

# US Supreme Court upholds state bans on gender-affirming care for adolescents

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Last Wednesday, the US Supreme Court upheld a reactionary Tennessee law banning medically based hormonal therapies to treat transgender adolescents. The 6-3 ruling, along familiar ideological lines, further dismantles judicial recognition of equal protection under the law and opens the door to continuing attacks on groups disfavored by the fascists in control of the Republican Party.

Chief Justice John Roberts' majority opinion in *United States v. Skrametti* is a broadside attack on the considerable scientific research developed over the last several decades to help transgender youth. The ruling's immediate impact is to uphold similar laws in about half the states, the so-called "red" ones, encompassing about a third of the population. The Supreme Court has stripped over 100,000 adolescents of access to effective medical treatment that they, their parents and their doctors want administered.

There are an estimated 1.6 million people in the United States over the age of 13 whose gender identity, the sense of belonging to a particular sex, does not match their genitalia at birth. Left untreated, "gender dysphoria" can be emotionally overpowering, leading to severe anxiety, depression and suicide.

Along with behavioral therapies and other psychological treatments, in appropriate cases, endocrinologists can recommend puberty blockers and estrogen for born males who identify as female and testosterone for born females who identify as male. These same hormones are sometimes prescribed for boys and girls to treat other medical conditions such as precocious puberty and endometriosis.

Challenges faced by transgender youth, their families and doctors have been seized upon by the fascists demagogically to mobilize zealots and others in the purported defense of traditional gender distinctions,

while undercutting support for the Democratic Party. In his second week after becoming president, Donald Trump signed an executive order to restrict medical treatment for transgender youth under 19. Such treatment for adults is no doubt next up on the chopping block.

In *Skrametti*, three transgender teenagers who underwent hormonal treatments, along with their families and a Memphis physician, challenged a Tennessee law banning hormonal therapy for patients under 18, the very stage in life when the treatment is most effective.

US District Judge Eli Richardson for the Middle District of Tennessee blocked the law, finding that the hormonal treatments are "safe, effective, and comparable in both risk profile and efficacy to many other forms of pediatric medicine that Tennessee permits." He was reversed in a split decision by the Sixth Circuit, however. The Supreme Court then accepted review.

Although Roberts wrote that the case "carries with it the weight of fierce scientific and policy debates about the safety, efficacy, and propriety of medical treatments in an evolving field," the overwhelming consensus of scientific studies establishes that hormone-based gender affirming care is generally successful and that only 1 out of 100 patients later regrets undergoing treatment.

Roberts brushed aside the constitutional challenges to the overtly ideological and religious foundations of the law. The statute states that its purpose is to encourage "minors to appreciate their sex" by barring medical care "that might encourage minors to become disdainful of their sex." Roberts held the law legitimately "enforces a government preference that people conform to expectations about their sex."

To explain that the law allows certain hormones to be

administered to boys, but not girls, and vice versa, Roberts relied on the preposterous 1974 decision in *Geduldig vs. Aiello* that excluded pregnancy from disability coverage. There, the Supreme Court held that excluding pregnant people does not constitute sex discrimination because women are also in the class of non-pregnant persons.

Next, Roberts flipped reality on its head by writing that the law furthers Tennessee's "legitimate, substantial, and compelling interest in protecting minors from physical and emotional harm," when, in fact, access to hormonal therapy protects children from the effects of gender dysphoria.

Roberts finally denied reality altogether by asserting that transgender people have not historically been subject to discrimination, and that the Tennessee law "does not classify on the basis of transgender status," an obviously absurd premise that Justice Amy Coney Barrett amplified in her separate concurrence.

Justice Clarence Thomas also concurred separately, reveling in a ruling that allows the religious zealots in control of a state government to override both medical science and family wishes.

Thomas complained that "outsized credit" was being given to "claims about medical consensus and expertise" by experts who "surreptitiously compromised their medical recommendations to achieve political ends." What these "political ends" might be is neither explained nor readily apparent outside the right-wing blogosphere.

Thomas continued that the ruling gives "the people, their elected representatives, and the democratic process" the power to decide how best to address an area of medical uncertainty and extraordinary importance," and "does not bow to 'major medical organizations.'"

Justice Sonia Sotomayor slammed the majority ruling because it "authorizes, without second thought, untold harm to transgender children and the parents and families who love them."

"Transgender people," Sotomayor wrote, "have long been subject to discrimination in healthcare, employment, and housing, and to rampant harassment and physical violence." Indeed, she observed, "the Federal Government... has started expelling transgender servicemembers from the military and is threatening to withdraw funding from schools and nonprofits that

espouse support for transgender individuals."

"Tragically, studies suggest that as many as one-third of transgender high school students attempt suicide in any given year," Sotomayor added. "By retreating from meaningful judicial review exactly where it matters most, the Court abandons transgender children and their families to political whims."

Erwin Chemerinsky, the dean of Berkeley Law School, called the ruling "a tragic abdication of the judiciary's responsibility to protect minorities," citing Supreme Court decisions dating back to 1937 that protect "discrete and insular minorities" from discrimination.



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