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Do Citizens Care about Federalism? An Experimental Test

*Cindy D. Kam and Robert A. Mikos**

The ongoing debate over the political safeguards of federalism has essentially ignored the role that citizens might play in restraining federal power. Scholars have assumed that citizens care only about policy outcomes and will invariably support congressional legislation that satisfies their substantive policy preferences, no matter the cost to state powers. Scholars thus typically turn to institutions—the courts or institutional features of the political process—to cabin congressional authority. We argue that ignoring citizens is a mistake. We propose a new theory of the political safeguards of federalism in which citizens help to safeguard state authority. We also test our theory using evidence from a nationally representative survey experiment that focuses on the timely issue of physician-assisted suicide. We find that citizens are not single-mindedly interested in policy outcomes; trust in state governments and federalism beliefs, on the urging of political elites, reduce their willingness to support a *federal* ban on physician-assisted suicide.

I. INTRODUCTION

In 1994, Oregon became the first—and only—state in the nation to allow terminally ill patients to seek prescription drugs in order to hasten death

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(so-called physician-assisted suicide).¹ Congressional leaders responded with repeated but unsuccessful attempts to pass federal legislation that would trump Oregon's Death with Dignity Act and prevent any other state from following in Oregon's footsteps.² Unfazed by Congress's failure to act, in 2001, Attorney General John Ashcroft asserted authority under the decades-old Controlled Substances Act (CSA) to issue a ruling that, if upheld, would effectively put an end to physician-assisted suicide throughout the nation.³ Ashcroft's actions set in motion a chain of events that ground to a momentary halt on January 17, 2006, when the U.S. Supreme Court, in *Gonzales v. Oregon*, ruled that the CSA did not give the Attorney General authority to ban physician-assisted suicide.⁴

In his majority opinion for the Court, Justice Kennedy characterized the Attorney General's actions as demonstrating "a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality. The text and structure of the CSA did not have this far-reaching intent to alter the federal-state balance and the congressional role in maintaining it."⁵ The dispute between the State of Oregon and the Attorney General at its core hinges on *federalism*: in this case, it is a battle between the federal and state governments for control over controversial medical practices.

The *Gonzales* Court did not speak to whether the federal government *could* ban assisted suicide. It merely held that Congress had not yet passed a statute that clearly expressed the intent to displace state laws on the subject. Almost immediately after the Court issued its ruling, political pundits began to speculate about how opponents of physician-assisted suicide would use Congress to impose their morality on the State of Oregon—and any other states considering the issue. For example, a January 19, 2006 opinion piece in the *New York Times* sees the ruling as a harbinger of federally imposed

¹The Death with Dignity Act is codified at Or. Rev. Stat. §§ 127.800–127.897.

²Lethal Drug Abuse Prevention Act of 1998, H.R. 4006, 105th Cong. (1998); Pain Relief Promotion Act of 1999, H.R. 2260, 106th Cong. (1999).

³66 Fed. Reg. 56,607 (Nov. 9, 2001) ("prescribing, dispensing, or administering federally controlled substances to assist suicide violates the Controlled Substances Act . . . regardless of whether state law authorizes or permits such conduct").

⁴126 S. Ct. 904, 925 (2006).

⁵*Id.*

morality: “Congressional conservatives are already vowing to push through a law barring assisted suicide. After the sorry display of pandering during the Terri Schiavo tragedy, no one can bet that they won’t succeed this time.”⁶

This type of dire warning gives the sense that the Court failed to adequately protect the states’ traditional authority over medical care, leaving that authority to the mercy of Congress and powerful national interest groups. But other legal scholars say there is no need for the Court to police the boundaries of federal power vis-à-vis the states. The political safeguards approach claims that institutional features of the national political system, such as the structure of Congress and the political parties, adequately protect state prerogatives.⁷ Notably, however, proponents of the political safeguards approach—and their critics—overlook the role that ordinary citizens might play in safeguarding state authority. Citizens are portrayed as cognitive misers, who are rationally ignorant of political procedures and whose political interests are limited exclusively to policy outcomes. The conventional wisdom suggests that citizens, being single-mindedly interested in policy outcomes, would therefore support any congressional action that comports with their policy preferences.

We argue that citizens may not be so eager to embrace federal legislative action. We develop a new theory of political safeguards that entertains the notion that ordinary citizens may play an important role in limiting the use of federal power.⁸ Our theory rests on two constructs: trust in government and federalism beliefs. First, citizens may protect state authority because they trust their state governments more than they trust the federal government.⁹ Second, citizens may protect state prerogatives because they value federalism, for both policy and process reasons. Although some schol-

⁶The Assisted Suicide Decision, N.Y. Times, Jan. 19, 2006, at A22 (editorial).

⁷The three most often-cited proponents of the political safeguards of federalism include: Jesse H. Choper, *Judicial Review and the National Political Process* (1980); Larry D. Kramer, *Putting the Politics Back into the Political Safeguards of Federalism*, 100 Colum. L. Rev. 215 (2000); Herbert Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 Colum. L. Rev. 543 (1954).

⁸The theory and its implications for judicial review are developed more fully in Robert A. Mikos, *The Populist Safeguards of Federalism*, 68 Ohio St. L.J. (forthcoming 2007).

⁹Todd E. Pettys, *Competing for the People’s Affection: Federalism’s Forgotten Marketplace*, 56 Vand. L. Rev. 329, 333 (2003) (suggesting that the people may grant states more regulatory responsibility when states earn their “trust, confidence, allegiance, or loyalty”).

ars argue that it may be asking too much of ordinary citizens to comprehend the structure of our constitutional system, as opposed to its policy outputs, we disagree. We think citizens have views regarding the proper allocation of power in our federal system and they may consider these beliefs when evaluating proposed federal legislative action. In short, by considering trust in government and federalism beliefs, our theory suggests that citizens may be less willing to support congressional legislation that usurps state powers than the existing literature suggests.

We also contribute to the empirical literature in legal studies by implementing and analyzing an innovative nationally representative survey experiment to test our theory. Our experiment tests four separate hypotheses regarding the roots of citizen support for federal legislation: (1) citizens simply care about policy outcomes, (2) citizens support legislative action based on their level of trust in the federal versus state governments, (3) citizens use their a priori beliefs about federalism to guide their opinion of federal legislative action, and (4) even if citizens do not spontaneously use federalism beliefs in evaluating legislative action, elite debate can trigger the activation and application of federalism beliefs.

Our statistical analyses lend strong support for our theory that citizens can bolster the political safeguards of federalism. The more citizens trust their state governments, the more opposed they are to the exercise of federal power. Citizens' beliefs about the distribution of state and federal power also figure into their opinion of congressional legislation, *but only* when they are exposed to federalism-based arguments raised by elites in political discourse. When political elites frame debates over legislation using the lens of federalism, citizens who believe a priori that the states should handle the domain are much more likely to oppose federal attempts to usurp state authority, holding all else constant. To be sure, citizen policy preferences still matter, but trust and federalism beliefs can shift public opinion against otherwise popular federal legislation. Our results are not only statistically significant, they are substantively sizable as well. Citizens, our results suggest, have an important role to play in the political safeguards of federalism—a role heretofore neglected in the theoretical and empirical literature on federalism.

II. BACKGROUND: THE POLITICAL SAFEGUARDS OF FEDERALISM

For more than two centuries, the Supreme Court has taken upon itself to limit Congress's powers vis-à-vis the states. But some legal scholars claim

there is no need for the Court to invalidate congressional legislation to protect states from federal encroachment. Supporters of the political safeguards of federalism argue that the states can protect their governing authority through the federal political process instead.

Legal scholars Herbert Wechsler and Larry Kramer each propose a model of political safeguards that emphasizes the role of political institutions.¹⁰ Wechsler's seminal 1954 article focuses on the role that the structure of Congress plays in safeguarding federalism. Wechsler argues that congressional representatives are beholden to the local interests that elected them, and not to the nation at large. Since these local interests have more influence over state government than federal government, they will often prefer the content of state legislation over the content of federal legislation, and their federal representatives will have to oblige them by not impinging on state powers. As Wechsler explains:

[H]ostility to Washington may rest far less on pure devotion to the principle of local government than on opposition to specific measures which Washington proposes to put forth.¹¹

In a nutshell, Congress will restrain itself because many issues simply do not lend themselves to uniform national solutions. As a consequence, the theory suggests that states will always retain a meaningful role in the federal system.¹²

One shortcoming of relying on congressional structure to protect state prerogatives is that nothing prevents local interest groups from imposing their will on the entire nation when they do in fact control majorities in both houses of Congress. Larry Kramer explains:

Preferences in Congress are aggregated on a nationwide basis: However sensitive federal legislators may be to state or local interests, if interests in an area

¹⁰Wechsler, *supra* note 7; Kramer, *supra* note 7. The positive argument made by Professor Jesse Choper in *Judicial Review and the National Political Process*, *supra* note 7, with respect to the political safeguards of federalism is similar to Wechsler's thesis, so we will not discuss it separately here.

¹¹Wechsler, *supra* note 7, at 552.

¹²Wechsler posits a number of other features of the national political system that reinforce the ability of local interest groups to block unfavorable national legislation, including the allocation of Senate seats, the filibuster, state control over the drawing of congressional districts, and the Electoral College. Wechsler, *supra* note 7, *passim*.

represented by a majority of these legislators concur, interests in the rest of the country will be subordinated.¹³

This possibility that local interests can further their agendas in Congress is an important shortcoming in the Wechsler thesis, given that large national majorities do indeed favor certain policies on many important social issues facing the country today.¹⁴

Kramer recognizes that if citizens only care about discrete policy outcomes (e.g., ban physician-assisted suicide), as Wechsler suggests, congressional structure alone provides only limited protection for state authority. Still, Kramer turns to another political institution—the political party system—to check the aggrandizement of federal power. Kramer reasons that candidates for federal office need the machinery of the parties to get elected. Because the parties are decentralized, Kramer argues, the machinery for reelection is controlled by local officials, and local officials will demand respect for local institutions in return for their efforts on behalf of candidates for federal office.¹⁵ The political party system, and not congressional structure, prevents Congress from usurping state powers.

There is much to be said for Kramer's thesis. Yet Kramer's argument hinges on the assumption that political parties are decentralized, local efforts that are crucial for reelection. First, the extent to which political parties are in fact decentralized is an open question.¹⁶ Second, that elected officials are actually beholden to local political parties for reelection is somewhat doubtful. Political scientists view U.S. congressional races as “decidedly candidate

¹³Kramer, *supra* note 7, at 222–24.

¹⁴To cite one example, a large majority (71 percent) of respondents to a January 2004 CBS News/New York Times poll supported annual mandatory testing of students in public schools; only 25 percent opposed it. CBS/New York Times, Jan. 12–15, 2004, The Roper Center, University of Connecticut, Public Opinion Online, accession 0446891, available at Lexis Nexis, Polls and Surveys Database. The threat that state prerogatives will be trumped is most evident when citizens in the national majority are not evenly distributed throughout the country, namely, when they constitute a minority in some states. In this case, the national majority may be tempted to pursue congressional legislation to override the policy choices made by outlier states. We thank an anonymous reviewer for highlighting this point.

¹⁵Kramer, *supra* note 7, at 278–79.

¹⁶Kramer himself recognizes that parties may have become more centralized in recent decades. Larry D. Kramer, *Understanding Federalism*, 47 *Vand. L. Rev.* 1485, 1537 (1994).

centered”¹⁷ and *not* party centered, as they are in other countries.¹⁸ If U.S. elections are indeed candidate centered, then the ability of local political parties to extract concessions from federal elected officials is sharply curtailed. Third, and perhaps most importantly, Kramer never adequately explains why political parties are necessarily more inclined than local interest groups to protect state institutions.¹⁹ For example, the members of the minority party in a state may seek to limit the *state* government’s power since, after all, these out-party members may favor a policy that is politically feasible only at the federal level and not the state. In any event, Kramer may overstate the ability of local parties to extract concessions *in the name of state authority*. Their campaign machinery will do candidates little good if the voters demand federal action the candidates have promised party leaders not to support.

In sum, the leading theories of the political safeguards of federalism focus predominantly on the role of political institutions. Wechsler suggests that local governments are better able to satisfy local policy preferences. Kramer suggests that party leaders will demand respect for local prerogatives in return for their support in congressional elections. The structure of Congress and the political parties, however, may not adequately protect state power from federal intrusion.²⁰

III. WHY CITIZENS MIGHT OPPOSE THE EXPANSION OF FEDERAL POWER

In our view, the greatest shortcoming of extant theories of the political safeguards of federalism is that they neglect ordinary citizens. Wechsler assumes that citizens are single-mindedly interested in policy outcomes.

¹⁷Gary C. Jacobson, *The Politics of Congressional Elections* 57 (5th ed. 2001).

¹⁸Morris P. Fiorina, *Congress: Keystone of the Washington Establishment* (2d ed. 1989); David R. Mayhew, *Congress: The Electoral Connection* (1974).

¹⁹John Yoo and Sai Prakash suggest that the political parties were organized to overcome separation of powers and federalism, which had made the “rational exercise” of national power virtually impossible. John Yoo & Sai Prakash, *The Puzzling Persistence of Process-Based Federalism Theories*, 79 *Tex. L. Rev.* 1459, 1484–85 (2001). They also suggest that the parties today stand behind a strong national government. *Id.* at 1485.

²⁰Other features of the political system, such as the selection of senators by state legislatures, may have once played a role in safeguarding federalism, but they are now anachronistic. See Kramer, *Understanding Federalism*, *supra* note 16, at 1508–09.

Kramer downplays the significance of citizen opinion by proposing that candidates for federal office cater to local political elites instead. We propose that citizens may provide an additional check on attempts by Congress to encroach upon the states, a role that could be critical when the institutional safeguards of federalism fail.

Citizen preferences should be part of the discussion about political safeguards for both normative and empirical reasons. Normative arguments regarding democratic representation assert that governments and their actions ought to reflect “the will of the people.” Empirically, research in political science has established a link between public opinion and policy making, at both the state level and at the national level.²¹ Elected officials pursue several goals—with reelection often viewed as the paramount goal—and to maximize their chances of being reelected, legislators often pursue policies that accord with the wishes of their constituents.²² The implication is that if citizens care about governmental processes and not just policy outcomes, their congressional representatives may refrain from asserting control over an issue every time a national consensus on a policy outcome exists.

We posit that citizens may oppose congressional legislation that otherwise comports with their policy preferences, for two main reasons. First, citizens may trust their state government more than the federal government; hence they may prefer to have the state address an issue, even if the state’s announced policy is not as appealing (in substance) as Congress’s. Second, citizens may value federalism, for both policy-oriented and process-oriented

²¹E.g., Larry M. Bartels, *Constituency Opinion and Congressional Policy Making: The Reagan Defense Buildup*, 85 *Am. Pol. Sci. Rev.* 457, 467 (1991) (finding a strong statistical relationship between congressional roll-call votes on Pentagon spending and constituent preferences for defense spending, concluding that “public opinion was a powerful force for policy change”); Robert S. Erikson, Gerald C. Wright & John P. McIver, *Statehouse Democracy: Public Opinion and Policy in the American States* 244 (1993) (concluding that “public opinion is the dominant influence on policy making in the American states”); Benjamin I. Page & Robert Y. Shapiro, *Effects of Public Opinion on Policy*, 77 *Am. Pol. Sci. Rev.* 175, 189 (1983) (finding a high level of congruence between occasions of public opinion change and the direction of ensuing policy change over five decades).

²²E.g., Robert S. Erikson & Kent L. Tedin, *American Public Opinion* 288 (6th ed. 2003) (“Because of the fear of electoral sanctions (or simply because they believe it to be what they ought to do), elected leaders play the role of ‘delegate,’ trying to please their constituents.”). In fact, as Geer argues, there is “mounting evidence to suggest that public opinion frequently leads policy.” John G. Geer, *From Tea Leaves to Opinion Polls: A Theory of Democratic Leadership* 89 (1996).

reasons; hence, they may oppose federal legislation that conflicts with their views regarding the federal government's proper role in a given policy domain (i.e., their federalism beliefs).

A. *Trust in State Governments Diminishes Support for Federal Encroachments*

We argue that trust in state governments provides one reason citizens will enforce the borders between federal and state governments. We expect that citizens who place more trust in state governments would be more likely to oppose congressional statutes, even statutes they might otherwise endorse on the merits.²³

The notion that trust in state governments will hinder efforts to expand the powers of the national government can be traced back to the Framers. In *Federalist 17*, Hamilton insists that the federal government will not be able to wrest power from the states, owing to the "greater degree of influence which the State governments, if they administer their affairs with uprightness and prudence, will generally possess over the people."²⁴

In the political science literature, trust derives from several factors, including the government's competence (e.g., the caliber of its personnel), its processes (e.g., its responsiveness to ordinary citizens), and its integrity (e.g., the public's assessment of the honesty of elected officials).²⁵ That is, governments earn trust not only by pursuing specific policies the people favor (say, by passing a popular statute), but also by executing policies efficiently and effectively, listening and responding to concerns raised by ordinary citizens, and steering clear of corrupt influences. It follows that even if Congress promises citizens the policy outcome the majority prefers—say, a ban on physician-assisted suicide—citizens may still doubt that the

²³This portion of the argument uses Pettys, *supra* note 9, as a point of departure.

²⁴The *Federalist 17*, at 119 (Alexander Hamilton) (Jacob E. Cooke ed., 1961). Indeed, Hamilton suggests the greater danger is that the states will exploit citizen loyalties to wrest power from the national government. *Id.* ("[I]t will always be far more easy for the State governments to encroach upon the national authorities than for the national government to encroach upon the states."). See Pettys, *supra* note 9, at 338–44, for a review of the Framers' arguments.

²⁵E.g., Virginia A. Chanley et al., Public Trust in Government in the Reagan Years and Beyond, in *What is it about Government that Americans Dislike?* 76–78 (John R. Hibbing & Elizabeth Theiss-Morse eds., 2001) (suggesting that the competence of a government's leaders—and not the policies it adopts—is one of the most important determinants of trust in that government); M. Kent Jennings, Political Trust and the Roots of Devolution, in *Trust and Governance* 232 (Valerie Braithwhite & Margaret Levi eds., 1998).

federal government will execute or interpret that policy competently, faithfully, or in accordance with their wishes.²⁶

Existing survey data suggest that citizens do view the various levels of government in different lights. According to the 2000 Attitudes Toward Government Study, citizens on average hold the federal government consistently in greater disdain. Citizens on average evaluate the performance of the federal government as significantly lower than that of the state and local governments, report less faith in the federal government to “do the right thing,” have significantly lower confidence in the ability of the federal government to solve problems effectively, see the federal government as significantly less responsive than lower levels of government, and nearly 60 percent see the federal government as the most corrupt level of government.²⁷ These findings are consistent with those reported by other scholars, using other nationally representative surveys.²⁸

Trust in the state and federal governments is dynamic, responding to large-scale sociocultural changes, specific political events (e.g., Watergate), and evaluations of politicians and incumbent officeholders. In the 1960s, survey respondents in the National Election Studies reported greater trust in the federal government relative to state governments; after 1974, this was no longer the case.²⁹ When asked to describe why they do not trust the federal

²⁶Mikos suggests that trust considerations become more consequential as Congress delegates more discretion and policy-making authority to the Executive branch. *Supra* note 8.

²⁷This nationally representative survey of 1,557 adults was conducted in May–June 2000 and was commissioned by National Public Radio, the Henry J. Kaiser Family Foundation, and Harvard University’s Kennedy School of Government. NPR et al., *Attitudes Toward Government Study* (2000) (data archived at the Roper Center for Public Opinion Research, University of Connecticut) (on file with authors).

²⁸E.g., Marc J. Hetherington & John D. Nugent, *Explaining Public Support for Devolution: The Role of Political Trust*, in *What is it about Government that Americans Dislike?* 134 (John R. Hibbing & Elizabeth Theiss-Morse eds., 2001); John R. Hibbing & Elizabeth Theiss-Morse, *Stealth Democracy: Americans’ Beliefs about How Government Should Work* (2002); John Kincaid & Richard L. Cole, *Changing Public Attitudes on Power and Taxation in the American Federal System*, 31 *Publius* 207 (2001); Jennings, *supra* note 25; Phillip W. Roeder, *Public Opinion and Policy Leadership in the American States* (1994).

²⁹The NES asked the question: “We find that people differ in how much faith and confidence they have in various levels of government in this country. In your case, do you have more faith and confidence in the national government, the government of this state, or in the local government around here?” Jennings notes that trust is synonymous with having confidence or faith in the government in question. *Supra* note 25, at 220–21.

government, Americans point to inefficiency in the federal government, overresponsiveness to special interests, cheap talk, and lack of integrity among elected officials. Shared values on policy outcomes are only secondary concerns.³⁰

Trust in government is politically consequential: it affects public opinion and voting decisions. Within one level of government, for example, voters who have less trust in the incumbent are more likely to vote for the challenger in elections.³¹ Moreover, comparative levels of trust in the federal and state governments help to explain citizen support for the allocation (and reallocation) of policy-making responsibilities between these governments. In particular, some scholars claim that the federal government returned various powers to the states (the so-called devolution revolution) in the 1980s under Ronald Reagan and in the 1990s during the Republican Congress because they began to consider state governments more competent, more accountable, and more honest than the federal government.³² In other words, support for devolution reflects more than mere agreement with the

³⁰NPR et al., *supra* note 27. One point worth noting is the relationship between trust in state governments and trust in the federal government. Theoretically, these need not be “zero-sum”; one could imagine that generalized cynicism could drive down trust in both the state and federal governments; generalized optimism could drive up trust in both levels of government. In practice, however, questions about trust in state and federal governments are often asked using a zero-sum construction: the respondent is asked to select which level of government is more trustworthy. Our substantive interest is in the respondent’s evaluation of the relative trustworthiness of state versus federal governments, and thus specifying whether the two constructs are zero-sum or non-zero-sum is not necessary.

³¹Margaret Levi & Laura Stoker, *Political Trust and Trustworthiness*, 2000 *Ann. Rev. Pol. Sci.* 475, 490.

³²Hetherington and Nugent suggest that at least part of the reason so many people supported devolution can be attributed to the “widespread efforts of nearly all state governments over the past thirty years in terms of constitutional revision, legislative reapportionment and professionalization, strengthening executive authority, and increasing fiscal capacity.” *Supra* note 28, at 134. They also say that citizens demanded the power shift because of a loss of confidence in the competence of the federal government. *Id.* at 135. For our purposes, however, it does not matter whether citizens support devolution of powers because their absolute trust in the states increased (because the states have proven their worth) or whether it was because their confidence in the federal government simply decreased (because the federal government broke promises, managed policies ineptly, etc.); in either case, the relative standing of the states when compared to the federal government was the trigger for devolution, and the effect is the same.

policies pursued by the states; it was driven largely by trust in state governments relative to the federal government.³³

B. Concern for Federalism Diminishes Support for Federal Encroachments

Aside from trust in state governments, we argue that concern for federalism itself may motivate citizens to oppose congressional statutes that upset the balance of power between the federal government and the states. Citizens harbor opinions regarding which level of government ought to have primary authority over various policy domains (education, the environment, etc.),³⁴ and they may take these views (their federalism beliefs) into consideration in evaluating federal legislation, for both policy and for process reasons.

Citizens may care about federalism because respecting state power offers certain *policy-oriented benefits*. They may oppose congressional legislation on a narrow issue in order to preserve state control over a broader policy domain. Namely, citizens may fear that adopting one federal law may jeopardize state autonomy over other, related issues in the future—issues on which they might prefer *state* control. Such fears may reduce the temptation to back Congress when it offers laws that come closer to satisfying their policy preferences on individual issues.

Apart from these policy-oriented considerations, citizens may also value federalism as a *democratic process*. In other words, citizens may view federalism as a legitimate feature of our political system, entitled to respect. Respecting the limits of federal power may at times require citizens to sacrifice other values, namely, their policy preferences. But the public opinion literature suggests that citizens care as much about how policy is created and implemented as they do about what the policy is. One line of research, for example, suggests that when governmental processes are perceived as being “fair,” citizens are more willing to comply with laws or court decisions they

³³See, e.g., Hetherington & Nugent, *supra* note 28; Greg M. Shaw & Stephanie L. Reinhart, Devolution and Confidence in Government, 65 *Pub. Opinion Q.* 369–88 (2001) (noting that devolution followed a decline in confidence in the federal government).

³⁴See Phillip W. Roeder, *Public Opinion and Policy Leadership in the American States* (1994) for polling data capturing federalism beliefs across a wide range of policy domains.

otherwise oppose on the merits.³⁵ The literature also shows that when citizens formulate opinions on government actions, they place weight on matters of procedure and principle, not just matters of specific policy substance. When citizens are asked, for example, whether controversial groups like the KKK should be allowed to demonstrate, they bring to mind considerations of free speech, guarantees in the Constitution, majority rule, and minority rights.³⁶ Similarly, the central argument that John Hibbing and Elizabeth Theiss-Morse advance is that citizens care about political processes even more than they might care about policy outcomes: “Contrary to popular belief, many people have vague policy preferences and crystal-clear process preferences, so their actions can be understood only if we investigate these process preferences.”³⁷

The political safeguards of federalism may require citizens to care about not just policy outcomes, but also political procedures. Existing literature suggests that citizens are equipped for this task: they know how they would like government to be run, and they care about political processes, perhaps even more than policy outcomes. In short, citizens may value federalism as a democratic process, and not just as a means to another end.

C. Making Citizens Care: The Impact of Federalism Depends on Elite Debate

We note, however, that federalism may not immediately come to mind when citizens evaluate proposed federal legislation. Nonetheless, rhetoric by political elites may make federalism a more salient consideration. Indeed, on issues ranging from school desegregation to medicinal marijuana, from same-sex marriage to physician-assisted suicide, political elites have often used the language of federalism to rally opposition to federal legislative action and maintain state control over an issue. In 1948, then Governor of South Carolina, Strom Thurmond, campaigning as the States’ Rights Democratic Party candidate for president, argued fiercely against proposed federal civil rights legislation, claiming, for example, that a federal anti-lynching statute “would provide the opening wedge for federal control of [state]

³⁵Tom R. Tyler & Kenneth Rasinski, Procedural Justice, Institutional Legitimacy, and the Acceptance of Unpopular U.S. Supreme Court Decisions, 25 *Law & Soc’y Rev.* 621 (1991).

³⁶Dennis Chong, How People Think, Reason, and Feel about Rights and Liberties, 37 *Am. J. Pol. Sci.* 867 (1993).

³⁷John R. Hibbing & Elizabeth Theiss-Morse, *Stealth Democracy: Americans’ Beliefs about How Government Should Work* 6 (2002).

police powers,”³⁸ and suggesting that preserving states’ rights was essential to fighting the “Kremlin in Washington.”³⁹ Fifty-six years later, Democratic presidential candidate John Kerry argued against a federally-imposed ban on same-sex marriage, again using the federalism argument: “[F]or 200 years, this has been a state issue. I oppose this election year effort to amend the Constitution in an area that each state can adequately address.”⁴⁰

By exposing the public to federalism appeals, elite debate can make federalism a more salient and persuasive consideration in the minds of citizens. Some scholars have suggested that citizens are “rational[ly] ignorant” of federalism⁴¹ and that it may be asking too much of ordinary citizens to comprehend the structure of our constitutional system, as opposed to its policy outputs. While we disagree with this view—a large and growing body of political science literature suggests that citizens do indeed understand and care about processes⁴²—elite discussion certainly makes it more likely that citizens will consider federalism when formulating opinions of controversial congressional proposals. As Dennis Chong found in his study regarding citizen views of civil liberties, elite debate often succeeds in bringing more abstract or intangible concerns into the minds of citizens.⁴³

To summarize, extant empirical research in political science suggests that public opinion reflects more than just policy preferences. This literature alerts us to the possibility that citizens can play a crucial role in the political safeguards of federalism—a role that has heretofore been ignored. We argue that citizens may protect states from federal encroachments for two primary reasons: first, out of comparative trust in state versus federal governments, and second, out of a regard for federalism itself. If citizens trust the state government more than the federal government, or if they value the existing division of power between the federal and state governments, they will be less willing to support legislative action at the federal level, even if they agree with

³⁸Donald P. Myers, *Old Strom, Can He Win?* Newsday, Apr. 30, 1996, at B4.

³⁹Speech by Strom Thurmond, *N.Y. Times*, Oct. 27, 1948, at 15.

⁴⁰Marie Horigan, *Kerry, Edwards Oppose Marriage Amendment*, UPI, Feb. 24, 2004.

⁴¹John O. McGinnis & Ilya Somin, *Federalism v. States’ Rights: A Defense of Judicial Review in a Federal System*, 99 *Nw. L. Rev.* 89, 97 (2004).

⁴²E.g., Hibbing & Theiss-Morse, *supra* note 28, at 36–39.

⁴³Chong, *supra* note 36, at 888–97.

congressional aims. In short, we theorize that citizens can help protect states from federal encroachment, and we test this possibility below.

IV. RESEARCH DESIGN

Because no systematic evidence exists to test our theory directly, we have designed and implemented our own survey experiment. An experimental design provides an excellent opportunity to identify causal relationships because we can actively manipulate a single causal factor (say, exposure to elite debate on federalism grounds) and observe its consequences.⁴⁴ Our design follows a classic experimental template commonly used by political scientists who study the foundations of public opinion. Subjects are randomly assigned to receive an experimental stimulus representing a treatment condition or a control condition, and attitudes are measured following exposure to the stimulus.⁴⁵ The key virtue of experimental design is internal validity: the ability to rule out confounding factors as causal explanations through carefully designed and controlled manipulations.

Our experiment enables us to test the following four hypotheses.

Hypothesis 1: *Issue Proximity.* A citizen's support or opposition to federal legislative action is a function of the citizen's own policy preference on the issue. A citizen will support the action if it is close to his or her own policy position.

Hypothesis 2: *Trust.* A citizen's support or opposition to federal legislative action is a function of the citizen's relative trust across state and federal governments. A citizen will support federal action if he or she trusts the federal government more than his or her state government.

Hypothesis 3: *Federalism Beliefs.* A citizen's support or opposition to federal legislative action depends on the citizen's a priori judgments about which level of government ought to control the policy domain.

Hypothesis 4: *Activation of Federalism by Elite Debate.* A citizen's support or opposition to federal legislative action depends on the citizen's a priori judgments about which level of government ought to control the policy domain, but only when prompted by federalism arguments in elite discourse.

⁴⁴E.g., Donald Green & Alan Gerber, Reclaiming the Experimental Tradition in Political Science, in *Political Science: State of the Discipline 803* (Ira Katzelnson & Helen V. Milner eds., 2003); Donald R. Kinder & Thomas Palfrey, On Behalf of an Experimental Political Science, in *Experimental Foundations of Political Science* (Donald R. Kinder & Thomas Palfrey eds., 1993).

⁴⁵This is a standard posttest-only control group design. Donald T. Campbell & Julian C. Stanley, *Experimental and Quasi-Experimental Designs for Research* (1963).

To test our hypotheses, we use data from an original Time-Sharing Experiments in the Social Sciences (TESS) survey, administered in July 2005. The dataset consists of a nationally representative sample of 672 individuals who are part of an ongoing Internet panel study administered by Knowledge Networks.⁴⁶ Respondents were completely unaware that they were participating in an experiment. At the start of the study, each respondent completed a set of questions designed to measure policy preferences on a number of issues, including physician-assisted suicide, their comparative trust in the state and federal governments, and their federalism beliefs—their a priori judgments about which level of government ought to have primary authority to regulate medical practices (among other issues). Following a series of questions designed to mask the true nature of our study, each respondent was exposed to a scenario that specified that Congress was considering a federal ban on physician-assisted suicide.

We designed our empirical test case around the issue of physician-assisted suicide for several reasons. First, the issue is *comprehensible*, it is one that ordinary citizens can understand, and one on which ordinary citizens possess grounded opinions.⁴⁷ As such, the issue provides an opportunity to impose a tradeoff between well-grounded policy preferences and federalism. It presents a more difficult test of our theory because federalism is competing with policy preferences that are more firmly grounded than they might be with a more novel or less compelling issue. Second, the issue is *timely*; physician-assisted suicide, though not the most frequently discussed issue,

⁴⁶TESS is funded by the National Science Foundation. Proposed studies are subject to anonymous peer review and accepted only after a panel of social scientists deems them sufficiently compelling and rigorously designed. For more detail on TESS, see (<http://experimentcentral.org/>). The Internet data in our study were collected by Knowledge Networks, a highly reputable cutting-edge survey firm that serves the scientific community as well as government and commercial firms. The Knowledge Networks sample is comprised of households selected via a random selection of telephone numbers. The panel is nationally representative (in terms of age, race, ethnicity, gender, and ideology). Households that did not have computer access were provided with an Internet connection and the necessary equipment. For more information on Knowledge Networks, see (<http://www.knowledgenetworks.com>).

⁴⁷Indeed, a November 2005 Pew Research Center poll found that 46 percent of respondents approved of laws that “let doctors assist patients who want to end their lives” by prescribing lethal doses of drugs, 45 percent of respondents disapproved of such laws, and only 9 percent of respondents had no opinion. Pew Research Center, Nov. 9–25, 2005, The Roper Center, University of Connecticut, Public Opinion Online, accession 1639808, available at Lexis Nexis, Polls and Surveys Database.

holds a prominent place in contemporary debate.⁴⁸ A third feature of the physician-assisted suicide issue is that it has genuine political plausibility. Our scenario posits that the federal government is considering national legislation to ban physician-assisted suicide. Our experimental design actually portends current political debate, on the heels of the recent Supreme Court's decision in the *Gonzales v. Oregon* case.⁴⁹ Thus, we are able to maintain an aura of realism, and our experiment does not require suspension of disbelief on the part of our respondents.

Respondents were randomly assigned to one of three experimental conditions. In the baseline condition, subjects were presented with a brief description of a ban on physician-assisted suicide Congress was considering. Unlike subjects in the other two conditions, they were given no additional information to support either the state's or the federal government's control over the issue of physician-assisted suicide. In the *Federalism Argument* condition, subjects were given the same description of the ban as the baseline condition subjects, but they were also exposed to a series of federalism arguments levied by opponents of the federal ban. We crafted these arguments to "mimic" elite debate, and we based the wording on our content analysis of real political arguments made by political elites on this and other issues.⁵⁰ By including these arguments we can determine the extent to which elite debate activates federalism considerations as ordinary citizens consider proposed federal legislation. The third condition includes arguments intended to persuade subjects on the substance of the policy itself. By including both a *Substantive Argument* condition and a *Federalism Argument* condition, we can determine whether any type of argument can shift public opinion or whether federalism arguments hold special sway over respondents. The complete text of the stimuli appears in Table 1.

⁴⁸We conducted a Lexis-Nexis search of *The New York Times* for the three-month window bracketing our data collection (June 1–Aug. 31, 2005). During that time, 52 articles featured the terms physician-assisted suicide or end of life in the full text; 306 mention the term abortion; 226 mention the term inflation; 108 mention the terms gay marriage or same-sex marriage; 63 mention the term affirmative action; 23 articles include the terms border control or immigration policy; and 19 articles mention school prayer. Thus, physician-assisted suicide is moderately discussed during this period.

⁴⁹The Assisted Suicide Decision, *supra* note 6.

⁵⁰See Donald Kinder & Lynn M. Sanders, *Mimicking Political Debate*, 8 *Soc. Cognition* 73 (1990), on the merits of mimicking elite debate in framing experiments.

Table 1: Experimental Stimuli

Subjects Were Randomly Assigned to One of the Following Conditions

Condition 1 (Baseline)	This summer, Congress will vote on a proposal to ban doctor-assisted suicide throughout the nation. The proposal is designed to override the law of Oregon—the only state that currently allows doctor-assisted suicide—and to prevent any other state from following Oregon’s path. Under Oregon law, doctors may give terminally ill patients lethal doses of medication, but only if procedures designed to protect vulnerable patients and to ensure their choices are voluntary and informed are followed.
Condition 2 (Federalism Argument)	[Baseline +] Opponents say the proposed federal law tramples on states’ rights. The states have always possessed the clear authority to define acceptable medical practices within their borders. The people of Oregon have decided to authorize doctor-assisted suicide and we should respect their decision, whether we agree with it or not. Let each state plot its own course. Further, opponents warn that this federal law sets a dangerous precedent for an expanded federal role in the regulation of medical care. If Congress can undo a state law allowing doctor-assisted suicide, what’s to stop it from undoing state laws concerning the refusal of medical treatment, abortion, and other medical issues as well?
Condition 3 (Substantive Argument)	[Baseline +] Opponents say the proposed federal law tramples on individual rights. Terminally ill patients have a right to be treated with respect, including the right to whatever relief from pain and suffering medical technology can provide. When such relief is possible only through techniques that deprive patients of their autonomy and self-respect, terminally ill patients have a right to end life itself—and to do so with dignity. The government has no business forcing terminally ill patients to live out their natural lives, no matter the circumstances.

After exposure to the scenario, each respondent was asked to report his or her level of support or opposition to the congressional action.⁵¹ About 23.2 percent of respondents strongly supported the proposed federal ban, 15.3 percent somewhat supported it, 30.2 percent somewhat opposed it, and 31.4 percent strongly opposed it. Because each respondent was *randomly assigned* to one of the three experimental conditions, any differences in support for or opposition to the proposed federal ban on physician-assisted

⁵¹The question text was: “What do you think? Do you support or oppose Congress’s proposed ban on doctor-assisted suicide?” The four response options were: strongly support Congress’s proposed ban; somewhat support Congress’s proposed ban; somewhat oppose Congress’s proposed ban; strongly oppose Congress’s proposed ban.

suicide can be attributable to the presence or absence of the *Federalism Argument* or *Substantive Argument*.⁵²

V. RESULTS

A. Descriptive Analyses

Our four hypotheses specify relationships between the respondents' views on the proposed legislative action and their policy preferences, comparative trust in state and federal governments, and federalism beliefs. Hypothesis 1 suggests that citizens' views of federal legislative action will be informed by their own policy preferences. To test this hypothesis, we included a question designed to capture each respondent's policy preference on the issue of physician-assisted suicide.⁵³ Under Hypothesis 1, there should be a positive relationship between views on physician-assisted suicide and opposition to the federal ban; respondents who support physician-assisted suicide as a policy matter should be more opposed to the federal action. As an initial test of this hypothesis, we examine the relationship between views on the federal ban and policy preferences in Figure 1. Each column in the graph displays the percentage of respondents who support or oppose the federal ban, given the policy preference they reported before reading about the proposed legislation.⁵⁴

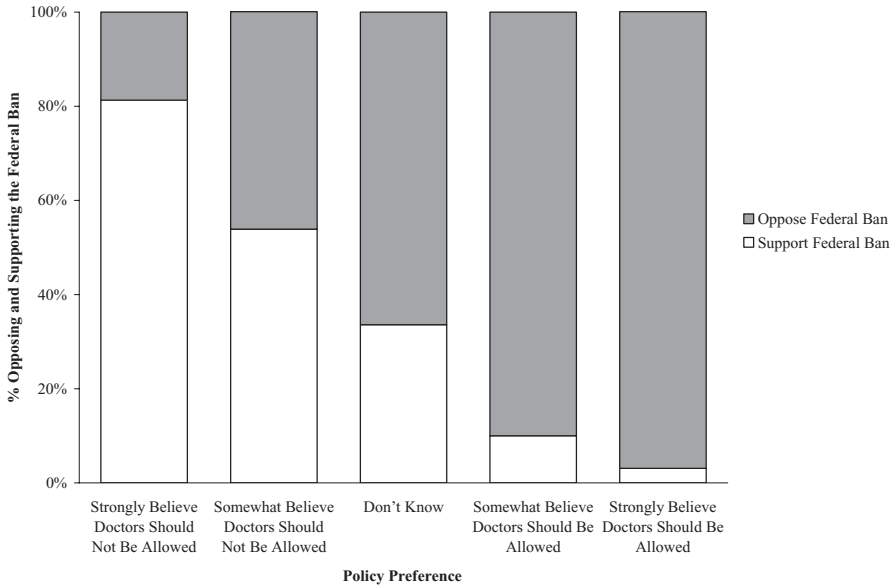
The graph provides initial support for our hypothesis: among respondents who strongly opposed physician-assisted suicide on the merits, the vast majority (80 percent) supports the federal ban. Among respondents who have less intense preferences on the merits of the issue, the response to the

⁵²As Kinder and Palfrey note, “[b]y randomly assigning subjects to treatments, the experimenter, in one elegant stroke, can be confident that any observed differences must be due to differences in the treatments themselves.” *Supra* note 44, at 7.

⁵³Policy preference was measured with a five-point Likert response to the following: “Do you think the government should or should not allow doctors to assist some patients in committing suicide?”: 14.8 percent strongly favored allowing it; 25.6 percent somewhat favored allowing it; 20.5 percent said “Don’t Know”; 11.8 percent somewhat opposed it; and 27.1 percent strongly opposed it. Note that this question purposefully does not tie the policy to a specific level of government.

⁵⁴For clarity in these initial bivariate analyses, we collapse views toward the federal ban into two groups: support or oppose. In our regression analysis, we break apart the four categories (strongly support, somewhat support, somewhat oppose, strongly oppose).

Figure 1: Opposition to the federal ban, by policy preference.

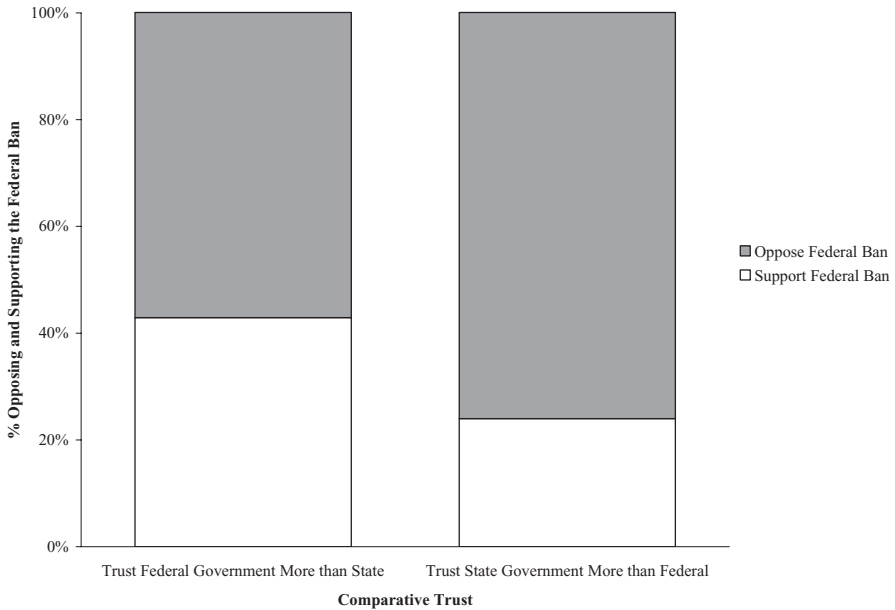


federal proposal is more equivocal. Finally, among respondents who were most supportive of physician-assisted suicide, an overwhelming majority (97 percent) opposed the federal ban. This initial examination suggests a strong relationship between individuals’ policy preferences and their willingness to oppose or support federal legislative action, as the conventional wisdom suggests.

Our claim, however, is that citizens will take other factors into consideration besides policy preferences. Hypothesis 2 suggests that citizens’ comparative level of trust in the state versus the federal government should influence their willingness to support federal action. To test this hypothesis, we included questions to capture respondents’ level of trust in their state government and the federal government.⁵⁵ Under Hypothesis 2, we expect

⁵⁵Comparative trust in federal and state governments was measured with responses to two separate questions, asked in random order: “When [the government in Washington/your state government] decides to solve a problem, how much confidence do you have that the problem will actually be solved—a lot, some, just a little, or none at all?” We have coded this variable into three categories: 0 (favor federal government over state), 0.5 (no difference), and 1 (favor state government over federal).

Figure 2: Opposition to federal ban, by comparative trust.

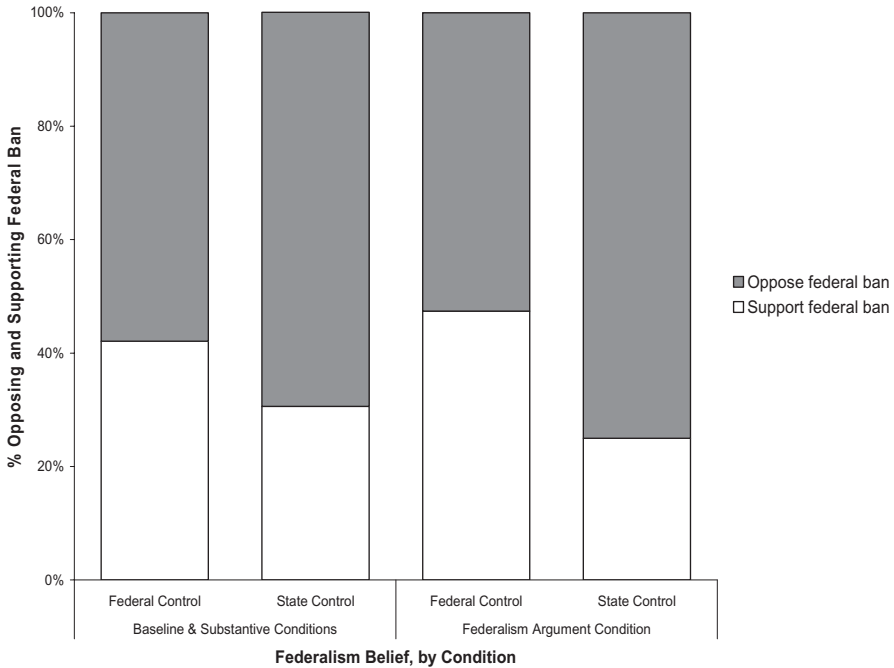


that citizens who trust their state government more than the federal government should be more opposed to federal action. Figure 2 provides a first glimpse at these data.

Figure 2 provides some support for the hypothesis that trust will determine whether citizens will go along with or oppose federal action. Among respondents who trust the federal government more than the state government, we see that about 55 percent oppose the federal ban. Among respondents who trust the state government more than the federal government, a much higher percentage (about 80 percent) opposes the federal ban. While the relationship between comparative trust and opposition to the federal ban is less pronounced than that between policy preferences and opposition to the federal ban, it nonetheless hints that some component of citizens’ views of federal legislative action is indeed attributable to how much they trust the state versus federal government.

Hypotheses 3 and 4 suggest that citizens may be motivated by their beliefs about federalism—specifically, whether they believe the federal or state government should have primary authority for regulating medical prac-

Figure 3: Opposition to federal ban, by federalism belief and experimental condition.



tices. As such, we included a question to capture this federalism belief.⁵⁶ One possibility is that citizens hold views regarding which level of government should control which policy domains and, *without prompting*, apply these views in deciding whether to support or oppose federal legislative action. This possibility is captured by Hypothesis 3. Another possibility is that federalism beliefs matter only after political elites provide the frame to citizens. This possibility is captured by Hypothesis 4. Figure 3 depicts level of

⁵⁶Federalism belief was measured by responses to: “Which level of government—state or federal—should have primary responsibility for regulating medical practices, such as doctor-assisted suicide?”: 31.1 percent of subjects felt strongly that the federal government should handle the issue; 31.9 percent felt less strongly that the federal government should handle the issue. Eighteen percent thought, not strongly, that the states should handle the issue; 18.8 percent felt strongly that the states should handle it.

opposition to the federal ban, by federalism belief and by experimental condition, providing a first examination of these potential relationships between federalism beliefs and opposition to legislative action.⁵⁷

The evidence first suggests a relationship between respondents' views on which level of government should handle medical practices and their willingness to support federal action in this domain. The majority of respondents who prefer state control voice opposition to the federal ban; in the baseline and substantive conditions, this is over two-thirds of respondents. In the *Federalism Argument* condition, an even greater percentage of respondents who prefer state control over the domain voice opposition to the federal ban (75 percent). Hence, we see suggestive support for Hypothesis 3; in all conditions, there is a relationship between federalism beliefs and opposition to federal action. Further, we see some indication of support for Hypothesis 4: the relationship between preference for state control over the issue domain and opposition to federal action is stronger among respondents in the *Federalism Argument* condition.

B. Regression Analyses

The descriptive analyses above provide initial support for our hypotheses. To provide a more rigorous test of our hypotheses, we estimate the relationships using regression analysis. Regression analysis enables us to determine the effect of each of the variables of interest (policy preference, trust, federalism belief, elite activation of federalism belief), holding all other variables constant. We specify the following mathematical relationship between the dependent variable (*Opposition to Legislative Action*) and the independent variables:

⁵⁷For clarity in these initial bivariate cross-tabulations, Figure 3 collapses into two groups: favor federal control or favor state control. The measure actually contains four categories (strongly favor federal control/somewhat favor federal control/somewhat favor state control/strongly favor state control), but this would have doubled the number of bars in the graph. In our statistical analysis (below), however, we make use of the four-category variable.

$$\begin{aligned}
\text{Opposition to Legislative Action} &= \beta_0 \\
&+ \beta_1 \text{Policy Preference} \\
&+ \beta_2 \text{Comparative Trust} \\
&+ \beta_3 \text{Federalism Belief} \\
&+ \beta_4 \text{Federalism Belief} \times \text{Federalism Argument Condition} \\
&+ \beta_5 \text{Federalism Argument Condition} \\
&+ \beta_6 \text{Federalism Belief} \times \text{Substantive Argument Condition} \\
&+ \beta_7 \text{Substantive Argument Condition} \\
&+ \varepsilon
\end{aligned}$$

We test Hypothesis 1 by examining the estimate of β_1 . It indicates the impact of a citizen's policy preferences on opposition to the legislative action. If citizens consider their policy preferences when evaluating the proposed congressional ban, the estimate of β_1 should be positive and statistically significant (the more they support physician-assisted suicide as a policy, the more opposed to the federal ban they should be).

We test Hypothesis 2 by examining the estimate of β_2 . It identifies the impact of a citizen's comparative level of trust in the state versus federal government. A positive and statistically significant β_2 will lend support for Hypothesis 2 by demonstrating that citizens who trust their state government more than the federal government are more opposed to the federal legislative action.

We test Hypothesis 3 using our estimate of β_3 , as it shows the impact of federalism beliefs on opposition to legislative action. If citizens spontaneously consider federalism beliefs, then β_3 should be positive. If the federalism argument enhances the impact of federalism beliefs, then the coefficient on the interaction term *Federalism Belief* \times *Federalism Argument Condition* (β_4) should be positive and significantly different from zero, thus providing us with leverage on testing Hypothesis 4. The other variables in the model enable us to defend our claims against alternative hypotheses.⁵⁸

⁵⁸The coefficient on *Federalism Argument Condition* (β_5) indicates whether respondents in the *Federalism Argument* condition are, on average, more opposed to the legislative action than respondents in the baseline condition, whether or not they believed, a priori, that the states should have primary authority to regulate medical practices. This will allow us to test whether mere persuasion is at work, or whether the federalism arguments specifically affect only those individuals who believe the states should handle the issue, as we predict.

The *Substantive Argument* condition provides a second "baseline" against which to test the strength of our claims. If *Federalism Belief* \times *Substantive Argument Condition* (β_6) is significantly different from zero, then this suggests that even substantive arguments (e.g., citizens have a

Table 2: Regression Analysis of Opposition to a Federal Ban

Variable	Model 1	
	Coefficient	Standard Error
β_1 : Policy preference	2.929**	0.158
β_2 : Comparative trust	0.321**	0.161
β_3 : Federalism belief	0.300	0.231
β_4 : Federalism belief \times federalism argument condition	0.554*	0.324
β_5 : Federalism argument condition	-0.269	0.175
β_6 : Federalism belief \times substantive argument condition	0.453	0.331
β_7 : Substantive argument condition	-0.069	0.177

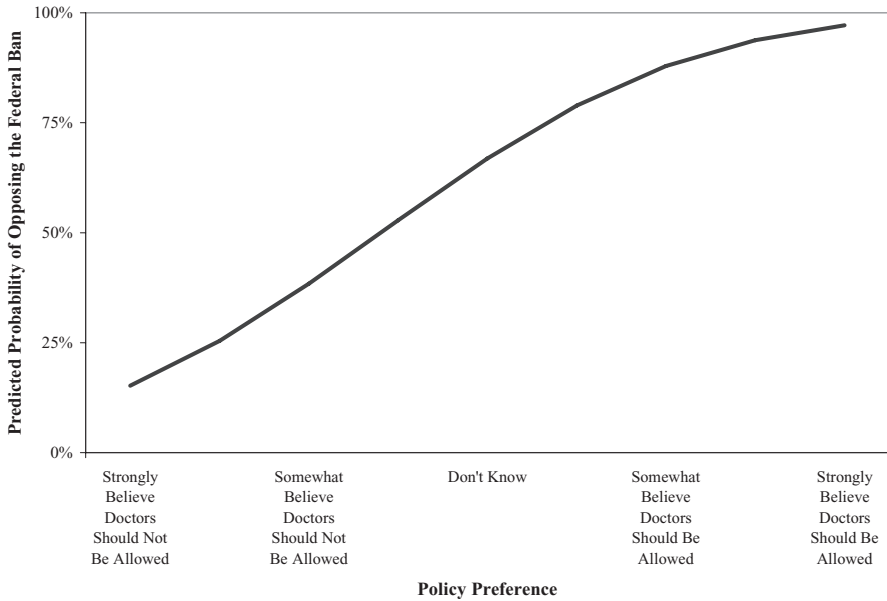
NOTE: The analyzed sample consists of 635 respondents. Significance levels refer to a two-tailed test of the null hypothesis that $\beta = 0$, with *indicating a p value < 0.10 and **indicating a p value < 0.05 . *Policy preference* ranges from 0 (strongly believe should not allow physician-assisted suicide) to 1 (strongly believe should allow physician-assisted suicide). *Comparative trust* ranges from 0 (trust federal more than state) to 1 (trust state more than federal). *Federalism belief* takes on values of 0 (strongly believe federal government should control) to 1 (strongly believe state government should control).

We use ordered probit regression to estimate this mathematical model, since the dependent variable consists of four categories (from strong support of the ban to strong opposition to the ban). Regression analysis enables us to be more certain of the relationships between each independent variable (policy preference, trust, federalism belief, elite activation of federalism belief) and opposition to the federal ban because we estimate the relationship between each variable and opposition to the federal ban while holding other variables constant. To facilitate interpretation of these results, we provide thorough discussion of their substantive meaning in the text. The ordered probit regression results appear in Table 2.

The results in Table 2 indicate that policy preferences are clearly consequential. The coefficient on *Policy Preference* is positive and statistically significant, lending support to Hypothesis 1. The more subjects believe that physician-assisted suicide should be allowed, the more strongly they oppose the federal government's proposed ban on it. Conversely, the more subjects oppose physician-assisted suicide, the more strongly they support the federal

fundamental right to end their lives) can activate federalism beliefs. The coefficient on *Substantive Argument Condition* (β_7) indicates whether respondents in the *Substantive Argument* condition are, on average, more opposed to the legislative action than respondents in the baseline condition.

Figure 4: Predicted probability of opposing the federal ban, by policy preference.



ban. To make the interpretation more concrete, we calculated predicted probabilities of opposing (either strongly or somewhat) the federal ban.⁵⁹ For a given individual who strongly believes that physician-assisted suicide should not be permitted, the probability of opposing the federal ban is very low: there is only a 0.15 probability that the individual will oppose the federal ban. On the other side of the spectrum, a given individual who strongly believes that physician-assisted suicide should be permitted as a policy has a very high probability of opposing the federal ban: 0.97. Figure 4 displays the predicted probability that a given individual would oppose the federal ban, at given policy preferences.⁶⁰

⁵⁹For ease of exposition, and since most political conflicts are about whether the majority of citizens supports or opposes a given policy, we discuss the cumulative probability of opposing the federal ban, which is the sum of the probability of strongly opposing and somewhat opposing the federal ban.

⁶⁰The predicted probabilities were calculated for an individual in the baseline condition who has median levels of trust and federalism beliefs, along varying levels of policy preference.

The results in Table 2 also suggest that comparative trust influences opposition to federal action. The coefficient on *Comparative Trust* (β_2) is positive and statistically significant, providing strong support for Hypothesis 2. The coefficient estimate suggests that citizens who place more trust in their state as opposed to the federal government are more likely to oppose the congressional law. Likewise, citizens who place more trust in the federal government are more inclined to support the congressional law. We calculated predicted probabilities of opposing the federal ban, at various levels of comparative trust.⁶¹ Individuals who trust the federal government more than the state have a 0.61 probability of opposing the federal ban, whereas individuals who trust the state more than the federal government have a 0.73 probability of opposing the ban. Figure 5 displays these predicted probabilities.

Trusting the state more than the federal government pushes respondents to oppose the federal ban, although the magnitude of the effect is less dramatic than the magnitude of the effect of policy preferences, pictured in Figure 5.

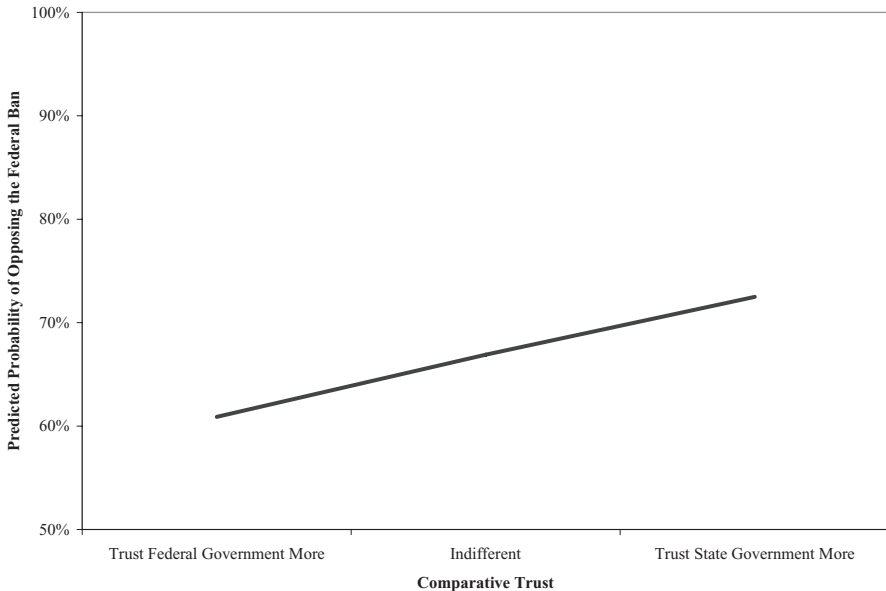
Finally, the results in Table 2 allow us to speak to Hypotheses 3 and 4. We see that the coefficient on *Federalism Belief* is positive but not statistically significant. This means that although the results suggest a positive relationship, we cannot be certain that the effect of *Federalism Belief* for individuals in the baseline condition is statistically different from zero. However, the coefficient on *Federalism Belief* \times *Federalism Argument Condition* is positive and statistically significant. This result indicates that federalism beliefs are consequential when they are activated by elite debate. Although federalism is often portrayed as a complex legal concept, the province of constitutional lawyers, elite arguments can and do resonate with ordinary citizens. Citizens understand federalism, but they may need elites to bring it to their attention before it influences their opinion.

To facilitate interpretation of these results speaking to Hypotheses 3 and 4, we have calculated predicted probabilities of opposing the federal

Specifically, the individual trusts the state and federal governments equally and somewhat prefers federal control over medical practices.

⁶¹The predicted probabilities were calculated for a given individual in the baseline condition with median level of federalism belief and policy preferences, along varying levels of comparative trust. Specifically, the individual somewhat prefers federal control over medical practices and is indifferent regarding policy preferences on physician-assisted suicide.

Figure 5: Predicted probability of opposing the federal ban, by comparative trust.

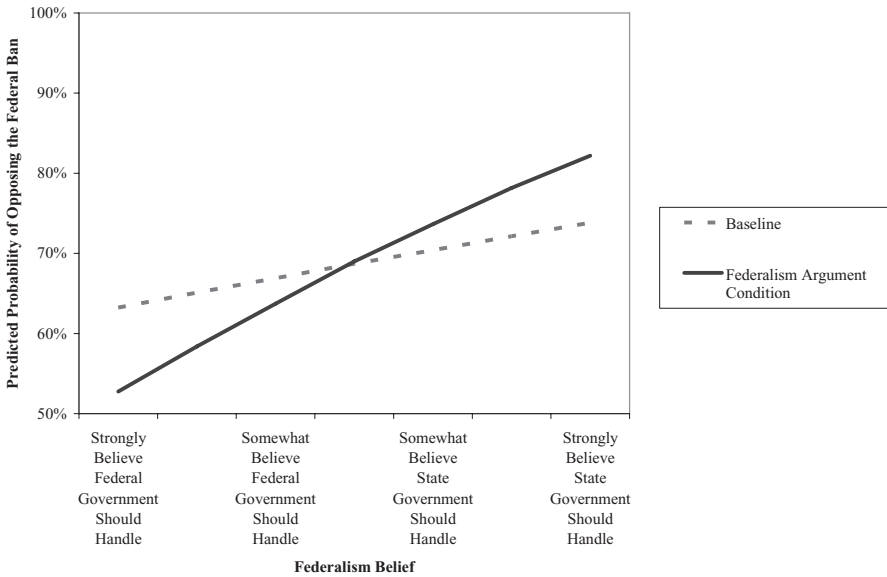


ban.⁶² For a given individual in the baseline condition who strongly believes the federal government should control the policy domain, the predicted probability of opposing the legislative action is 0.63. For a given individual in the baseline condition who strongly believes the state government should control the policy domain, the predicted probability of opposing the legislative action rises a bit, to 0.74. The “effect” of the federalism belief can therefore be viewed as inducing a 0.11 shift in the probability of opposing the federal ban. That is, the strong belief that the state government should control this domain (compared with the strong belief that the federal government should control this domain) causes an 11 percentage point increase in the probability of opposing federal action.

Elite appeals to federalism are remarkably effective at enhancing the effect of federalism beliefs. For respondents in the *Federalism Argument* con-

⁶²The predicted probabilities are calculated for an “average” individual, who gave the middle response option on policy preference and is indifferent in trusting the state and federal governments.

Figure 6: Predicted probability of opposing the federal ban, by federalism belief.



dition, a given individual who strongly believes that the federal government should control the policy domain has a predicted probability of opposing the federal action of 0.53. For a given individual also in the *Federalism Argument* condition who supports state control, the predicted opposition to the federal ban is dramatically higher: 0.82. Within the *Federalism Argument* condition, the “effect” of the federalism belief is thus 29 percentage points. In other words, the strong belief that the state government should control this domain (compared with the strong belief that the federal government should control this domain) causes a 29 percentage point increase in the probability of opposing federal action. Note that the effect of federalism beliefs in the *Federalism Argument* condition is nearly three times the size of its effect in the baseline condition (29 percentage points vs. 11). Figure 6 depicts these patterns graphically.

Figure 6 plots the predicted probability of opposing the federal legislative action, conditional on the respondent’s federalism belief and experimental condition. The values on the x-axis indicate the federalism belief: a respondent’s given preference for federal versus state control over the regulation of medical practices. The dashed line represents the predicted prob-

abilities of opposing federal action, for subjects in the baseline condition. This line has a positive slope, but is comparatively flat, as we would expect if federalism beliefs are not spontaneously activated in the absence of elite appeals to federalism. For subjects in the baseline condition, a shift from strongly preferring federal control to strongly preferring state control yields only an 11 percentage point increase in probability of opposing the federal action. The solid line represents the predicted probabilities of opposing the federal action, for subjects in the *Federalism Argument* condition. Here, we see a much steeper effect line. For subjects in the *Federalism Argument* condition, a shift from strongly preferring federal control to strongly preferring state control yields a 29 percentage point increase in probability of opposing the federal action.

An interesting finding here is that elite appeals to federalism polarize citizens. At the low end of the federalism scale, among those who strongly favor federal control, respondents are less opposed to federal action on physician-assisted suicide, compared with their counterparts in the baseline condition. At the high end, among those who strongly favor state control, subjects are much more opposed to federal action, compared with their counterparts in the baseline condition. At both ends of the spectrum, elite debate activates federalism beliefs. The effect of federalism beliefs grows and, indeed, becomes statistically discernible, when elites remind citizens that federalism is implicated by the federal ban. Invoking concern for state authority galvanizes opposition to federal law among people who, a priori, believed that states should handle the issue, but it also tends to raise *support* for the federal law among those who believed, a priori, that the federal government should have primary control of the issue. This suggests that elite appeals to federalism will be most effective at protecting state authority when a majority of citizens favors state or local control of the issue, which is true of many, but not all, policy domains.⁶³ In such situations, citizens who could be swayed to oppose the federal law outnumber those who might be swayed to support it, as a result of the appeals.⁶⁴

⁶³See Roeder, *supra* note 34, at tbl. 6.1.

⁶⁴The other values in Table 2 support our claims against alternative hypotheses. The interaction between *Federalism Belief* × *Substantive Argument Condition* (β_6) is statistically indistinguishable from zero, thereby buttressing our claim that the set of federalism arguments in elite debate resonate distinctly with federalism beliefs. That is, federalism beliefs are triggered specifically by federalism appeals in elite debate, and not by just any argument put forward by elites. The substantive condition provides a second “baseline” against which to test the strength of our

Table 3: Regression Analysis of Opposition to a Federal Ban

Variable	Model II	
	Coefficient	Standard Error
β_1 : Policy preference	3.116**	0.255
β_2 : Comparative trust	0.333**	0.161
β_3 : Federalism belief	0.276	0.235
β_4 : Federalism belief \times federalism argument condition	0.554*	0.323
β_5 : Federalism argument condition	0.070	0.235
β_6 : Federalism belief \times substantive argument condition	0.494	0.336
β_7 : Substantive argument condition	-0.154	0.238
β_8 : Policy preference \times federalism argument condition	-0.731**	0.349
β_9 : Policy preference \times substantive argument condition	0.180	0.351

NOTE: The analyzed sample consists of 635 respondents. Significance levels refer to a two-tailed test of the null hypothesis that $\beta = 0$, with *indicating a p value < 0.10 and **indicating a p value < 0.05 . *Policy preference* ranges from 0 (strongly believe should not allow physician-assisted suicide) to 1 (strongly believe should allow physician-assisted suicide). *Comparative trust* ranges from 0 (trust federal more than state) to 1 (trust state more than federal). *Federalism belief* takes on values of 0 (strongly believe federal government should control) to 1 (strongly believe state government should control).

The model estimated in Table 2 identifies the extent to which federalism beliefs are consequential in the three conditions. The model, however, assumes that policy preferences have the same impact across the three conditions; it essentially displays the “average” effect of policy preferences. But it seems reasonable to expect that the impact of policy preferences might vary by experimental condition. In particular, elite appeals to federalism might cause citizens to lean less on policy preferences in evaluating federal legislative action. To test for whether federalism arguments make policy preferences less consequential, we include an interaction between *Policy Preference* \times *Federalism Argument Condition* (β_8) in Model II.⁶⁵ The results from this second model appear in Table 3.

The estimated coefficient on *Policy Preference* \times *Federalism Argument Condition* is negative and statistically significant. This finding demonstrates that

claims. The nearly-zero coefficient on *Substantive Argument Condition* (β_7) indicates that respondents in the *Substantive Argument* condition are, on average, no more opposed to the legislative action than respondents in the baseline condition.

⁶⁵We also include an interaction between *Policy Preference* and *Substantive Argument Condition* (β_6) to determine whether the substantive arguments make policy preferences more consequential. The interpretation of the coefficient suggests that policy preferences are no more consequential in the *Substantive Argument* condition than they were in the baseline condition—in short, policy preferences come to mind for citizens even without the urging of elites.

casting the elite debate in federalism terms will accomplish two feats: it accentuates the impact of federalism beliefs and attenuates the impact of policy-based considerations. To provide a sense of the degree of attenuation that occurs, recall that the estimates from Model I (discussed above) showed that a shift from strongly opposing physician-assisted suicide on the merits to strongly supporting the practice induces about an 80 percentage point shift in the probability of opposing the federal ban. Using the estimates in Model II, we find that the effect of policy preferences shrinks, to about a 60 percentage point shift in probability of opposing the ban. Those who oppose physician-assisted suicide are less likely to support the federal ban, and those who support physician-assisted suicide are less likely to oppose it, holding federalism beliefs and trust constant. Policy preferences are still consequential, but elite debate chips away at the magnitude of the effect and encourages citizens to put more weight on federalism considerations instead.

VI. DISCUSSION OF RESULTS

In the analyses above, we describe the effect of policy preferences, comparative trust, and federalism beliefs on a given individual's opinion toward a proposed congressional ban on physician-assisted suicide. Not surprisingly, we find that when an individual agrees with the policy espoused in the federal legislation, it is very likely he or she will support the congressional action, holding all else constant. Confining the inquiry solely to policy preferences would suggest that citizens behave as the conventional wisdom suggests; ignoring other considerations, if a sizeable majority of citizens agrees with the policy pursued by Congress, they will support the effort to federalize the issue. One would need to look to the courts or the structural features of the national political process to restrain Congress in this situation.

However, our point is that we should not limit the analysis to just policy preferences. Our theory argues that comparative levels of trust and federalism beliefs can play a consequential role in determining citizens' views of federal action, and our experimental results substantiate the theory. We find that individuals who trust their state government more than the federal government are much less likely to support the federal law, holding all else constant. Trust in state government tempers support for congressional legislation. As long as citizens trust their state government more than the federal government, they can serve as an important check on congressional encroachments.

Furthermore, we find that federalism beliefs are consequential, at least when elites frame the debate over the legislation in federalism terms. Individuals who believe a priori that the states should have primary authority over the policy domain (in this case, regulation of medical practices) are nearly 30 percentage points more likely to oppose congressional legislation than are individuals (with the same policy preferences and comparative trust) who believe a priori that the federal government should control the domain. At the same time, elite appeals to federalism also have the effect of diminishing the impact of policy preferences by about 20 percentage points. Citizens put less weight on policy preferences and more weight on their federalism beliefs and comparative trust when elites call attention to federalism. Our results suggest that federalism in elite discourse can influence an individual citizen's willingness to support or oppose federal action. As with comparative trust, federalism beliefs will serve as an effective check on Congress whenever more citizens favor state, as opposed to national, control of the disputed issue.

Given the individual-level results, we can forecast the aggregate effects of these constructs on public opinion. In the aggregate, the net effect of comparative trust and federalism beliefs on public opinion will depend on the proportion of citizens trusting states more and the proportion favoring state versus federal control in the contested policy domain. To illustrate how individual-level effects translate into aggregate levels of opposition to federal action, we develop a hypothetical example. Suppose that citizens overwhelmingly support a congressional policy on the merits, with 70 percent of citizens supporting the underlying policy, and 30 percent opposing the underlying policy. This is precisely the situation in which critics claim political institutions will fail to protect state prerogatives. The sizable majority will likely control enough votes in both houses of Congress to push through federal legislation. However, as we have shown, citizen support for the federal law is also contingent on levels of comparative trust and federalism beliefs. Suppose 60 percent of citizens trust their state government more than the federal government, and the remaining 40 percent trust the federal government more. Furthermore, suppose 60 percent of the citizenry prefers state control over the policy domain, while 40 percent prefers federal control.⁶⁶ Consider also the possibility that elites might or might not raise the issue of federalism in political debate.

⁶⁶We assume, for simplicity, that these preferences are independently distributed.

In this hypothetical, the overwhelming majority of citizens have a policy-based rationale to support federal action. Using the conventional wisdom, where citizens are portrayed as motivated solely by policy considerations, we would expect some 70 percent of citizens to support federal action and only 30 percent to oppose it. Our results, however, challenge the conventional wisdom by demonstrating that comparative trust and federalism beliefs play a role as well. Even in the absence of elite debate on federalism grounds, comparative trust in state versus federal governments increases public opposition to federal action. Instead of only 30 percent opposing the federal action, 46 percent of the public will oppose the federal action. The majority of citizens, however, would still support federal action. In the presence of elite debate on federalism, however, federalism beliefs would be activated. In this state of the world, 53 percent of the public would oppose federal action. Our results show that even a large national majority may not be enough to federalize an issue traditionally handled by the states. When citizens trust states more, believe states should handle the issue, and elites invoke federalism in their opposition to the congressional law, citizens will sacrifice policy preferences to safeguard federalism.⁶⁷

Citizens have for too long been left out of the conversation about the safeguards of federalism. Our results suggest that citizens can indeed play a role in policing the boundaries between federal and state jurisdiction, possibly reducing the need for judicial review of federalism issues. Our example focuses on physician-assisted suicide because it is a timely and relevant issue. However, it is also a particularly tough test of our hypotheses because many citizens already possess fairly well-grounded views on the issue. Even in this difficult test case, however, we find that trust and federalism are consequential. Elite appeals to federalism may have an even larger potential to influence citizens' views on less salient issues. On these other issues, federalism appeals may induce large shifts in individual opinions and subsequent movement in the location of majority opinion on federal legislative action.

VII. CONCLUSION

The conventional wisdom and the existing literature on the political safeguards of federalism suggest that citizens are single-mindedly focused on

⁶⁷These aggregate levels of opposition were calculated using the results from Model II.

policy outcomes. Further, the existing literature portrays citizens as being unable or unwilling to care about the abstract issue of federalism. The expectation is that citizens will gladly delegate all power to the federal government as long as it promises to satisfy their policy preferences. Citizens, according to this caricature, cannot be entrusted with the role of safeguarding federalism; instead, the burden must fall on the courts or political institutions.

Our theory of political safeguards explicitly entertains the possibility that ordinary citizens play a role in policing the limits of federal power. Certainly, citizens care about policy outcomes, but they also care about preserving the authority of their state governments, first, because they trust their state governments more than the federal government, and second, because they value federalism.

We provide the first systematic examination of whether citizens can be entrusted to safeguard federalism. We put our theory to the test, using an innovative survey experiment designed around the timely issue of physician-assisted suicide. Our analysis shows that the conventional wisdom characterizing citizens as single-mindedly interested in only short-term policy outcomes is misguided. Policy preferences do matter, but so does comparative trust in the state versus federal governments, and so does federalism. Citizens who trust their state government more than the federal government are less willing to hand control of the policy domain over to the federal government. Citizens' beliefs about federalism bolster respect for state authority when elite debate frames the issue using federalism arguments; citizens who believe that the states should control the policy domain are less willing to support federal legislation.

The Supreme Court's narrow ruling in *Gonzales v. Oregon* does not preclude political elites from attempting to craft federal legislation that will prohibit physician-assisted suicide, an issue long thought the province of the state governments. Indeed, Justice Scalia's dissent provides lawmakers with a clear template for such legislation: "Unless we are to repudiate a long and well-established principle of our jurisprudence, using the federal commerce power to prevent assisted suicide is unquestionably permissible."⁶⁸ Some commentators have lamented the Court's refusal to block Congress at this juncture. It is only a matter of time, they say, before interest groups push Congress to federalize this issue. Our results suggest, however, that trust in

⁶⁸*Gonzales v. Oregon*, 126 S. Ct. 904, 939 (2006) (Scalia, J., dissenting).

state governments and concern for federalism may forestall Congress from effectively asserting this power. The Court has been criticized for sidestepping the central constitutional issue in the case, namely, whether Congress has the authority to ban physician-assisted suicide, but it may take solace in the notion that if its rulings force political elites to talk about federalism, citizens will listen.