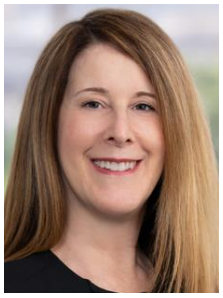
What High Court's Tenn. Trans Care Ruling Means Nationally

By **Jennifer Skeels and Caitlin Bell-Butterfield** (July 3, 2025)



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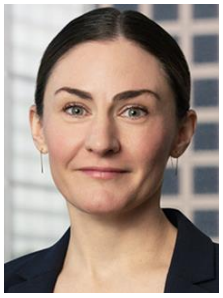

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The U.S. Supreme Court **issued** its highly anticipated decision in U.S. v. Skrmetti on June 18. The decision holds that a Tennessee law prohibiting the provision of certain medical treatments to minors for gender-affirming purposes does not violate the equal protection clause of the 14th Amendment to the Constitution.

This decision has wide-ranging implications for transgender minors, their families and their healthcare providers in Tennessee and in the approximately 25 other states that have enacted laws similar to Tennessee's.

The decision may also have implications for the enforcement of a recent executive order, which aims to restrict gender-affirming care for minors at the national level.

Background

In 2023, Tennessee enacted S.B. 1, which bans the use of certain medical procedures, including hormone therapies such as puberty blockers, when provided to minors for gender-affirming purposes.

S.B. 1 permits providers to provide or administer the same procedures to minors if the purpose of the treatment is to treat a minor's congenital defect, disease or physical injury. Providers who furnish treatment to minors in violation of S.B. 1 may be subject to civil penalties, licensing sanctions and private rights of action.

In April 2023, three transgender minors, their families and one Memphis-based physician filed suit against Tennessee, challenging the constitutionality of S.B. 1. The U.S. District Court for the Middle District of Tennessee issued a statewide preliminary injunction with respect to certain of S.B. 1's provisions, but that preliminary injunction was eventually stayed by the U.S. Court of Appeals for the Sixth Circuit.

The plaintiffs, supported at that time by the U.S. as petitioner, petitioned the court for a writ of certiorari. The court granted certiorari and heard oral arguments on Dec. 4, 2024. On Feb. 7, following the change in presidential administrations, the U.S. solicitor general informed the court that the U.S. no longer supported the plaintiffs' position, but nevertheless requested that the case be promptly resolved.

The Opinion

The plaintiffs in Skrmetti argued that S.B. 1 impermissibly restricted access to certain types of healthcare on the basis of the patient's sex and on the basis of the patient's transgender identity.

As a general matter, unless the state law in question involves a suspect class distinction (such as race, religion or national origin) or infringement on a fundamental right (such as freedom of religion, the right to interstate travel and the right to marry), regulation of medical care has historically been considered the purview of the states, and courts review

such regulation using the highly deferential rational basis standard of review.

Under rational basis review, a court will uphold government action upon a finding that the action is rationally related to a legitimate government interest. Sex is a quasi-suspect class that triggers heightened scrutiny, sometimes called intermediate scrutiny.

To survive heightened scrutiny, a government action must be substantially related to achieving an important government interest. The court has never ruled on the question of whether transgender identity constitutes a suspect class for equal protection purposes.

However, in the 2020 case Bostock v. Clayton County, the court held that Title VII's prohibition on discharging an employee because of their sex prohibited an employer from firing an employee based on gay or transgender identity.

The majority opinion in Skrmetti, joined by all but Justices Elena Kagan, Sonia Sotomayor and Ketanji Brown Jackson, holds that S.B. 1 does not discriminate on the basis of sex or transgender status, but makes classifications based only on the patient's age and medical indications for treatment.

The majority reached this determination by reasoning that the restricted medical treatments are available, under S.B. 1, to minors of any sex and gender identity for purposes of treating certain indications, such as precocious puberty, but are unavailable to minors of any sex and gender identity for purposes of treating other conditions, such as gender dysphoria.

Thus, according to the majority, classifications under S.B. 1 are based on the minor's diagnosis, rather than on the minor's sex or transgender identity. Thus, finding no suspect classification, the court conducted a rational basis inquiry, and held that Tennessee's stated interest in protecting the health and welfare of minors was rationally related to the age and medical indication classifications made by S.B. 1.

Because the court's majority held that S.B. 1 does not discriminate on the basis of transgender identity, it declined to opine on whether transgender status is a protected class for purposes of constitutional equal protection analysis.

Skrmetti in the National Context

As noted above, approximately half of all states have enacted laws restricting the provision of gender-affirming care to minors.

In addition, on Jan. 28, President Donald Trump issued Executive Order No. 14187, which sets forth administration policies opposing the provision of gender-affirming care to minors, and directs agencies and certain federal healthcare programs to limit access to such care through measures including halting federal grant funding to medical institutions that provide gender-affirming care to minors.

At this time, it is unclear how the decision in Skrmetti will affect ongoing litigation related to other states' laws restricting gender-affirming care and the executive order. The reasoning in Skrmetti is based on a narrow review of the language of S.B. 1; although many other states' laws are drafted in a nearly identical fashion to S.B. 1, state laws that are structured or even worded differently may not fall squarely within the reasoning underlying Skrmetti and may, therefore, require separate scrutiny by the courts.

Similarly, litigation in certain states raises arguments not considered by the court in Skrmetti — Arkansas' ban on gender-affirming care, for example, is currently enjoined on the basis of both equal protection and due process claims.

While the equal protection claims are likely to be resolved in favor of the state as a result of the holding in Skrmetti, litigation regarding the due process claims, which assert that Arkansas' ban on gender-affirming care for minors unconstitutionally interferes with the rights of parents to make decisions about their children's medical care, will likely continue.

It is likely that due process claims will also arise against other, similar state laws that may well wend their way back to the Supreme Court for further analysis.

The executive order is currently enjoined by two separate lawsuits: PFLAG Inc. v. Trump, in which the U.S. District Court for the District of Maryland has issued a national injunction,[1] and Washington v. Trump, in which the U.S. District Court for the Western District of Washington issued an injunction applicable only to the plaintiff states of Washington, Minnesota, Oregon and Colorado.

Plaintiffs in both PFLAG v. Trump and Washington v. Trump have alleged that the executive order violates equal protection, among other claims, and both injunctions rely, in part, on the respective courts' determination that the plaintiffs are likely to succeed on the merits of their equal protection claims.

Because the nature of the executive order — as federal executive policy rather than state legislative action — and its substance differ from S.B. 1, the eventual outcome of these two cases will be an important signal regarding how broadly the reasoning and holding of Skrmetti will be applied by the lower courts going forward.

Implications of the Opinion

The opinion holds that state regulations concerning gender-affirming care do not necessarily discriminate on the basis of sex or transgender status.

It also allows states to regulate gender-affirming care to minors based on the minor's underlying medical diagnosis, regardless of whether the minor's parents consent to the care.

The opinion also establishes that states' articulated interests in regulating gender-affirming care for minors must satisfy only a rational basis standard of review. For example, Tennessee's stated interest under S.B. 1 was to protect the health and welfare of minors.

What the Opinion Does Not Do

The opinion does not opine as to whether transgender status is a protected class for the purposes of equal protection analysis.

It also does not impose a federal ban or restriction on access to gender-affirming care for minors, or rule on the specific circumstances at issue in individual pending cases at the state level.

The opinion does not affect how states regulate puberty blockers or hormone replacement therapy for minors for medical purposes other than gender dysphoria, gender identity disorder and gender incongruence.

It also does not opine on the reliability of any medical research regarding gender-affirming care and the effects such care may have on minors.

Conclusion and Practical Takeaways for Healthcare Organizations

As noted above, the Skrmetti decision is fairly limited in scope and closely tailored to the specific language of Tennessee's law. While the ban on gender-affirming care for minors in Tennessee and, likely, similar bans in other states will stand and be enforced, the decision in Skrmetti does not affect the law in states that do not currently restrict gender-affirming care. Healthcare organizations can prepare for the implications of the Skrmetti decision by doing the following:

- Reviewing state laws regarding gender-affirming care in all states in which the organization operates, including state laws for which enforcement is currently enjoined;
- Continuing to monitor legislation and the resolution of ongoing litigation at the state and national level;
- Ensuring that providers are aware of state laws restricting provision of gender-affirming care and the penalties for violating such restrictions;
- Reviewing organizational policies regarding gender-affirming care and the treatment of minors generally to ensure compliance with applicable laws; and
- For healthcare organizations operating in states with few or no restrictions on gender-affirming care for minors, preparing for increased inquiries from out-of-state patients.

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[1] The status of this nationwide injunction may also be affected by the Court's recent holding in Trump v. Casa, which provided that universal injunctions are likely to exceed the authority granted to federal courts.