

Measuring LGBTQ Policy Environment in the American States

Scott LaCombe¹

Terms: LGBTQ & transgender

This project presents a novel dataset tracking LGBTQ policies in the United States. The past decade, and in particular the past 2 years, has seen a dramatic rise in policies expanding or restricting the rights of LGBTQ populations in the American states. To understand this rise, this paper collected data on hundreds of proposed and adopted policies in the American states to generate a continuous measure of the status of LGBTQ rights in the American States to get a more systematic understanding of the policy environment. We then use an IRT model to scale states based on how permissive or restrictive they are across a variety of policy areas including education, health care, and civil rights protections. This research has important implications for understanding the rapidly changing policy environment for LGBTQ rights, as well as understanding how public opinion is translated into policy on topics concerning vulnerable populations. To our knowledge, this is the most comprehensive dataset of LGBTQ policies to date, with over 1,400 pieces of legislation tracked so far.

¹ Assistant Professor of Government and Statistical and Data Sciences, Smith College,
slacombe@smith.edu

Introduction

Since 2015, and particularly since 2020, there has been a swell of policy-making activity both expanding and restricting LGBTQ rights. Given the nationalization of politics (Hopkins 2018) and growing polarization between the states (Caughey and Warshaw 2016), it is no surprise that the states are diverging significantly when it comes to protections on LGBTQ rights. In Florida, transgender residents cannot go to the bathroom aligned with their gender in government-owned buildings, whereas they would be confronted with no such problems in Massachusetts. Transgender minors in Oklahoma are unable to access proper healthcare because medical providers would immediately lose their license for providing gender-affirming care but in Oregon gender-affirming care cannot be denied by insurance providing it is medically necessary. While recent work to build comprehensive measures of a state's LGBTQ policy environment has yielded important insights into diagnosing what is driving this divergence (Movement Advancement Project 2020, Taylor et al 2020), we see a clear need for overtime data that studies not only the policies that passed but also what policies *don't*.

To fill this gap, we have started collecting data on all legislative proposals expanding or restricting LGBTQ rights, beginning in 2023, with the goal of releasing a dataset spanning from 2010-2023. Using data from Legiscan, the Movement Advancement Project, and the ACLU, in 2023 alone, we have identified over 1300 proposals, including over 200 adoptions across distinct policies topic-coded by a group of research assistants.

After introducing the preliminary dataset, we then use an Item Response Theory (IRT) model to generate a measure of LGBTQ policy openness to provide an example of the insights we hope this dataset will provide to activists and scholars alike. We find that more liberal public opinion and Democratic control is associated with more open policies, whereas Republican

control is associated with more restrictive policies. We find that nationally the policy environment became much more open from 2010-2016, but has since stabilized with far slower movement. As we continue to build these data our goal is to expand this measure of policy openness to incorporate dozens of additional policies.

Policy Context- LGBTQ Policies in the American States

A Brief History of LGBTQ Policies

We are witnessing a new wave of anti-LGBTQ policy adoptions in some states accompanied by a rush of favorable policy adoptions in others. Wins and losses for LGBTQ rights occur most frequently at the state level with rare decisive federal events, often Supreme Court decisions, disrupting state-level policy adoptions. Federalism allows states to have substantive policy discussions regarding LGBTQ rights, which has produced both regressive and progressive LGBTQ policy movements (Taylor et al., 2021).

Most LGBTQ policy adoptions occur at the state level due to the gridlock associated with passing policies at the federal level. Given Republican's reliance on Evangelical voters, who generally do not support expanded rights for LGBTQ people, for electoral success (Cambell, Monson, 2008), passing any inclusive LGBTQ legislation at the federal level is difficult so long as Republicans control at least one chamber of Congress (Taylor et al, 2021). LGBTQ policies can be described as a "double-edged issue" where focusing on one side to motivate voters often motivates the opposing side, creating a difficult environment for legislators focusing on LGBTQ issues. (Campbell and Monson, 2008).

Initiating a nationwide debate on marriage equality in 1993, Hawaii's high court ruled in *Baehr v. Lewin* that barriers to marriage are discriminatory (Courson, 1994). This case was a first of its kind and spurred states across the country into action. Utah implemented the first

state-level Defense Against Marriage Act (DOMA) in 1995. In 1996, the federal government passed its own Defense Against Marriage Act, creating a policy environment conducive to vertical diffusion as states began to enact more same-sex marriage bans (Lewis, 2011). Yet this era did not solely see the restriction of LGBT rights. In 2003, Massachusetts' Judicial Court decided that the state constitution grants gays and lesbians the right to marriage, ruling that limiting gay and lesbian unions to civil union status rather than marriage created a separate and equal status for the gay and lesbian community. That same year, the Supreme Court overturned state sodomy bans, thus legalizing same-sex relations in every state.

In 2004 13 states passed same sex marriage bans via ballot initiative, followed by several more states in 2005 and 2006. Throughout the 2000s and early 2010s, there was significant activity at the state level regarding same-sex marriage, with states using their legislatures, ballot measures, and state supreme courts to definitively ban or allow same-sex marriage or civil unions for same-sex couples (*Same-Sex Marriage, State by State*, 2015). By 2014, state supreme courts were increasingly active on the issue in both directions, and the 6th Circuit Court upheld state-level same-sex marriage bans as constitutional, paving the way for a Supreme Court decision on the issue.

2015 marked a substantial change in LGBTQ policy, as the Supreme Court case *Obergefell v. Hodges* legalized same-sex marriage in all fifty states (*Same-Sex Marriage, State by State*, 2015). However, since same-sex marriage could no longer be used as a motivational tool for voters, state legislators moved on to other policy areas, as seen in North Carolina's passage of a bathroom ban for transgender people in 2016 (Public Facilities Privacy and Safety Act, 2016). Although this ban on transgender people's ability to use the bathroom aligned with their gender identity was short-lived, it marked a new focus in the area of LGBTQ policy. By

2020, state-level policies aimed at the LGBTQ community became increasingly focused on transgender people, especially children, and the idea of the LGBTQ community posing a threat to children in general. This trend continues into 2023, with an increasingly large volume of anti-transgender legislation being proposed every year. This policy area is highly polarized, with Democrats increasingly supporting expansions of LGBTQ rights and Republican opposition growing, even if the face of public attitudes growing increasingly supportive of the LGBTQ community (Bishin et al 2020; Krimmel et al 2016). Polarization at the national level has made federal policy changes rare, and often focused on the courts to make rulings (Taylor et al 2021), leading to much of the policymaking being concentrated at the state and local levels.

LGBTQ Policies in Context

The rapid proposal of so many policies leads to questions about the extent to which we can use existing theories of policy adoption to explain this area's rapid growth. Unlike economic policies that might be focused on gaining a comparative advantage (Shipan and Volden 2008), we argue these policies more clearly fit under the umbrella of morality policies. Morality policies, or policies that regulate social norms or evoke strong moral responses, are widely used in the political arena to engage voters (Mooney & Lee, 1995). This is because discussion and engagement with morality policy has no information barrier, and is heavily influenced by tradition, religious beliefs, and moral values. Anyone can reasonably consider themselves an expert in morality policy, resulting in such issues having high salience (Haider-Markel & Meier, 1996). For the above reasons, LGBTQ policies are widely considered a type of morality policy (Wendell & Tatalovich, 2023; Cravens III, 2019)

LGBTQ policy is categorized as a “two-sided” morality policy, like abortion, as it “provokes a legitimate debate between competing advocacy coalitions” (Wendell & Tatalovich,

2023). Because of LGBTQ policy's characterization as a morality policy, research of LGBTQ policy is of use to scholars seeking to understand the broader morality policy landscape.

Additionally, much of the engagement surrounding LGBTQ policies occurs via social media (Human Rights Campaign & Center for Countering Digital Hate, 2022), which may provide researchers insight into political dynamics on social media.

It is notable, however, that LGBTQ policy differs from other two-sided morality policies in the sense that LGBTQ identity is an innate characteristic, rather than an action or cognisant social decision. Because of this, LGBTQ advocacy organizations characterize LGBTQ policy as a civil rights issue as opposed to a moral issue (Haider-Markel & Meier, 1996). The competing frames around LGBTQ mean that existing explanations using morality policy might be less applicable to LGBTQ policies. LGBTQ policy is further distinct due to the dramatic change in public opinion over a short period of time. From 2000 to 2020, support for same-sex marriage went from a super majority opposing it to supporting it (McCarthy, 2023). We argue that just as abortion policy straddles multiple policy areas and frames such as morality policy, health care, and civil rights (Kreitzer 2015), there is a need to develop a distinct framework for understanding LGBTQ policies and understand how evolving public opinion has altered the policy environment.

LGBTQ Policies and Public Policy

Given the unique history of the LGBTQ policy environment, and that this policy area falls at the intersection of morality policy, civil rights, and in many cases healthcare, we argue that these policies represent an opportunity for researchers to test theories of public policy from a variety of perspectives. First, while there has been significant progress in building large-N policy databases to track general patterns of policy diffusion (Boehmke and Skinner 2012; Boehmke et

al 2021; Boushey, 2010), questions remain over the extent to which these findings apply generally across policy areas. At the same time, single policy studies within a policy area lead to further questions of generalizability. Therefore, we follow in a similar vein to research attempting to bring a large-N analysis to specific topic areas such as abortion (Kreitzer 2016) or interstate compacts (Karch et al 2016).

Additionally, LGBTQ policies represent a clear test case of how democracies treat vulnerable minority groups. Are institutions such as direct democracy designed to build responsiveness being used to remove rights and protections for marginalized groups? Lastly, given the dramatic rise in legislation both expanding and restricting LGBTQ rights in recent years, we see a clear need to systematically measure and track activity occurring in the states. Does the legalization of same-sex marriage nationally in 2015 represent a punctuating event (Baumgartner and Jones) that disrupted the state policy environment? Or is the trend more of a gradual rise that received little media or scholarly attention until recently? These are just a sample of the questions we hope to answer by collecting this data.

Data Collection and Summary Statistics

The primary goal of the project is to construct a comprehensive dataset of legislative proposals and policy adoptions across the states to track the diverse regulations of LGBTQ rights. The initial focus was to manually search Legiscan's 2023 data for all states to identify and categorize all proposed pieces of legislation. This search yielded over 120 policies across ten policy areas, including sports, medical care, education, anti-discrimination, and legal recognition. In all, the processes resulted in 1376 policies, including 210 that were passed by the state legislatures. We were able to optimize the initial collection process to target specific keywords

and phrases, as we sought to track policy adoptions only going back in time.⁷ If a bill contains multiple distinct policies (for example, a gender-affirming care ban for minors and a ban on requiring educators to use a student's preferred pronouns) they are recorded as distinct observations.

We further extended our data collection process by incorporating policies tracked by the ACLU's LGBTQ Policy Tracking Project and the Movement Advancement Project's project tracking LGBTQ policies. After a pilot search using these resources, we developed a series of search terms to use when browsing thousands of state legislative proposals on Legiscan (see appendix). In addition to tracking information about the bill, we tracked how far it made it through the legislative process and information about the bill sponsor (including sponsor partisanship). We also topic-coded policies into the following topic areas: sports, medical, education, legal recognition, public presence, discrimination, safety, economics, families, economics, and other, and coded policies as restrictive, expansive, or neutral on LGBTQ rights. We have nearly completed the data collection process for 2023, and are now moving to 2022 and have already noted a large cutoff in the number of adoptions, suggesting that 2023 is a year with unprecedented policy attention to LGBTQ rights.

For the 2023 data, out of the 1376 policies identified in 2023, 836 (60.7%) were identified as restrictive, 515 (37.4%) as expansive, and 25 (1.8%) as neutral. When constrained to only policy adoptions (210 as of December 1, 2023), we again find more restrictive policies (70%) being adopted than expansive (27%) or neutral (2.3%). Figures 1 and 2 display the geographic distribution of both expansive and restrictive policies. With the exception of Texas⁸,

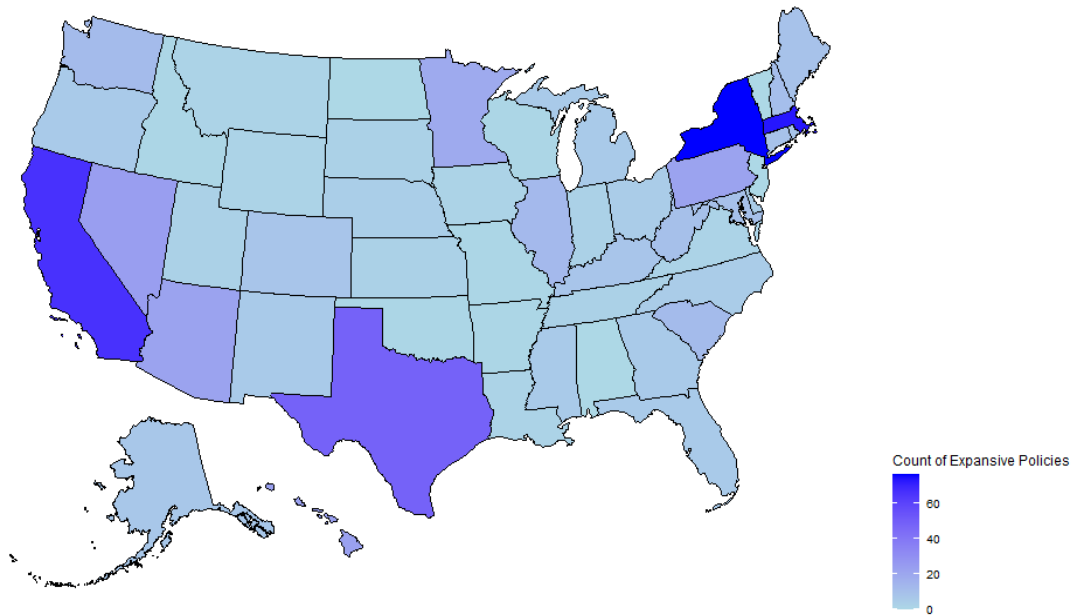
⁷ While we see clear value in collecting data on proposals, not just adoptions, our over time data collection process is solely for adoptions to aid in the construction of our measure of the LGBTQ policy environment.

⁸ Texas's higher number of expansive proposals are due to a high number of bills sponsored by Democrats, none of which were adopted by the state.

the states with the most expansive policy proposals are disproportionately liberal and governed by Democrats. Massachusetts, New York, and California stand out as legislatures with the most expansionary proposals.

Figure 2 shows the distribution of restrictive policies is almost a mirror image of the expansive map. Texas again stands out as a state with a lot of proposals, but other states also emerge such as South Carolina and Iowa. Overall, restrictive proposals appear to be geographically concentrated in the South and in states governed by Republican legislatures, although there is notable heterogeneity with states such as Georgia or Louisiana seeing relatively few policies. Taken together, these maps present a policy context where the states diverge significantly with respect to LGBTQ policies.

Figure 1: Distribution of Expansive Policy Proposal, 2023⁹



⁹ Data collection is still in progress for New Jersey and Vermont, which may explain their relatively low numbers.

Figure 2: Distribution of Restrictive Policies

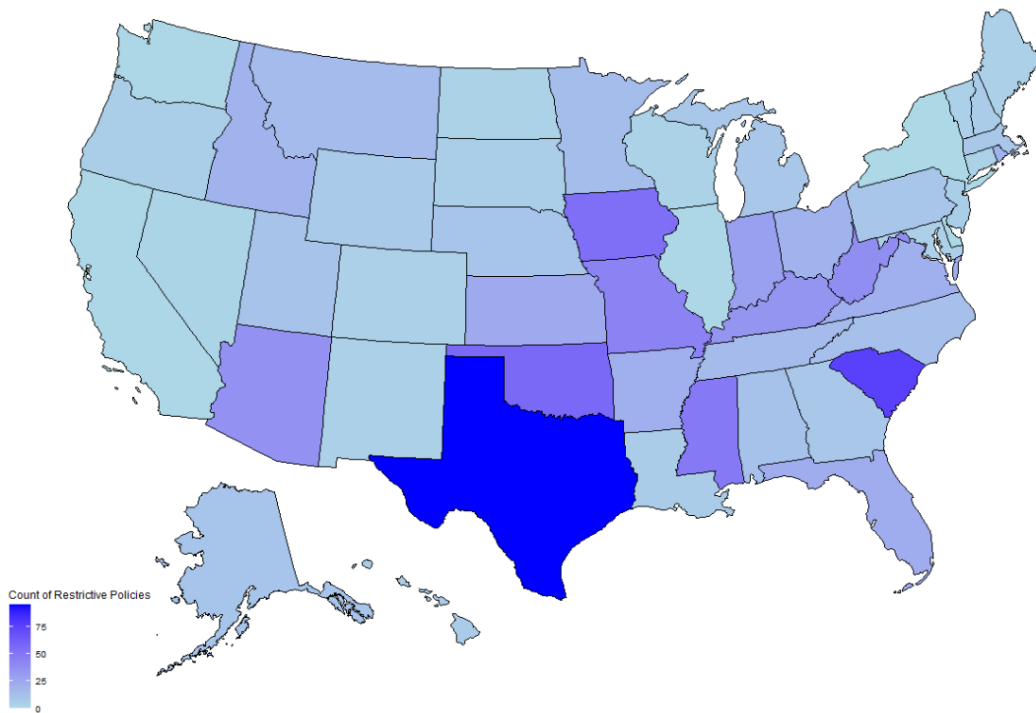


Figure 3 shows the distribution of policy adoptions in 2023. Republican-led states appear to have the most policymaking activity, and Florida stands out as a particularly active state in 2023, with 16 adoptions, all of which are coded as restricting LGBTQ rights. These descriptive maps suggest that while the environment is heterogeneous, there is disproportionate policy-making activity going on in Republican-led states, and the universe of adopted policies is more restrictive than introduced legislation.

Figure 3: Maps of 2023 LGBTQ Policy Adoptions by State

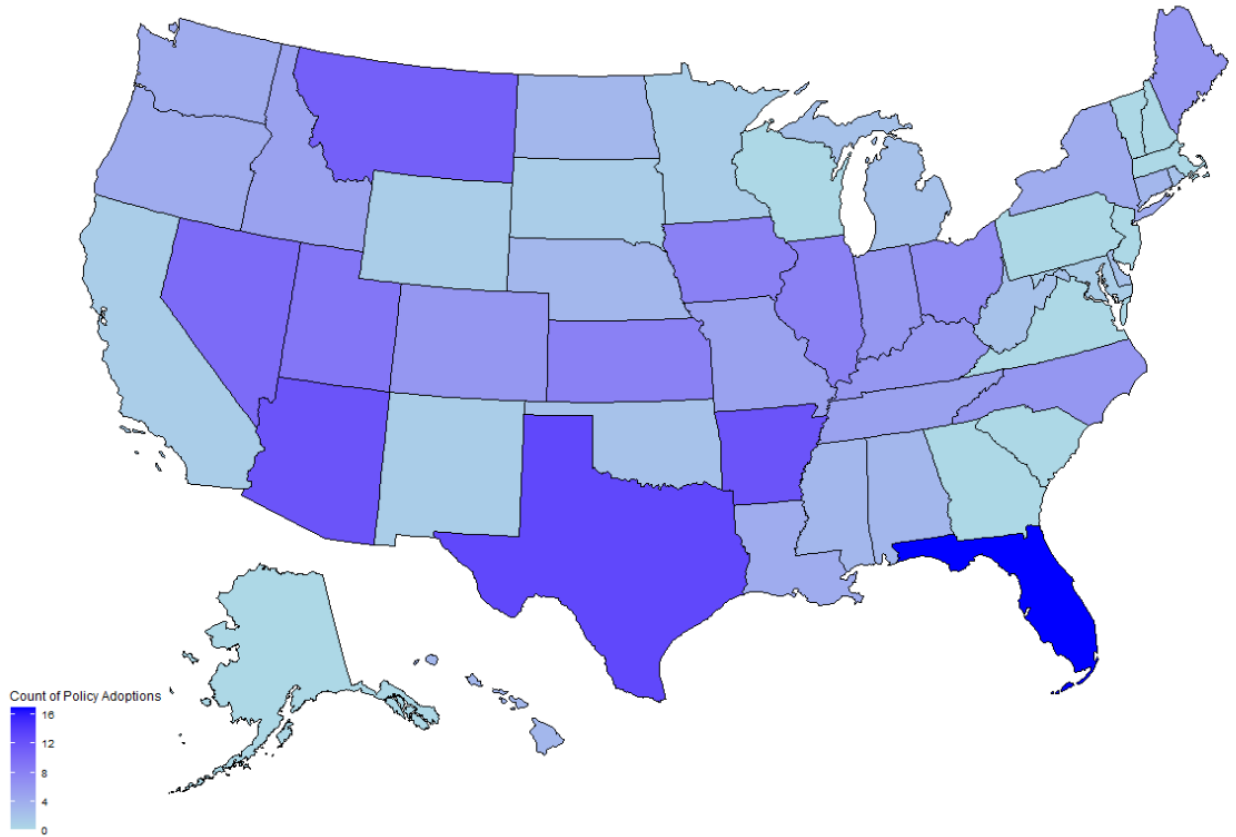
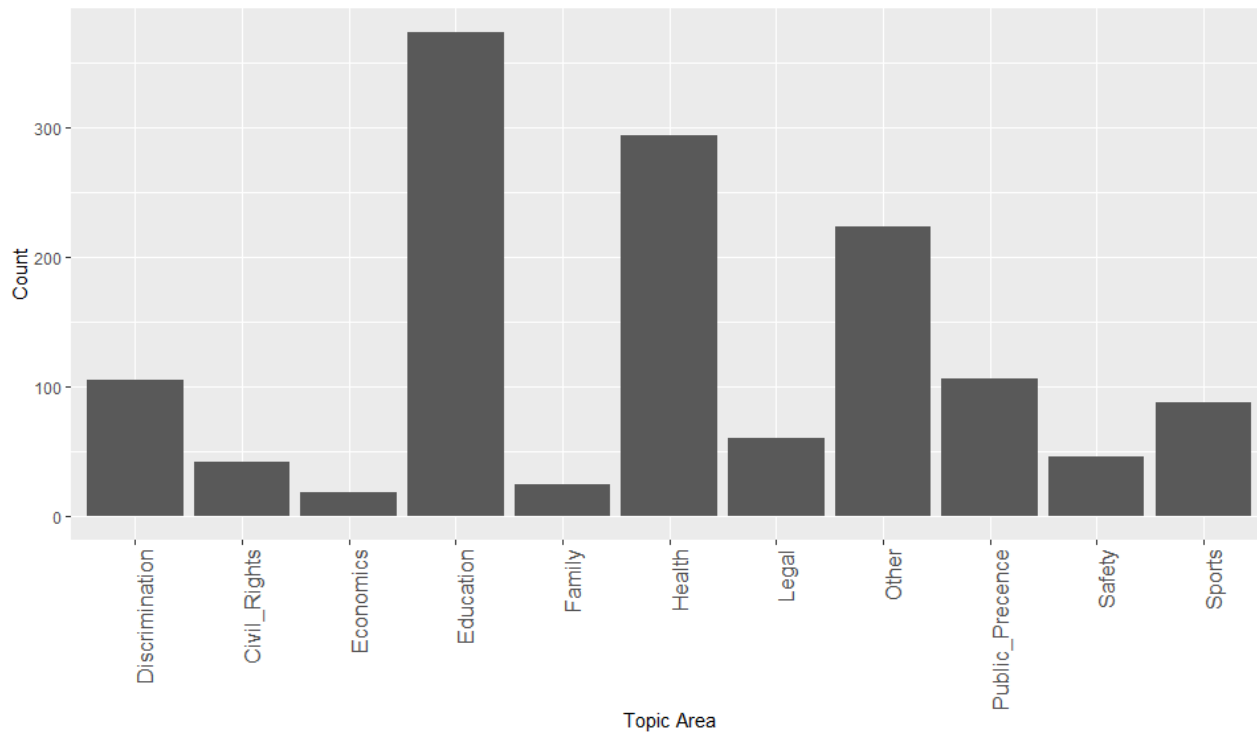


Figure 4 presents the distribution of topic areas in the 2023 data. Education and Healthcare dominate the policy agenda, which is consistent with extensive coverage of state “Don’t Say Gay” bills and gender-affirming care bans proposed in many states. Public presence policies include those that ban drag shows in public places or in the presence of a minor, or other similar decency laws that regulate public spaces, and is the third most common topic area. The category other refers to a group of policies that did not fit into the other categories, and are disproportionately policies regulating inclusive practices (changed state laws to have gender-neutral language) or were more procedural than substantive in nature. This policy area is seeing intense activity across a variety of topics, and policy-making activity can be found in any region of the country.

Figure 4: 2023 Bill Proposals by Topic Area



Measuring LGBTQ Policy Environment

We next turn to a brief application using these data to demonstrate how they can be a resource to policy scholars and political scientists alike. While there has been significant media attention given to the rise in LGBTQ policy restrictions and expansions at the state level, our search of the literature yielded little systematic data on the policy-making environment overall. Much of the research evaluates the adoption of specific policies, such as same-sex marriage bans (Lewis 2011), the ability to change birth certificates to reflect someone’s gender identity (Taylor, Tadlock, and Poggione 2014), or anti-sodomy laws (Haider-Markel 2010). While these studies provide important insights across a variety of important issues, less attention has been given to a comprehensive measure of the collective state of LGBTQ policies in the state. Some recent work

has recognized this gap and the Movement Advancement Project (2020) has produced an additive scale using a variety of restrictive and inclusive policies that are strongly related to state public opinion (Taylor, Tadlock, and Poggione 2014). While this scale provides immense insights, we see a need for a time-varying measure using a non-additive approach.

First, a time-varying scale can help us better understand both national and subnational trends to better examine the factors that lead to the expansion or restriction of LGBTQ rights. In particular, a time-varying measure allows researchers to leverage time itself such as using lagged public opinion to explore whether opinion drives policy, or if policy drives opinion. Secondly, an additive scale assumes that all indicators have similar influences on the overall policy environment. Latent variable analysis has long been a tool used by scholars to operationalize measures that cannot be directly observed such as democracy (Treier and Jackman 2008), particularly when many indicators contribute to the same underlying concept (Coppedge, Alvarez and Ladonado 2008). So, for example, a same-sex marriage ban would be weighted equally to a policy segregating high school sports leagues by assigned sex at birth. By taking an Item Response Theory (IRT) approach (Demars 2010; Youn-Jeng Choi & Abdullah Asilkalkan 2019), we can allow each policy to have a unique contribution to the underlying concept of the openness of a state's LGBTQ policy environment.

Data

To generate a scale of LGBTQ openness, we first collected data on 14 different policies adopted from 2000-2023. Our goal was to collect data on policies similar to those collected by the Movement Advancement Project including those regulating marriage, access to gender affirm care, gender identity, and legal protections against discrimination on the basis of gender identity or sexual orientation. Our list of policies is smaller than those used by organizations such as

MAP to generate a longer time series, but we are continuing to work to expand the list of policies over time. Our ultimate goal with this project is to generate a scale using many more policies than the ones used in this application, but we used the 2023 data collection process to help guide our decisions on the preliminary policies to collect information on.

Our unit of analysis is state-year, and we generate binary indicators for each state noting whether it has a particular policy in any given year. We anchor the scale by coding some policies such as gender-affirming care bans and bathroom bans as clearly restrictive of LGBTQ rights as negative, whereas the legalization of same-sex marriage and adoption of anti-discrimination ordinances are coded as positive. We include separate indicators for same-sex marriage bans and same-sex legalization because many states in this period have neither. Even if same-sex marriage was de facto banned, the act of formally banning it represents a distinct policy action from simply having no defined policy.

We use the *MIRT* package (Chalmers 2012) to assess the number of conditions, items to include, and estimate scores for each state. We find that the underlying concept, which we label LGBTQ Openness, is unidimensional. After assessing the initial model, we used the 12 policies found in Table 1 to estimate a state's LGBTQ openness. As can be seen in this table, the factor loads for the first 5 policies are very high, and in the anticipated direction. States with the least open policy environment banned same-sex marriage, adopted "Don't Say Gay" laws, enhanced religious liberty protections to allow for discrimination on the basis of sexual orientation if it violates one's religious beliefs, criminalized same-sex relations, and banned gender-affirming care to summarize a few key takeaways. The loadings for several items are extremely strong, which suggests the underlying concept is clearly defined.

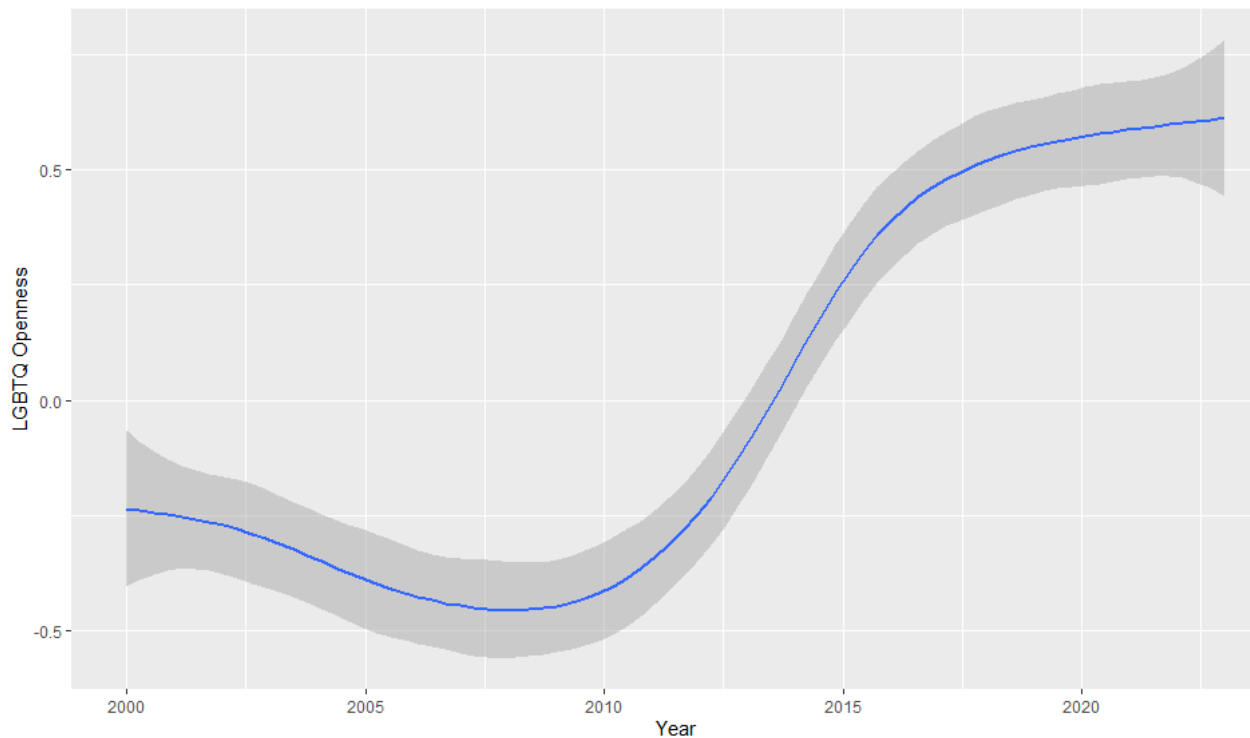
Table 1: Factor Loadings

Policy	Factor Loading
Don't Say Gay Law	-.886
Same-Sex marriage ban	-.956
Enhanced Religious Liberty Protections	-.925
Decriminalizing same-sex relations (Sodomy ban repeal)	.964
Legalizing same-sex marriage	.973
Gender-Affirming Car Ban for Minors	.473
Require Surgery for Legal Gender Change	.161
LGBTQ anti-Discrimination protection	.572
Laws preempting local governments from adopting anti-Discrimination ordinances protecting LGBTQ	-.261
Gender-neutral option on legal documents	.597
No surgery required to legally change gender	.328
Ban on changing gender on birth certificates	-.450

We use these loadings to scale states by their policy openness. Scores are standardized with a mean of 0, and higher levels represent a more open LGBTQ policy environment. Figure 5 shows the mean score by year. While the average is negative in the year 2000, we see a national decrease in policy openness as states ban same-sex marriage in the early to mid-2000s. This trend continued to decrease until it reached a national low in 2006 and began a rapid increase from 2010 to 2015 (nearly a 1 standard deviation increase in openness) as public attitudes rapidly shifted and states began adopting more expansive policies. We see this trend slow and begin to stall out by 2018, and scores have remained relatively stable since then, although there is still a

small, positive change. From a face validity standpoint, these results are consistent with trends of LGBTQ backsliding in the 2000s followed by major societal shifts in the 2010s in favor of LGBTQ rights, with some evidence of a slowdown in progress since 2020 as opponents of the 2015 Obergefell decision were able to organize a potential backlash. Whether we have reached a new equilibrium or are currently in a zenith of LGBTQ protections remains to be seen.

Figure 5: Average LGBTQ Openness Score by State



For a face validity test, we compare our measure to the most recent Movement Advancement Project's tally of a state's sexual orientation and gender identity policies. The data-generating processes are distinct for both measures, so a direct comparison of scales is not possible. However, they are measuring similar underlying concepts, so we expect geographic patterns to be similar. To more directly compare scores we convert both quantitative measures into quartiles, and plot the states by their relative score in Figures 6 and 7, with darker shades indicating more open states, and lighter shades more restrictive ones. Both measures identify 9

of the same twelve states with the most open policies, and share similar geographic patterns. States in the Northeast and West Coast generally have more open policy environments, whereas those in the South tend to score lower by both measures. It is important to note that many of these policies are currently being debated and adopted, so these scores are fluid, but overall our measure is related (correlation of .68, $p < .05$).

Figure 6: 2023 LGBTQ IRT Estimates (Openness Score) by Quartile

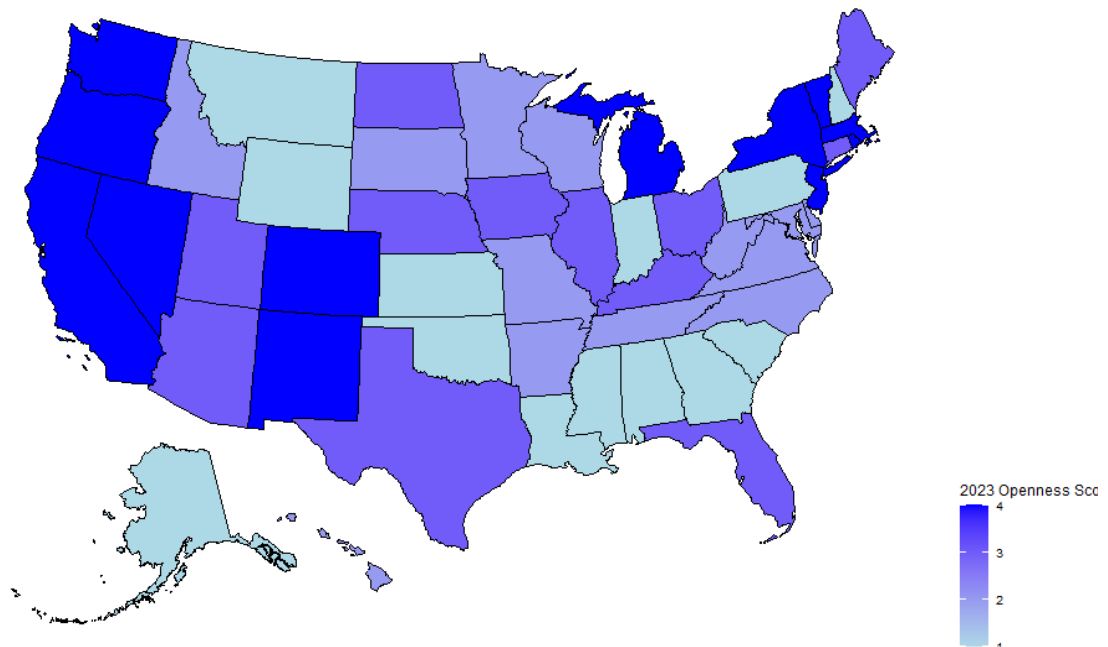
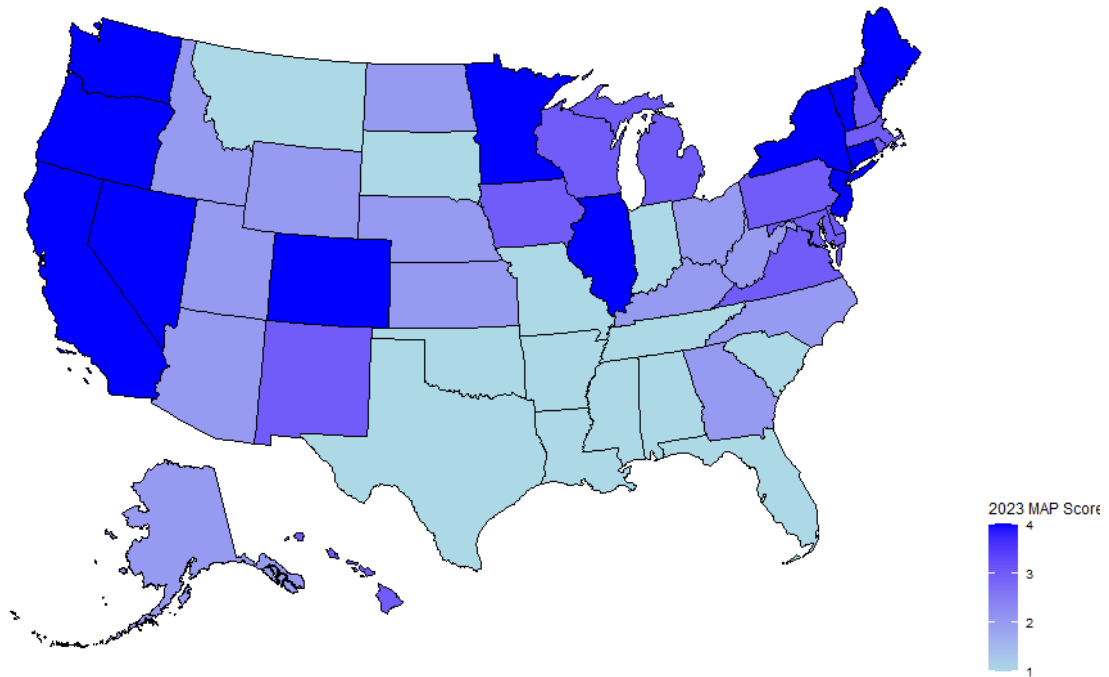


Figure 7: 2023 MAP Policy Tally by Quartile



The descriptive data presents a powerful picture in of itself, but we also aim to systematically analyze what factors lead to a more open or restrictive policy environment. We hypothesize that more liberal public opinion will be positively related to more open LGBTQ policy, while unified GOP control will be associated with more restrictive policy on average. To measure public opinion we use Caughey and Warshaw’s (2018) measure of mass social public liberalism. These estimates were generated using hundreds of surveys across many social topic areas to generate a state-level measure of social liberalism. Higher values indicate a more liberal public, and negative values a more conservative public. We use binary indicators for partisan control. To better understand how public opinion and partisanship may work in tandem, we also interact the measure of public liberalism with party control. We hypothesize that increased

liberalism will decrease the restrictive effect of unified Republican control while increasing the size of the positive effect of Democratic control on openness.

We include control variables for state income per capita (standardized), population (standardized), and the percentage of a state's population that is evangelical. We use a two way fixed effects model, with fixed effects for state and year to control for temporal trends and unmodeled variation in the states. We lag mass liberalism so that the previous year's public opinion predicts the next year's policy outputs. After including the covariates mentioned we have time-series cross-sectional data for all states from 2000-2015.¹⁰

Results

Table 2 shows the results for both models, with model 1 showing the additive specification, and model two including the interactions between public opinion and party control. Beginning with model 1, we find support for both hypotheses. States with more socially liberal populations see more open LGBTQ policies. A one-standard-deviation increase in liberalism is associated with a .23 standard deviation increase in openness. This effect is significantly larger than either partisanship measure. We also find that unified GOP control of a state government is associated with more restrictive LGBT policies, while unified democratic governments see more open policies as expected.

Except for income, the control variables operate similarly in direction and statistical significance. More populous states have somewhat less open policies, and as expected a larger evangelical population is associated with more restrictive policies. Depending on the specification, a state's income per capita is either unrelated or positively related to openness.

¹⁰ We used Caughey and Warshaw's measure of public opinion despite its more limited time coverage because the measure tracks opinion on issues directly related to our policies. We also estimated parallel models with the Lagodney et al (2023) measure of policy mood for 2000-2020 and found the same results for both hypotheses in terms of direction and statistical significance.

Table 2: Two-Way Fixed Effects Model Predicting LGBT Policy**Openness¹¹**

	Model 1	Model 2
Mass Social Liberalism	0.23** (0.08)	0.31*** (0.06)
Unified GOP	-0.12* (0.05)	0.01 (0.06)
Liberalism*GOP		-0.31*** (0.09)
Unified Dem	0.16*** (0.04)	0.20** (0.07)
Liberalism*Dem		-0.02 (0.06)
Population	-0.64* (0.26)	-0.07*** (0.02)
Income Per Cap	0.02 (0.10)	0.22*** (0.05)
Evangelical %	-.01* (0.00)	-.01*** (0.00)
Intercept	-1.97*** (0.26)	-0.20 (0.11)
R ²	0.75	0.56
Adj. R ²	0.72	0.55
Num. obs.	782	782

*** p < 0.001; **p < 0.01; *p < 0.05

Model 2 shows that the relationship might be more complicated than simply partisanship. While social liberalism still has a large, positive, and significant association with LGBTQ policy openness, the base term for GOP control is insignificant. The interaction between GOP control

¹¹ Model includes fixed effects for state and year

and liberalism shows that GOP control essentially negates the effect of liberalism, meaning that liberal public opinion is less likely to move policy in a more open direction if the government is controlled by the GOP. On the other hand, we again find evidence that Democratic governments are associated with more open policies, and this effect is not moderated by mass opinion. Taken together, these results show there is a clear asymmetry in how the parties are making policy. In unified Democratic governments, more liberal public opinion leads to more open policy, while in Republican governments opinion is unrelated to policy. The adjusted r-squared drops notably from model 1 to model 2, meaning the additive model does a better job explaining variation in the policy environment.

These results help explain some of the descriptive data explored above. Going back to Figure 6, the states with the highest openness scores are those that generally have the highest levels of social policy liberalism, and almost every state in the top quartile has a Democratic trifecta. On the other hand, the states in the bottom quartile almost all have a Republican trifecta but vary considerably in their social policy liberalism score. New Hampshire and Pennsylvania have considerably more liberal mass publics than Mississippi, Alabama, or Louisiana, but they have overwhelmingly been governed by a GOP-controlled legislature for the last few decades. Our findings are consistent with Taylor et al's (2020) work finding that liberalism is associated with more LGBTQ protections, while GOP control is negatively associated with the MAP score. We have shown these results hold a much larger time period than previously studied.

Conclusion

This project seeks to introduce a new dataset of LGBTQ policies in the American states. The 21st century has seen dramatic changes in the LGBTQ policy environment and public opinion related to this policy area. Until 2003 same sex relations were illegal in 14 states, but by

2015 same-sex marriage was legal nationwide. At the same time, recent reporting suggests that we may be in the midst of a backlash to this progress as some states seek to roll back protections or add new restrictions, particularly around transgender rights. This is a salient topic area with considerable attention at the national, state, and local level. We see a clear need for comprehensive, over-time data on both policy proposals and adoptions for a variety of reasons.

First, work from organizations such as the ACLU and MAP have been vital in taking the temperature of the policy environment. For activists and scholars alike, these data have provided new insights into how and why these policies are adopted. Secondly, by including not just adoptions, but also policy proposals, we can test questions related to how the policy process can block or allow for more moderate or extreme policies to be adopted. Thirdly, there are a host of questions in both the policy diffusion and policy responsiveness literature that could be applied to these data. Do LGBTQ policies have a distinct policy network? Are majoritarian institutions helping or hurting LGBTQ rights? Given the dramatic change in public attitudes towards homosexuality (Taylor et al 2018) to what extent are states responding more quickly or slowly to new public preferences? Do we see higher instances of the coercion mechanism (Shipan and Volden 2008) given the high-profile court rulings of the 21st century such as *Lawrence v. Texas* and *Obergefell v Hodges*? We see these policies as situated in a unique space, interacting with morality policies, healthcare, education, and civil rights. Additionally, this is a policy area with little federal policymaking (Bishin, Freebourn, and Teten 2021) so much of the variation occurs at the state level.

We therefore collected a dataset on over 1300 policy proposals and 210 adoptions in the 2023 legislative session, and are continuing to collect more data from previous sessions after developing a procedure for systematically identifying policies regulating LGBTQ rights. We find

that the 2023 environment is heterogeneous, but that there is more restrictive than expansive policy activity both in proposals and adoptions. To show the utility of these data we tracked the adoption of 14 policies from 2000-2023 to use an IRT model to scale states by their LGBTQ openness. We find that public opinion is strongly related to LGBTQ openness, with more liberal public opinion being associated with more open policies. Party control also is associated with the policy environment, with Republican governance being associated with more restrictive policies, and Democratic control with more open ones. These findings are consistent with existing research showing that the states play a large role in the LGBTQ policy environment and that this environment is heavily fragmented. If polarization continues to deepen, we expect to see the states to continue to diverge along partisan and ideological lines.

One limitation encountered by this data collection process is how to measure de facto versus de jure policies. For example, Massachusetts has allowed non-binary citizens to use an “X” for their gender on drivers licenses since at least 2019, but this was not codified as law until 2023. Similarly, many states had de facto bans on same-sex marriage prior to formally banning it in the mid-2000s. Furthermore, like abortion policy, the courts have played an outsized role in the spread of these policies. Often, states were forced to adopt policies they otherwise would not have without coercion from the federal government. We view identifying a way to incorporate de facto restrictions or expansions of LGBTQ policies as an important, but challenging component of producing these data.

As we continue with the data collection process, we see several important future directions for extending this research. First, we plan on continuing a comprehensive over-time collection of LGBTQ policies so that the scale of LGBTQ policy openness can include many of the policies we identified in 2023. We now have a framework for searching for policies, and once

our collection process is complete we hope that our data will be a resource for scholars and activists alike.

Bibliography

- Bishin, Benjamin G., Justin Freebourn, and Paul Teten. "The power of equality? Polarization and collective mis-representation on gay rights in Congress, 1989–2019." *Political Research Quarterly* 74.4 (2021): 1009-1023.
- Boushey, G. (2010). *Policy diffusion dynamics in America*. Cambridge University Press.
- Campbell, D. E., & Monson, J. Q. (2008). The Religion Card: Gay Marriage and the 2004 Presidential Election. *Public Opinion Quarterly*, 72(3), 399–419. <https://doi.org/10.1093/poq/nfn032>
- Caughey, D., & Warshaw, C. (2016). The dynamics of state policy liberalism, 1936–2014. *American Journal of Political Science*, 60(4), 899-913.
- Caughey, D., & Warshaw, C. (2018). Policy preferences and policy change: Dynamic responsiveness in the American states, 1936–2014. *American Political Science Review*, 112(2), 249-266.
- Chalmers, R. P. (2012). mirt: A multidimensional item response theory package for the R environment. *Journal of statistical Software*, 48, 1-29.
- Coppedge, Michael, Angel Alvarez, and Claudia Maldonado. "Two persistent dimensions of democracy: Contestation and inclusiveness." *The Journal of Politics* 70, no. 3 (2008): 632-647.
- Courson, M. K. (1994). Baehr v. Lewin: Hawaii Takes a Tentative Step to Legalize Same-Sex Marriage. 24.
- Cravens, R. G. (2015). Morality politics and municipal LGBTQpolicy adoption. *State and Local Government Review*, 47(1), 15–25. <https://doi.org/10.1177/0160323x15575185>
- DeMars, C. (2010). *Item response theory*. Oxford University Press.
- Flores, A. R., Langton, L., Meyer, I. H., & Romero, A. P. (2020). Victimization rates and traits of sexual and gender minorities in the United States: Results from the National Crime Victimization Survey, 2017. *Science Advances*, 6(40). <https://doi.org/10.1126/sciadv.aba6910>
- Haider-Markel, D. P. (2010). *Out and running: Gay and lesbian candidates, elections, and policy representation*. Georgetown University Press.
- Haider-Markel, D. P., & Meier, K. J. (1996). The politics of gay and lesbian rights: Expanding the scope of the conflict. *The Journal of Politics*, 58(2), 332–349. <https://doi.org/10.2307/2960229>
- Hopkins, D. J. (2018). *The increasingly United States: How and why American political*

- behavior nationalized*. University of Chicago Press.
- Human Rights Campaign & Center for Countering Digital Hate. (2022). *Digital Hate: Social Media's Role In Amplifying Dangerous Lies About LGBTQ+ People*.
<https://hrc-prod-requests.s3-us-west-2.amazonaws.com/CCDH-HRC-Digital-Hate-Report-2022-single-pages.pdf>
- Karch, Andrew, et al. "Policy diffusion and the pro-innovation bias." *Political Research Quarterly* 69.1 (2016): 83-95.
- Kreitzer, R. J. (2015). Politics and morality in state abortion policy. *State Politics & Policy Quarterly*, 15(1), 41-66.
- Krimmel, K., Lax, J. R., & Phillips, J. H. (2016). Gay rights in congress: Public opinion and (mis) representation. *Public Opinion Quarterly*, 80(4), 888-913.
- Lagodny, J., Jones, R., Koch, J., & Enns, P. K. (2023). A validation and extension of state-level public policy mood: 1956–2020. *State Politics & Policy Quarterly*, 23(4), 359-372.
- Lewis, D. C. (2011). Direct democracy and minority rights: Same-sex marriage bans in the US states. *Social science quarterly*, 92(2), 364-383.
- McCarthy, J. (2023, July 7). *U.S. same-sex marriage support holds at 71% high*. Gallup.com.
<https://news.gallup.com/poll/506636/sex-marriage-support-holds-high.aspx>
- Mooney, C. Z., & Lee, M.-H. (1995). Legislative morality in the American states: The case of pre-roe abortion regulation reform. *American Journal of Political Science*, 39(3), 599.
<https://doi.org/10.2307/2111646>
- Movement Advancement Project. 2020. Snapshot: LGBTQEquality by state.
- Public Facilities Privacy and Security Act, North Carolina General Assembly, 2nd Special Session (2016). <https://www.ncleg.gov/BillLookup/2015E2/H2>
- Same-Sex Marriage, State by State. (2015, June 26). Pew Research Center's Religion & Public Life Project.
<https://www.pewresearch.org/religion/2015/06/26/same-sex-marriage-state-by-state-1/>
- Shipan, C. R., & Volden, C. (2008). The mechanisms of policy diffusion. *American journal of political science*, 52(4), 840-857.
- Taylor, J. K., Haider-Markel, D. P., & Lewis, D. C. (2018). *The remarkable rise of transgender rights*. University of Michigan Press.
- Taylor, J. K., Lewis, D. C., & Haider-Markel, D. P. (2020). LGBTQ Policy and Fragmented Federalism in the US. *State and Local Government Review*, 52(4), 255-265.

- Taylor, J. K., Tadlock, B. L., & Poggione, S. (2014). State LGBTQrights policy outliers: Transsexual birth certificate amendment laws. *American Review of Politics*, 34, 245-270.
- Treier, S., & Jackman, S. (2008). Democracy as a latent variable. *American Journal of Political Science*, 52(1), 201-217.
- Wendell, D. G., & Tatalovich, R. (2023). Status politics is the origin of morality policy. *Politics and the Life Sciences*, 42(2), 306–315. doi:10.1017/pls.2023.11
- Choi, Y. J., & Asilkalkan, A. (2019). R packages for item response theory analysis: Descriptions and features. *Measurement: Interdisciplinary research and perspectives*, 17(3), 168-175.

Appendix

Procedures for Using Legiscan Search

A quick note on workflow in Legiscan: On the left of each bill row, there is a checkbox and a magnifying glass. By clicking the checkbox on one or more bills and scrolling to the top of the page, you can change these magnifying glasses into minus signs by clicking “Bulk Bill Updates w/ Selected” → “Monitoring” → “Ignore” → “Apply All Bulk Changes” This will add the minus sign to the bill permanently, no matter where you encounter it in a search. This allows you to mark which bills you’ve already looked at, and not have to check bills multiple times when they come up in multiple keyword searches. (Note: There are other options for monitoring/marketing bills, but the “ignore” feature is the only one included in the free version of Legiscan.)

Search Terms: All of the following terms (which have been compiled by a very slay guy named Avery) should be searched in the “Full Text Search” bar on the left of the page. This allows you to find relevant bills without having to scroll through a list of all the bills proposed in a state.

This specific order of search terms is ideal, as it generally frontloads work and makes it easier to go through a state quickly. You will find the first 2-3 search terms get 90% or more of the relevant bills so then you can quickly go through the remaining search terms.

1. **Sex NOT Offender, Gender:** Make sure NOT is in all caps so Legiscan filters out all the sex offender bills. On the off chance there is a bill that classifies lgbtq people/gender affirming care providers/drag performers as sex offenders/committing a sex offense it should be found using the gender or prurient interest search terms.
2. **Gender Identity, Sexual Orientation, Male, Female:** Should have come up in step 1 but doesn’t hurt to double check.
3. **Lesbian, Gay, Transgender, Homosexual, LGBT, LGBTQ, Sports:** Some of these bills may be resolutions, which we are not recording. **DO NOT** search the word “trans” by itself, you will get mostly legislation regarding transportation or trans fats.
4. **Prurient, Grooming, Moral, Morality, Conscience, Drag:** Sometimes search terms like “moral” come up with a lot of irrelevant legislation (lots of regulations on gambling/alcohol), but it should be pretty obvious what’s relevant so they’re quick to get through.
5. **Parental Rights Counseling, Parental Consent:** These searches will bring up lots of bills related to parental rights that *could* be used to hurt LGBT+ people, but we only want to include bills that **explicitly mention LGBT+ people** or bills that constitute **forced outing** (when people are required/encouraged to out LGBT+ children to their parents/guardians).

Do Not Include:

- **Resolutions:** These generally have a different name than other bills (ie JR34 instead of HB34—Look for the R) and are more about making a statement rather than implementing a change. A lot of pride month bills are joint resolutions so be on the lookout for that.
- **Non-substantive changes:** If a bill that has nothing to do with LGBTQrights has a diversity/inclusion statement, but no other changes/impacts for the LGBTQcommunity don't include it. Data privacy bills that mention sexual orientation as protected health data but offer no other substantive changes should not be included.
- **Anti-porn legislation:** This can be hard to tell sometimes, especially since a lot of coded language can be used in these bills. In general, if the sole purpose of the bill is to keep minors from being able to access porn/explicit materials then don't include it, even if it uses phrases like "prurient interest". A lot of times these bills will have detailed descriptions on what is considered obscene, and it should be pretty clear it's about porn and not queer people. If it is more vague and talks more about community values/morals, doesn't provide detailed definitions on what is considered obscene, and could potentially be used to censor queer people, then include it/bring it up for discussion. For example, I read a lot of bills regulating porn online to make it harder for minors to access. These bills had very specific definitions of porn that included depicting sexual acts, nudity, etc, while a potentially coded anti-LGBTQbill I would include would state that minors cannot be exposed to anything that goes against the "prurient interest" but left the definition vague enough to include queer people or drag performers
- **Amendments that are not relevant to relevant laws:** These are not too common but for example, I had a bill that amended regulations regarding genders of people allowed in high school locker rooms. The already existing law segregated locker rooms by biological sex, but the amendment added an exception for coaches of the opposite sex to enter their team's locker room, which isn't really relevant to this project. A lot of times the ACLU will accidentally tag these bills so be on the lookout for that.
- **Duplicate bills:** If two bills are identical (or very close to being identical), they may be recorded on one line. Record the bill that made it the farthest in the normal way, and then add the duplicate in the "notes" column. If both bills made it the same distance, record the bill that was proposed earliest. Duplicates are often found in cases where the exact same bill has been proposed in both the state house and the state senate.
- **Anti DEI bills that just deal with race/sex:** Only include anti DEI/CRT bills that define DEI efforts as including gender identity/sexual orientation, not ones that are just general or just mention race/sex.

If you are not sure if a piece of legislation is relevant or not based on the very short summary Legiscan gives, it is best to err on the side of caution and open it and search for the words "Gender, Sex, Sexual orientation, etc" in the bill itself. Then skim the parts of the bill containing those words, and it should be obvious if you need to read the whole thing.

When in doubt, add a bill and discuss it with others, it is easier to remove bills than to find them again.