No.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

JONATHAN THOMAS SKRMETTI, ET AL.

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

PETITION FOR A WRIT OF CERTIORARI

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
KRISTEN CLARKE
Assistant Attorney General
BRIAN H. FLETCHER
Deputy Solicitor General
YAIRA DUBIN
Assistant to the Solicitor General
BONNIE I. ROBIN-VERGEER
BARBARA A. SCHWABAUER
JONATHAN L. BACKER
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether Tennessee Senate Bill 1 (SB1), which prohibits all medical treatments intended to allow "a minor to identify with, or live as, a purported identity inconsistent with the minor's sex" or to treat "purported discomfort or distress from a discordance between the minor's sex and asserted identity," Tenn. Code Ann. § 68-33-103(a)(1), violates the Equal Protection Clause of the Fourteenth Amendment.

PARTIES TO THE PROCEEDING

Petitioner (intervenor-appellee in the court of appeals) is the United States of America.

Respondents (plaintiffs-appellees in the court of appeals) are L.W.; Samantha Williams; Brian Williams; John Doe; Jane Doe; James Doe; Rebecca Roe; Ryan Roe; and Susan N. Lacy.

Respondents (defendants-appellants in the court of appeals) are Jonathan Thomas Skrmetti, in his official capacity as the Tennessee Attorney General and Reporter; the Tennessee Department of Health; Ralph Alvarado, in his official capacity as the Commissioner of the Tennessee Department of Health; the Tennessee Board of Medical Examiners; Melanie Blake, in her official capacity as the President of the Tennessee Board of Medical Examiners; Stephen Loyd, in his official capacity as Vice President of the Tennessee Board of Medical Examiners; Randall E. Pearson, Phyllis E. Miller, Samantha McLerran, Keith G. Anderson, Deborah Cristiansen, John W. Hale, John J. McGraw, Robert Ellis, James Diaz-Barriga, and Jennifer Claxton, in their official capacities as members of the Tennessee Board of Medical Examiners; and Logan Grant, in his official capacity as the Executive Director of the Tennessee Health Facilities Commission.

RELATED PROCEEDINGS

United States District Court (M.D. Tenn.):

L.W. v. *Skrmetti*, No. 23-cv-376 (June 28, 2023)

United States Court of Appeals (6th Cir.):

L.W. v. *Skrmetti*, No. 23-5600 (Sept. 28, 2023)

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The Solicitor General, on behalf of the United States, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-101a) is reported at 83 F.4th 460. A prior opinion of the court of appeals (Pet. App. 102a-124a) is reported at 73 F.4th 408. The opinion of the district court (Pet. App. 130a-218a) is not yet published in the Federal Supplement, but is available at 2023 WL 4232308.

JURISDICTION

The judgment of the court of appeals was entered on September 28, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the appendix. Pet. App. 296a-307a.

STATEMENT

This case is about a Tennessee law banning medical treatments for gender dysphoria in transgender adolescents. The law does not merely ensure informed consent or otherwise regulate the covered treatments; instead, it categorically forbids them. And the law frames that prohibition in explicitly sex-based terms: The covered treatments are banned if they are prescribed "for the purpose" of "[e]nabling a minor to identify with, or live as, a purported identity inconsistent with the minor's sex" or "[t]reating purported discomfort or distress from a discordance between the minor's sex and asserted identity." Tenn. Code Ann. § 68-33-103(a)(1). But the law leaves the same treatments entirely unrestricted if they are prescribed for any other purpose. Thus, for example, a teenager whose sex assigned at birth is male can be prescribed testosterone to conform to a male gender identity, but a teenager assigned female at birth cannot.

The district court preliminarily enjoined Tennessee officials' enforcement of the law, joining courts around the country that have held that similar laws trigger heightened scrutiny because they discriminate based on sex and transgender status. And like every court to consider the issue, the district court held that a categorical ban on evidence-based treatments supported by the overwhelming consensus of the medical community cannot survive heightened scrutiny.

A divided panel of the Sixth Circuit reversed. The panel majority did not disturb the district court's

factual findings and did not suggest that Tennessee's law could withstand heightened scrutiny. Instead, the majority held that despite the law's explicit sex-based classifications, it does not discriminate based on sex for purposes of the Equal Protection Clause. The majority also held that laws that discriminate against transgender individuals warrant only deferential rational-basis review.

The Sixth Circuit's decision implicates multiple circuit conflicts about the application of the Equal Protection Clause to laws that target transgender individuals. And this Court's intervention is urgently needed because Tennessee's law is part of a wave of similar bans preventing transgender adolescents from obtaining medical care that they, their parents, and their doctors have all concluded is necessary. Although such care has been provided to adolescents for decades, in the last three years eighteen other States have adopted categorical bans like Tennessee's.[1] Those laws, and the conflicting court decisions about their validity, are creating profound uncertainty for transgender adolescents and their families around the Nation—and inflicting

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[1] See Ala. Code § 26-26-4; Ark. Code Ann. § 20-9-1502(a); Fla. Stat. § 456.52(1); Fla. Admin. Code Ann. R.64B8-9.019; Ga. Code Ann. § 31-7-3.5; Idaho Code Ann. § 18-1506C; Ind. Code § 25-1-22-13; Iowa Code § 147.164; Ky. Rev. Stat. Ann. § 311.372; La. Stat. Ann. § 40:1098; Miss. Code Ann. §§ 41-141-1 *et seq.*; Mo. Rev. Stat. Ann. § 191.1720; Ch. No. 306, 2023 Mont. Laws 858-862; Neb. Rev. Stat. §§ 71-7301 *et seq.*; N.C. Gen. Stat. §§ 90-21.150 *et seq.*; N.D. Cent. Code. § 12.1-36.1-02; Okla. Stat. tit. 63, § 2607.1; S.D. Codified Laws §§ 34-24-33 *et seq.*; Tex. Health & Safety Code §§ 161.701 *et seq.* Two additional States have adopted bans with very limited exceptions. See Utah Code Ann. §§ 58-1-603, 58-1-603.1; W. Va. Code § 30-3-20.

particularly acute harms in Tennessee and other States where the laws have been allowed to take effect.

A. Medical Standards For Gender-Affirming Care

1. Roughly one percent of Americans are transgender. Pet. App. 161a. Being transgender is not itself a disorder or a condition to be cured. *Id.* at 251a. But transgender people often suffer from gender dysphoria, a serious medical condition characterized by clinically significant distress resulting from persistent incongruence between a person's gender identity and sex assigned at birth. *Id.* at 251a-252a. Left untreated, gender dysphoria can result in severe physical and psychological harms. *Ibid.* Those harms include "debilitating distress, depression, impairment of function, substance use, self-surgery to alter one's genitals or secondary sex characteristics, self-injurious behaviors, and even suicide." *Edmo* v. *Corizon, Inc.*, 935 F.3d 757, 769 (9th Cir. 2019) (per curiam), cert. denied, 141 S. Ct. 610 (2020).

2. The World Professional Association of Transgender Health (WPATH), the leading association of medical professionals treating transgender individuals, and the Endocrine Society, an organization representing more than 18,000 endocrinologists, have published evidence-based practice guidelines for the treatment of gender dysphoria. Pet. App. 178a-179a; see *id.* at 252a. All of the Nation's major medical and mental health organizations recognize those guidelines as reflecting the consensus of the medical communities on the appropriate treatment for gender dysphoria. See *Edmo*, 935 F.3d at 769; Pet. App. 178a-181a; American Academy of

Pediatrics C.A. Amicus Br. 9, 15-17 (AAP C.A. Amicus Br.).[2]

Under the guidelines, the appropriate treatment for gender dysphoria varies based on an individualized assessment of each patient's needs. Pet. App. 253a, 289a-290a. The standards of care also differ for children, adolescents, and adults. *Id.* at 253a. Before puberty, treatment "does not include any drug or surgical intervention." *Id.* at 255a. Treatment may instead include social transition—that is, allowing a transgender child to live in accordance with their gender identity, including their clothing, hairstyle, name, and pronouns. *Ibid.*

The permanent physical changes that accompany puberty can warrant a different approach because they can trigger or exacerbate gender dysphoria, causing "extreme distress." Pet. App. 256a. Without appropriate treatment, adolescents with gender dysphoria are at risk of serious psychological and physical harm, including depression, eating disorders, substance abuse, self-harm, and suicidality. *Id.* at 194a-197a, 252a. Moreover, "there is broad consensus in the field that once adolescents reach the early stages of puberty and experience gender dysphoria"—that is, clinically significant distress or impairment for a sustained period of time—

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[2] Those organizations include the American Academy of Pediatrics, the Academic Pediatric Association, the American Academy of Child & Adolescent Psychiatry, the Association of American Medical Colleges, the American Academy of Family Physicians, the American College of Obstetricians and Gynecologists, the American College of Physicians, the American Medical Association, the American Pediatric Society, the American Psychiatric Association, the Association of Medical School Pediatric Department Chairs, Inc., the Pediatric Endocrine Society, the Societies for Pediatric Urology, the Society for Adolescent Health and Medicine, and the Society for Pediatric Research. See AAP C.A. Amicus Br. 1.

"it is very unlikely they will subsequently identify as cisgender." *Brandt* v. *Rutledge*, No. 21-cv-450, 2023 WL 4073727, at *34-*35 (E.D. Ark. June 20, 2023), appeal pending, No. 23-2681 (8th Cir. filed July 21, 2023); see D. Ct. Doc. 32, at 12 (Apr. 21, 2023).

The guidelines therefore permit medical interventions for transgender adolescents in appropriate cases, after the adolescent undergoes a comprehensive assessment to ensure that any intervention is medically necessary. Pet. App. 253a-254a, 258a-260a. Under the guidelines, gender-affirming medical care is appropriate only when an adolescent has marked and sustained gender dysphoria that has worsened with the onset of puberty; no health issues that would interfere with treatment; and the capacity to provide informed consent. *Id.* at 256a-258a, 287a-288a. Both the patient and the patient's parents must provide consent after counseling about the risks and benefits of each treatment. D. Ct. Doc. 141, at 2-3 (June 1, 2023); Pet. App. 262a-263a.

Potential treatments for adolescents include puberty-suppressing medication, also called "puberty blockers," and hormone therapy. Pet. App. 256a, 258a. Puberty blockers "allow[] adolescents with gender dysphoria to pause their endogenous puberty, thereby avoiding the heightened gender dysphoria and permanent physical changes that puberty would cause." *Id.* at 256a. Treatment with puberty blockers is "reversible"; it "pauses puberty only for the duration of the treatment and gives a young person time to further understand their gender identity." *Ibid.* If puberty blockers are discontinued without further treatment, endogenous puberty resumes. *Id.* at 261a. The guidelines also recognize that it may be medically appropriate to provide hormone

therapy to induce puberty consistent with the patient's gender identity. *Id.* at 258a. Hormone therapy consists of providing feminizing hormones (estrogen or androgen suppressants) to transgender girls and masculinizing hormones (testosterone) to transgender boys, which cause patients to develop physical characteristics consistent with their gender identity. *Ibid.*

The same treatments are prescribed to non-transgender adolescents to treat a variety of conditions, including delayed or precocious puberty; polycystic ovarian syndrome; intersex conditions; premature ovarian failure; and cancer. D. Ct. Doc. 30, at 19, 22 (Apr. 21, 2023); Pet. App. 256a-267a. Adverse side effects from these medications are limited and infrequent, and the risks they carry "generally do not vary based on the condition they are being prescribed to treat." Pet. App. 267a; see *id.* at 192a-193a; D. Ct. Doc. 30, at 22. Puberty blockers do not affect the patient's fertility. Pet. App. 267a-268a. And although hormone therapy may affect fertility, it does not invariably do so and "the risk of negative impacts on fertility can be mitigated." *Id.* at 185a, 267a-268a.

On the other hand, overwhelming evidence establishes that appropriate gender-affirming treatment with puberty blockers and hormones directly and substantially improves the physical and psychological well-being of transgender adolescents with gender dysphoria. Pet. App. 194a-197a. Among other things, such treatment "lowers rates of depression, suicide, and additional mental health issues." *Id.* at 196a. And every major American medical organization with a position on the issue, including the American Academy of Pediatrics and the American Medical Association, agrees that puberty blockers and hormone therapy "are appropriate

and medically necessary treatments for adolescents when clinically indicated." *Id.* at 198a.

B. Tennessee SB1

In March 2023, Tennessee enacted the Prohibition on Medical Procedures Performed on Minors Related to Sexual Identity, Senate Bill 1, Tenn. Code Ann. §§ 68-33-101 *et seq*. (SB1). SB1 was enacted as part of a series of laws targeting transgender individuals in Tennessee.[3] Some of SB1's findings describe the legislature's views on the risks of the covered treatments. *Id.* § 68-33-101(b)-(e) and (h). But SB1 also declares that Tennessee has a "compelling interest in encouraging minors to appreciate their sex, particularly as they undergo puberty," and in prohibiting procedures "that might encourage minors to become disdainful of their sex." *Id.* § 68-33-101(m).

SB1 prohibits healthcare providers from "[p]rescribing, administering, or dispensing any puberty blocker or hormone" if that treatment is provided "for the

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[3] See, *e.g.*, Tenn. Pub. Ch. 486 (introduced Feb. 2, 2023 and enacted May 17, 2023) (Tenn. Code Ann. §§ 1-3-105, 49-2-802(4)) (defining statutory term "sex" as "a person's immutable biological sex as determined by anatomy and genetics existing at the time of birth"); Tenn. Pub. Ch. 285 (introduced Feb. 2, 2023 and enacted Apr. 28, 2023) (Tenn. Code Ann. § 49-50-805) (limiting students to participating in interscholastic athletic events "only in accordance with the student's sex" at birth); Tenn. Pub. Ch. 448 (introduced Jan. 26, 2023 and enacted May 17, 2023) (Tenn. Code Ann. § 49-6-5102) (specifying that public school teachers need not refer to a student by the pronouns used by the student if those pronouns are inconsistent with the student's sex assigned at birth); see also Tenn. H.B. 1215 (introduced Feb. 1, 2023) & Tenn. S.B. 1339 (introduced Feb. 2, 2023) (prohibiting any managed care organization that contracts with Tennessee's Medicaid program from covering gender-affirming care).

purpose" of "[e]nabling a minor to identify with, or live as, a purported identity inconsistent with the minor's sex" or "[t]reating purported discomfort or distress from a discordance between the minor's sex and asserted identity." Tenn. Code Ann. §§ 68-33-102(5)(B), 68-33-103(a)(1). The law also prohibits surgical procedures provided for the same purposes, but that prohibition is not at issue here. Pet. App. 9a-10a, 140a-142a. SB1 defines "[s]ex" as the "immutable characteristics of the reproductive system that define the individual as male or female, as determined by anatomy and genetics existing at the time of birth." Tenn. Code Ann. § 68-33-102(9).

Because SB1's prohibition applies only when a covered treatment is prescribed to allow individuals to live in conformity with a gender identity other than their sex assigned at birth, the law does not restrict the provision of puberty blockers or hormones for any other purpose. The law also explicitly exempts those treatments when they are prescribed "to treat a minor's congenital defect, precocious puberty, disease, or physical injury." Tenn. Code Ann. § 68-33-103(b)(1)(A). The terms "[c]ongenital defect" and "disease" are defined to include an "abnormality present in a minor that is inconsistent with the normal development of a human being of the minor's sex" but specifically exclude "gender dysphoria, gender identity disorder, [and] gender incongruence." *Id.* §§ 68-33-102(1), 68-33-103(b)(2).

Violations of SB1 are punishable by civil penalties of $25,000 for each prohibited prescription or treatment, professional discipline, and potential civil liability in private suits. Tenn Code Ann. §§ 68-33-105 to -107. The law took effect on July 1, 2023, but includes a limited exemption allowing otherwise-prohibited treatments

that began before the law took effect to continue until March 31, 2024. *Id.* § 68-33-103(b)(1)(B).

C. The Present Controversy

1. Private petitioners are L.W., Ryan Roe, and John Doe, three transgender adolescents who live in Tennessee; their parents; and a Tennessee doctor who treats adolescents with gender dysphoria. Pet. App. 9a.

L.W. is a 15-year-old transgender girl whose dysphoria made her feel like she was "trapped in the wrong body" and "drowning." Pet. App. 223a. In 2021, after extensive assessments and consideration of risks and benefits, L.W. began treatment at Vanderbilt University Medical Center, first with puberty blockers and then, a year later, with estrogen. *Id.* at 225a-227a. L.W. is "terrified" of the permanent changes that would happen to her if that "care was taken away"; she "would not be able to think about anything else in [her] life except when [she] could get [her] medication again." *Id.* at 228a.

Ryan Roe is a 15-year-old transgender boy. Pet. App. 233a. As he entered adolescence, he got "more and more anxious about puberty," to the point that he would "throw[] up before school every morning." *Id.* at 234a, 236a. When he "got [his] first period," "everything felt wrong about living in [his] body." *Id.* at 235a. He also "considered going mute to protect [himself] from the pain and anxiety that [his] voice caused." *Ibid.* In 2022, after two years of psychotherapy and extensive counseling, Ryan began hormone therapy at Vanderbilt. *Id.* at 236a. Since beginning treatment, he has "found [his] voice again," raising his hand in class, participating in school, and looking at himself in the mirror. *Id.* at 237a; see *id.* at 234a. Ryan says: "Gender-affirming health

care saved my life and the idea of losing it terrifies me." *Id.* at 234a.

John Doe is a 12-year-old transgender boy. Pet. App. 229a-230a. From an early age, he knew he was a boy, choosing a male name for himself and socially transitioning in school. *Id.* at 230a. He is terrified of "under[going] the wrong puberty" because he knows that "some of those changes could be permanent." *Id.* at 232a. In 2021, after years of psychotherapy and endocrine monitoring, and extensive discussion of the risks and benefits of further treatment, John began taking puberty-delaying medication. *Id.* at 231a. If John "didn't have access to this medication," he "would have an incredibly difficult time wanting to be around other people and go to school." *Id.* at 232a. He says: "This might seem like a small issue to others but it affects my whole world"; "I've gone through a lot to finally get to the happy, healthy place where I am and I desperately hope that doesn't all get taken away from me." *Ibid.*

2. Private petitioners sued respondents, Tennessee officials responsible for enforcing SB1, in the U.S. District Court for the Middle District of Tennessee. Among other claims, private petitioners alleged that SB1 violates the Equal Protection Clause. D. Ct. Doc. 1, at 35-37 (Apr. 20, 2023). The United States intervened under 42 U.S.C. 2000h-2, which authorizes intervention in a private equal-protection suit "if the Attorney General certifies that the case is of general public importance." See D. Ct. Doc. 38 (Apr. 26, 2023).

3. The district court granted private petitioners' motion for a preliminary injunction. Pet. App. 130a-

218a. As relevant here, the court held that SB1 likely violates the Equal Protection Clause. *Id.* at 148a-205a.[4]

The district court first held that SB1 is subject to heightened scrutiny because it discriminates based on sex, both by "demarcat[ing] its ban(s) based on a minor's sex" and by "treat[ing] similarly-situated individuals differently based on transgender status." Pet. App. 164a; see *id.* at 161a-175a. The court also held that SB1 independently triggers heightened scrutiny because it "expressly and exclusively targets transgender people," who, the court held, constitute a quasi-suspect class. *Id.* at 152a; see *id.* at 151a-161a.

The district court held that SB1 likely fails heightened scrutiny, which requires the State to show "that the law is substantially related to an important state interest." Pet. App. 182a; see *id.* at 181a-205a. The court found that the WPATH and Endocrine Society guidelines are reliable, supported by evidence, and provide "the prevailing standards of care." *Id.* at 198a-199a. And the court found that "the weight of the evidence" did not support respondents' contention that "either puberty blockers or cross-sex hormones pose serious risks" to transgender adolescents. *Id.* at 197a-199a. At the same time, the court found that "the benefits of the medical procedures banned by SB1 are well-established." *Id.* at 197a. The court thus concluded that Tennessee

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[4] The court also held that private petitioners are likely to succeed on their claim that SB1 violates parents' substantive due process right to make decisions about their children's medical care. Pet. App. 142a-148a. Because the United States intervened under 42 U.S.C. 2000h-2, which applies to suits "seeking relief from the denial of equal protection of the laws," it has not addressed that separate due-process claim.

had not established that SB1 serves an important government interest.

In the alternative, the district court held that SB1's categorical ban is not sufficiently related to the State's asserted interest in protecting minors from the risks of the covered treatments. Pet. App. 199a-205a. To the contrary, the court emphasized that SB1 is "severely underinclusive" because "it bans the [prohibited] procedures for a tiny fraction of minors, while leaving them available for all other minors (who would be subjected to the very risks that the state asserts SB1 is intended to eradicate)." *Id.* at 204a-205a.

Finally, the district court found that the minor petitioners would suffer irreparable harm without an injunction, including "emotional and psychological harms as well as unwanted physical changes if they are deprived [of] access to treatment." Pet. App. 206a; see *id.* at 205a-211a. The court further concluded that the equities and the public interest weighed in favor of a preliminary injunction. *Id.* at 211a-212a.

4. A divided panel of the Sixth Circuit granted respondents' motion for a stay pending appeal and, after expedited briefing, reversed the preliminary injunction. Pet. App. 1a-101a; see *id.* at 102a-124a (stay opinion).[5]

a. As relevant here, the Sixth Circuit rejected petitioners' equal-protection claim. Pet. App. 30a-50a. The court held that despite SB1's explicit sex-based terms, the law is subject only to rational-basis review because it "regulate[s] sex-transition treatments for all minors,

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[5] The Sixth Circuit consolidated this case for argument with *Doe* v. *Thornbury*, No. 23-5609, an appeal from a preliminary injunction against enforcement of Kentucky's similar ban on gender-affirming care for minors. See Pet. App. 10a-12a. The Sixth Circuit reversed both injunctions in a single opinion. *Id.* at 55a.

regardless of sex." *Id.* at 32a. The court acknowledged that "'racial classifications' always receive strict scrutiny 'even when they may be said to burden or benefit the races equally.'" *Id.* at 37a (quoting *Johnson* v. *California*, 543 U.S. 499, 506 (2005)). But the court held that a law that relies on sex triggers heightened scrutiny only if it "perpetuates invidious stereotypes or unfairly allocates benefits and burdens." *Id.* at 39a. And the court believed that SB1 is not such a law. *Ibid.*

The Sixth Circuit acknowledged that this Court adopted a different approach in *Bostock* v. *Clayton County*, 140 S. Ct. 1731 (2020), which recognized that "it is impossible to discriminate against a person for being * * * transgender without discriminating against the individual based on sex," *id.* at 1741; see Pet. App. 40a. But the Sixth Circuit held that *Bostock*'s "reasoning applies only to Title VII" of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, not to the Equal Protection Clause. Pet. App. 40a.

The Sixth Circuit did not question the district court's conclusion that SB1 discriminates based on transgender status. But the Sixth Circuit held that such discrimination triggers only rational-basis review because transgender individuals do not qualify as a quasi-suspect class. Pet. App. 44a-46a. The court expressed skepticism that "transgender identity" is "immutable" or that transgender people lack political power. *Id.* at 45a-46a.

Applying deferential review, the Sixth Circuit concluded that the Tennessee legislature could have rationally concluded that SB1 was an appropriate response to perceived risks and uncertainties associated with puberty blockers and hormone therapy. Pet. App. 49a-50a. The court acknowledged the countervailing evidence reflected in the district court's findings, including

the consensus of the medical community. *Id.* at 50a. But the Sixth Circuit reasoned that the rational-basis standard does not allow a court to enjoin SB1 based on a disagreement with the State's "assessment of the risks and the right response to those risks." *Ibid.*

b. Judge White dissented. Pet. App. 56a-101a. Because "sex and gender conformity each 'play an unmistakable role'" in SB1's prohibitions, she concluded that the law presents "an open-and-shut case of facial classifications subject to intermediate scrutiny." *Id.* at 73a (brackets, citation, and ellipsis omitted). Under SB1, Judge White emphasized, "medical procedures that are permitted for a minor of one sex are prohibited for a minor of another sex." *Id.* at 72a (citation omitted). And Judge White explained that SB1 "condition[s] the availability of procedures on a minor's conformity with societal expectations associated with the minor's assigned sex" by "bar[ring] treatment when sought 'for the purpose of' inducing physiological changes, like secondary sex characteristics, that are 'inconsistent with' how society expects boys and girls to appear." *Ibid.* (quoting Tenn. Code Ann. § 68-33-103(a)).

Judge White concluded that SB1 cannot withstand heightened scrutiny because its "text[] effectively reveal[s] that [its] purpose is to force boys and girls to *look* and *live* like boys and girls." Pet. App. 85a. Nor, in her view, did respondents refute the district court's "robust factual findings based on an extensive record * * * that banning these treatments is [not] beneficial to minors." *Ibid.*

Finally, Judge White concluded that the remaining preliminary-injunction factors favored private petitioners. In particular, she warned that minor petitioners face irreparable harm absent an injunction "because

progressing through adolescence untreated leads to daily anguish and makes adult treatment more complicated." Pet. App. 98a.

REASONS FOR GRANTING THE PETITION

In the past three years, nineteen States have enacted laws that categorically prohibit transgender adolescents from receiving medical care in accordance with evidence-based standards reflecting the overwhelming consensus of the medical community, but impose no restrictions when the same treatments are provided for any other purpose. By their terms, operation, and design, those laws classify based on sex and transgender status. And they inflict profound harms on transgender adolescents and their families by denying medical treatments that the affected adolescents, their parents, and their doctors have all concluded are appropriate and necessary to treat a serious medical condition.

The Sixth Circuit did not suggest that laws like SB1 could survive heightened scrutiny. Instead, it applied only the deferential rational-basis standard because it held that some laws that draw sex-based lines do not trigger heightened scrutiny—and that laws discriminating based on transgender status *never* warrant heightened review. Those holdings are wrong, and they create or deepen circuit conflicts on the proper application of the Equal Protection Clause to laws targeting transgender individuals, both in the specific context of bans on gender-affirming care and more broadly.

Absent this Court's review, families in Tennessee and other States where laws like SB1 have taken effect will face the loss of essential medical care. Those with the resources to do so may abandon their homes, jobs, schools, and communities to move to a State where the needed treatment remains available. Others will not

have even that option. And families in much of the rest of the Nation will be left in limbo, waiting to see whether their State's ban will be upheld or enjoined. This case squarely presents the relevant legal issues and offers an appropriate vehicle for resolving the disagreements in the lower courts and providing the definitive resolution those issues urgently require.[6]

A. The Sixth Circuit's Decision Is Wrong

SB1 warrants heightened scrutiny both because it relies on sex-based classifications and because it discriminates based on transgender status, which satisfies all of this Court's traditional criteria for recognizing a suspect classification. Heightened scrutiny "does not make sex"—or transgender status—"a proscribed classification." *United States* v. *Virginia*, 518 U.S. 515, 533 (1996) (*VMI*). To the contrary, the Court has applied intermediate rather than strict scrutiny precisely because "[p]hysical differences between men and women" sometimes justify sex-based lines. *Ibid.* But SB1 cannot satisfy that standard because it makes no attempt to tailor its prohibition to match the harms it purports to address.

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[6] Private petitioners have filed a petition for a writ of certiorari raising both the equal-protection question presented in this petition and a substantive-due-process question. See *L.W.* v. *Skrmetti*, petition for cert. pending, No. 23-466 (filed Nov. 1, 2023). The plaintiffs in the parallel Kentucky case have also filed a petition raising both the equal-protection and due-process issues. See *Doe* v. *Thornbury*, No. 23-*** (filed Nov. 3, 2023 but not yet docketed). In the government's view, the due-process question does not warrant this Court's review because that aspect of the Sixth Circuit's decision does not conflict with any decision of another court of appeals and does not otherwise satisfy this Court's traditional certiorari standards. Accordingly, the Court should grant the petitions limited to the equal-protection issue and consolidate the cases.

1. SB1 warrants heightened scrutiny because it relies on sex-based classifications

a. The ratification of the Fourteenth Amendment did not immediately end our Nation's "long and unfortunate history of sex discrimination." *J.E.B.* v. *Alabama*, 511 U.S. 127, 136 (1994) (citation omitted). To the contrary, laws discriminating based on sex remained common into the 20th century, and until the 1970s this Court reviewed sex-based classifications deferentially. See *VMI*, 518 U.S. at 531-532. But it is now firmly established that the Equal Protection Clause requires courts to apply "a heightened standard of review" to "[l]egislative classifications based on gender." *City of Cleburne* v. *Cleburne Living Ctr., Inc.*, 473 U.S. 432, 440 (1985). That heightened scrutiny is warranted because sex "generally provides no sensible ground for differential treatment," *ibid.*, and because sex-based lines all too often reflect stereotypes or "overbroad generalizations about the different talents, capacities, or preferences of males and females," *VMI*, 518 U.S. at 533. Accordingly, this Court has held that "all gender-based classifications" must be subjected to "heightened scrutiny." *Id.* at 555 (citation omitted).

SB1 classifies based on sex, through and through. Most obviously, as the district court recognized, the law "creates a sex-based classification on its face" by defining the prohibited procedures based on the patient's sex assigned at birth. Pet. App. 164a. Specifically, SB1 bans puberty blockers and hormone therapy if—and only if—those treatments are provided "for the purpose" of "[e]nabling" an adolescent to identify with a gender "inconsistent with the minor's sex" or treating distress "from a discordance between the minor's sex" and gender identity. Tenn. Code Ann. § 68-33-103(a)(1).

Because the law's prohibitions "cannot be stated without referencing sex," they are "inherently based upon a sex-classification." *Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017), cert. dismissed, 138 S. Ct. 1260 (2018).

In operation, as mandated by its text, SB1 restricts care only for transgender individuals who seek to induce physiological effects inconsistent with their sex assigned at birth. That, too, is sex discrimination, because "transgender status [is] inextricably bound up with sex." *Bostock* v. *Clayton County*, 140 S. Ct. 1731, 1742 (2020). This Court has explained that when a law or policy "penalizes a person identified as male at birth for traits or actions that it tolerates in [a person] identified as female at birth," the person's "sex plays an unmistakable" role. *Id.* at 1741-1742. That is precisely how SB1 works: An adolescent assigned female at birth cannot receive puberty blockers or testosterone to live as a male, but an adolescent assigned male at birth can. See Tenn. Code Ann. § 68-33-103(a) and (b). And vice versa, an adolescent assigned male at birth cannot receive puberty blockers or estrogen to live as a female, but an adolescent assigned female at birth can. See *ibid.*; Pet. App. 165a. "Because [a] minor's sex at birth determines whether or not the minor can receive certain types of medical care," a ban on gender-affirming care necessarily "discriminates on the basis of sex." *Brandt* v. *Rutledge*, 47 F.4th 661, 669 (8th Cir. 2022).

That sex-based line-drawing is not an incidental effect of SB1—to the contrary, it is the law's *raison d'être*. By its own account, SB1 is designed to enforce conformity with sex assigned at birth. The enacted statutory findings declare that Tennessee has a "compelling interest in encouraging minors to appreciate their sex"

and in prohibiting procedures "that might encourage minors to become disdainful of their sex." Tenn. Code Ann. § 68-33-101(m). And SB1 bars medical treatments only when sought "for the purpose of" inducing physiological changes, like secondary sex characteristics, that are "inconsistent with" how society expects boys and girls to appear. Tenn. Code Ann. § 68-33-103(a). This Court has recognized that heightened scrutiny is required where, as here, a state legislates based on characteristics that are "typically male or typically female." *VMI*, 518 U.S. at 541 (citation omitted).

b. The Sixth Circuit failed to justify its contrary conclusion. Indeed, the court's shifting rationales underscore its departure from the fundamental equal-protection principles reflected in this Court's precedents.

The Sixth Circuit initially appeared to deny that SB1 relies on sex-based classifications, asserting that the law regulates "evenhandedly" by prohibiting "sex-transition treatments for all minors, regardless of sex." Pet. App. 31a-32a. But whether a treatment is a prohibited "sex-transition treatment" depends, of course, on the minor's sex assigned at birth. See pp. 18-19, *supra*. And this Court has already rejected the argument that a law that classifies based on a protected characteristic such as race or sex is insulated from heightened review simply because it applies to members of all races or to both sexes.

The Sixth Circuit recognized that race-based classifications trigger strict scrutiny "even when they may be said to burden or benefit the races equally." Pet. App. 37a (quoting *Johnson* v. *California*, 543 U.S. 499, 506 (2005)). But the court maintained that sex-based lines do *not* invariably warrant heightened scrutiny. It acknowledged this Court's repeated holding "that 'all'

sex-based classifications receive heightened review." *Id.* at 38a (quoting *VMI*, 518 U.S. at 555). But the Sixth Circuit asserted 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." *Id.* at 39a. The court held that sex-based classifications that reflect "'enduring' differences between men and women do not trigger heightened review." *Ibid.* (quoting *VMI*, 518 U.S. at 533).

That holding directly contradicts this Court's precedent. The Court has repeatedly instructed that heightened scrutiny applies to "all" sex-based classifications, not just some of them. In *J.E.B.*, for example, the Court held that sex-based peremptory challenges violate the Equal Protection Clause even though "the system as a whole [wa]s evenhanded" in the sense that men and women were equally likely to be struck based on their sex. 511 U.S. at 159-160 (Scalia, J., dissenting). And the Court applied heightened scrutiny to a statute that classified in "gender specific terms" even when it ultimately *upheld* the sex-based classification as a legitimate response to "a biological difference" between men and women. *Nguyen* v. *INS*, 533 U.S. 53, 64 (2001); see *id.* at 60-61.

The Sixth Circuit emphasized this Court's statement in *VMI* that it has not "equated gender classifications, for all purposes, to classifications based on race." Pet. App. 37a (quoting *VMI*, 518 U.S. at 532) (brackets omitted). But the *VMI* Court was simply noting that sex-based classifications are subject to heightened scrutiny rather than the strict scrutiny that applies to race-based classifications. See 518 U.S. at 532 n.6 ("The Court has thus far reserved most stringent judicial

scrutiny for classifications based on race or national origin."). And the Court has explained that a more forgiving standard applies in this context precisely because "[p]hysical differences between men and women" may sometimes justify legislative reliance on sex. *Id.* at 533. In other words, the very purpose of heightened scrutiny is to identify those sex-based classifications that reflect legitimate and appropriately tailored responses to "enduring" physical differences between men and women. *Ibid.*; see *Nguyen*, 533 U.S. at 61-70. The Sixth Circuit seriously erred in asserting a novel power to dispense with heightened scrutiny altogether for sex-based classifications that it regarded as benign.

The Sixth Circuit asserted that its approach was supported by this Court's decisions holding that "heightened review does not apply in the context of laws that regulate medical procedures unique to one sex or the other." Pet. App. 39a; see *id.* at 33a-34a (citing *Dobbs* v. *Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022), and *Geduldig* v. *Aiello*, 417 U.S. 484 (1974)). But unlike SB1, neither the law regulating abortion in *Dobbs* nor the law excluding certain pregnancy-related disabilities from insurance coverage in *Geduldig* facially discriminated based on sex. And SB1 differs from the laws at issue in those cases because it regulates medical procedures that all individuals can undergo, regardless of their sex: Healthcare providers cannot perform an abortion on a cisgender man, but they can "[p]rescrib[e], administer[], or dispens[e] * * * puberty blocker[s] or hormone[s]" to any person regardless of their sex assigned at birth. Tenn. Code Ann. § 68-33-102(5)(B).

The Sixth Circuit suggested that prescribing those treatments for gender dysphoria is not the same as prescribing them for any other condition because the "cost-

benefit analysis" differs. Pet. App. 34a. But once again, that "conflates the classifications drawn by the law with the state's justification for it." *Brandt*, 47 F.4th at 670. The strength of the State's justification—including the risks and benefits of gender-affirming care—may be highly relevant to determining whether SB1 survives heightened scrutiny. But it provides no basis for refusing to subject the law's facially sex-based classification to heightened scrutiny at all.

Finally, the Sixth Circuit held that this Court's decision in *Bostock* is inapposite because its "text-driven reasoning applies only to Title VII." Pet. App. 40a. Of course, "Title VII and the Equal Protection Clause are not identical": "The former forbids sex- or gender-based discrimination (subject to certain defenses), for example, while the latter allows such discrimination if the classification satisfies heightened scrutiny." *Id.* at 79a (White, J., dissenting). But as Judge White observed, the Sixth Circuit did "not explain why or how any difference in language" between Title VII and the Equal Protection Clause "requires different standards for determining whether a facial classification exists in the first instance," *id.* at 80a, such that a restriction could simultaneously be sex-based under the former yet sex-neutral under the latter. *Bostock*'s core insight is that "it is impossible to discriminate against a person for being * * * transgender without discriminating against that individual based on sex" because sex plays an "unmistakable" role when a person is "penalize[d]" for "traits or actions" that would be tolerated in someone assigned the opposite sex at birth, 140 S. Ct. at 1741-1742—and that reasoning is just as sound in the equal-protection context.

2. SB1 warrants heightened scrutiny because it discriminates against transgender individuals

As the district court correctly held, SB1 is also subject to heightened scrutiny because it "expressly and exclusively targets" transgender persons, who constitute at least a quasi-suspect class. Pet. App. 152a. In determining whether to recognize a suspect or quasi-suspect class, this Court has considered four factors: (1) whether the class has been subjected to discrimination, see *Lyng* v. *Castillo*, 477 U.S. 635, 638 (1986); (2) whether the class has a defining characteristic that "frequently bears no relation to [the] ability to perform or contribute to society," *Cleburne Living Ctr.*, 473 U.S. at 441 (citation omitted); (3) whether members of the class have "obvious, immutable, or distinguishing characteristics that define them as a discrete group," *Lyng*, 477 U.S. at 638; and (4) whether the class lacks political power, see *Bowen* v. *Gilliard*, 483 U.S. 587, 602 (1987).

Transgender individuals satisfy each of those requirements. First, transgender persons, as a class, have "historically been subject to discrimination including in education, employment, housing, and access to healthcare." Pet. App. 159a (citation omitted). Second, whether a person is transgender plainly bears no relation to their ability to contribute to society. *Id.* at 160a. Third, there is no reasonable dispute that transgender persons share "obvious, immutable, or distinguishing characteristics that define them as a discrete group," *Gilliard*, 483 U.S. at 602 (citation omitted): their gender identities do not align with their respective sexes assigned at birth. Pet. App. 160a. Finally, transgender individuals have not "yet been able to meaningfully vindicate their rights through the political process" in much of the Nation. *Grimm* v. *Gloucester Cnty. Sch.*

Bd., 972 F.3d 586, 613 (4th Cir. 2020), cert. denied, 141 S. Ct. 2878 (2021). They are "underrepresented in every branch of government." *Ibid.* And in recent years, States across the country have enacted a host of laws targeting transgender individuals. See pp. 3, 8 & nn. 1, 3, *supra*.

In declining to recognize that transgender status is a quasi-suspect classification, the Sixth Circuit appeared to rely primarily on its view that it should not recognize a quasi-suspect class that this Court has not yet recognized. Pet. App. 44a. The Sixth Circuit also asserted that transgender status "is not necessarily immutable." *Id.* at 46a. But even if that is correct, immutability is not required; it is sufficient that transgender individuals share "distinguishing characteristics that define them as a discrete group." *Lyng*, 477 U.S. at 638.

The Sixth Circuit further asserted that transgender individuals are not subject to "a skewed or unfair political process." Pet. App. 46a. But the fact that the position of some transgender persons in society "has improved markedly in recent decades," *Frontiero* v. *Richardson*, 411 U.S. 677, 685 (1973) (plurality opinion), does not suggest that transgender persons as a class wield political power; the same was true of women when the Supreme Court recognized that sex-based restrictions are subject to heightened scrutiny. *Id.* at 685-686. And the recent wave of legislation targeting transgender individuals decisively refutes any suggestion that they have no need for the protection of the courts.

3. SB1 cannot survive heightened scrutiny

Because it concluded that rational-basis review applies, the court of appeals did not consider whether SB1 could survive heightened scrutiny. The district court correctly held—consistent with every court to consider

the question, see p. 28 & n.7, *infra*—that it cannot. Pet. App. 181a-205a. The court determined, based on detailed factual findings, that the record did not support the State's asserted interest in protecting the welfare of transgender adolescents. *Id.* at 181a-199a. To the contrary, the evidence established that the benefits of gender-affirming care outweigh any risks associated with such treatment—consistent with the consensus within the medical community endorsing such care, in appropriate cases, to treat gender dysphoria in adolescents. See *id.* at 194a-197a.

The district court likewise correctly found that even if SB1 serves the State's interest in protecting adolescents, its complete lack of tailoring means that it is not substantially related to that interest. Pet. App. 199a-205a. SB1 is "severely under-inclusive" because "it bans [the prohibited] procedures for a tiny fraction of minors, while leaving them available for all other minors (who would be subjected to the very risks that the state asserts SB1 is intended to eradicate)." *Id.* at 204a-205a. At the same time, SB1 "classif[ies] unnecessarily and overbroadly," *Sessions* v. *Morales-Santana*, 582 U.S. 47, 63 n.13 (2017), because it categorically bans all hormone treatments and puberty blockers provided to treat gender dysphoria for all transgender minors under all circumstances. As a general matter, States undoubtedly have legitimate interests in ensuring informed consent and regulating the practice of medicine. But when a state regulates using sex-based classifications, it cannot rely on such sweeping and overinclusive measures if "more accurate and impartial lines can be drawn." *Ibid.*

B. The Sixth Circuit's Decision Warrants This Court's Review

The Sixth Circuit's decision warrants this Court's review. It implicates an emerging circuit conflict on the validity of the recent wave of bans on gender-affirming care. It also creates or deepens conflicts on broader questions about the proper application of the Equal Protection Clause to laws targeting transgender individuals. And it squarely presents an important question of national significance that urgently requires this Court's resolution.

1. Two other courts of appeals have considered equal-protection challenges to laws like SB1. The Eleventh Circuit took the same approach as the Sixth, holding that Alabama's ban on gender-affirming care for minors triggers only rational-basis review and that it is "exceedingly likely" to satisfy that standard. *Eknes-Tucker* v. *Governor of Alabama*, 80 F.4th 1205, 1230 (2023). By contrast, the Eighth Circuit affirmed a preliminary injunction against enforcement of Arkansas's law. *Brandt*, 47 F.4th at 671. Relying on reasoning that applies equally to SB1, the Eighth Circuit explained that the law is "subject to heightened scrutiny" because "[t]he biological sex of the minor patient is the basis on which the law distinguishes between those who may receive certain types of medical care and those who may not." *Id.* at 670.

Proceedings are ongoing in the Eleventh and Eighth Circuits: A petition for rehearing en banc remains pending in *Eknes-Tucker*, and the Eighth Circuit has granted initial hearing en banc in the defendants' appeal of a permanent injunction in *Brandt*. See Order, *Brandt* v. *Griffin*, No. 23-2681 (Oct. 6, 2023). But regardless of how the en banc Eighth and Eleventh

Circuits resolve the issue, the volume of ongoing challenges to similar laws and the weight of district court authority holding such laws invalid make it highly likely that a circuit conflict will persist and require this Court's resolution: Eight district courts have already ruled on challenges to laws like SB1, and seven of them held that they violate the Equal Protection Clause.[7] Appeals from those decisions are pending in the Seventh and Tenth Circuits. See *K.C.* v. *Individual Members of the Med. Licensing Bd.*, No. 23-2366 (7th Cir.) (briefing completed Oct. 18, 2023); *Poe* v. *Drummond*, No. 23-5110 (10th Cir.) (filed Oct. 10, 2023). And still more suits are pending in district courts in the Fourth and Ninth Circuits. See *Poe* v. *Labrador*, No. 23-cv-269 (D. Idaho); *Voe* v. *Mansfield*, No. 23-cv-864 (M.D.N.C.).

2. Those pending cases are especially likely to deepen the existing conflict on gender-affirming-care bans because the Fourth, Seventh, and Ninth Circuits have already rejected key premises of the Sixth Circuit's equal-protection analysis. Indeed, the decision below created or deepened broader disagreements in the courts of appeals about the level of scrutiny

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[7] 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*, No. 21-cv-450, 2023 WL 4073727 (E.D. Ark. June 20, 2023), appeal pending, No. 23-2681 (8th Cir. filed July 21, 2023); *Doe* v. *Ladapo*, No. 23-cv-114, 2023 WL 3833848 (N.D. Fla. June 6, 2023); *Koe* v. *Noggle*, No. 23-cv-2904, 2023 WL 5339281 (N.D. Ga. Aug. 20, 2023); *K.C.* v. *Individual Members of the Med. Licensing Bd.*, 2023 WL 4054086 (S.D. Ind. June 16, 2023), appeal pending, No. 23-2366 (7th Cir. filed July 12, 2023); *Doe 1* v. *Thornbury*, No. 23-cv-230, 2023 WL 4230481 (W.D. Ky. June 28, 2023), rev'd *sub nom. L.W.* v. *Skrmetti*, 83 F.4th 460 (6th Cir. 2023); Pet. App. 130a-218a (Tennessee); but see *Poe* v. *Drummond*, No. 23-cv-177, 2023 WL 6516449 (N.D. Okla. Oct. 5, 2023), appeal pending, No. 23-5110 (10th Cir. filed Oct. 10, 2023).

applicable under the Equal Protection Clause to restrictions targeting transgender individuals. Those conflicts independently warrant this Court's review.

a. In holding that laws that use sex-based terms and target transgender individuals do not discriminate based on sex, the Sixth and Eleventh Circuits have split with the Fourth and Seventh. In *Grimm*, the Fourth Circuit held that a school board policy limiting use of male and female facilities to "'the corresponding biological genders'" discriminated based on sex, and thus was subject to heightened scrutiny, because the policy "punish[ed] transgender persons for gender nonconformity." 972 F.3d at 608 (citation omitted). Likewise, in *Whitaker*, the Seventh Circuit held that the school district's bathroom policy "treat[ed] transgender students * * * who fail to conform to the sex-based stereotypes associated with their assigned sex at birth[] differently," and therefore discriminated based on sex. 858 F.3d at 1051.

Whereas the decision below and the Eleventh Circuit's decision in *Eknes-Tucker* refused to find that the challenged laws facially discriminate based on sex despite their explicitly sex-based terms, see pp. 20-23, 27, *supra*, the Fourth and Seventh Circuits recognized that a restriction that "cannot be stated without referencing sex" is "inherently based upon a sex-classification" and therefore subject to "heightened review." *Whitaker*, 858 F.3d at 1051; see *Grimm*, 972 F.3d at 608 ("As in *Whitaker*, [the board's bathroom] policy 'cannot be stated without referencing sex.' On that ground alone, heightened scrutiny should apply.") (citations omitted); see also *Brandt*, 47 F.4th at 669-670 (citing *Whitaker* for the same proposition).

b. Next, in holding that *Bostock*'s "reasoning applies only to Title VII" and not to the Equal Protection Clause, Pet. App. 40a, the Sixth Circuit sided with the Eleventh Circuit and broke with the Ninth. Cf. *Bostock*, 140 S. Ct. at 1783 (Alito, J., dissenting) (predicting that the lower courts would divide over "the reach of the Court's reasoning" in constitutional cases). Like the Sixth Circuit here, the Eleventh Circuit in *Eknes-Tucker* held that *Bostock* has "minimal relevance" to identifying sex-based discrimination under the Equal Protection Clause because it "concerned a different law" and "a different factual context." 80 F.4th 1229. The Eleventh Circuit thus held that Alabama's ban on gender-affirming care for minors did not "classif[y] on the basis of sex by classifying on the basis of gender nonconformity." *Id.* at 1228.

By contrast, in *Hecox* v. *Little*, 79 F.4th 1009 (2023), the Ninth Circuit relied on *Bostock* in holding that an Idaho law barring transgender women and girls from participating in women's athletics was subject to heightened scrutiny in part because "discrimination on the basis of transgender status is a form of sex-based discrimination." *Id.* at 1026; see *ibid.* ("The Supreme Court recently held in the Title VII context that 'it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex.'") (citation omitted).

c. Finally, the Sixth Circuit's holding that transgender individuals do not constitute a quasi-suspect class created a square conflict with the Fourth and Ninth Circuits. In *Grimm*, the Fourth Circuit held that the challenged policy was independently subject to heightened scrutiny because "transgender people constitute at least a quasi-suspect class." 972 F.3d at 610.

The court explained that "each factor" used to "determine whether a group of people constitutes a suspect or quasi-suspect class" is "readily satisfied" for transgender persons. *Id.* at 611; see *id.* at 611-613 (discussing factors). The Ninth Circuit has likewise held that "gender identity is at least a 'quasi-suspect class.'" *Hecox*, 79 F.4th at 1026 (citation omitted); see *Karnoski* v. *Trump*, 926 F.3d 1180, 1200-1201 (9th Cir. 2019) (per curiam).

3. This Court's review is also warranted because the question whether the recent wave of bans on gender-affirming care are consistent with the Equal Protection Clause is a question of national importance that urgently requires a definitive resolution.

Transgender adolescents have been treated for gender dysphoria with puberty blockers and hormones for decades. See Pet. App. 269a. But in the past three years, nineteen states have passed laws categorically banning that care. Those laws prevent parents from obtaining critical medical care for adolescents facing a serious and potentially damaging medical condition—care that every major medical organization agrees is warranted in appropriate cases, and that can be prescribed for any adolescent for any reason *except* to treat gender dysphoria. If these laws are allowed to go into effect, transgender adolescents in large swaths of the country will lose access to medically necessary care, resulting in "predictable and significant harms" like escalating distress, anxiety, and suicidality. *Id.* at 270a-271a. Parents will face the untenable choice of relocating to a different State—leaving their homes, employers, and communities—or forgoing this essential care for their children.

L.W., for example, does not know what her "parents would do about their jobs, or even where we would go"; she is terrified of "losing the medication" she needs, but she "hate[s] that continuing it could mean leaving [her] home." Pet. App. 228a. Rebecca Roe, Ryan's mother, says that "Tennessee is our home," and "[m]oving would be incredibly difficult for our family"; "[i]t would mean giving up my husband's job, our proximity to family, and all of our friends," Ryan's "therapist," and his "support group." *Id.* at 246a. "But watching Ryan suffer if his treatment is taken away," she continues, "is the worst thing I can think of." *Ibid.*

Although other cases challenging laws like SB1 remain pending, this Court need not and should not await further percolation before granting review. Courts across the nation have considered these laws, dividing on the questions presented and thoroughly airing the relevant legal issues. See pp. 27-28 & n.7, *supra.*

This case is also a suitable vehicle to resolve the questions presented. The district court issued its preliminary injunction ruling on an extensive record, after the parties agreed that testimony from the parties' experts "would all go in writing." D. Ct. Doc. 125, at 14 (May 28, 2023). And the Sixth Circuit definitively resolved the critical legal questions, disagreeing with the district court on the relevant legal principles and the application of this Court's precedents and holding that laws like SB1 warrant only rational-basis review. Further factual development will not change the outcome.

Meanwhile, delay would prolong the harm suffered by adolescents in the Sixth and Eleventh Circuits who are being or will soon be denied critical medical care. And delay would prolong the uncertainty for minors and their families across the country, who do not yet know

whether the bans in their States will be upheld or enjoined. This Court's intervention is warranted now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
KRISTEN CLARKE
Assistant Attorney General
BRIAN H. FLETCHER
Deputy Solicitor General
YAIRA DUBIN
Assistant to the Solicitor General
BONNIE I. ROBIN-VERGEER
BARBARA A. SCHWABAUER
JONATHAN L. BACKER
Attorneys

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