No.

In The Supreme Court of the United States

L.W., BY AND THROUGH HER PARENTS AND NEXT FRIENDS, SAMANTHA WILLIAMS AND BRIAN WILLIAMS, ET AL.,

Petitioners,

v.

JONATHAN SKRMETTI, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Tennessee's SB1, which categorically bans gender-affirming healthcare for transgender adolescents, triggers heightened scrutiny and likely violates the Fourteenth Amendment's Equal Protection Clause.

2. Whether Tennessee's SB1 likely violates the fundamental right of parents to make decisions concerning the medical care of their children guaranteed by the Fourteenth Amendment's Due Process Clause.

PARTIES TO THE PROCEEDINGS

Petitioners are three transgender adolescents, L.W., Ryan Roe, and John Doe; their parents, Samantha and Brian Williams, Rebecca Roe, and Jane and James Doe, respectively; and Tennessee-licensed physician Susan N. Lacy, on behalf of herself and her patients. Petitioners were plaintiffs before the district court and appellees before the Sixth Circuit.

Respondents are Tennessee Attorney General Jonathan Skrmetti; the Tennessee Department of Health; Ralph Alvarado, the Commissioner of the Tennessee Department of Health; the Tennessee Board of Medical Examiners; Melanie Blake, the President of the Tennessee Board of Medical Examiners; Stephen Loyd, the Vice President of the Tennessee Board of Medical Examiners; Randall E. Pearson, Phyllis E. Miller, Samantha McLerran, Keith G. Anderson, Deborah Christiansen, John W. Hale, John J. McCraw, Robert Ellis, James Diaz-Barriga, and Jennifer Claxton, members of the Tennessee Board of Medical Examiners; and Logan Grant, the Executive Director of the Tennessee Health Facilities Commission. Respondents were defendants before the district court and appellants before the Sixth Circuit.

The United States of America was plaintiff-intervenor before the district court and intervenor-appellee before the Sixth Circuit.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *L.W., et al., and United States of America v. Skrmetti, et al.*, No. 23-5600 (6th Cir. June 30, 2023); and
- *L.W., et al.*, *v. Skrmetti, et al.*, No. 3:23-cv-00376 (M.D. Tenn. Apr. 20, 2023).

On appeal to the United States Court of Appeals for the Sixth Circuit, this case was consolidated for argument with the following proceeding:

- *Doe 1 v. Thornbury*, No. 23-5609 (6th Cir. July 8, 2023).

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INTRODUCTION

L.W., Ryan Roe, and John Doe are three transgender adolescents who have lived in Tennessee all their lives. After years of suffering severe distress from gender dysphoria—and after careful deliberation with their doctors and the informed consent of their parents—L.W., Ryan, and John each found tremendous relief from doctor-prescribed, gender-affirming medication. They now face severe physical and emotional harm because Tennessee has prohibited them from accessing the medical treatment they need. And their parents—Samantha and Brian Williams, Rebecca Roe, and Jane and James Doe—are each living a parent's worst nightmare at the prospect of watching their children lose the prescribed healthcare that has enabled them to thrive.

Transgender adolescents like Petitioners have been receiving such care for decades. But in the past three years, Tennessee and 20 other states have banned these treatments altogether, forcing families to upend their lives and move out of state to ensure that their children get the medical treatment they need. District courts across the country have enjoined these bans preliminarily or permanently. The Eighth Circuit has affirmed one of those injunctions in Arkansas, but the Sixth and Eleventh Circuits reversed injunctions in Tennessee, Kentucky, and Alabama. The legal uncertainty surrounding this medical care is creating chaos across the country for adolescents, families, and doctors.

Tennessee's Senate Bill 1 ("SB1") expressly prohibits puberty-delaying medication and hormone

treatments if, and only if, they are provided for the purpose of allowing a minor to live in accordance with, or minimize distress from, a gender identity that is inconsistent with the minor's sex designated at birth. Thus, the law precludes transgender adolescents, their parents, and their doctors from assessing medical needs related to gender dysphoria on an individual basis and instead imposes a one-size-fits-all prohibition on the only evidence-based treatments available. And the law imposes this ban using explicit sex classifications: medications that are permitted for a minor of one sex are prohibited for a minor of another sex. These classifications are not merely incidental to the operative prohibition but are tied to SB1's express purpose to "encourag[e] minors to appreciate their sex" and bar medical procedures "that might encourage minors to become disdainful of their sex." Tenn. Code Ann. ("TCA") § 68-33-101(m).

Though Tennessee claims that SB1 protects adolescent health, every court that has subjected such bans to anything more than rational basis review—including the district court in this case—has found that those assertions have no basis in fact. These courts uniformly have found the testimony of putative experts who support SB1 and similar laws to be illogical, inconsistent, exaggerated, or simply false. And no court to scrutinize the evidence has found that categorically banning gender-affirming treatment for transgender adolescents substantially advances any important governmental interest. On the contrary, the facts demonstrate that laws like SB1 inflict grave harm.

Breaking from that broad judicial consensus among courts that have actually subjected the facts to scrutiny, a divided Sixth Circuit held that only the most deferential review is warranted and that SB1 is likely constitutional under that standard. The majority declared that the explicit sex-based classifications in SB1 do not require heightened scrutiny. And it concluded that the fundamental right of parents protected by due process did not extend to making decisions regarding their children's medical care.

That decision warrants this Court's review for multiple reasons. *First*, the specific question of whether and how states may ban gender-affirming medication for transgender adolescents has divided the lower courts—with the Sixth Circuit's ruling deepening an existing split among the circuits. *Second*, the Sixth Circuit's decision implicates a broader disagreement among the circuits regarding how the ever-increasing number of state laws singling out transgender individuals for disfavored treatment should be scrutinized under the Equal Protection Clause. *Third*, the Sixth Circuit's holding that SB1 does not warrant heightened scrutiny despite its express sex classifications cannot be reconciled with this Court's precedents, both longstanding and recent. And *fourth*, in rejecting Petitioners' claim that the law violates the fundamental rights of parents, the Sixth Circuit misconstrued and misapplied this Court's precedents.

The Court should grant certiorari to resolve these important constitutional questions affecting the

availability of essential medical care for families across the country.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-103a) is reported at 83 F.4th 460. The opinion and order of the district court (App. 104a-190a) is reported at 2023 WL 4232308.[1]

JURISDICTION

The court of appeals entered its judgment on September 28, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The text of SB1 (ultimately codified in TCA § 68-33-101 et seq.) appears at App. 238a-250a.

STATEMENT OF THE CASE

A. Factual background

1. Gender identity refers to a person's core sense of belonging to a particular gender. App. 58a. Gender identity has biological roots and cannot be changed

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[1] Citations to the district court record are in the form of "R.__, PageID#__," referencing the district court docket number and page number, respectively.

voluntarily, by external forces, or through medical or mental health intervention. Adkins Decl., R.29, PageID#249; Janssen Decl., R.31, PageID#352. But it does not always match the sex an individual was designated at birth. Adkins Decl., R.29, PageID#249. People whose gender identity aligns with the sex they were designated at birth are cisgender (or non-transgender). App. 105a. People whose gender identity differs from their sex designated at birth are transgender. App. 58a.

Being transgender is not itself a condition to be cured. App. 58a-59a, 108a. It is common, however, for clinically significant distress—called "gender dysphoria"—to arise from the incongruence transgender people experience between their gender identity and the sex they were designated at birth. App. 58a-59a. Gender dysphoria is a serious medical condition that, if left untreated, can result in severe anxiety and depression, self-harm, and even suicide. App. 59a.

Treatment for gender dysphoria is not new. It is provided in accordance with evidence-based clinical guidelines that, like all clinical guidelines, are reviewed and updated as science and medicine evolve. The Endocrine Society and the World Professional Association for Transgender Health ("WPATH") have published widely accepted clinical guidelines for diagnosing and treating gender dysphoria ("Guidelines"). *Id.* Every major medical organization in the United States agrees that gender-affirming treatments—which, for adolescents, include puberty-delaying medication and hormone treatment—are

safe, effective, and can be medically necessary to treat gender dysphoria. App. 61a-62a.

Treatment for gender dysphoria involves a careful, individualized assessment to determine what diagnoses and treatments are appropriate for each patient. Adkins Rebuttal, R.141, PageID#2388-89; Janssen Rebuttal, R.143, PageID#2424-25. Under the Guidelines, gender-affirming medical care is provided only when a patient has: (i) gender incongruence that is both marked and sustained over time; (ii) a diagnosis of gender dysphoria; (iii) sufficient emotional and cognitive maturity to provide informed consent; (iv) provided consent with their parents after being informed of the potential risks of treatment, including potential reproductive side effects; and (v) no mental health concerns that would interfere with diagnosis or treatment. App. 60a.

If medically indicated, adolescents with gender dysphoria who have entered puberty may be prescribed puberty-delaying medication. Such medication is prescribed only with parental consent and when certain diagnostic criteria are met, including "a long-lasting and intense pattern of gender nonconformity or gender dysphoria [that has] worsened with the onset of puberty," "sufficient mental capacity to give informed consent," and a detailed assessment from a pediatric endocrinologist or other clinician experienced in pubertal assessment. Adkins Decl., R.29, PageID#254. This treatment helps to prevent worsening symptoms of gender dysphoria that can arise during puberty by pausing the development of secondary sex characteristics inconsistent with the patient's gender identity.

App. 61a. When the treatment is discontinued, endogenous puberty resumes. *Id.*

In some cases, a doctor may determine it is medically necessary for an adolescent patient to be treated with gender-affirming hormone therapy. App. 60a-61a. Such therapy includes testosterone for adolescent transgender boys and a combination of testosterone suppression and estrogen for adolescent transgender girls. These medications alleviate distress by facilitating physiological changes consistent with the adolescent's gender identity. App. 61a. Under the Guidelines, hormone therapy is prescribed only with parental consent after a rigorous assessment of the adolescent's gender dysphoria and capacity to understand the risks and benefits of treatment. App. 60a.

Gender-affirming medical treatment in adolescence can drastically minimize dysphoria later in life and may eliminate the need for surgery. App. 167a. A delay in treatment, on the other hand, can result in significant distress, including anxiety and escalating suicidality, as well as permanent physical changes from puberty that can be impossible to reverse. Adkins Decl., R.29, PageID#266-67.

A substantial body of evidence, including cross-sectional and longitudinal studies, as well as decades of clinical experience, has shown that these medical interventions greatly improve the mental health of adolescents with gender dysphoria. App. 61a. The evidence supporting this treatment is comparable to evidence supporting other pediatric care. App. 61a-62a.

2. SB1 was part of a wave of bans on healthcare for transgender people that swept through state legislatures in recent years, leading to 21 states banning medical treatment for gender dysphoria in adolescents. In Tennessee, SB1 (enacted in March 2023) was one of several new laws targeting transgender people. *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 638 (2023) (Sotomayor, J., dissenting) (highlighting Tennessee's ban on drag performances as one of a "slew of anti-LGBT laws" that have been recently passed).

SB1 categorically bans all medical treatment for gender dysphoria in transgender adolescents. It prohibits any healthcare provider from knowingly performing or administering any "medical procedure" for the purpose of "[e]nabling a minor to identify with, or live as, a purported identity inconsistent with the minor's sex [designated at birth]" or "[t]reating purported discomfort or distress from a discordance between the minor's sex and asserted identity." TCA § 68-33-103(a)(1)(A)-(B). It defines "medical procedure" broadly to include, among other things, "[p]rescribing, administering, or dispensing any puberty blocker or hormone to a human being." TCA § 68-33-102(5)(B).

SB1 expressly allows the prohibited treatments for any other purpose, including to treat "a physical or chemical abnormality present in a minor that is inconsistent with the normal development of a human being of the minor's sex [designated at birth], including abnormalities caused by a medically verifiable disorder of sex development . . . ." TCA §§ 68-33-102(1), 68-33-103(b)(1). Thus, medications

that are permitted for those who seek to conform to expectations of their sex designated at birth are prohibited for those who seek to depart from them.

SB1 took effect on July 1, 2023, but allows the banned treatments to continue until March 31, 2024, to phase out the medication for patients (1) who have initiated treatment before SB1's effective date, and (2) whose physicians certify in writing that "in the physician's good-faith medical judgment, . . . ending the medical procedure would be harmful to the minor." TCA §§ 68-33-103(b)(1)(B), (b)(3); *see also* App. 66a. In practice, however, because hormone therapy and puberty-delaying treatment cannot be abruptly stopped, physicians must wean patients off care in anticipation of the full ban going into effect. *See* Lacy Rebuttal, R.140, PageID#2383. The temporary "continuation of care" provision does not permit a provider to initiate any new treatments, medications, or procedures. Vanderbilt University Medical Center ("VUMC") and other providers treating adolescents under age 16 in Tennessee all stopped providing care as of July 1, 2023. *See* App. 181a-182a. Other providers who treat sixteen- and seventeen-year-old adolescents have continued to provide care during the statutory "wind down" period. *Id.*; Lacy Rebuttal, R.140, PageID#2384.

a. Petitioner L.W. is a fifteen-year-old transgender girl who lives with her parents, Petitioners Samantha and Brian Williams, in Tennessee. App. 62a; S.Williams Decl., R.23, PageID#202-03. L.W.'s gender dysphoria made her feel like she was "trapped" and "drowning." App. 62a. It was "hard for [her] to focus" or "connect[] with [her]

friends" because she "felt constant anxiety." *Id.*; L.W. Decl., R.22, PageID#197. She would get urinary tract infections from avoiding using restrooms at school. App. 62a.

L.W. came out as transgender to her parents when she was twelve years old and was subsequently diagnosed with gender dysphoria. App. 62a; S.Williams Decl., R.23, PageID#203-04. Following that diagnosis, L.W. and her parents met with a team of clinicians at VUMC and—after extensive assessments, discussions of potential risks and benefits, and ongoing mental health care—L.W. began treatment with puberty-delaying medication and then hormones. App. 62a.

Since beginning this treatment, L.W. has grown more outgoing and is thriving. App. 62a. She is "terrified" of the permanent changes that her body would undergo without gender-affirming medication. L.W. Decl., R.22, PageID#200-01. "It is painful [for L.W.] to even think about having to go back to the place [she] was in before [she] was able to . . . access [gender-affirming medical] care." *Id.* PageID#201.

Petitioner Ryan Roe is a sixteen-year-old transgender boy who lives with his mother, Petitioner Rebecca Roe, and father in Tennessee. App. 63a; Ryan Roe Decl., R.26, PageID#225. Ryan was vocal and outgoing as a child, but when puberty started, he became depressed, anxious, and withdrawn because of worsening gender dysphoria. App. 63a. His anxiety was so bad that he would vomit every morning before school. *Id.* Ryan came out as transgender when he was in fifth grade. Ryan Roe Decl., R.26, PageID#227.

Ryan was prescribed anti-anxiety medication, which stopped the vomiting and some of the extreme anxiety around school, but his distress about his body only got worse. *See* Rebecca Roe Decl., R.27, PageID#233. He stopped talking in public because of the dysphoria he felt hearing his voice. App. 63a. Ryan consistently went to psychotherapy, but therapy did not improve the distress resulting from the incongruence between his gender identity and sex designated at birth. *Id.*

Ryan was formally diagnosed with gender dysphoria, and in the summer after seventh grade, as his distress was continuing to worsen, his therapist discussed additional treatment options with Ryan and his parents. *See id.* PageID#234. Ryan and his parents consulted with an endocrinologist at VUMC during the summer of 2021. The family spent the next several months discussing every possible effect, benefit, and risk of treatment, including potential impacts on fertility. *Id.* PageID#234-35. They also continued to discuss treatment with Ryan's therapist. *Id.* PageID#235. In January 2022, when Ryan was fourteen years old, a pediatric endocrinologist at VUMC prescribed testosterone to treat Ryan's gender dysphoria. *Id.*; App. 63a.

Since beginning treatment, Ryan's mental health has improved dramatically. App. 63a; Ryan Roe Decl., R.26, PageID#228-29; Rebecca Roe Decl., R.27, PageID#236. He has transformed back into the vocal, outgoing person that he was before puberty. Rebecca Roe Decl., R.27, PageID#236. For years he suffered from gender dysphoria, and nothing could address it the way gender-affirming medical treatment has. *Id.*

Ryan cannot imagine his life without it. Ryan Roe Decl., R.26, PageID#229.

Petitioner John Doe is a twelve-year-old transgender boy who lives in Tennessee with his parents, Petitioners Jane and James Doe. App. 63a. John knew from an early age that he was a boy and remembers getting upset when people treated him as a girl. *Id.* Participating in sex-separated activities with girls made him miserable. *Id.* When he was four years old, John's parents discovered that John had adopted a typical boys' name for himself and had been telling friends that he was a boy. *Id.* John began psychotherapy prior to second grade and has been consistently seeing the same therapist since that time. *Id.* John's therapist formally diagnosed him with gender dysphoria. *Id.*

When John was nine years old and had been seeing a therapist for two years, his therapist referred John and his parents to a pediatric endocrinologist at VUMC to discuss treatment options for his gender dysphoria. App. 63a-64a. The endocrinologist monitored John until he reached the first stages of puberty. App. 64a. John experienced tremendous anxiety about undergoing puberty inconsistent with his gender. Jane Doe Decl., R.25, PageID#219. As John's anxiety escalated, the slow and deliberative process with his doctors—including the detailed informed-consent discussions—was reassuring for John's parents. *Id.*

When puberty began for John in 2021, he was prescribed puberty-delaying treatment to prevent the worsening of the distress he was suffering. *Id.* John's

relief from medication has been palpable. *Id.* The prospect of having to stop treatment and being forced to experience the physical changes caused by endogenous puberty terrifies John. *Id.* PageID#220-21. He "cannot imagine losing control of [his] life" by going through a puberty that is wrong for him. John Doe Decl., R.24, PageID#212. He feels that he has "gone through a lot to finally get to [a] happy, healthy place," and he "desperately hope[s] that doesn't all get taken away." *Id.* PageID#213.

SB1 prevents L.W., Ryan, and John from continuing to receive gender-affirming medication in Tennessee. Because cutting off treatment is unimaginable, their families have sought care outside Tennessee. In addition to imposing a great financial burden, seeking care out of state has disrupted L.W.'s, Ryan's, and John's schooling, their parents' work, and the relationships they have built with their doctors. S.Williams Rebuttal, R.137, PageID#2370-71; Rebecca Roe Decl., R.27, PageID#236-37; Rebecca Roe Rebuttal, R.139, PageID#2381; Jane Doe Decl., R.25, PageID#221-22; Jane Doe Rebuttal, R.138, PageID#2376-77.

b. Dr. Lacy is a physician licensed to practice medicine in Tennessee. App. 64a. Her private practice in Memphis provides healthcare services to transgender and cisgender people. *Id.* As part of her practice, Dr. Lacy treats gender dysphoria with hormone therapy for transgender patients ages sixteen and over. Lacy Decl., R.28, PageID#241. She refers families with adolescents under sixteen to a pediatric endocrinologist. *Id.* Dr. Lacy currently treats 350-400 transgender patients in accordance

with the Guidelines, including twenty patients under age eighteen. *Id.* PageID#242.

SB1 prevents Dr. Lacy from treating her sixteen- and seventeen-year-old transgender patients (but not cisgender patients the same age) with hormone therapy. *Id.* Although she can continue treating existing transgender patients until March 31, 2024, the care is limited to decreasing their dosages in preparation for treatment being terminated. Lacy Rebuttal, R.140, PageID#2383-84. Dr. Lacy must comply with the law or risk losing her license. Lacy Decl., R.28, PageID#242. If the law were to be enjoined, Dr. Lacy would continue treatment for her existing patients (without unnecessarily decreasing dosage to comply with the law) and would initiate care for new patients. Lacy Rebuttal, R.140, PageID#2384.

B. Procedural history

1. Petitioners filed their Complaint on April 20, 2023, and moved to enjoin SB1 from going into effect on July 1, 2023, alleging that the law violated the adolescent Petitioners' rights to equal protection and the parent Petitioners' substantive due process right to make decisions concerning the medical treatment of their minor children.

On June 28, 2023, the district court granted Petitioners' motion for a preliminary injunction in part.[2] The court recognized that SB1 draws explicit classifications based on sex and transgender status

[2] The district court denied Petitioners' motion as to SB1's ban on surgical treatment. Petitioners did not cross-appeal the denial of the injunction as to that part of the law.

because the statute selectively denies certain treatments only to persons seeking to depart from their sex designated at birth, while allowing those treatments for persons seeking to conform to their birth-designated sex. The court applied heightened scrutiny both because of the law's facial sex classifications and because it found that transgender status constituted a quasi-suspect classification in its own right.

The district court thoroughly reviewed the lengthy record under heightened scrutiny and made extensive factual findings. Crediting Petitioners' experts and finding several of Respondents' experts minimally persuasive, the district court found that the benefits of the banned treatment are well-established and that it is undisputed that every major medical association has found the banned treatments to be safe, effective, and medically necessary for adolescents with gender dysphoria when clinically indicated. The district court's findings also established that many of Respondents' claims about the harms of the banned treatments are not reliable, that the alleged harms are not unique to the prohibited care, and that SB1 undermines rather than advances an interest in protecting the welfare of children. Applying heightened scrutiny, the court found that SB1 is "not proportionate to the state's interest of protecting children from allegedly dangerous medical treatments," and is "severely underinclusive in terms of the minors it protects from the alleged medical risks of the banned procedures . . . ." App. 176a. Based on the same findings, the district court determined that the law likely infringed the fundamental right of

parents to make decisions regarding the medical care of their minor children.

2. Respondents sought an emergency stay pending appeal. A divided motions panel of the Sixth Circuit granted the stay one week later and ordered expedited consideration of the appeal. App. 195a. On September 28, the same divided panel reversed the district court's order. App. 57a.

a. The Sixth Circuit majority concluded that Petitioners were not likely to succeed on the merits of their claims. App. 16a.

As to equal protection, the majority rejected Petitioners' argument that SB1 classifies on the basis of sex and thus triggers heightened scrutiny. App. 33a. Despite this Court's command to apply heightened scrutiny to "all gender-based classifications," *United States v. Virginia*, 518 U.S. 515, 555 (1996) ("*VMI*") (quotations omitted), the majority announced that "the necessity of heightened review . . . will not be present every time that sex factors into a government decision." App. 42a. When sex classifications are applied "equally" to males and females, the majority reasoned, the classification should be treated as facially neutral and a "challenger must show that the State passed the law because of, not in spite of, any alleged unequal treatment." App. 40a.

Citing this Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the majority opined that "laws regulating 'medical procedure[s] that only one sex can undergo' ordinarily do not 'trigger heightened constitutional scrutiny.'"

App. 36a (quoting *Dobbs*, 142 S. Ct. at 2245-46). In the majority's view, adhering to *VMI*'s instruction to apply heightened scrutiny to all sex classifications would "nullify *Dobbs*." App. 46a.

The majority declined to follow *Bostock v. Clayton County*, 140 S. Ct. 1732 (2020), which held that discrimination based on transgender status is a form of sex discrimination, concluding that *Bostock*'s reasoning "applies only to Title VII." App. 43a. The majority then further distinguished *Bostock* based on its specific facts, noting, "the employers fired adult employees because their behavior did not match stereotypes of how adult men or women dress or behave." App. 44a. Though SB1 applies only to persons who seek to live in accordance with a gender identity that Tennessee deems to be "inconsistent" with their sex designated at birth, the court found no "such stereotypes" at play. *Id.*

The majority then rejected Petitioners' claim that transgender status independently constitutes a quasi-suspect classification.

Reviewing the law under the "deferential" rational-basis standard, the court held that Petitioners failed to meet the high burden required to "invalidate a democratically enacted law on rational-basis grounds." App. 51a, 53a.

The majority also rejected Petitioners' due process claims, finding that Petitioners had not established a right "deeply rooted in this Nation's history and tradition." App. 19a-20a. Characterizing the relevant inquiry as whether the nation had a "tradition of preventing governments from regulating

the medical profession or certain treatments in particular," the majority found no such historical right. App. 20a.

The majority distinguished this Court's precedents in *Troxel v. Granville*, 530 U.S. 57 (2000) (plurality opinion), and *Parham v. J.R.*, 442 U.S. 584 (1979), which explicitly recognize the fundamental right of parents with respect to the care, custody, and control of their children, including in decisions about medical care. The majority did not conclude that this fundamental right was overcome by Tennessee's interest in regulating the medical profession; rather, it found no fundamental right of parents at all in this context.

b. Judge White dissented. She concluded that SB1 triggered and failed heightened scrutiny under both the Equal Protection and Due Process Clauses.

Noting that "medical procedures that are permitted for a minor of one sex are prohibited for a minor of another sex," App. 73a, Judge White concluded that SB1 imposed "a facial classification, pure and simple." App. 75a. And because sex and gender conformity each "play[] 'an unmistakable . . . role' in determining the legality of a medical procedure for a minor," Judge White opined that "[SB1] should raise an open-and-shut case of facial classifications subject to intermediate scrutiny." App. 75a (quoting *Bostock*, 140 S. Ct. at 1741-42).

Judge White found flaws in the multiple reasons "the majority conclude[d] otherwise." *Id.* She explained: "laws that classify on suspect lines do not escape heightened scrutiny despite 'evenhandedly'

classifying all persons." App. 76a (citations omitted). And she reasoned that, unlike the statute at issue in *Dobbs*, SB1 "expressly reference[s] a minor's sex and gender conformity—and use[s] these factors to determine the legality of procedures." App. 78a. Accordingly, Judge White concluded, the majority erred in rejecting the application of heightened scrutiny to the law's sex-based classification.

Judge White further concluded that SB1 classified based on sex for the reasons identified by this Court in *Bostock*—namely, that "discrimination against transgender individuals . . . 'necessarily' is discrimination 'because of sex.'" *Id.* (quoting *Bostock*, 140 S. Ct. at 1744). The majority's refusal to follow that precedent on account of differences between the text of Title VII and the Equal Protection Clause missed the mark, Judge White reasoned, because those differences say nothing about whether a law *classifies* based on sex in the first instance—only whether it *survives* heightened scrutiny. App. 81a-82a.

Judge White concluded that SB1 failed such review because it lacked an exceedingly persuasive justification. App. 86a. Instead, the "'actual state purposes' . . . rested on improper generalizations about boys and girls," namely the expectation that a person will live and identify in a manner that conforms to their sex designated at birth. App. 88a-89a.

Judge White also determined that SB1 infringed the fundamental right of parents to make decisions about their children's medical care. App. 89a. Unlike laws that generally ban medical procedures for the

entire population, Judge White explained, "Tennessee banned treatment for minors *only*, despite what minors or their parents wish." App. 95a. Thus, "the issue is the *who*—who gets to decide whether a treatment otherwise available to an adult is right or wrong for a child?" *Id.* For Judge White, "[t]he answer [was] clear: parents have, in the first instance, a fundamental right to decide whether their children should (or should not) undergo a given treatment otherwise available to adults, and the government can take the decision-making reins from parents only if it comes forward with a sufficiently convincing reason to withstand judicial scrutiny." App. 96a.

Reviewing the district court's factfinding on that critical issue, Judge White found no clear error in its conclusion that the benefits of gender-affirming treatment outweigh the minimal, manageable side effects. Judge White criticized the majority for "misapprehend[ing] the significance" of the fact that some of the uses of the drugs in question were "off-label," noting that such practices are common in medicine, particularly pediatrics. App. 94a n.8. Tennessee's assertion that the treatment was harmful to children was "without support in reality." App. 98a.

REASONS FOR GRANTING THE PETITION

The courts of appeals are divided over the specific question raised in this case—whether laws banning gender-affirming healthcare for transgender adolescents violate the Equal Protection Clause—as well as the antecedent legal question concerning the appropriate level of scrutiny for government actions targeting transgender individuals for disfavored

treatment. The Sixth Circuit broke with numerous precedents of this Court in holding that heightened scrutiny did not apply despite SB1's express sex classification and the law's avowed purpose of compelling transgender individuals to "appreciate" and not be "disdainful of" their sex designated at birth. The court also minimized or dismissed decisions of this Court with respect to the fundamental right of parents to make decisions concerning the medical care of their minor children. The issue is of surpassing importance because Petitioners and other families are already suffering severe and irreparable harm as laws like SB1 sweep the country. This Court should grant review.

I. THE DECISION BELOW DEEPENS CONFLICTS AMONG THE CIRCUITS

A. The Sixth Circuit's decision deepens an existing split with the Eighth Circuit as to laws banning gender-affirming medical treatment for transgender adolescents

The decision below is in direct conflict with the decision of the Eighth Circuit in *Brandt v. Rutledge*, 47 F.4th 661 (8th Cir. 2022). There, the Eighth Circuit held that Arkansas's comparable ban on gender-affirming healthcare for transgender adolescents classified on the basis of sex, triggering heightened scrutiny, and likely violated the Equal Protection Clause. The unanimous opinion in *Brandt* explained that, under Arkansas's law, the same medications and procedures are permitted for adolescents who seek to conform to their sex designated at birth but are

prohibited for those who seek to depart from their sex designated at birth. *Id.* The court rejected the state's argument that the ban draws a line based on medical treatment rather than sex as "conflat[ing] the classifications drawn by the law with the state's justification for it." *Id.* at 669-70.

The Sixth Circuit reached the opposite result, deepening the already present split between the Eighth Circuit's decision in *Brandt* and the Eleventh Circuit's decision in *Eknes-Tucker v. Governor of Alabama*, 80 F.4th 1205 (11th Cir. 2023), which (like the decision below) held that a ban on gender-affirming medication for transgender adolescents is subject only to rational basis review and likely survives that deferential standard. *Id.* at 1227.

In addition to the Eighth Circuit, nearly every district court to consider the question, including the two district courts reversed by the decision below, has found that state laws categorically prohibiting medical treatments for gender dysphoria but allowing any such treatment where it conforms to an individual's sex designated at birth create sex-based classifications and are thus subject to—and likely fail—heightened scrutiny. *See Eknes-Tucker v. Marshall*, 603 F. Supp. 3d 1131 (M.D. Ala. 2022), *rev'd*, 80 F.4th 1205 (11th Cir. 2023); *Brandt v. Rutledge*, 551 F. Supp. 3d 882, 892-93 (E.D. Ark. 2021), *aff'd*, 47 F.4th 661 (8th Cir. 2022); *see also Koe v. Noggle*, No. 1:23-CV-2904-SEG, 2023 WL 5339281 (N.D. Ga. Aug. 20, 2023), *preliminary injunction stayed*, No. 1:23-CV-2904-SEG (N.D. Ga. Sept. 5, 2023); *Brandt v. Rutledge*, No. 4:21CV00450-JM, 2023 WL 4073727 (E.D. Ark. June 20, 2023); *K.C. v. Individual Members of Med.*

Licensing Bd. of Indiana, No. 1:23-cv-00595-JPH-KMB, 2023 WL 4054086 (S.D. Ind. June 16, 2023); *Doe v. Ladapo*, No. 4:23cv114-RH-MAF, 2023 WL 3833848 (N.D. Fla. June 6, 2023), *appeal filed*, No. 23-12159 (11th Cir. June 27, 2023). While seven district courts have enjoined these state bans, only one has taken the opposing view and upheld a ban on treatment, and it did so under rational basis review. *Poe v. Drummond*, No. 23-CV-177-JFH-SH, 2023 WL 4560820 (N.D. Okla. July 17, 2023), *appeal filed*, No. 23-5110 (10th Cir. Oct. 10, 2023).

The Eighth Circuit has agreed to initially hear en banc Arkansas's appeal from the permanent injunction entered in *Brandt*, 2023 WL 4073727, *hearing en banc granted*, *Brandt v. Griffin*, No. 23-2681 (8th Cir. Oct. 6, 2023), but that does not diminish the need for this Court's review. The Eighth Circuit panel decision upholding the preliminary injunction was not vacated, and the near consensus view among district courts makes clear that the judicial divide on this question will not be resolved absent a ruling from this Court. And parents and their children deserve to know whether they have the right to seek this care where they live, or will be compelled to leave their homes, leave their treating physicians, and move out of state to obtain needed medical treatment.

B. The Sixth Circuit's decision deepens a broader split on whether discrimination against transgender individuals triggers heightened scrutiny

The Sixth Circuit also split with multiple courts of appeals in holding that laws discriminating against transgender people do not trigger heightened scrutiny more generally.

1. This Court explained in *Bostock* that, where an action "penalizes a person identified as male at birth for traits or actions that it tolerates in [a person] identified as female at birth," a person's "sex plays an unmistakable" role. 140 S. Ct. at 1741-42. "Any way you slice it," treating someone differently based on their transgender status inherently classifies based on the fact that a person has "one sex identified at birth and another today." *Id.* at 1746.

In refusing to apply these principles in the equal-protection context and limiting *Bostock*'s reasoning to Title VII claims, the Sixth Circuit broke with the Fourth, Seventh, and Ninth Circuits, all of which have held that classifications based on transgender status are sex classifications that trigger heightened equal-protection scrutiny. In *Hecox v. Little*, the Ninth Circuit applied *Bostock*'s reasoning in the equal protection context and found that "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex." 79 F.4th 1009, 1026 (9th Cir. 2023). In *Grimm v. Gloucester County School Board*, the Fourth Circuit concluded that "discrimination

against transgender people constitute[s] sex-based discrimination for purposes of the Equal Protection Clause because such policies punish transgender persons for gender non-conformity . . . ." 972 F.3d 586, 608 (4th Cir. 2020). And in *Whitaker v. Kenosha Unified School District*, the Seventh Circuit held that discrimination based on transgender status discriminates based on sex under the Equal Protection Clause because it treats people "who fail to conform to the sex-based stereotypes associated with their assigned sex at birth" differently from others. 858 F.3d 1034, 1051 (7th Cir. 2017); *see also A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760, 769 (7th Cir. 2023) (reaffirming *Whitaker* as "follow[ing]" the same "approach" as *Bostock*), *petition for cert. filed*, No. 23-392 (Oct. 11, 2023). In holding otherwise, the Sixth Circuit created a clear divide among the courts of appeals on this critical issue with far-reaching implications.

2. The Sixth Circuit created an additional circuit split on the question whether transgender status qualifies as a quasi-suspect classification in its own right. Unlike the majority below, the Fourth and Ninth Circuits have both concluded that transgender status bears all the hallmarks of a quasi-suspect classification. *See Grimm*, 972 F.3d at 610 (holding that transgender status qualifies as a quasi-suspect classification); *Karnoski v. Trump*, 926 F.3d 1180, 1200-01 (9th Cir. 2019) (same). That circuit conflict also warrants this Court's review.

II. THE SIXTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENTS

A. The decision below contravenes decades of equal protection jurisprudence on sex classifications

By permitting "medical procedures . . . for a minor of one sex [that] are prohibited for a minor of another sex," App. 73a, SB1 imposes "a facial [sex] classification, pure and simple." App. 75a (White, J., dissenting). And this Court's precedents instruct that "all" such classifications "today warrant heightened scrutiny." *VMI*, 518 U.S. at 555 (quotations omitted).

1. The Sixth Circuit majority disregarded that clear command and concluded that SB1 did not trigger heightened scrutiny because it classifies both boys and girls on the basis of sex, and therefore its sex-based distinction applies "equally." App. 40a. "Such an across-the-board regulation," the Sixth Circuit reasoned, "lacks any of the hallmarks of sex discrimination," like "prefer[ring] one sex over the other," "includ[ing] one sex and exclud[ing] the other," "bestow[ing] benefits or burdens based on sex," or "apply[ing] one rule for males and another for females." App. 35a. Although acknowledging this Court's "cases saying that 'all' sex-based classifications receive heightened review," the court opined that "[t]hose cases show only that the government cannot classify individuals by sex when doing so perpetuates invidious stereotypes or unfairly allocates benefits and burdens." App. 41a. And it found no such stereotyping or allocation at issue here.

That reasoning improperly collapses equal protection's two-step analysis. The first question is whether a sex classification exists. If so, the court must apply heightened scrutiny, which is designed to assess whether a particular classification perpetuates sex-based stereotypes or harms, or instead is properly tailored to advance a sufficiently important non-sex-based interest. The possibility that a law might ultimately survive heightened scrutiny does not excuse a court from applying heightened scrutiny in the first instance.

Nor is heightened scrutiny limited to sex classifications based on "invidious stereotypes." *See* App. 41a. Indeed, in *Nguyen v. INS*, this Court applied heightened scrutiny to a federal statute that classified based on sex despite expressly finding that the classification was not premised on any stereotype. 533 U.S. 53, 68 (2001). And in any event, the law at issue here *does* reinforce and indeed compel conformity to sex-based stereotypes and generalizations, namely that persons identified as one sex at birth will identify as that sex for their entire life. It is true of most people, but it is manifestly false for millions of Americans.

The Sixth Circuit majority also erroneously distinguished sex classifications from race classifications, declaring, without supporting citation, that "[w]hen laws on their face treat both sexes equally, a challenger must show that the State passed the law because of, not in spite of, any alleged unequal treatment." App. 40a.

That is wrong. Race and sex classifications are, indeed, different. That is why race classifications receive strict scrutiny and sex classifications receive only heightened scrutiny. *VMI*, 518 U.S. at 532. But regardless of whether facial classifications are based on race or sex, it "is axiomatic" that such classifications do not somehow become neutral "on the assumption that all persons suffer them in equal degree." *Powers v. Ohio*, 499 U.S. 400, 410 (1991). Thus, in holding that litigants may not exercise peremptory challenges based on sex, this Court explained that such challenges are impermissible even "if each side uses its peremptory challenges in an equally discriminatory fashion" because "the exclusion of even one juror for impermissible reasons harms that juror . . . ." *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 142 n.13 (1994); *see also id.* at 159-60 (Scalia, J., dissenting) (noting that "the system as a whole [wa]s evenhanded" and that "for every man struck by the government petitioner's own lawyer struck a woman").

If allowed to stand, the Sixth Circuit's rule would insulate facial sex classifications from heightened review not just in the context of gender-affirming medical care but would reach all classifications that apply "equally" to groups of men and groups of women. Without this Court's review, courts in the Sixth Circuit are currently bound by the far-reaching misapplication of this Court's longstanding precedent.

2. Citing *Dobbs*, the Sixth Circuit also determined that heightened scrutiny should not apply because it viewed SB1's sex classifications as merely incidental and necessary to accomplish the legislature's goals of regulating medical procedures

based on biological differences. That conclusion was also incorrect. Application of heightened scrutiny here would not "nullify *Dobbs*," *see* App. 46a, because as to equal protection, *Dobbs* merely restated the conclusion in *Geduldig v. Aiello*, 417 U.S. 484 (1974), that classifications based on pregnancy do not automatically trigger heightened scrutiny even if they exclusively affect women. That does not resolve the level of scrutiny here. On its face SB1 requires that in each instance a person's sex be known and used to determine whether treatment is prohibited. As Judge White explained in her dissent, SB1 expressly "reference[s] a minor's sex and gender conformity . . . and use[s] these factors to determine the legality of procedures." App. 78a. For example, under the express terms of the statute, an adolescent can be prescribed testosterone to affirm a male gender identity if the minor's sex designated at birth was male but not if it was female. *Dobbs* did not somehow immunize all facial sex classifications in the healthcare context and direct that they are all subject to deferential review. Nor did *Dobbs* overrule *VMI*'s command that all sex classifications warrant heightened scrutiny. Lower courts must follow controlling Supreme Court precedent "even if the lower court thinks the precedent is in tension with 'some other line of decisions.'" *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)).

The Sixth Circuit also declared that "necessary references to 'enduring' differences between men and women do not trigger heightened review." App. 42a

(citing *VMI*, 518 U.S. at 533). But the command that "all [sex] classifications today warrant heightened scrutiny," *VMI*, 518 U.S. at 555, means *all* such classifications, including those involving "gender specific terms [that] take[] into account a biological difference" between sexes, *Nguyen*, 533 U.S. at 64. Although "physical differences" may be relevant in sex discrimination cases brought under the Equal Protection Clause, *VMI*, 518 U.S. at 533, they come into play when assessing whether a law *survives* heightened scrutiny—not in determining whether heightened scrutiny applies in the first instance. *See Nguyen*, 533 U.S. at 73 (applying heightened scrutiny to law that distinguished between mothers and fathers but ultimately finding statute survived heightened scrutiny). The Sixth Circuit erroneously conflated whether a law survives heightened scrutiny with the antecedent question of whether a facial classification exists in the first instance.

B. The Sixth Circuit's decision contravenes *Bostock*'s reasoning

The Sixth Circuit's decision also conflicts with this Court's recognition in *Bostock* that when an action treats a person designated one sex at birth differently than a person designated the other sex at birth, the person's "sex plays an unmistakable" role in the action. 140 S. Ct. at 1741-42. *Bostock* established that discrimination against transgender individuals is necessarily sex-based because it punishes people for being identified as "one sex . . . at birth" and a different sex "today." *Id.* at 1746. That is precisely what SB1 does.

Under SB1, whether a minor can take estrogen or testosterone depends on whether they were designated male or female at birth. That is sex discrimination in the same way that it is sex discrimination to fire an employee for coming to work consistent with her female identity if she was designated male at birth but not if she was designated female at birth.

Likewise, whether adolescents can be prescribed puberty-delaying medication—or hormone therapy—depends on whether the adolescent seeks to conform to, or depart from, their sex designated at birth. App. 74a (White, J., dissenting). The statute specifically proscribes medical care based on whether that care would "[e]nabl[e] a minor to identify with, or live as, a purported identity inconsistent with the minor's sex [designated at birth]." TCA § 68-33-103(a)(1)(A). The law thus "penalizes" people designated male at birth for the same "action[]" of seeking to align their body and live in accordance with their female gender identity that it "tolerates" in persons designated female at birth. *Bostock*, 140 S. Ct. at 1741. That is a sex classification under *Bostock* and should trigger heightened scrutiny under the Equal Protection Clause.

The Sixth Circuit's rationales for rejecting *Bostock*'s reasoning all miss the mark. To be sure, there are significant differences between Title VII and the Equal Protection Clause, but those distinctions all concern whether sex discrimination is *permissible*—not whether a sex classification exists in the first place. Sex discrimination under Title VII is categorically prohibited, but a sex classification may

be permissible under the Equal Protection Clause if it satisfies heightened scrutiny. *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2220 (2023) (Gorsuch, J., concurring) (drawing distinction between Title VI's and Title VII's categorical prohibitions on race and sex discrimination and the Equal Protection Clause's application of strict and intermediate scrutiny). As Judge White observed, the majority's allusions to textual differences between Title VII and the Equal Protection Clause do "not explain why or how any difference in language requires different standards for determining whether a facial classification exists in the first instance." App. 81a. Where a law treats individuals differently because of such individuals' transgender status, it classifies because of sex, under both Title VII and the Equal Protection Clause.

The majority also reasoned that SB1 does not trigger heightened scrutiny because, unlike the employer's discriminatory treatment in *Bostock*, bans on gender-affirming care do not "deny . . . healthcare treatment based on . . . stereotypes" of how boys and girls should behave. App. 44a. But, once again, that is *exactly* what SB1 does. It allows treatment of adolescents when such treatment is deemed consistent with the gender identity and expression associated with an adolescent's sex designated at birth but prohibits treatment when it is deemed "inconsistent." The law's intentions are explicitly spelled out in the legislative findings, which proclaim that Tennessee has an interest in "encouraging minors to appreciate their sex" and prohibiting medical procedures "that might encourage minors to become disdainful of their

sex." TCA § 68-33-101(m). Consistent with that purpose, the law targets care for exclusion precisely because it would "[e]nabl[e] a minor to identify with, or live as, a purported identity inconsistent with the minor's sex [designated at birth]." TCA § 68-33-103(a)(1)(A). That express classification based on the incongruence between a person's gender identity and sex designated at birth is a sex classification based on expectations and generalizations of how boys and girls should behave, and therefore demands heightened scrutiny.

C. The Sixth Circuit's suspect classification analysis is wrong

In rejecting Petitioners' argument that classifications based on transgender status independently merit heightened scrutiny because they are quasi-suspect, the Sixth Circuit misapplied this Court's precedents. This Court has set forth four considerations for identifying a suspect classification: whether the group has historically been subject to discrimination; whether the group has a defining characteristic that bears a relation to its ability to perform or contribute to society; whether the group is discretely defined by obvious, immutable, or distinguishing characteristics; and whether the group is a minority lacking political power. *See Lyng v. Castillo*, 477 U.S. 635, 638 (1986); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985).

The Sixth Circuit never even addressed the two most critical considerations—a group's history of discrimination and whether the classification relates to the group's ability to contribute to society—and it

misapplied the other two considerations. As demonstrated by the wave of similar bans that have passed across the country, the fact that law firms and medical organizations oppose discrimination says nothing about transgender individuals' *political* power. And there is no requirement that a group's "discrete characteristics" be "definitively ascertainable at the moment of birth." *See* App. 48a. Race is not always definitively ascertainable at birth, and both alienage and legitimacy are quasi-suspect classifications though neither are immediately ascertainable at the time of birth, and both are mutable. *See, e.g.*, *Nyquist v. Mauclet*, 432 U.S. 1, 9 n.11 (1977) (rejecting argument that alienage did not deserve strict scrutiny because it was mutable).

III. THE SIXTH CIRCUIT MISCHARACTERIZED A PARENT'S FUNDAMENTAL RIGHT TO MAKE DECISIONS CONCERNING MEDICAL CARE FOR THEIR MINOR CHILDREN

This Court has long honored "concepts of the family as a unit with broad parental authority over minor children," recognizing that "our constitutional system long ago rejected any notion that a child is 'the mere creature of the State' . . . ." *Parham*, 442 U.S. at 602 (quoting *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925)). The Sixth Circuit's holding that the state's decision to override the aligned judgment of parents, adolescents, and their doctors does not infringe "perhaps the oldest of the fundamental liberty interests recognized by [the] Court" is wrong. App. 90a-91a (citing *Troxel*, 530 U.S. at 65); *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27 (1981); *Prince v.*

Massachusetts, 321 U.S. 158, 166 (1944); *Pierce*, 268 U.S. at 535.

As Judge White explained, the majority erred at the outset by focusing on the wrong question. Because "Tennessee . . . banned treatment for minors only, despite what minors or their parents wish, . . . the issue is not the *what* of medical decision-making—that is, any right to a particular treatment or a particular provider." App. 95a. "Rather, the issue is the *who*—who gets to decide whether a treatment otherwise available to an adult is right or wrong for a child?" *Id.* Framed correctly, it is "clear" that parents have an especially strong interest in medical decision-making that aligns with the judgment of medical providers and their adolescent child. App. 96a. That conclusion comports with this Court's decision in *Parham*, which recognized the right "to seek and follow medical advice" and, contrary to the decision below, did not limit that right to refusing treatment. 442 U.S. at 602. Indeed, the parental autonomy right at issue in *Parham* involved parents who *affirmatively* sought medical treatment by having their children admitted to a hospital for mental health care. *Id.* Nor does it matter that *Parham* recognized a procedural right—the threshold issue is whether parents have a fundamental right to decide on medical care for their children, and it is the existence of that right that justifies both procedural and substantive protections. As Judge White observed, *Parham* relied on a litany of substantive due process cases in finding that parents have a fundamental right to seek and follow medical advice on behalf of their children. App. 97a.

SB1 is an attempt by "the State to inject itself into the private realm of the family to further question the ability of [a fit] parent to make the best decisions concerning the rearing of that parent's children." *Troxel*, 530 U.S. at 68-69. Even the majority recognized that, at a minimum, the restriction on a parent's right to access medication for their minor children must be *reasonable*. App. 22a. But the majority conducted no such analysis of the reasonableness of SB1's categorical ban on care. The state's categorical ban on treatment for transgender adolescents regardless of medical need and the aligned judgment of adolescents, parents, and doctors contravenes the established medical guidelines that have governed such treatment for years and is in no way reasonable.

The Sixth Circuit's dismissive treatment of a deeply rooted fundamental right warrants review by this Court.

IV. THIS COURT'S REVIEW IS URGENTLY NEEDED TO PROVIDE CLARITY ON THIS ISSUE OF EXCEPTIONAL IMPORTANCE

In the past three years, 21 states have banned gender-affirming treatment for transgender adolescents. The impact of these laws is immediate and devastating for the over 100,000 transgender youth ages 13-17 who live in states with these bans and their families.[3] If laws like SB1 are allowed to go

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[3] Christy Mallory & Elana Redfield, *The Impact of 2023 Legislation on Transgender Youth* (UCLA Williams Institute, Oct. 2023),

into or remain in effect, adolescents who are thriving because of the banned treatment will lose access to their needed medical care. Those adolescents will be forced to undergo permanent physical changes that do not comport with their gender identity, and the growing depression, anxiety, and suicidality that often accompany those changes. As L.W., Ryan, and John attest, this future is unimaginable. And their parents are trapped in a nightmare living with the uncertainty of whether they will be able to obtain lifesaving healthcare for their children and the worry about what will happen to their children if this care is unavailable. These families are forced to choose between losing access to healthcare or relocating to another state, leaving their employment, their community, their children's doctors and schools, simply to obtain necessary medical treatment. Parents and their children deserve to know as soon as possible whether such bans are constitutional.

This case presents an excellent vehicle for this Court to review the critical issues raised by gender-affirming healthcare bans and to provide much-needed clarity. The lengthy majority and dissenting opinions from the Sixth Circuit, together with the lengthy decision of the district court, fully address the issues raised. And the underlying record is fulsome, including numerous expert declarations on both sides and relevant party declarations providing context for the passage, operation, and impact of the law.

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https://williamsinstitute.law.ucla.edu/publications/2023-trans-legislative-summary/.

That this case comes to the Court on a preliminary injunction does not counsel against certiorari. Both the majority's and dissent's reasoning turned on differing interpretations of this Court's precedents and legal principles concerning the merits. Further development of the facts will not alter this Court's consideration of those central—and largely dispositive—legal questions that will ultimately control at each stage in the litigation.[4]

Neither the wave of state bans on gender-affirming medication nor the lawsuits challenging them are likely to abate in the near future. Given the division among the courts of appeals on the appropriate level of scrutiny in these and related cases, any delay in this Court's review only risks subjecting transgender adolescents, their parents, and their doctors to a patchwork of inconsistent laws and legal standards that obstruct their medical care. Treatment that is lawful one day may be banned the next; out-of-state providers thought to offer a lifeline may be unable to provide care by the time a patient's appointment date approaches or the family is able to relocate.

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[4] The Sixth Circuit's passing reference to redressability likewise does not pose any obstacle to this Court's review. Even accepting the State's assertions, it is undisputed that providers in Tennessee are willing to provide gender-affirming treatment to adolescents age 16 and older if SB1 is enjoined—including Petitioner Dr. Lacy. Lacy Rebuttal, R.140, PageID#2384. Petitioner Ryan Roe has already turned 16, and Petitioner L.W. will turn 16 during the pendency of this Court's review.

On an issue of such profound importance to parents, children, their doctors and communities, and the nation at large, this Court's review is urgently needed. Delay will only perpetuate the severe and irreparable harm transgender adolescents face every day that they are denied lifesaving medical treatment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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