Trans Rights Under Attack: Rising Up to Defend the Lives and Futures of Trans Youth

By Sophie Roppe

On December 4, the Supreme Court, which President Trump stacked with three extremist conservative justices, heard oral arguments in *United States v. Skrmetti*, a case that will determine whether transgender youth can access medically necessary gender-affirming care, specifically hormone therapy. At issue in *Skrmetti* is a 2023 Tennessee law that prohibits health care providers from "prescribing, administering, or dispensing any puberty blocker or hormone" to minors who identify with a gender other than their sex assigned at birth. However, the law still allows for puberty blockers or hormone therapies to be used for cisgender youth to affirm their gender identity. Three transgender adolescents living in Tennessee, their parents, and a doctor treating adolescents with gender dysphoria sued the state. The U.S. District Court for the Middle District of Tennessee paused the law from taking effect, holding that the law likely violated the Equal Protection Clause of the 14th Amendment because it discriminated based on sex and transgender status by treating cis youth differently than trans youth. Additionally, the court held that the law violated parents' rights to make health decisions about their children.

The decision was appealed to the Sixth Circuit Court of Appeals, which considered the Tennessee law with a similar law in Kentucky. Chief Circuit Judge Jeffrey Sutton, joined by Trump-appointed Judge Amul Thapar, ruled in a 2-1 decision that the laws could take effect because they do not discriminate on the basis of sex or infringe on fundamental parental rights. In her dissent, Judge Helene White agreed with the district court that the laws violate the 14th Amendment's prohibition on sex discrimination and deprive parents the right to make medical decisions affecting their children with their children and medical practitioners.

The Supreme Court will only consider the argument that the law violates Equal Protection because it discriminates on the basis of sex. The argument against the law is straightforward and sound; banning puberty blockers or hormone treatment for transgender youth but not cisgender youth constitutes sex discrimination because access to treatment is based on one's sex assigned at birth.

Nonetheless, given the Supreme Court majority's recent rulings, there is no guarantee of the outcome even when it is this clear. Even more concerning, Tennessee's argument for the law depends in part on the Court's decision in *Dobbs v. Jackson Women's Health Organization,* which overturned *Roe v. Wade.* In that case, Justice Alito briefly dismissed the idea that the right to have an abortion could be protected under Equal Protection, citing the arcane, rarely acknowledged case *Geduldig v. Aiello,* which held that state regulations on pregnancy do not constitute sex discrimination. Tennessee's reliance on *Dobbs* in *Skrmetti* opens the door for the Court to potentially expand the devastating reach of the *Dobbs* decision beyond abortion, broadly curtailing the right for people to make private medical decisions with their doctors.

The attack on the trans community does not end with Tennessee's attempt to ban gender-affirming care. Anti-trans legislation has surged across the country, including sports and

bathroom bans. In 2020, 18 states introduced legislation that bans transgender student athletes from participating in school sports, and in 2021, 31 states introduced similar legislation. While no evidence suggests including trans athletes in sports causes harm, evidence does show that excluding them harms mental health and well-being.

As of April 2024, at least 11 states adopted laws barring transgender girls and women from using girls' and women's bathrooms at public schools. A 2018 study by the Williams Institute at the University of California Los Angeles School of Law found no evidence that letting transgender people use public facilities that align with their gender identity increases safety risks. These laws are not based on evidence, but instead, they are used to further oppress and malign trans folks.

Taken together, these laws put fear above reasoning, hate above inclusivity, and politics above people. While the Supreme Court justices will review the Tennessee law at issue in *Skrmetti*, lower courts across the country have the final say on most of these laws — like sports and bathroom bans — that regulate and restrict transgender communities. In fact, the vast majority of cases will never reach the Supreme Court. As such, pro-civil and human rights judges must be nominated and confirmed at all levels of the judiciary to make fair, just decisions. The civil and human rights movement cannot abandon our trans friends, family members, and communities at this critical juncture. Instead, we must fight against inflammatory and ill-intentioned rhetoric, policies, and judicial decisions against people simply trying to authentically live their lives.

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