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.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF EQUALITY FLORIDA, GEORGIA EQUALITY, TENNESSEE EQUALITY PROJECT, EQUALITY UTAH, AND WYOMING EQUALITY AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

Amici Equality Florida, Georgia Equality, Tennessee Equality Project, Equality Utah, and Wyoming Equality are organizations that exist to support and advocate on behalf of members of the lesbian, gay, bisexual, transgender, and queer community (LGBTQ+). Each of the States in which amici operate (Florida, Georgia, Tennessee, Utah, and Wyoming) has passed a ban on gender-affirming medical care[2]—that is, a law that prohibits certain forms of generally available medical care from being used for the purpose of affirming the gender identity of a minor, if that gender differs from the minor's sex assigned at birth.

Amici's membership includes countless families who have spent years working tirelessly to support their transgender children. Learning how to best provide that support is a process that includes listening to and learning from the children themselves; consulting with a range of trusted advisors—for example, medical professionals, educators, and religious leaders; and speaking with other families to glean insights from their experiences. In many cases, these families have chosen, after going through that careful, deliberative process, to have medical profession-

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[1] Pursuant to Rule 37, counsel for amici curiae affirm that no counsel for a party authored this brief in whole or in part and no entity or person, other than amici, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

[2] See Fla. Stat. § 456.52(1); Ga. Code Ann. § 31-7-3.5; Tenn. Code Ann. §§ 68-33-101 *et seq.*; Utah Code Ann. §§ 58-1-603, 58-1-603.1; Wyo. Stat. § 35-4-1001 *et seq.*

als prescribe gender-affirming medical treatments to their adolescent children. Those treatments are administered by experienced medical professionals following established, evidence-based clinical treatment protocols and are based on the specific medical and developmental needs of each adolescent who receives care. These families made that choice based on the firm and well-informed belief that such care was necessary for their children's well-being.

Laws like SB1 prohibit families of transgender adolescents from making that choice. Specifically, these laws prohibit families of transgender adolescents from accessing medical treatments to affirm their children's gender identity, even as those same laws allow families to choose identical treatments for their children for any other purpose. Amici have a strong interest in protecting the families of transgender adolescents in their membership from state interference in one of the most significant decisions these families make: how best to care for their children.

INTRODUCTION AND SUMMARY OF ARGUMENT

The determination of how best to care for a child is one of the most important decisions a family can make. Many advisors and experts may be involved in that decision, including teachers, religious counselors, medical professionals, and even, on occasion, politicians. Nevertheless, with only rare exceptions, the ultimate decision of how best to provide for a child belongs not to these stakeholders, but to the child's family. Families decide how to ensure their children are safe, healthy, and loved. Families sort through the numerous sources of guidance available to reach the outcome best suited for their children. And they make decisions about their children's care, including medical care, with integrity, curiosity, and deep knowledge of their children's identities and needs. To take away from a family the ability to decide what is best for a child can have grave consequences—for families, for children, and for society as a whole. In some cases, those consequences are literally life threatening.

This is such a case. The Tennessee Legislature generally recognizes the value of allowing families to make decisions for their children. Yet, when parents choose to provide otherwise lawful medical care for the specific purpose of affirming the gender identity of their adolescent transgender children, the Legislature takes a different approach. In that context, it does not matter how carefully a family has considered its decision; how much the family has studied the science of transgender care; or how deeply the family is convinced that such care is appropriate and, indeed,

necessary for their child's very survival. Nor does it matter that, in the case of the medical care Tennessee prohibits, parents are making this decision based on the recommendation of medical professionals, consistent with the evidence-based approach supported by every major medical association in the United States. See U.S. Br. 6. If a family chooses gender-affirming medical care with which the State of Tennessee disapproves, it is the State—and not the family—that gets to decide what is best for the child.

The decision below erred in sanctioning this extreme and discriminatory intrusion on family decisionmaking. As an initial matter, the Court of Appeals' opinion wrongly applied rational-basis review, rather than heightened scrutiny, to determine the legality of Tennessee's law under the Equal Protection Clause. As the United States and plaintiffs explain, SB1 does not trample on the family's ability to make decisions for children in a *neutral* way. It does so *only* where families consent to medical treatment that will affirm a child's gender that differs from her sex assigned at birth. See U.S. Br. 21-23; L.W. Br. 22-23.

SB1 explicitly discriminates based on both sex and transgender status. SB1 prohibits medical professionals—and by extension, families—from providing "any puberty blocker or hormone" if, and only if, offered "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. §§ 68-33-102(5)(B), 68-33-103(a)(1). SB1 also contains an express exemption for treatments prescribed

"to treat a minor's congenital defect, precocious puberty, disease, or physical injury." Tenn. Code Ann. § 68-33-103(b)(1)(A). It is thus only when families decide to provide medical care to affirm the gender identity of their transgender adolescent that Tennessee arrogates to itself the family's right to choose the appropriate care for their child. That is straightforward sex-discrimination, triggering heightened scrutiny under this Court's precedents. See *United States* v. *Virginia*, 518 U.S. 515, 555 (1996) (*VMI*); U.S. Br. 19-23; L.W. Br. 22-25. The law also unquestionably draws lines based on transgender status, which is a quasi-suspect classification. See U.S. Br. 28-31; L.W. Br. 37-38.

The decision below, however, went beyond simply applying the wrong tier of scrutiny. Having incorrectly determined that rational basis review applies to SB1, the Court of Appeals framed the question before it as one of judicial modesty versus overreach: should the *courts* or the *Legislature* get to decide what is best for transgender adolescents in Tennessee? See *L.W. by & through Williams* v. *Skrmetti*, 83 F.4th 460, 471-472, 486-487 (6th Cir. 2023) (*L.W. II*). In so doing, the Sixth Circuit fundamentally misconstrued the question at the heart of this case—and that question's implications for Tennessee families.

SB1 and laws like it *do* implicate issues of who gets to decide how best to care for transgender adolescents. But those issues are not only about legislative or judicial power to decide, but also about whether legislatures or the *families* of transgender adolescents get to make that crucial choice. When the question is framed properly, it is plain to see that the de-

cision below was not an exercise in judicial neutrality. Instead, by affirming the legality of SB1, the Court of Appeals elevated one deliberative process—the democratic process of the Tennessee Legislature—above another: the one families go through every day to decide how best to care for their transgender children.

Amici are five LGBTQ+ equality organizations in States with bans on gender-affirming medical care.[3] Their members include families who love their children deeply and make decisions for their well-being every day. Included in that membership are families of transgender children. Those families have worked tirelessly to understand their children's needs and identities by consulting with medical advisors, reading literature, and learning from other families with transgender children. Amici know firsthand the extraordinary importance of allowing families to make medical decisions on behalf of these children. And they have directly witnessed how laws like Tennessee's that take that vital choice away from families cause profound harm—both to families who flee the State and those who remain.

In this brief, amici detail the consequences of discriminatorily taking away a family's choice to determine what medical care is best for their transgender child. To do so, amici provide stories from the sources best positioned to speak to those harmful consequences—the families themselves. These families each have their own story of discovering their child's

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[3] Two dozen States have bans on gender-affirming medical care in place. See U.S. Br. 7 n.3.

gender identity; seeking out appropriate resources to understand how best to care for their child emotionally and medically; and then making the choice of how to support and protect their child's well-being.

These families also have stories of how laws like SB1 have cruelly appropriated their ability to make these choices for themselves. For families that choose to stay in States with laws similar to SB1, or that—for financial or personal reasons—must do so, bans on gender-affirming medical care threaten to destroy the careful, years-long journey they have taken to care for and support their children, risking severe harm to these children in the process. For families with sufficient resources that choose to flee, the effect of these laws has been to force them to abandon States where they have lived for years, decades, or even generations. Such compelled relocation can separate children from their grandparents and extended families, friends, and communities. And it can make life harder for the families who remain, who are left without the same community to support them in making their own informed decisions about how best to care for their children.

Amici submit that the Constitution's Equal Protection Clause is not "neutral" as to these harms. *L.W. II*, 83 F.4th at 472. When States like Tennessee intervene for the specific and selective purpose of prohibiting families from choosing to provide gender-affirming medical care to their transgender children, that discriminatory legislative intervention violates the United States Constitution.

ARGUMENT

I. Laws Like SB1 Interfere With Careful, Deliberative Family Decisionmaking, Leading to Devastating Consequences.

"The law's concept of the family" has long recognized that the "natural bonds of affection lead [the family] to act in the best interests of their children." *Parham* v. *J.R.*, 442 U.S. 584, 602 (1979) (citing 1 W. Blackstone, Commentaries & 2 J. Kent, Commentaries on American Law). This observation applies just as forcefully to the parents of transgender children. In the following stories, amici share the accounts of families who grappled with deciding how best to care for their transgender children, including how best to provide medical care. These stories detail how bans on gender-affirming medical care are destroying that careful, deliberative process—in favor of ill-reasoned, blanket statewide bans that inflict significant harms on families and their transgender children.

S.B.[4]

S.B. is a seven-year-old transgender boy from Florida who came out to his mother, E.B., as transgender about three years ago.

In the years since, E.B. has worked tirelessly to understand, care for, and support her transgender

[4] Interview conducted by counsel August 12, 2024. All stories included in this brief are from families served by amici, who provided their stories for the specific purpose of inclusion in this brief, unless otherwise indicated. Stories have been edited for length and to preserve the families' confidentiality.

son. She has ensured that he has seen physicians and therapists. E.B. has also educated herself about the transgender community, reading numerous books. As E.B. explained, "families are not making care choices willy-nilly. No one wants to rush into anything—we all want what is best for our children." She describes herself as a fierce "mama bear" for her child in this area—just as she is in all aspects of her parenting.

Community has been particularly critical for both E.B. and S.B. in navigating S.B.'s growth. Last winter, E.B. found out that one of S.B.'s friends has a transgender father. It was, in E.B.'s words, a "blessing." The friend's father was able to take S.B. out to ice cream for a "Q&A session" about living as a transgender man. S.B. asked numerous questions, as he saw what his life could be. Discussing the meeting brought tears to E.B.'s eyes.

Unfortunately, the community of families of transgender youth has been severely impacted by Florida's enactment in 2023 of a ban on gender-affirming medical care similar to SB1. See Fla. Stat. Ann. § 456.52(1). Friends of the family with transgender children have left Florida and moved to States as wide-ranging as Maine, Minnesota, and Maryland. E.B. was saddened by these families leaving because there were "so few of us as it is," and even fewer families with children of S.B.'s age. S.B. has expressed that without these relationships he "feels alone."

E.B. is terrified of what will happen in the next few years if Florida's ban on gender-affirming medi-

cal care remains in effect.[5] S.B. has a physician who understands transgender medical care and who makes decisions based on the evidence-based approach supported by every major medical association in the United States. And E.B. knows from her research, including discussions with other parents, that puberty blockers and other medical therapies Florida has banned may be essential to S.B.'s mental and physical well-being. S.B. has long lived as a boy. E.B. fears what could happen if the State were to force S.B. to forgo common therapies for gender dysphoria, against his wishes, those of his mother, and those of his physician.

E.B.'s only goal has ever been her family's "protection and safety." She understands that providing such protection to S.B. may ultimately require, in her words, "evacuating" Florida. That is a scary thought for E.B.—and in particular adds to her worry for her son. She cannot imagine what it would feel like for S.B. to know that his family had to be uprooted for his medical care. E.B. is angry that the State would tell her—a fierce advocate for the well-being of her child—that she is not capable of making reasonable decisions as to what is best for S.B. "[T]aking that out of parents' hands, that's so harmful. I worry for my child's safety. I think about the possibility of suicide."

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[5] In June 2024, a federal district court entered a permanent injunction against the enforcement of parts of Florida's ban on gender-affirming medical care. See *Doe* v. *Ladapo*, 2024 WL 2947123 (N.D. Fla. June 11, 2024). In August 2024, a divided panel of the Eleventh Circuit stayed the injunction pending appeal. See *Doe* v. *Surgeon General, State of Florida*, Order, No. 24-11996 (11th Cir. August 26, 2024).

R.R. [6]

R.R. is an eight-year old transgender girl. Until last year, R.R. lived in Florida with her parents, C.R. and J.R., and her elder sister.

As soon as R.R. could select her own toys and clothes, the family knew that she was, in their words, "either a girl or a drag queen." R.R. confirmed her family was correct when she came out as transgender at age four. For years, the family had community, support, and the prospect of excellent medical care in Florida should they need it.

All of that changed when Florida enacted its ban on gender-affirming medical care in 2023. R.R. did not yet require medical care banned by the law, but R.R.'s family watched the negative effects of the ban on other families with adolescent transgender children—a stark contrast to the extraordinary value they had previously seen hormone therapy have in supporting transgender adolescents. The family was also worried about how others in the State would now react to R.R., who from a young age would "go up to people on the street" and explain she was a girl. At one point, the family struggled with whether they should ask R.R. to "closet herself" while they remained in Florida. Ultimately, given their concerns arising from Florida legislation that would allow the State to take temporary custody of adolescents receiving gender-affirming medical care, the family decided that "waiting to see how things played out was no longer an option."

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[6] Interview conducted by counsel August 14, 2024.

Over the course of a month and a half, the family went through a "grieving" process. Deciding to move meant not just leaving behind their longtime home and the community to which they had belonged for years, but also moving away from their children's grandparents.

In early 2023, the family made the difficult choice to leave Florida and relocate to Minnesota. It was a difficult move in every respect. C.R. and J.R. had to dip into their retirement savings to "make it happen." The family is now renting a house in Minnesota—which is hard for them to swallow, given that, as they explain, they have a "house and land that could be ours" in Florida. Making the move even more painful, R.R.'s grandfather passed away in October 2023, leaving her grandmother alone in the Florida Panhandle. Despite these challenges, her grandmother has been clear that she does not want the family to move back to Florida. She has told C.R. and J.R. that they "can't bring" the family back because of fears for R.R.'s safety in the State.

While the move has been difficult, the family has been able to breathe a sigh of relief in Minnesota. In Minnesota, R.R. and her family have felt accepted—like they "belong here." Moving was "one of the hardest decisions" C.R. and J.R. have ever made. In their view, however, it was clearly the right one, as they see their role as to do all they can to "protect their children, first and foremost."

C.T.[7]

C.T. is a six-year-old transgender boy. He and his family also live in Florida. For nearly two years, C.T. has been telling his family that he was a different gender from the sex he was assigned at birth. C.T.'s confidence was matched by his family's curiosity and cautious deliberation. After C.T. first came out, his family dedicated almost a year to "doing all the research in the world on this topic" before deciding that C.T. should socially transition, which C.T. did just before he turned six. That is the typical story: as E.B. noted above, families take tremendous care in making these decisions with their children and do not act on a whim.

C.T.'s mother, J.T., knows that allowing C.T. to socially transition was the correct decision because she sees every day how happy he is. But she worries for the future. J.T. worries that, as C.T. grows, the family may not be able to stay in Florida. She wants to get all three of her children, including C.T., the best care she can. She wants medical professionals to monitor all possible risks of care, including puberty blockers, should C.T., in consultation with his family and medical team, decide to go that route. But Florida has effectively made it impossible to get that care and guidance from medical professionals. Even when the State's ban on gender-affirming medical care was briefly enjoined, the legislation created a culture of fear, in which endocrinologists were afraid to even appear to be treating transgender adolescents.

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[7] Interview conducted by counsel August 13, 2024.

J.T. is proudly a teacher at a local school. C.T.'s father, F.T., is intensely involved in the local community. Despite these deep ties to the community, the "really hard road" of trying to do what is best for C.T. has forced the family to seriously consider leaving their community, including nearby family, behind. J.T. is "tired of fighting every institution we go to." Losing devoted members of the community like J.T. and F.T. impacts all local children and their families, not just families with transgender children.

M.D.[8]

M.D. is a middle-school transgender girl living in Illinois. When M.D. first began to identify as a girl, their family sought out resources to support them, leaning especially on a robust set of doctors in their community and parents of other transgender children. Although M.D. has socially transitioned, they have not yet received hormone therapy. But as their family considers that option, they count themselves grateful to have the help of psychologists and medical doctors who have been able to provide them with evidence and risk-based advice on when and how to begin a medical transition. M.D.'s family has also been supported by other families in the area, who have provided M.D. and their parents with a sense of community and the wisdom of their experiences.

Since States like Tennessee began enacting bans on gender-affirming medical care, it has become more challenging to access such care even in States without bans, like Illinois. M.D.'s family has noticed that more and more families from States farther and far-

[8] Interview conducted by counsel August 16, 2024.

ther away have begun to travel to Illinois in search of gender-affirming medical care, stretching thin the medical resources available in Illinois. Further compounding that scarcity of resources, out-of-state bans have had a chilling effect even in States where gender-affirming medical care remains legal: M.D.'s family has noticed that certain doctors have grown fearful about providing gender-affirming medical care, worried that doing so could jeopardize their ability to practice in other States in the future.

M.D.'s story highlights how bans on gender-affirming medical care negatively impact transgender children across the country, even in States without such bans. But it also shows the night-and-day difference between living in a State that prohibits families from making medical care decisions, and living in a State that does not. For M.D., their family looks without fear to the future, knowing that M.D. will be able to access the medical care they need if and when they need it—no different from any other situation requiring medical intervention. They do not worry that the State will take away their ability to make that choice. And they have not had to weigh the extraordinary cost and consequences of leaving their home.

D.S.[9]

D.S. is a non-binary college student who grew up in Georgia, during a time when the State did not bar gender-affirming medical care. D.S. began their journey to transition during high school. When D.S. first began experiencing distress about their gender,

[9] Adapted from email received August 14, 2024.

their parents found them a psychologist specializing in gender identity and expression. D.S. met biweekly with the psychologist for a year before ultimately being diagnosed with gender dysphoria. At that point, D.S. was referred to a primary care physician who specialized in working with adolescents suffering from gender dysphoria. That physician suggested hormone replacement therapy using testosterone.

After considering the risks, and in consultation with their family, D.S. began testosterone therapy at age 17. D.S.'s parents were amazed at the change in D.S. As D.S.'s "voice changed and their shoulders broadened," D.S. began to finally "feel more aligned with their true self both physically and emotionally." Starting that treatment was, in D.S.'s parents' words, "a game changer."

Through their transition, D.S. and their parents found support from other families and their religious community. D.S. was actively involved with a church group for teenagers. That church group respected D.S.'s identity, was "supportive and caring," and provided D.S. with community through their transition. D.S.'s parents also had support from a mother of a transgender boy, who "was there to answer questions and provide emotional support." This was an invaluable resource for D.S.'s parents since their existing friends did not have the same understanding of D.S.'s gender identity and transition.

D.S. has now left Georgia and attends college in a State that protects transgender rights. The college has provided a "supportive and inclusive environment" for D.S., who plans to pursue a PhD in a scientific field.

D.S.'s parents are proud of how the family navigated the complexities of gender-affirming medical care. Throughout the process, the family "had plenty of fears and doubts, but [their] biggest concern was always D.S.'s safety and mental well-being. [They] have faced each obstacle with love, determination, and unwavering support for [D.S.]." D.S.'s story, however, would not be possible under Georgia's ban on gender-affirming medical care, enacted in March 2023. See Ga. Code Ann. § 31-7-3.5.

* * *

These families are not alone. Declaration after declaration from other litigation tells the same story of families learning that their children are transgender and doing exactly what a family should do: determining how best to support their children and making choices to do so.[10] Like the families discussed above, other families raising transgender children consult counselors and doctors with experience applying the established and evidence-based clinical treatment standards for adolescent gender dysphoria.[11] They often turn to other members of the community who are transgender or otherwise LGBTQ+,

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[10] See, *e.g.*, *Loe* v. *Texas*, No. D-1-GN-23-003616 (Dist. Ct., Travis Cnty., Tex.), Dkt. 1, Exs. 1-7; *Brandt* v. *Griffin*, 4:21-CV-00450-JM (E.D. Ark. 2021), Dkt. 11, Exs. 2, 4, 6, 8; *Poe* v. *Labrador*, No. 1:23-cv-00269-BLW (D. Idaho 2023), Dkt. 32, Exs. 2-5.

[11] See, *e.g., Loe*, No. D-1-GN-23-003616 (Dist. Ct., Travis Cnty., Tex.), Dkt. 1, Exs. 1-7; *Brandt*, 4:21-CV-00450-JM (E.D. Ark. 2021), Dkt. 11, Exs. 2, 4, 6, 8; *Poe*, No. 1:23-cv-00269-BLW (D. Idaho 2023), Dkt. 32, Exs. 2-5.

as S.B.'s family did.[12] Many families, like D.S.'s, rely on their faith and their faith communities.[13] Like R.R.'s family, many families have chosen to leave the States and communities they have long called home, recognizing that staying in those States would mean that their children would be unable to access medical care essential for their safety and development.[14] Others have no choice but to stay, threatening their children's ability to get the care the families view as necessary to their children's well-being.[15]

As these stories—and countless others—make clear, families of transgender children approach the process of understanding and providing care for their children's gender dysphoria in the same way most families approach all childhood developments and health needs: through empathy and deliberation, and

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[12] *Poe*, No. 1:23-cv-00269-BLW (D. Idaho 2023), Dkt. 32, Ex. 4 at 2 (declaration from transgender sixteen-year-old, stating that after she met her parents' transgender friend who was "born a boy but was a woman on the inside, and was now living her life as a woman," she felt "[i]t was like hearing them describe my own life to me.").

[13] See *Brandt*, 4:21-CV-00450-JM (E.D. Ark. 2021), Dkt. 11, Ex. 4 (explaining that as part of the family's deliberative process, they "prayed about it").

[14] See, *e.g.*, *Loe*, No. D-1-GN-23-003616 (Dist. Ct., Travis Cnty., Tex.), Dkt. 1, Exs. 1-3 (families relocated or planned to relocate their children out of state after the passage of Texas's ban on gender-affirming medical care).

[15] See, *e.g.*, *Loe*, No. D-1-GN-23-003616 (Dist. Ct., Travis Cnty., Tex.), Dkt. 1, Exs. 5-7 (one family lacked "financial means" to travel out of state to access medical care for their child; another explained that receiving care out of state would involve severe financial hardships including delaying parents' retirements several years).

with an overriding desire to do what is best for their children. Laws like SB1 take that ability away.

II. The State's Selective Interference With Family Decisionmaking Is Unconstitutional Under the Equal Protection Clause.

Laws like SB1 that impose discriminatory burdens on family decisionmaking are not just damaging for families and children. They are unconstitutional. The United States and plaintiffs explain in detail why SB1 violates the Equal Protection Clause. Amici submit that the State's egregious imposition on the ability of families to decide how best to care for their transgender children is relevant to this Court's Equal Protection Clause analysis.

First, the State's interference with family decisionmaking highlights the profoundly discriminatory nature of those harms. Tennessee did not impose a neutral restriction on family decisionmaking—as to medical decisions generally or as to the precise medical interventions at issue in this case. Tennessee chose to tell only certain families they could not make a particular choice: to use otherwise legal medical therapies to affirm their child's gender, if that gender does not match the child's sex assigned birth. SB1's legislative findings underscore that the law is clearly discriminatory on the basis of sex and transgender status. Those findings identify the State's "interest" in passing SB1 as one "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." Tenn. Code Ann. § 68-33-101(m). In other words, the very purpose of the law is to encourage children as-

signed male at birth—but not those assigned female at birth—to "appreciate" a male gender identity, and vice versa. And SB1's operative provisions are written to achieve this central, discriminatory goal. They prohibit medical professionals from offering hormonal treatment *only* if offered "for the purpose" of affirming the gender of a transgender minor, Tenn. Code Ann. §§ 68-33-102(5)(B), 68-33-103(a)(1), while allowing the same hormonal treatments if offered for any other purpose.

Making this discrimination all the more pernicious and undeniable, Tennessee's own laws recognize the importance of family decisionmaking as to medical care in *other* contexts—even as they erase that decisionmaking in this one. Most notably, just a year after passage of SB1, Tennessee enacted the "Family Rights and Responsibilities Act," which declares that the "liberty of a parent to the care, custody, and control of the parent's child, including the right to direct the upbringing, education, health care, and mental health of the child, is a fundamental right." Tenn. Code Ann. § 36-8-103(a). The Act states that "[a]ll parental rights are exclusively reserved to a parent of a child without obstruction by or interference from a government entity, including" the right to "make all physical and mental healthcare decisions for the child and consent to all physical and mental health care on the child's behalf." *Id.* § 36-8-103(c). In short, even as Tennessee has emphasized the importance of allowing parents to make choices about their children's medical care free from government "interference," it has removed the ability of families of transgender adolescents to choose evidence-based medical care for

those adolescent children. That straightforward discrimination triggers heightened review.

Second, Tennessee's discriminatory burdens on family decisionmaking also prevent it from showing SB1 serves an "exceedingly persuasive" governmental interest and that it has selected means that are "substantially related to the achievement of th[at] objective[]." *VMI*, 518 U.S. at 533 (citations and quotation marks omitted); see also *City of Cleburne* v. *Cleburne Living Ctr., Inc.,* 473 U.S. 432, 440-441 (1985). Tennessee asserts that SB1's exceedingly persuasive objective is the protection of children. See Tenn. Code Ann. §68-33-101; Brief of Defendants-Appellants 44, *L.W. II* (July 24, 2023), 2023 WL 4932115, at *44. But to show a nexus between SB1 and that justification, Tennessee cannot simply disagree with the medical consensus of every major medical association in the United States. It must justify its decision to abrogate a family decisionmaking process that demonstrably benefits children—and that Tennessee has itself affirmed benefits children. The Legislature has not and cannot justify that imposition.

That conclusion would be all the more significant if, as the Sixth Circuit appeared to assume, the science of transgender care *were* uncertain. Concluding (incorrectly) that rational-basis review applied, the Court of Appeals failed to engage with the extensive evidence and lower court findings demonstrating that SB1 lacks a scientific basis. See *L.W. II*, 83 F.4th at 488-489. Instead, the Sixth Circuit deferred to the Tennessee Legislature, apparently based on a view that the efficacy and long-term effects of the care SB1 addresses were "far from conclusive." *Id.* at 489. As

the United States and plaintiffs explain, that is, on its own terms, wrong. See U.S. Br. 34-44; L.W. Br. 40-48. Unlike the Sixth Circuit, the district court made robust and extensive factual findings after an exhaustive review of the evidentiary record, and concluded that "[t]he medical evidence on the record" did not support the State's contention "that the medical procedures banned by SB1 are harmful to minors." *L.W. by & through Williams* v. *Skrmetti*, 679 F. Supp. 3d 668, 709 (M.D. Tenn. 2023); see also *id.* at 702-709 (examining record). Many other district courts have reached similar conclusions.[16]

But even if the science *were* "far from conclusive" (and, to be clear, it is not), that is not a reason to defer to the Tennessee Legislature's choice to take away from families the ability to make care decisions for their transgender children. In cases where there is

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[16] *See, e.g.*, *Doe*, 2024 WL 2947123, at *6 (concluding that the "overwhelming weight of medical authority supports" hormone therapy "in appropriate circumstances"); *Brandt* v. *Rutledge*, 677 F. Supp. 3d 877, 921 (E.D. Ark. 2023) (concluding that evidence showed that gender-affirming medical care is "effective to treat gender dysphoria and the benefits of the treatments greatly outweigh the risks"); *Eknes-Tucker* v. *Marshall*, 603 F. Supp. 3d 1131, 1146 (M.D. Ala. 2022), *rev'd*, *Eknes-Tucker* v. *Gov. of Ala.*, 80 F.4th 1205 (11th Cir. 2023) ("the record shows that at least twenty-two major medical associations in the United States endorse transitioning medications as well-established, evidence-based treatments for gender dysphoria in minors"); *Koe* v. *Noggle*, 688 F. Supp. 3d 1321, 1351 (N.D. Ga. 2023) (explaining that State's characterization of "hormone therapy significantly understates [its] benefits," which are "supported by research as well as the extensive clinical experience of Plaintiffs' experts," and that State had "not shown that the treatment's risks are not or cannot be adequately managed").

clear evidence that a certain procedure would cause harm, the State may have a strong interest in prohibiting that treatment. But, to the extent there is genuine uncertainty about the effects of gender-affirming medical care, that makes it all the more important that families—not the State—navigate those uncharted waters.

At bottom, to allow Tennessee to usurp parental and familial decisionmaking in the critical space of transgender medical care is to give into the "statist notion that governmental power should supersede parental authority." *Parham*, 442 U.S. at 603. That is a view this Court has long recognized as "repugnant to American tradition." *Ibid.* To affirm that view here as to the families of transgender adolescents would, in turn, have tremendous implications for all families—not solely the families of transgender children. That would have devastating consequences the Constitution does not, and should not, condone.

CONCLUSION

For the foregoing reasons, and those stated by the United States and plaintiffs, the Court should reverse.

Respectfully submitted,

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SEPTEMBER 3, 2024