for Mixed Ordinal and Continuous Responses." *Political Analysis* 12 (4): 338–353.
- Sharkansky, Ira, and Richard I. Hofferbert. 1969. "Dimensions of State Politics, Economics, and Public Policy." *American Political Science Review* 63 (3): 867–879.
- Sorens, Jason, Fait Muedini, and William P. Ruger. 2008. "US State and Local Public Policies in 2006: A New Database." *State Politics & Policy Quarterly* 8 (3): 309–326.
- Wright, Gerald C., Robert S. Erikson, and John P. McIver. 1987. "Public Opinion and Policy Liberalism in the American States." *American Journal of Political Science* 31 (4): 980–1001.