



UNDERSTANDING *US V. SKRMETTI*

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Does the Constitution allow states to deny care to transgender youth?

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On December 4, the Supreme Court heard [oral arguments](#) in *U.S. v. Skrmetti*, a lawsuit challenging Tennessee’s ban on gender-affirming care for minors. In nearly [two and a half hours of energetic argument](#), parties hotly debated what legal standard to apply, whether the state had a persuasive justification for its attempt to ban the care, and the very nature and purpose of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

Tennessee’s law, [SB1](#), prohibits medical practitioners from providing gender-affirming puberty blockers, hormones, or surgery for the purposes of “enabling the minor to identify with, or live as, a purported identity different than the minor’s sex; or treating purported discomfort or distress from discordance between a minor’s sex and asserted identity.” The law permits the same treatments for minors whose gender identity matches their sex assigned at birth. Tennessee’s law is one of [24 nationwide](#) that comprehensively ban gender-affirming care for transgender youth. Two additional states have bans on surgical treatments alone. (See our 2024 [analysis](#) of the state laws.) Most of the bans have been challenged in either federal or state courts.

WHAT STANDARD SHOULD THE COURT APPLY?

U.S. v. Skrmetti is the first time the Supreme Court has directly considered how the Equal Protection Clause applies to gender-affirming care for minors. A central question the justices must decide is the standard of review the court should use—in other words, how skeptically the Court should look at the law. In Equal Protection cases, the standard of review is determined by the classification the government party is making. If the classification is one that the laws have found to be “suspect,” such as distinctions based on race, the Court is likely to treat it with skepticism. If the classification is one that isn’t considered suspect, such as age, the Court will look more deferentially at the law—and it is likely to be upheld.

Sex classifications have historically received “intermediate” scrutiny, which means that the Court will apply some degree of skepticism. However, the state could still justify its actions if they are deemed to be important enough. The crux of the argument this week by the U.S. Solicitor General and the original plaintiffs in the case (represented by Chase Strangio, the first openly transgender lawyer to argue before the Supreme Court) was that the law should be treated with skepticism, or heightened scrutiny, because it facially discriminates on sex. In fact, SB1 explicitly



uses the word “sex” to categorize people. Justice Ketanji Brown-Jackson emphasized this point repeatedly, saying, “I had understood that it was bedrock in the equal protection framework that there was a constitutional issue in any situation in which the legislature is drawing lines on the basis of a suspect classification...”

The Tennessee Attorney General argued that SB1 does not make a sex classification at all, explaining that the legislature was drawing lines across age (minors versus adults) and purpose (prohibiting gender transition for all sexes), both of which, he argued, were well within the power of the state to regulate without meriting skepticism from the court. Justice Samuel Alito leaned on his own statements in the 2022 abortion case, *Dobbs v. Jackson Women’s Health Organization*, to provide support for this argument, offering several hypotheticals to assert that states can regulate medical procedures even if the procedures are related to biological sex. However, the Solicitor General pushed back by reminding the Court that unlike the scenarios Justice Alito described, where sex was implicated only indirectly, SB1 explicitly makes distinctions based on sex in the plain text of the statute.

Justice Elena Kagan, who referred to Tennessee’s reasoning as “a dodge” to avoid admitting that this was sex discrimination, saw another type of discrimination at play as well. Petitioners had argued that SB1 draws lines based on transgender status itself. Justice Kagan asked, “I’m wondering whether ... what’s really going on here is a ... discrimination against, a disregard for young people who are trans, and why we shouldn’t think of the law in that way.” Although the court has not applied heightened scrutiny to a new classification in decades, this reasoning opened the door for further discussion by the parties as to whether the transgender status would meet the criteria. Justice Barrett, in the course of her questioning, expressed surprise to learn about the long history of state-sanctioned discrimination that transgender people have experienced, such as cross-dressing bans and the ban on military participation. (Williams Institute scholars have previously provided [testimony to Congress](#) and submitted amicus briefs in other cases regarding [historical discrimination against transgender people](#).)

CAN TENNESSEE JUSTIFY THE BAN?

Ultimately, the argument on Wednesday was centered around the standard of review, but there is another component to equal protection analysis—whether the state can justify its actions. Justices Alito and Brett Kavanaugh spent considerable time discussing allegations raised by Tennessee and several amici about the efficacy and risks of gender-affirming care and the state’s interest in regulating those treatments in response. Although the sources they referenced have been determined by experts to be [inaccurately cited, misleading, or unreliable](#), the Justices suggested that the state would nonetheless be justified in relying on them. Justice Kavanaugh argued for judicial restraint, postulating that “... we look to the Constitution, and the Constitution doesn’t take sides on how to resolve that medical and policy debate.”

WHAT DOES THIS CASE MEAN FOR THE EQUAL PROTECTION DOCTRINE?

Solicitor General Prelogar redirected Justice Kavanaugh: “Well, I do think that the Constitution takes a position that individuals are entitled to equal protection of the law.” Justice Jackson returned to this point later, expressing fear that the majority, if it were to rule in favor of Tennessee, would be abandoning the core purposes of the equal protection doctrine. Drawing parallels to how pseudo-science was once used to justify Virginia’s ban on interracial marriage (overturned by the court in *Loving v. Virginia*), Justice Jackson suggested that the justification-first approach implied by Justices Kavanaugh and Alito had existential ramifications:



"...this kind of idea that the way we look at it is not, first, are you drawing these classifications and then, State, give us your evidence so we can make sure that there's a proper fit. If, instead, we're ... say[ing], well, there are lots of good reasons for this policy, and who are we as the Court to say otherwise, I'm worried that we're undermining the foundations of some of our bedrock equal protection cases."

Mr. Strangio replied, "I share your concerns, Justice Jackson."

WHAT'S NEXT?

A decision in *U.S. v. Skrmetti* is expected in June 2025. If the court sides with Tennessee, it could give the green light to states to deny gender-affirming care to over one-third of the trans youth living in the U.S. If the Court sides with the Petitioners, multiple outcomes are possible, including an outright victory striking down Tennessee's law or the case returning to the lower court for reconsideration. Whatever the outcome, the decision will set a new standard for how transgender issues are viewed under the Constitution.

To learn more about this case and its potential impact on transgender youth, read the Williams Institute's [amicus brief](#). The brief, submitted by myself and Selendy Gay, on behalf of scholars Jody Herman and Christy Mallory, provided the court with research to help understand the population affected by the bans and the impact of the Court's decision.

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