No. 23-477

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER,

v.

JONATHAN SKRMETTI, ATTORNEY GENERAL AND REPORTER FOR TENNESSEE, ET AL., RESPONDENTS

and

L.W., BY AND THROUGH HER PARENTS AND NEXT FRIENDS, SAMANTHA WILLIAMS AND BRIAN WILLIAMS, ET AL., RESPONDENTS IN SUPPORT OF PETITIONER

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

BRIEF FOR *AMICUS CURIAE* AMERICAN BAR ASSOCIATION SUPPORTING PETITIONER

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BRIEF FOR *AMICUS CURIAE* AMERICAN BAR ASSOCIATION SUPPORTING PETITIONER

INTERESTS OF *AMICUS CURIAE*[1]

The American Bar Association ("ABA") is the largest voluntary association of attorneys and legal professionals in the world. Its membership comprises attorneys in private firms, corporations, non-profit organizations, and government agencies. Membership also includes judges,[2]

[1] No counsel for a party authored this brief in whole or in part. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

[2] Neither this brief nor the decision to file it should be interpreted to reflect the views of any judicial member of the ABA. No inference should be drawn that any members of the Judicial Division Council participated in the adoption or endorsement of the positions in this brief. This brief was not circulated to any member of the Judicial Division Counsel prior to filing.

legislators, law professors, law students, and non-lawyers in related fields. The ABA's mission is to serve the legal profession and the public by "defending liberty and pursuing justice."[3] Consistent with that mission, the ABA has for decades opposed anti-LGBTQ discrimination of all kinds. The ABA has an equally clear record of opposing state laws that interfere with medical autonomy and access to care, particularly provisions that are based in ideology rather than patient health and well-being.

In furtherance of its longstanding commitment to liberty, justice, and protection from discrimination, the ABA respectfully urges the Court to hold that the Equal Protection Clause bars Tennessee from banning gender-affirming medical care for transgender youth while allowing essentially identical treatments for others. A decision upholding Tennessee Senate Bill 1 ("SB1") would deny on a discriminatory basis urgently needed medical care to one of the nation's most vulnerable groups and infringe on their fundamental right to medical and bodily autonomy.

More than fifty years ago, the ABA adopted its first policy supporting LGBTQ rights, urging the repeal of laws criminalizing private sexual relations between consenting adults.[4] Since that time, the ABA has continued to oppose anti-gay and anti-transgender discrimination. In 2014, it adopted a comprehensive resolution recognizing that lesbian, gay, bisexual, and transgender people have a human right to be free from discrimination, threats, and violence based on their

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[3] Am. Bar Ass'n, *About Us*, https://bit.ly/4c5NuXS.

[4] See ABA Resolution 14114B, Accompanying Report, at 1 (Aug. 11, 2014), https://bit.ly/4darKve. Generally recommendations must be presented to and adopted by the ABA's House of Delegates to become ABA policy. See Am. Bar Ass'n, *ABA House of Delegates*, https://bit.ly/3YNGuvV.

identity.[5] Four years later, it adopted a policy supporting an interpretation of the Affordable Care Act's bar on sex discrimination to include discrimination on the basis of sexual orientation and gender identity.[6]

The ABA has a similarly extensive history of advocating for access to medical care, including for children, and opposing state policies that interfere with medical choices on ideological grounds. In 1984, the ABA approved a resolution urging the legal community to assist in supporting children's legal rights and health and welfare needs.[7] Subsequent resolutions have included, in 1994, a policy supporting the right of every American to access quality health care; in 1997, a resolution supporting legislation to provide comprehensive health care for children; in 2005, a resolution opposing government interference with patients' rights to receive relevant and accurate medical information; and in 2019, a resolution urging governments not to impose health care regulatory requirements that burden patients' access to care without sound medical justification.[8]

In keeping with its longstanding support for both LGBTQ rights and medical autonomy, the ABA has adopted two resolutions directly addressing medical care for transgender individuals. In 2020, it adopted a resolution opposing policies that discriminate against transgender individuals on the basis of gender identity or impose barriers to obtaining or providing medical care to

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[5] ABA Resolution 14114B.

[6] ABA Resolution 18A104C (Aug. 6, 2018), https://bit.ly/3AtBx0O.

[7] See ABA Resolution 97A113, Accompanying Report, at 7 (Aug. 4, 1997), https://bit.ly/3WMiXtM.

[8] ABA Resolution 94M105 (Feb. 7, 1994), https://bit.ly/3X2z1qj; ABA Resolution 97A113; ABA Resolution 05M104 (Feb. 14, 2005), https://bit.ly/3YoUKLg; ABA Resolution 19A115F (Aug. 12, 2019), https://bit.ly/3Yq2UTC.

affirm an individual's gender identity.[9] And in 2024, it adopted a resolution urging governments at all levels to enact legislation that protects access to gender-affirming medical care and safeguards professionals who provide it.[10] In doing so, the ABA recognized the consensus of leading medical organizations that for many youth who suffer from gender dysphoria, gender-affirming medical care is often medically indicated, urgently needed, and the standard of care.[11]

Consistent with its longstanding policies, the ABA has served as a leading voice before the Court in nearly every landmark discrimination case involving sexual orientation or gender identity over the past three decades. Those cases include *303 Creative LLC* v. *Elenis*, 600 U.S. 570 (2023); *Fulton* v. *City of Philadelphia*, 593 U.S. 522 (2021); *Bostock* v. *Clayton County*, 590 U.S. 644 (2020); *Masterpiece Cakeshop, Ltd.* v. *Colorado Civil Rights Commission*, 584 U.S. 617 (2018); *Gloucester County School Board* v. *G.G. ex rel. Grimm*, 580 U.S. 1168 (2017); *Obergefell* v. *Hodges*, 576 U.S. 644 (2015); *United States* v. *Windsor*, 570 U.S. 744 (2013); *Lawrence* v. *Texas*, 539 U.S. 558 (2003); *Boy Scouts of America* v. *Dale*, 530 U.S. 640 (2000); and *Romer* v. *Evans*, 517 U.S. 620 (1996).

The ABA's work on these issues furthers its mission to defend liberty and justice and reflects its recognition of the significant harms that discrimination and identity-based restrictions on medical care inflict on the nation's institutions and vulnerable populations. The ABA condemns discriminatory policies that infringe on fundamental rights to bodily and medical autonomy. For

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[9] ABA Resolution 20A116C (Aug. 4, 2020), https://bit.ly/4c5skZS.

[10] ABA Resolution 24A510 (Aug. 5, 2024), https://bit.ly/3WYMFeY.

[11] ABA Resolution 20A116C, Accompanying Report, at 1-2; ABA Resolution 24A510, Accompanying Report, at 1.

these reasons, the ABA has a strong interest in advocating for the invalidation of Tennessee SB1.

INTRODUCTION AND SUMMARY OF ARGUMENT

The "precepts of liberty and equality under the Constitution" are inextricably linked. *Obergefell* v. *Hodges*, 576 U.S. 644, 673–674 (2015). And as this Court recognized more than eighty years ago, to deny "a basic liberty" to one group, while extending it to others, "runs afoul of the equal protection clause." *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942). As petitioner correctly explains, Tennessee's SB1 is subject to (and fails) heightened scrutiny because it impermissibly draws a suspect classification, singling out a group whose immutable characteristics make them the target of pervasive, invidious discrimination. But the statute is unconstitutional for a second and independent reason, too: it discriminates in the exercise of the "basic civil rights" to medical and bodily autonomy. *Ibid.* The government cannot, consistent with the Equal Protection Clause, grant these basic rights to medical and bodily autonomy only to some *favored* groups, while denying them to other *disfavored* groups, unless the choice can meet the requirements of strict scrutiny. A law justified by interests that amount to little more than favoritism for one group over another, like those Tennessee asserts here, plainly fails that test.

A. Equal access to gender-affirming medical care is critical for the wellbeing and dignity of transgender youth. The treatments to help adolescents conform to their gender identity at issue in this case are safe and medically accepted. For adolescents with gender dysphoria, these treatments are especially critical. Gender-affirming medical care for minors with gender dysphoria is *science-backed medical treatment*—treatment associated with significant improvements in anxiety and depression, disruptive behaviors, global

functioning, and suicidality. And as the ABA has recognized in its past policy statements, state policy denying any individual access to needed medical care for reasons wholly unrelated to any medical justification—as SB1 does—is inimical to equality and equal dignity before the law.

B. Tennessee's SB1 violates equal protection because it discriminates in the exercise of important constitutional rights. This Court has long recognized a "constitutionally protected liberty interest" in control over one's own medical care, an interest that is at its apex where the care involved relates so closely to individual dignity, self-expression, and the ability to form intimate bonds. *Cruzan ex rel. Cruzan* v. *Dir., Mo. Dep't of Health*, 497 U.S. 261, 278 (1990). And that interest is bolstered by the parental rights of parents of transgender youth whom the law denies any say in their children's medical care. See *Wisconsin* v. *Yoder*, 406 U.S. 205, 233 (1972). The idea that the State can force parents to watch their child suffer when safe, appropriate, science-backed medical treatment is available is fundamentally anathema to our constitutional history and traditions. Under *Skinner* and *Obergefell*, any classification on the exercise of these important constitutional rights is subject to heightened scrutiny.

SB1 denies gender-affirming medical care to transgender minors, while permitting use of the same medicines and treatments by other similarly situated minors, including those seeking to conform their appearance to societal expectations. No purported interest in medical safety could justify denying transgender youth access to this critical care because Tennessee recognizes the safety of those treatments for other similarly situated patients. And Tennessee's stated purpose to deny equal medical autonomy to individuals whose "purported identity [is] inconsistent" with their sex

assigned at birth, Tenn. Code Ann. § 68-33-101, falls short of even a rational justification for the law.

ARGUMENT

DENYING TRANSGENDER INDIVIDUALS EQUAL ACCESS TO CRITICAL MEDICAL CARE AVAILABLE TO OTHERS VIOLATES EQUAL PROTECTION

Equal protection forbids differential treatment in the exercise of important constitutional rights absent the strongest justification, and Tennessee's SB1 cannot withstand scrutiny under that standard. Medical experts have recognized that medical care to help adolescents conform their bodies to their gender identity is both safe and effective. Yet SB1 denies those treatments to transgender individuals while allowing them to others, with no plausible medical justification. In so doing, the State imposes unequal burdens on the liberty interests of transgender youth and their parents. No legitimate interest in medical safety could justify that unequal treatment, because Tennessee recognizes that those same treatments are safe and appropriate for similarly situated adolescents whose gender identity aligns with their sex assigned at birth. To the contrary, the law's stated justifications make clear that its purpose is to single out transgender individuals for disfavored treatment. That purpose is anathema to the guarantees of the Equal Protection Clause.

A. Expert Medical Evidence and Research Demonstrate That Gender-Affirming Medical Care Can Be Critical For The Wellbeing Of Transgender Youth

Both transgender and cisgender[12] individuals routinely receive medical care to conform their physical characteristics to their gender identity. For over forty years, puberty blockers have been used to suppress puberty in cisgender children with precocious puberty until they reach the appropriate age.[13] This allows cisgender adolescents to go through puberty in the time and manner typical of their gender, and to avoid the medical, psychological, and social strife that may come if they develop much earlier than their peers. Hormone therapy, too, is a common treatment for cisgender patients with delayed puberty or other endocrine disorders.[14] Both treatments are also indicated for certain cancers and other diseases and to preserve fertility in adolescents undergoing chemotherapy.[15]

In transgender individuals, gender-affirming medical care aims to treat gender dysphoria, a clinical diagnosis recognized in the American Psychiatric Association's *Diagnostic and Statistical Manual*.[16] It is a serious medical condition, marked by significant distress resulting from incongruence between a person's sex

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[12] The term "cisgender" describes a person whose gender identity aligns with their sex assigned at birth. See Am. Psych. Ass'n, *Guidelines for Psychological Practice With Transgender and Gender Nonconforming People*, 70 Am. Psych. 832, 833 (2015), https://bit.ly/4dxC5B4.

[13] Decl. of Dr. Deanna Adkins ¶ 47, *L.W. v. Skrmetti*, 679 F. Supp. 3d 668 (M.D. Tenn. 2023) (No. 23-cv-376).

[14] *Id.* ¶¶ 52–54.

[15] *Id.* ¶¶ 47, 52–54.

[16] See Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 512–13 (5th ed. rev. 2022).

assigned at birth and their gender identity, and is associated with clinically significant impairment in social or other important areas of functioning.[17]

Gender-affirming medical care, like similar care for cisgender adolescents, typically consists of puberty blockers—which pause puberty to allow adolescents and their parents to decide the best path forward—or hormone therapy. Under guidelines published by the World Professional Association for Transgender Health and the Endocrine Society, this care is never initiated before the onset of puberty.[18] And surgical interventions in minors—which are not at issue in this case—are exceptionally rare.[19] As recognized by nearly every major American medical and mental health association, these treatments are safe, often medically appropriate, and

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[17] *Ibid.*

[18] See Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int'l J. Transgender Health S1, S64 (2022), https://bit.ly/3yhihTP (WPATH Standards of Care); Wylie C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. Clinical Endocrinology & Metabolism 3869, 3880–3881 (2017), https://bit.ly/3ynXBcN (Endocrine Society Clinical Guidelines).

[19] See, *e.g.*, Dannie Dai et al., *Prevalence of Gender-Affirming Surgical Procedures Among Minors and Adults in the US*, JAMA Network Open, June 2024, at 1–3, https://bit.ly/3LT185X. Indeed, gender-affirming surgeries are far more common among cisgender minors than transgender minors. *Ibid.* For example, cisgender boys with gynecomastia may undergo gender-affirming breast reduction. *Id.* at 3.

typically reversible.[20] Extensive scientific literature supports this medical consensus.[21]

For many transgender adolescents, gender-affirming medical care is vitally important. By delaying development of distressing characteristics that exacerbate gender dysphoria, gender-affirming medical care reduces the incidence of depression and suicidality

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[20] See, *e.g.*, Am. Med. Ass'n House of Delegates, *Resolution 122: Removing Financial Barriers to Care for Transgender Patients* 1 (2008), https://bit.ly/4ciNrIa; Am. Acad. of Pediatrics, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, Pediatrics, Oct. 2018, at 5–6, https://bit.ly/3WU02w3; Endocrine Soc'y & Pediatric Endocrine Soc'y, *Transgender Health Position Statement* (2020), https://bit.ly/4ftVrZH; Am. Psych. Ass'n, *Position Statement on Discrimination Against Transgender and Gender Diverse Individuals* (2018), https://bit.ly/3LSzqpT; Am. Acad. of Fam. Physicians, Resolution No. 1004 (May 3, 2012), https://bit.ly/4cdrr1h; Am. Coll. of Obstetricians & Gynecologists, *Health Care for Transgender Individuals* (2021), https://bit.ly/4fyYekn; see also Dick Mul & Ieuan A. Hughes, *The Use of GnRH Agonists in Precocious Puberty*, 159 Euro. J. Endocrinology S3, S6–S7 (2008), https://bit.ly/4cjNraW (explaining that effects of puberty blockers are fully reversible).

[21] See, *e.g.*, Annelou L.C. de Vries et al., *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 Pediatrics 696, 701–703 (2014), https://bit.ly/3LTibEX; Christal Achille et al., *Longitudinal Impact of Gender-Affirming Endocrine Intervention on the Mental Health and Wellbeing of Transgender Youths: Preliminary Results*, Int'l J. Pediatric Endocrinology, Apr. 2020, at 1, https://bit.ly/3ysjzv4; Luke Allen et al., *Well-Being and Suicidality Among Transgender Youth After Gender-Affirming Hormones*, 7 Clinical Prac. in Pediatric Psych. 302, 305–309 (2019), https://bit.ly/3AcdO5n; Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, Pediatrics, Feb. 2020, at 1, https://bit.ly/3yolr8j; Anna I.R. van der Miesen et al., *Psychological Functioning in Transgender Adolescents Before and After Gender-Affirmative Care Compared with Cisgender General Population Peers*, 66 J. Adolescent Health 699, 699 (2020), https://bit.ly/3WxCZXE.

among transgender adolescents, allowing them to live happier and more productive lives. Those effects are both measurable and substantial, as confirmed by extensive medical literature.[22] Receiving gender-affirming medical care during adolescence can also obviate the need for more invasive interventions—like surgery—in adulthood.[23]

Indeed, parents and caregivers of adolescents with gender dysphoria recognize the positive effects of gender-affirming medical care, and fear worsening mental health outcomes for their children if such care were to be banned.[24] Such fears are consistent with available evidence demonstrating that denial of gender-affirming medical care significantly harms the mental health of individuals with gender dysphoria.[25]

As ABA policy resolutions and supporting reports have consistently recognized, restrictions on equal access to gender-affirming medical care also undermine the dignity and autonomy of transgender individuals. The right of patients to access treatment without arbitrary governmental interference is "grounded in the common-law right of bodily integrity and self-determination, as well as liberty interests protected by the Fourteenth

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[22] See Kellan E. Baker et al., *Hormone Therapy, Mental Health, and Quality of Life Among Transgender People: A Systematic Review*, J. Endocrine Soc'y, Apr. 2021, https://bit.ly/3LULVkK (systematic review of studies of gender-affirming hormone therapy).

[23] See Adkins Decl., *supra* note 13, ¶ 65.

[24] See Kacie M. Kidd et al., *"This Could Mean Death for My Child": Parent Perspectives on Laws Banning Gender-Affirming Care for Transgender Adolescents*, 68 J. Adolescent Health 1082, 1084–1086 (2020), https://bit.ly/4d1Q1nb.

[25] See, *e.g.*, Amy E. Green et al., *Association of Gender-Affirming Hormone Therapy With Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, 70 J. Adolescent Health 643, 643–644 (2022), https://bit.ly/4fvgiMl.

Amendment."[26] Imposing barriers to care for reasons unrelated to medical safety and necessity "weaken[s] [these] long standing and deeply rooted legal protections of patients' rights to direct their own medical course."[27] And these impositions on bodily integrity and self-determination are particularly acute for transgender individuals, who face pervasive discrimination. For that reason, the ABA "opposes all federal, state, local, territorial and tribal legislation, regulation, and agency policy that discriminates against transgender and non-binary people on the basis of gender identity and/or that imposes barriers to obtaining or providing medically necessary care to affirm an individual's gender identity."[28]

B. Tennessee SB1 Impermissibly Discriminates In The Exercise Of The Right To Medical And Bodily Autonomy

By denying to transgender youth the same generally accepted medical treatments available to others, SB1 impermissibly discriminates in the exercise of the rights to medical and bodily autonomy. A law that denies important constitutional rights to one group while allowing them to others is subject to heightened scrutiny under the Equal Protection Clause regardless whether that law draws a suspect classification. As this Court has long recognized, there is a constitutionally protected liberty interest in important decisions about one's own medical care. That interest is at its apex here, where the medical care involved is so closely tied to individual dignity and autonomy. And the liberty interests of transgender youth are buttressed by those of their parents, whom SB1 denies any say in their children's

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[26] ABA Resolution 05M104, Accompanying Report, at 1 (Feb. 14, 2005), https://bit.ly/3YoUKLg.

[27] *Id.* at 3.

[28] ABA Resolution 20A116C (Aug. 4, 2020), https://bit.ly/4c5skZS.

medical care. Tennessee's asserted interests, which rest on sex stereotypes and single out transgender individuals for disfavor, cannot justify the law under heightened scrutiny, or indeed any standard of constitutional review.

1. SB1 Is Subject To Heightened Scrutiny As A Classification In The Exercise Of Important Constitutional Rights

"The Due Process Clause and the Equal Protection Clause are connected in a profound way, though they set forth independent principles." *Obergefell* v. *Hodges*, 576 U.S. 644, 672 (2015). Equality and liberty go hand-in-hand. A law that affords rights to some while denying them to others "stigmatizes those whose own liberty is then denied." *Ibid.*

Consistent with these principles, this Court recognized over eighty years ago that equal protection demands equal treatment in the protection of important constitutional rights. See *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942). Regardless whether a suspect classification is involved, a law that denies one group "a basic liberty" "runs afoul of the equal protection clause." *Ibid.* Since *Skinner*, the Court has repeatedly applied this principle to strike down statutes that discriminate in the exercise of important rights without the strongest justification. *Obergefell*, 576 U.S. at 673–674; see, *e.g.*, *M.L.B.* v. *S.L.J.*, 519 U.S. 102, 123–124 (1996); *Zablocki* v. *Redhail*, 434 U.S. 374, 383 (1978).

The Court has identified as "fundamental" those rights "essential to the orderly pursuit of happiness by free [people]." *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923). The liberty interests protected under the Constitution "extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs." *Obergefell*, 576 U.S. at 663. For that reason, the Court has recognized constitutionally protected liberty interests in

deeply personal decisions about family, see *Troxel* v. *Granville*, 530 U.S. 57 (2000); about bodily autonomy, see *Washington* v. *Harper*, 494 U.S. 210 (1990); and about sexuality, see *Lawrence* v. *Texas*, 539 U.S. 558 (2003).

"History and tradition guide and discipline this inquiry but do not set its outer boundaries." *Obergefell*, 576 U.S. at 664. And the liberties protected by the Constitution need not "be defined in a most circumscribed manner, with central reference to specific historical practices." *Id.* at 671; cf. *United States* v. *Rahimi*, 144 S. Ct. 1889, 1898 (2024) (scope of constitutional rights turns on "the principles that underpin our regulatory tradition," not the existence of a precise "historical twin" (citation omitted)). Under this framework, the Constitution protects, among other things, the liberty to make "personal choice[s]" that are "inherent in the concept of individual autonomy." *Obergefell*, 576 U.S. at 665.

And certain liberties have been thought foundational since the Constitution's ratification and across a dozen American generations the recognition of their vital importance has never wavered.

The right to medical and bodily autonomy is just such a right. As the Court recognized in *Cruzan*, "a competent person has a constitutionally protected liberty interest" in controlling one's own medical care. *Cruzan ex rel. Cruzan* v. *Dir., Mo. Dep't of Health*, 497 U.S. 261, 278 (1990). And that interest is strongest where, as here, the medical care at issue is closely linked to individual dignity, self-expression, and the ability to form intimate bonds. *Skinner*, for example, recognized the "basic liberty" to decide whether to undergo sterilization. 316 U.S. at 541. And no less than "choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution," decisions concerning gender expression "are among the most intimate that an individual can make." *Obergefell*, 576 U.S.

at 666. To deny transgender individuals the ability to make such fundamental decisions on the same terms as cisgender individuals "would disparage their choices and diminish their personhood." *Id.* at 672.

And the liberty interests of transgender youth do not stand alone in this case. For more than a hundred years, this Court has recognized a fundamental right of parents to shape the upbringing of their children. See *Meyer*, 262 U.S. at 400. Indeed, that is the "natural duty" of every parent. *Ibid.* Tennessee's law treads on that interest, too, forbidding gender-affirming medical care even when a child, their parents, and their doctors all agree that such care is in the child's best interests. Tenn. Code Ann. § 68-33-103(c)(1) ("It is not a defense *** that the minor, or a parent of the minor, consented to the conduct that constituted the violation.").

The confluence of parental rights and a child's liberty interests warrants particularly serious respect. See *Wisconsin* v. *Yoder*, 406 U.S. 205, 231–232 (1972). Indeed, infringement on such "hybrid rights" demands heightened scrutiny even when each of the individual interests involved would not, standing alone, necessarily mandate such searching review. See *Emp. Div.* v. *Smith*, 494 U.S. 872, 881 (1990) (collecting cases). As the Court explained in *Obergefell*, the Constitution's various protections should not be understood in isolation; they have "synergy," and each "may be instructive as to the meaning and reach of the other." 576 U.S. at 672–673.

Liberty and equality also reinforce one another. For that reason, the Court has determined that discrimination in the exercise of important rights may warrant heightened review even where due process would not independently require it. In *M.L.B.*, for example, the Court observed that "due process does not independently require that the State provide a right to appeal," and indigence is not ordinarily a suspect classification. 519

U.S. at 120. Nonetheless, the Court held, when transcript fees thwart an indigent mother's equal access to appellate review of a parental termination decree, "[d]ue process and equal protection principles converge." *Ibid.* (alteration in original) (quoting *Bearden* v. *Georgia*, 461 U.S. 660, 665 (1983)). In those circumstances, equal protection bars differential treatment in the exercise of important rights. The same principles mandate close scrutiny of Tennessee's decision to deny equal medical autonomy to transgender youth and their parents.

The classification SB1 draws between transgender individuals on one hand and cisgender individuals on the other is even starker than the classification in cases like *M.L.B.* Tennessee's law expressly distinguishes those whose "purported identity [is] inconsistent with the minor's sex" assigned at birth and those whose is not. Tenn. Code Ann. § 68-33-103(a)(1)(A). Under the statute, cisgender individuals may receive treatments like puberty blockers or hormone therapy to conform their expressed gender to their gender identity; transgender individuals may not. That brightline classification in the exercise of important rights can satisfy equal protection only if justified by the most compelling state interests.

2. Tennessee's Overtly Discriminatory Interests Cannot Justify Its Discriminatory Treatment Of Transgender Youth

The purposes expressed in SB1's legislative findings fall far short of the compelling interests required. Critically, those purposes rest on exactly the sort of "stereotypes" and "generalizations" about conformance to an individual's sex assigned at birth that this Court has held cannot satisfy even intermediate scrutiny. *United States* v. *Virginia*, 518 U.S. 515, 549–550 (1996). The legislative findings, for example, assert that minors whose gender identities differ from their sex assigned at birth "lack the maturity to fully understand and appreciate the

life-altering consequences" of gender affirming care. Tenn. Code Ann. § 68-33-101(h). But cisgender minors seeking identical treatment to align their physical characteristics with their gender identity are fully able, in the legislature's view, to determine the course of their own medical care together with their parents and doctors. The legislature also asserts an interest "in protecting the ability of minors to develop into adults who can create children of their own." Tenn. Code Ann. § 68-33-101(m). Even ignoring the problematic lack of understanding of the relevant science reflected in that purported justification, it evidences profound antipathy for autonomy in making personal decisions about procreation. See *Obergefell*, 576 U.S. at 667.

To the extent Tennessee relies on findings about medical safety, that interest too cannot survive even cursory inspection. That is because the statute permits the same treatments with the same safety profile for the same purposes—conforming one's physical characteristics to one's gender identity—when cisgender individuals are involved. See Tenn. Code Ann. § 68-33-103(a)(1). The statute singles out transgender individuals, denying them medically safe and appropriate care that similarly situated cisgender individuals may access freely. If Tennessee's medical concerns about puberty blockers and hormone treatments were legitimate, the statute would be vastly underinclusive. And the State's decision to draw a line untethered to its asserted interests is a strong indication of an "invidious" purpose. *Eisenstadt* v. *Baird*, 405 U.S. 438, 454 (1972).

Indeed, Tennessee's stated interests would fail even rational-basis review, because they reflect "a bare desire" to disfavor transgender individuals. *Romer* v. *Evans*, 517 U.S. 620, 634 (1996) (cleaned up). The legislative findings, for example, also assert an interest in "encouraging minors to appreciate their sex" assigned at birth. Tenn.

Code Ann. § 68-33-101(m). That is, the State's policy expressly favors conventional gender expression and those whose gender identities align with their sex assigned at birth over those whose do not. Confirming the State's discriminatory purpose, Tennessee enacted SB1 as part of a series of laws targeting transgender individuals.[29] "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare *** desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest." *Romer*, 517 U.S. at 634 (alteration in original) (quoting *Dep't of Agric.* v. *Moreno*, 413 U.S. 528, 534 (1973)). The State's overtly discriminatory interests cannot justify denying autonomy in making important medical decisions to transgender individuals while allowing it to others.

For many of these young people, this well accepted therapy will help them escape debilitating depression and anxiety; free them from feeling like prisoners in their own bodies; and even save their lives. To justify its intrusion against these individual interests of the highest order, the Tennessee legislature asserts that minors should "appreciate their sex." Tenn. Code Ann. § 68-33-101(m). Far less restrictive avenues exist to further any legitimate goals the State might have than the discriminatory law it has adopted. The Court should hold that Tennessee SB1 violates equal protection.

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[29] See, *e.g.*, Tenn. Pub. Ch. 486 (May 17, 2023) (defining "sex" as "a person's immutable biological sex as determined by anatomy and genetics existing at the time of birth"); Tenn. Pub. Ch. 448 (May 17, 2023) (permitting public school teachers to disregard a student's preferred pronouns if they are inconsistent with the student's sex assigned at birth); Tenn. Pub. Ch. 285 (Apr. 28, 2023) (limiting students to participating in school sports "only in accordance with the student's sex" assigned at birth).

CONCLUSION

For the foregoing reasons, the Court should reverse.

Respectfully submitted.

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