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The Boundaries of Equal Protection and Rational Basis Review in Healthcare: Analysing the Impact of United States v Skrmetti (2025)

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United States v Skrmetti marks a decisive juncture in Fourteenth Amendment equal protection doctrine, reordering the constitutional treatment of state laws restricting medical care for transgender minors.[1] *By characterising Tennessee's Senate Bill 1 (SB1) as a regulation of 'age' and 'medical diagnosis' rather than of 'sex' or 'transgender status', the six-Justice majority removed the statute from the heightened scrutiny ordinarily reserved for sex-based classifications and subjected it instead to the deferential rational basis standard. This article argues that the reasoning employed by Roberts CJ effects a doctrinal contraction with consequences reaching well beyond the four corners of SB1: by permitting states to redescribe status-based restrictions as content-neutral healthcare regulation, Skrmetti supplies a template through which legislatures may insulate discriminatory enactments from meaningful judicial review. Drawing on Justice Sotomayor's dissent, the historical development of intermediate scrutiny, and the medical-consensus evidence that the Court declined to weigh, this article contends that Skrmetti transforms rational basis review from a floor into a shield, leaving transgender minors and their families dependent upon the vagaries of the political process for the vindication of interests previously treated as constitutionally salient. The article situates Skrmetti alongside the Court's*

[1] *United States v Skrmetti, Attorney General and Reporter for Tennessee, et al.* [2025] 605 US 495

subsequent Title IX ruling in West Virginia v BPJ to trace the wider recalibration of judicial deference toward state authority over the medical and social lives of transgender minors.

Keywords: *equal protection clause, transgender rights, gender-affirming care, sex discrimination, judicial deference.*

INTRODUCTION

The Intersection of State Police Power, Paediatric Healthcare, and the Equal Protection Clause: State legislatures possess broad police power to regulate the practice of medicine within their borders: licensing providers, restricting experimental treatments, and drawing lines between permissible and impermissible interventions. That power has never, however, been thought to operate free of constitutional constraint. Where a state's exercise of regulatory authority sorts citizens according to a suspect or quasi-suspect characteristic, the Equal Protection Clause of the Fourteenth Amendment has historically demanded that the state do more than gesture at a merely conceivable justification. The difficulty in United States v Skrmetti was that Tennessee's SB1 sits precisely at this intersection: it is, on its face, a healthcare regulation, yet its practical operation sorts adolescent patients according to the correspondence, or lack thereof, between their birth sex and their asserted gender identity. Whether that sorting counts as a constitutional 'classification', and whether any such classification is one 'based on sex' or 'based on transgender status', occupied the bulk of the Court's opinion, and it is the question upon which this article's critique is built.

Procedural History and Holding of United States v Skrmetti: Tennessee's SB1, enacted in 2023, prohibits healthcare providers from prescribing puberty blockers or hormones, or performing certain surgical procedures, for the purpose of enabling a minor 'to identify with, or live as, a purported identity inconsistent with the minor's sex', or to treat distress arising from the 'discordance' between a minor's sex and asserted identity. The same medications remain freely available to minors treated for precocious puberty, congenital conditions, disease or injury. Transgender adolescents, their parents, and a treating physician sued, and the United States intervened as of right; the district court found the plaintiffs likely to succeed on their equal protection claim and preliminarily enjoined the challenged provisions, concluding that transgender individuals form a quasi-suspect class and that SB1 discriminates based on both sex

and transgender status.[2] The Sixth Circuit reversed, holding that SB1 regulates medical conduct rather than sex or status and therefore need satisfy only rational basis review. On 18 June 2025, the Supreme Court affirmed by a vote of 6–3, holding that SB1 'does not classify based on sex or transgender status' and that it satisfies rational basis review. Roberts CJ wrote for the majority, joined in full by Thomas, Gorsuch, Kavanaugh and Barrett JJ, and by Alito J as to Parts I and II–B; Thomas, Barrett and Alito JJ each filed separate concurrences, while Sotomayor J dissented, joined in full by Jackson J and in part by Kagan J, who also filed a separate dissenting opinion.[3]

Summary of Core Legal Arguments and Thesis Statement: This article contends that by framing medical bans on gender-affirming care as age and diagnosis-based classifications rather than sex- or status-based distinctions, the Skrmetti majority drastically constricted Fourteenth Amendment protections. This manoeuvre lowers the barrier for states to regulate vulnerable minorities under the guise of healthcare deference, rendering rational basis review a shield for state-sanctioned medical inequality rather than a floor beneath which no legislative justification may fall. The argument proceeds in six further parts. Part II traces the pre-Skrmetti architecture of sex-based equal protection doctrine and the transgender-class debate that divided the circuits. Part III deconstructs the majority's reasoning, in particular its redescription of SB1 as an age/diagnosis regulation and its containment of Bostock v Clayton County to the statutory sphere. Part IV examines Justice Sotomayor's dissent and its facial sex-classification argument. Part V offers a critical assessment of the Court's selective deference to medical consensus and its neglect of the parental-rights dimension. Part VI considers the decision's broader doctrinal reach, including its relationship to West Virginia v BPJ. Part VII concludes.

THE CONSTITUTIONAL THRESHOLD: INTERMEDIATE SCRUTINY VERSUS RATIONAL BASIS

The Pre-Skrmetti Equal Protection Framework: Since the mid-1970s, the Supreme Court has treated classifications drawn on the basis of sex as quasi-suspect, triggering intermediate scrutiny: the state must demonstrate that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the

[2] *United States v Skrmetti, Attorney General and Reporter for Tennessee, et al.* [2025] 605 US 495
[3] 'United States v. Skrmetti' (*SCOTUSblog*) <https://www.scotusblog.com/cases/united-states-v-skrmetti/> accessed 10 June 2026

achievement of those objectives.[4] Craig v Boren itself struck down an Oklahoma statute permitting the sale of 3.2% beer to women at eighteen but to men only at twenty-one, on the ground that the state's statistical justification, differential rates of drink-driving arrests, could not, without more, sustain a gender-based line.

The Court hardened this standard two decades later in United States v Virginia, holding that a state must offer an 'exceedingly persuasive justification' for any classification that relies upon generalisations about the way men and women are, in the course of striking down the Virginia Military Institute's exclusion of women.[5] The Court reiterated that sex-based classifications may not be used, as they had been for much of the nation's history, to create or perpetuate the legal, social and economic inferiority of women. The animating premise of this line of authority is that sex, like race, is a characteristic bearing no necessary relationship to an individual's ability to contribute to society, such that legislative reliance upon it is inherently suspect, whether that reliance is overt, as in an express statutory line between men and women, or covert, achieved through a facially neutral criterion that operates as a proxy for sex.[6]

This framework did not emerge fully formed. In its earliest engagements with sex-based classification, the Court divided over whether such classifications should attract the same strict scrutiny reserved for race, with a plurality in Frontiero v Richardson concluding that sex, like race, is an immutable characteristic determined solely by birth and bearing no relation to individual merit, such that classifications resting upon it should be treated as inherently suspect.[7] Although a majority never coalesced around strict scrutiny for sex, the intermediate standard that emerged from Craig v Boren and was later entrenched in United States v Virginia represents a considered compromise: sex-based classifications are subjected to real, searching justification, even if not the near-automatic invalidation that attends racial classification. It is against this backdrop of an already-compromised, intermediate standard that the Skrmetti majority's further manoeuvre- avoiding heightened scrutiny altogether by redefining the classification as one of diagnosis rather than sex- must be assessed. The majority does not purport to lower the standard applicable to sex classifications once found; it instead adopts a threshold characterisation that ensures the heightened standard is never reached in the first

[4] *Craig v Boren* [1976] 429 US 190
[5] *United States v Virginia* [1996] 518 US 515
[6] *Personnel Administrator of Massachusetts v Feeney* [1979] 442 US 256
[7] *Frontiero v Richardson* [1973] 411 US 677

place, a strategy that, if generalised, would leave the intermediate scrutiny framework built up over five decades with markedly less practical bite than the doctrine's architects intended.

The Circuit Split: By the time Skrmetti reached the Supreme Court, the courts of appeals had fractured over how bans on gender-affirming care ought to be classified. The Sixth Circuit, in the decision under review, concluded that SB1 regulates conduct rather than status and upheld the law under rational basis review, reversing the district court's preliminary injunction. Panels of the Eighth and Eleventh Circuits, considering materially similar bans enacted in Arkansas and Alabama, had reached preliminary findings pointing the other way, treating such laws as sex-based classifications warranting intermediate scrutiny and enjoining their enforcement pending trial. This divergence supplied the primary impetus for certiorari: absent the Supreme Court's intervention, a transgender adolescent's constitutional entitlement to heightened judicial protection depended entirely upon the accident of which federal circuit administered her state of residence: an outcome plainly incompatible with the uniform application the Fourteenth Amendment is meant to guarantee.

The Transgender Class Dilemma: Underlying the classification dispute lies a still more fundamental question that the majority pointedly declined to resolve: whether transgender individuals constitute a suspect or quasi-suspect class in their own right, independent of any argument grounded in sex discrimination. The traditional four-factor inquiry, distilled from the Court's Carolene Products footnote and its subsequent equal protection jurisprudence asks whether the group has historically been subjected to discrimination, whether the defining characteristic bears no relation to the ability to contribute to society, whether the characteristic is immutable or beyond the individual's control, and whether the group is politically powerless in the sense of being unable to protect itself through the ordinary political process. Transgender advocates argue that each of these factors is readily satisfied by the historical record of discrimination, exclusion and violence documented in the record below; opponents note the Court's traditional reluctance to expand the roster of suspect classes and its tendency, exemplified by Skrmetti itself, to resolve close cases without reaching the threshold question at all. The majority's studied silence on this point is itself significant: by resolving the case at the level of ‘classification’ rather than ‘class’, Roberts CJ avoided ever having to decide whether transgender status should join sex, race and national origin among the characteristics that

trigger heightened judicial suspicion- a question the Court has now deferred, perhaps indefinitely, to a future case in which no alternative ground of decision is available.

DECONSTRUCTING CHIEF JUSTICE ROBERTS' MAJORITY OPINION

The 'Age and Medical Diagnosis' Re-Characterisation: The centrepiece of the majority opinion is its conclusion that SB1 draws only two lines: one between minors and adults, and one between permitted and prohibited medical diagnoses. On the Court's account, SB1 'prohibits healthcare providers from administering puberty blockers or hormones to minors for certain medical uses, regardless of a minor's sex', so that a transgender adolescent who is denied a hormone is denied it not because of sex or transgender status but because gender dysphoria is not among the diagnoses for which the legislature has chosen to permit that medication in a minor.[8] Any minor- cisgender or transgender- may receive testosterone for a qualifying diagnosis such as precocious puberty, congenital defect, disease or injury; no minor, whatever their sex or gender identity, may receive it to treat gender dysphoria. It is this 'diagnosis, not identity' framing that permits the majority to treat the reference to 'sex' appearing on the face of the statute as a merely descriptive marker of the underlying medical criterion, insufficiently connected to invidious classification to invite heightened review.

Sidestepping Bostock: The plaintiffs had urged the Court to import the 'but-for' causation test articulated in Bostock v Clayton County, under which an employer discriminates 'because of sex' whenever it would not have taken the same action but for the employee's sex, so that discrimination against an employee for being transgender necessarily involves discrimination 'in part because of sex'.[9] The majority declined the invitation, holding that Bostock was a decision of Title VII statutory construction addressing a materially different question: the discharge of an employee, and that its causal test does not transplant into the distinct doctrinal architecture of constitutional equal protection, which asks not whether sex was a but-for cause of an individual adverse action but whether a legislative classification, on its face or in its practical operation, sorts persons by sex.[10] Applying its own diagnosis-based logic, the majority reasoned that neither a transgender boy's sex nor his transgender status is the but-for cause of his inability to obtain testosterone under SB1, because a cisgender minor lacking a qualifying diagnosis would be

[8] *United States v Skrmetti, Attorney General and Reporter for Tennessee, et al.* [2025] 605 US 495
[9] *Bostock v Clayton County* 590 [2020] US 644
[10] *United States v Skrmetti, Attorney General and Reporter for Tennessee, et al.* [2025] 605 US 495

equally barred, and a transgender minor possessing one would be equally permitted. The dissent's rejoinder, that sex remains at least one but-for cause of the statute's operation even accepting the majority's own hypothetical, was acknowledged but set to one side rather than engaged on its own terms.

Application of Rational Basis Review: Having concluded that no protected classification is implicated, the majority applied rational basis review, the most forgiving standard known to equal protection doctrine, under which a law will be upheld if there exists any reasonably conceivable state of facts that could provide a rational basis for it, whether or not that rationale in fact motivated the legislature. The Court accepted Tennessee's asserted interest in protecting minors from treatments that the state legislature judged to be unproven and evolving, declining to weigh the competing medical evidence submitted by the parties and the array of amici including the American Medical Association, the American Academy of Pediatrics, and the Endocrine Society, all of which had joined briefs endorsing the current standard of gender-affirming care as safe and effective for appropriately diagnosed adolescents.[11] Under rational basis review, such contestation is, by design, immaterial: the state need not have the better of the medical argument, only a conceivable one, and it is this structural feature of the standard, rather than any express finding about the merits of gender-affirming care, that decided the case once the threshold classification question had been resolved in Tennessee's favour.

JUSTICE SOTOMAYOR'S DISSENT: THE MECHANICS OF EQUAL PROTECTION

The Facial Sex-Classification Argument: Justice Sotomayor's dissent, joined in full by Jackson J and in large part by Kagan J, insists that SB1 is a facial sex classification requiring no inferential leap to detect. The statute conditions the availability of a specific medication upon the patient's sex assigned at birth: a teenager assigned male at birth may receive testosterone to conform to a male identity, while a teenager assigned female at birth may not receive the identical medication for the identical purpose.[12] In the dissent's own illustration, a transgender boy seeking testosterone to treat gender dysphoria is refused it under SB1 not because testosterone is unavailable to minors as such, but because his particular diagnosis is disfavoured;

[11] 'AMA statement on United States v. Skrmetti' (*American Medical Association,* 18 June 2025) <https://www.ama-assn.org/press-center/ama-press-releases/ama-statement-united-states-v-skrmetti> accessed 10 June 2026

[12] *United States v Skrmetti, Attorney General and Reporter for Tennessee, et al.* [2025] 605 US 495

had his sex been recorded as male at birth, the identical physiological outcome would have been achieved through treatment for a 'qualifying' condition.[13] For Justice Sotomayor, the majority's insistence that the law regulates 'diagnosis' rather than 'sex' obscures rather than resolves the constitutional inquiry, because the diagnosis itself is defined, and its treatment permitted or forbidden, by reference to the patient's sex.

Animus and the Protection of Historically Vulnerable Classes: Beyond the doctrinal disagreement over causation, the dissent raises an institutional warning: permitting states to relabel status-based restrictions as content-neutral medical regulation invites legislatures to draft around heightened scrutiny wholesale, achieving through definitional artistry what could not be achieved through an openly discriminatory statute. The dissent characterises the majority's approach as licensing courts to look away from 'blatant sex classifications' once they are dressed in the vocabulary of diagnosis and age, warning that the Court's approach 'does irrevocable damage to the Equal Protection Clause and invites legislatures to engage in discrimination by hiding blatant sex classifications in plain sight', and that it authorises 'untold harm to transgender children and the parents and families who love them'.[14] This is not merely rhetorical flourish; it reflects a considered institutional judgment that the entire function of heightened scrutiny, protecting minorities whose interests the ordinary political process is ill-equipped to safeguard, is defeated if legislatures can escape it through careful drafting rather than by demonstrating a substantial governmental interest genuinely related to the classification employed.

CRITICAL ANALYSIS: HEALTHCARE AUTONOMY AND JUDICIAL DEFERENCE

Selective Deference to Medical Consensus: One of the more striking features of the majority opinion is its treatment of the underlying medical evidence. The American Medical Association, jointly with the American Academy of Pediatrics and the Endocrine Society, had filed amicus briefs supporting the plaintiffs' position that gender-affirming care, properly diagnosed and administered, constitutes the prevailing standard of care for adolescent gender dysphoria within the American medical establishment. The Court did not purport to find this

[13] 'What You Need to Know About U.S. v. Skrmetti' (*National Education Association,* 23 June 2025) <https://www.nea.org/resource-library/what-you-need-know-about-us-v-skrmetti> accessed 10 June 2026

[14] Ashley Oliver, 'Sotomayor warns Skrmetti decision will cause 'untold harm' to transgender children in scathing dissent' *Fox News* (18 June 2025) <https://www.foxnews.com/politics/sotomayor-warns-skrmetti-decision-cause-untold-harm-transgender-children-scathing-dissent> accessed 10 June 2026

evidence inadequate on its merits; rather, it treated the existence of any genuine scientific or clinical disagreement, including more cautious recent guidance issued by certain national health systems in Europe, as itself sufficient to place the question within the zone of legislative, rather than judicial, resolution. This move is doctrinally coherent with rational basis review's traditional hands-off posture, but it sits uneasily beside the Court's simultaneous willingness, in adjacent lines of equal protection authority, to weigh medical and scientific evidence more searchingly once heightened scrutiny is engaged. The practical effect is that whichever standard of review a court selects at the threshold-sex classification or mere medical regulation effectively predetermines the outcome, since rational basis review by design forecloses any serious judicial engagement with the medical evidence at all. The classification question and the merits question, in other words, collapse into a single inquiry, and it is the classification question that Skrmetti resolves in the state's favour.

The irony is sharpened by the majority's own citation of Loving v Virginia, where the Court refused to accept Virginia's argument that its anti-miscegenation statute was race-neutral because it burdened white and black spouses equally.[15] Loving stands for the proposition that a formally symmetrical burden does not immunise a statute from strict scrutiny where the statute's entire purpose and structure is organised around a suspect classification. The Skrmetti majority distinguishes Loving on the basis that SB1's central purpose is medical rather than classificatory, but this distinction assumes precisely what the dissent disputes: that the medical/identity line can be drawn independently of sex in the first place. If it cannot, if, as Sotomayor J argues, the diagnosis is itself defined by reference to sex, then Loving's refusal to credit formal symmetry as a substitute for substantive equality applies with equal force to SB1, and the majority's reliance on Loving becomes, on this critique, self-undermining rather than supportive.

The Missing Due Process/Parental Rights Dimension: A further limitation of the Skrmetti litigation, and one the majority opinion does not meaningfully address, is its exclusively equal-protection framing. The plaintiffs did not press, and the Court did not consider, whether SB1 also burdens the substantive due process right of parents to direct the medical care of their children: a right the Court has previously recognised as one of the oldest liberty interests

[15] *Loving v Virginia* [1967] 388 US 1

protected by the Fourteenth Amendment, encompassing the right to make decisions concerning the custody, care and control of one's children free from unwarranted state interference.[16] Had the case been litigated, or decided, on that alternative footing, the analysis would have turned not on the elusive question of whether SB1 'classifies' by sex, but on the more direct question of whether the state's interest in restricting a specific category of treatment is sufficient to override a parent's decision, made in consultation with treating physicians, to pursue a particular course of adolescent healthcare. Skrmetti's silence on this dimension leaves the parental-rights argument open for future litigation, but it also means that the decision's sweeping equal protection holding does not, strictly speaking, foreclose every avenue of constitutional challenge to gender-affirming care restrictions, a point of some consequence for the litigation strategies discussed in Part VI below.

BROADER IMPLICATIONS OF SKRMETTI

Impact on Adult Care and Related Medical Restrictions: Although Skrmetti is formally confined to minors, its reasoning is not obviously so limited. The 'diagnosis, not identity' logic that shields SB1 from heightened scrutiny could, in principle, be redeployed to defend restrictions on gender-affirming care for adults, on insurance coverage mandates that exclude such care, or on other medically contested interventions that happen to correlate with a disfavoured status, including certain restrictions on reproductive healthcare. Because the majority's framework asks only whether a facially sex-referencing statute can plausibly be redescribed in diagnosis-neutral terms, and because a great many status-based restrictions admit of such redescription with sufficiently careful drafting, Skrmetti supplies a transferable methodology rather than a holding confined strictly to its facts. Whether lower courts will in fact extend the logic this far remains to be seen, but the doctrinal tools with which to do so are now firmly in place.

Consider, for instance, state Medicaid programmes or private insurance regulations that exclude coverage for gender-affirming surgery while covering the identical surgical procedures when performed for other diagnostic indications- mastectomy for cancer treatment as opposed to gender affirmation being the paradigm example. Under a straightforward application of Bostock's but-for logic, such an exclusion would appear to discriminate based on transgender

[16] *Troxel v Granville* [2000] 530 US 57

status, since the same procedure is available to a cisgender patient with a qualifying diagnosis but denied to a transgender patient seeking it for gender dysphoria. Under Skrmetti's diagnosis-based framework, however, the same exclusion can be redescribed as a coverage limitation tied to diagnostic indication rather than to sex or transgender status, precisely mirroring the structure the Court accepted in SB1 itself. Litigants challenging such exclusions after Skrmetti therefore face a considerably steeper doctrinal climb than they did prior to 18 June 2025, regardless of whether the underlying policy target is paediatric or adult care.

Future Litigation Strategies: The Court's subsequent ruling in West Virginia v BPJ, consolidated with Little v Hecox and resolved on statutory Title IX grounds concerning transgender athletes' participation in women's school sport, illustrates how quickly the doctrinal terrain shifted in Skrmetti's wake, with the parties and the Court itself drawing on Skrmetti's classification analysis outside the healthcare context in which it originated. Civil rights litigators responding to this landscape have already begun to pivot away from federal equal protection claims that are now considerably harder to win under Skrmetti's rational basis framework, and toward state constitutional provisions that may afford more robust protection than their federal counterpart, federal preemption arguments grounded in statutes such as Section 1557 of the Affordable Care Act, and substantive due process claims resting on parental authority rather than equal protection, as canvassed in Part V.B above. Each of these alternative avenues carries its own doctrinal limitations, but their emergence as the primary vehicles of post-Skrmetti litigation is itself the clearest evidence of how comprehensively the decision has reshaped the available constitutional terrain.

CONCLUSION

United States v Skrmetti marks a fundamental contraction in how the Supreme Court evaluates state regulation of bodily autonomy and the rights of minority groups. By defining Tennessee's SB1 as a neutral medical regulation triggering only rational basis review, the Court set a demanding bar for any future challenge to state healthcare restrictions that can be redescribed, however artificially, in the vocabulary of age and diagnosis rather than sex or status. The decision does not resolve, and pointedly avoids resolving, whether transgender individuals constitute a suspect or quasi-suspect class; it resolves instead the narrower, and in practice decisive, question

of how readily a state may draft around that unresolved status through definitional choices made at the level of the statute's text.

Justice Sotomayor's dissent identifies the cost of this approach with clarity: a legislature that wishes to discriminate against a historically vulnerable group need only describe its target by diagnosis rather than by identity, and rational basis review will do the rest. By removing the federal courts from the business of scrutinising healthcare restrictions targeting transgender youth, Skrmetti leaves the resolution of these questions to the political process: a forum in which the very features that historically justified heightened judicial protection, political powerlessness and vulnerability to majoritarian prejudice, are least likely to secure a hearing. The result, at least for the foreseeable future, is a starkly divided national landscape of healthcare access that tracks state lines rather than constitutional principle, and a body of equal protection doctrine considerably more permissive of legislative line-drawing than it was before 18 June 2025.