

No. 23-477

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IN THE  
**Supreme Court of the United States**

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UNITED STATES OF AMERICA,  
*Petitioner,*

v.

JONATHAN THOMAS SKRMETTI, ET AL.,  
*Respondents.*

*and*

L.W., BY AND THROUGH HER PARENTS AND NEXT OF  
FRIENDS, SAMANTHA WILLIAMS AND BRIAN WILLIAMS,  
ET AL.,  
*Respondents in Support of Petitioner.*

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

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**BRIEF OF TRANSPARENT AND MINORITY  
VETERANS OF AMERICA AS *AMICI CURIAE* IN  
SUPPORT OF PETITIONER AND  
RESPONDENTS IN SUPPORT OF PETITIONER**

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

TransParent is a 501(c)(3) not-for-profit organization with a mission to bring compassionate support to parents and caregivers navigating complex issues that arise in raising transgender children. TransParent was founded in 2011, when a group of parents based in St. Louis, Missouri started organizing monthly meetings to discuss their experiences raising transgender and nonbinary children. These parents met in hopes of finding connection, support, and community, and to share knowledge and resources. Today, TransParent is a national organization with a growing and diverse membership. TransParent has served thousands of families and is comprised of thirteen chapters in eleven states with four virtual groups, whose members gather in monthly meetings to exchange advice and resources, and to support one another's families.

Minority Veterans of America ("MVA") is a nationwide non-profit organization with a mission to create belonging and advance equity and justice for our Nation's most marginalized and historically underserved veterans and service members, including those who are transgender or are parents of transgender children. MVA supports and advocates on behalf of transgender service members as well as service members, veterans, and other military personnel with transgender children and dependents, many of whom

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<sup>1</sup> Pursuant to Supreme Court Rule 37, *amici curiae* state that no counsel for any party authored this brief in whole or in part, and no entity or person other than *amici curiae* or their counsel made any monetary contribution toward the preparation or submission of this brief.

are required to live in a state that bans gender-affirming medical care. Some of MVA's members have contemplated leaving the service because these bans interfere with their ability to obtain such care.

A fundamental objective of TransParent's members and members of MVA who are parents of transgender children is to help those children live happy, healthy, and productive lives. For many of these children, gender-affirming medical care is necessary to achieve that goal. *Amici* thus have a substantial interest in ensuring that transgender adolescents receive the medically necessary gender-affirming healthcare prescribed by their providers. *Amici* submit this brief to emphasize the significant harms that both transgender children and their parents and caregivers experience as a result of laws that deny adolescents the medical care they need solely because they are transgender. *Amici* urge the Court to reverse the decision below.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

Laws banning gender-affirming medical care, including Tennessee's SB1,<sup>2</sup> have upended the lives of families across the country. Thousands of parents in the United States—including *amici*'s members—have

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<sup>2</sup> SB1 refers to S.B. 1, 113th General Assembly (Tenn. 2023) codified in Tennessee Code Annotated § 68-33-101 *et seq.*

transgender children, many of whom suffer from gender dysphoria, a serious medical condition.<sup>3</sup> Until recently, parents of children diagnosed with gender dysphoria were able to do the same thing most parents do when their child has any medical need: work with experienced healthcare providers to determine the safest and most effective course of treatment. But parents of transgender children no longer have the comfort of knowing they can turn to modern medicine to give their children a chance to live healthier and happier lives. Instead, a number of state legislatures have passed laws telling parents of transgender children, including *amici*'s members, that they are legally prohibited from pursuing medically necessary and evidence-based healthcare their doctors advise will alleviate their children's suffering.

In the wake of these bans, *amici*'s members and other parents of transgender youth find themselves facing extraordinarily difficult choices. They can remain in states that ban gender-affirming care and watch their children suffer the psychological agony, anxiety, and depression that can result from prolonged, inadequately treated gender dysphoria. For many MVA members, this is the only option because service members often do not have a choice about where to live. If they have the means, some parents of transgender youth may be able to travel with their children to see providers in states where gender-affirming care is still available—a process that must be repeated several times each year, and comes with its

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<sup>3</sup> Gender dysphoria is a diagnosis that describes the clinical and mental distress a transgender person experiences as a result of the conflict between their birth sex and gender identity.

own set of harms, financial and otherwise. Or, if circumstances allow, parents can uproot their families (in many cases from the only homes they have ever known) to move to a state where their transgender children can receive the care they need. Myriad complex considerations factor into these incredibly hard decisions, including the needs of siblings and other relatives, careers, finances, school choices, and community ties. But these decisions are not “choices” parents are making of their own volition; they are direct consequences of bans like SB1.

While the harms inflicted by these bans are felt most acutely in the states that have enacted them, the laws also have a broader impact. The proliferation of gender-affirming care bans has contributed to months-long waitlists for providers in states without bans on puberty blockers and hormone therapy as treatment for gender dysphoria. And the hostile legal and legislative landscape surrounding this care has pressured some doctors away from providing gender-affirming care to adolescents at all—even in states where the medications are not banned.

*Amici* urge this Court to see gender-affirming medical care bans for what they are: discriminatory laws against transgender youth that prevent parents from seeking, at the recommendation of medical professionals, safe and effective medical care for their children *only if* the purpose of that care is to alleviate the suffering of an adolescent with gender dysphoria—a condition that is unique to transgender minors.

## ARGUMENT

### I. BANS ON GENDER-AFFIRMING MEDICAL CARE NEGATIVELY IMPACT THOUSANDS OF PARENTS AND FAMILIES OF DIVERSE BACKGROUNDS

The issue before the Court has far-reaching implications. Laws that ban gender-affirming medical care for adolescents are negatively affecting parents and families across the country, regardless of their political, religious, socioeconomic, and racial backgrounds. More than half of the states in this country have passed bans similar to SB1. These bans have left tens of thousands of parents to deal with the fallout of their children losing access to evidence-based treatments supported by every major medical organization in the country.

As of 2022, there were more than 300,000 transgender minors in the United States. Jody L. Herman, Andrew R. Flores & Kathryn K. O’Neill, *Research That Matters: How Many Adults and Youth Identify as Transgender in the United States?*, Williams Inst. 1 (June 2022). Of the transgender youth population, 39.4 percent live in a state with a gender-affirming care ban. *See Map: Attacks on Gender Affirming Care by State*, Hum. Rts. Campaign (Aug. 21, 2024);<sup>4</sup> Elana Redfield, Kerith J. Conron & Christy Mallory, *Research That Matters: The Impact of 2024 Anti-Transgender Legislation on Youth*, Williams Inst. 2 (April 2024). Although not every transgender

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<sup>4</sup> <https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>.

individual experiences gender dysphoria, a significant number of transgender minors have been diagnosed with the condition. From 2017 to 2021, at least 163,000 transgender minors were diagnosed with gender dysphoria.<sup>5</sup> Robin Respaut & Chad Terhune, *Putting Numbers on the Rise in Children Seeking Gender Care*, Reuters (Oct. 6, 2022);<sup>6</sup> Chad Terhune, Robin Respaut & Michelle Conlin, *As More Transgender Children Seek Medical Care, Families Confront Many Unknowns*, Reuters (Oct. 6, 2022).<sup>7</sup> These numbers capture the broad impact of the issue presented in this case: medical bans like SB1 have stripped tens of thousands of parents of the ability to pursue safe, effective, and medically necessary care for their children.

TransParent's experience confirms both the scope and the severity of the problem. As more and more states have passed gender-affirming medical care bans over the past few years, TransParent's membership continues to increase daily. In-person local chapter meetings are taking place in packed rooms, with concerned parents frequently driving long distances to discuss what comes next for their children. Local chapter leaders are receiving an influx of calls and

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<sup>5</sup> These figures are likely underinclusive, as they reflect only individuals with diagnosed gender dysphoria whose medical treatments for gender dysphoria were covered by insurance and whose providers logged a gender dysphoria diagnosis.

<sup>6</sup> <https://www.reuters.com/investigates/special-report/usa-transyouth-data/>.

<sup>7</sup> <https://www.reuters.com/investigates/special-report/usa-transyouth-care/#:~:text=The%20analysis%2C%20the%20first%20of,%2C%20up%2070%25%20from%202020.>

emails from parents seeking guidance about how to access medical care for their kids. TransParent continues to add new chapters across the country to meet these growing needs.

The impact of gender-affirming care bans knows no boundaries, affecting families from all walks of life. Families with transgender children are as diverse as the United States itself. Transgender youth reside in all 50 states and the District of Columbia. Herman, Flores & O'Neill, *supra*. The population is not concentrated in particular states or regions. Indeed, the percentages of minors who identify as transgender are relatively consistent across geographic regions, representing between 1.25 percent and 1.82 percent of the overall youth population in the West, Midwest, South, and Northeast. *Id.* at 9-10. The racial and ethnic distribution of transgender youth generally mirrors the U.S. population at large. *Id.* at 1. And state-level Medicaid data shows that the percentage of minors diagnosed with gender dysphoria in the Medicaid population is consistent with the percentage of minors diagnosed under private insurance plans, illustrating the impact of the issue on families of varied economic means. *See* Respaut & Terhune, *supra*. TransParent's membership reflects this diversity. TransParent currently has thirteen chapters in eleven states across the country, including Texas, Oregon, Arizona, Missouri, Illinois, Indiana, Tennessee, Mississippi, Georgia, New York, and Florida. A new chapter is being added in Colorado. The organization has hundreds more individual members in other states who join TransParent's monthly virtual parent and care-

giver meetings to discuss the challenges that accompany raising transgender children, particularly as gender-affirming care bans have proliferated. Still more parents write and call TransParent's leadership seeking guidance and support in raising their transgender children.

As MVA's experience demonstrates, gender-affirming medical care bans also impact military families, which are similarly diverse. MVA's membership includes many active duty members and veterans of the United States military who are parents of transgender children. Their active-duty members increasingly reach out to the organization's leadership expressing concerns that they cannot obtain gender-affirming medical care for their children because their military duties require them to live in a state with a ban. MVA hears from service members who have considered leaving service because of this scenario. They would continue serving their country, but for gender-affirming medical care bans making it impossible to obtain medically necessary care for their children in the states where they are stationed.

The parents of transgender children who seek out *amici's* support come from diverse backgrounds: urban and rural, rich and poor. They have various vocations, socioeconomic backgrounds, religious beliefs, and span political ideology. But they share a common goal, one shared by virtually all parents: to understand their child's experience and to raise happy, healthy, and thriving kids in a safe environment. Laws like SB1 drastically impair their ability to do so.

## II. BANS ON GENDER-AFFIRMING MEDICAL CARE FORCE PARENTS TO MAKE IMPOSSIBLE CHOICES FOR THEIR FAMILIES

Gender-affirming medical care bans have forced parents to make extraordinarily difficult, life-altering choices. They can stay put, knowing their transgender children may suffer indefinitely without access to the only medical treatments that have shown to be effective in treating gender dysphoria. The harms of losing access to this essential medical care are well-documented in the briefs filed by petitioner and respondents in support of petitioner and were undisputed by the Sixth Circuit below. *See* U.S. Br. 36-37 (describing the scientific consensus that untreated gender dysphoria leads to a higher risk of suicidality); Br. for Resp. in Support of Pet. at 5-6 (discussing recognized benefits of treatments for gender dysphoria); Pet. App. 57a (“If untreated, gender dysphoria may result in severe anxiety and depression, eating disorders, substance-use issues, self-harm, and suicidality.”); *id.* at 59a (noting the “substantial body of evidence” showing that gender-affirming medical interventions significantly decrease the likelihood of those harms).

Alternatively, some parents could remain in their home states and travel with their children to obtain out-of-state care. This, of course, comes with significant financial and logistical costs, which many families cannot afford. Most gender-affirming care treatments require at least three to four doctor’s visits per year. For many families, seeking care from an out-of-state provider thus involves parents taking repeated

time away from work and either flying or driving long distances with their children to medical appointments. In addition to the obvious travel costs, parents may also be forced to pay out-of-pocket for the treatments due to challenges with insurance coverage for out-of-state services.

Despite these significant costs, many of TransParent’s members who have the financial means have opted to travel out of state to access medical care for their children. For them, the sacrifices are the only means to avoid the mental and physical agony their children would experience without medically indicated treatment. But for many of these families, travelling is not a sustainable long-term solution. Parents are worried about the compounded harms of frequent time spent away from work, school, and their loved ones. *See* Madeline Carlisle, *As Texas Targets Trans Youth, a Family Leaves in Search of a Better Future*, *Time* (July 14, 2022) (documenting one couple’s hesitations about travelling or moving out of state for care because they do not want their kids to miss “the crucial social and emotional developmental years of high school and middle school”).<sup>8</sup>

The reality for most parents is that travelling for out-of-state care is simply not an option. Many families live in geographic regions where most, if not all, neighboring states have passed medical bans. For instance, almost every state in the southeastern United States bans gender-affirming care for minors. *See Map: Attacks on Gender Affirming Care by State, su-*

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<sup>8</sup> <https://time.com/6196617/trans-kids-texas-leave/>.

*pra.* Families living in places like Louisiana, Arkansas, and Alabama would have to travel across several states to access care. Travel costs alone are prohibitive for many families. And beyond travel costs, for many single parents, parents with jobs that lack remote work flexibility, and parents who are small-business owners, extended time away from work can have a crippling impact on their finances.

Finally, parents fortunate enough to be able to do so may be forced to make the difficult decision to permanently move their families to another state where gender-affirming care is currently available. Reports abound of parents taking this drastic measure—leaving their homes, schools, places of worship, and communities behind. *See, e.g.,* Carlisle, *supra* (profiling ten families leaving their home states due to gender-affirming care bans). Some TransParent members have already relocated their families once, only to have to consider moving yet again because their new state subsequently passed a gender-affirming care ban. Other TransParent members have even made the agonizing decision to split up their families, with one parent moving with their transgender child to a state where care is accessible, and the other remaining in their home state alone or with other children. *See* Sasha van Oldershausen, *I Don't Want to Live in This State of Terror Anymore': Some Families with Trans Children Are Leaving Texas*, *Tex. Monthly* (July 24, 2023) (profiling another family that chose to split up to obtain gender-affirming care for their

transgender child, noting that the family could not afford for the father to move until he found a job in California).<sup>9</sup>

Even for families who have the financial means to do so, there are many complex factors at play when considering whether to relocate. There are other relatives to think about, including family members needing care, parents' careers and finances to consider, community ties that are difficult to leave behind, and the social and educational needs of their other children. See Marc Ramirez, *As State Laws Target Transgender Children, Families Flee and Become 'Political Refugees,'* USA Today (Oct. 29, 2022) (profiling a mother who wants to move with her transgender child to California, but does not want to leave behind her aging parents, for whom she is the primary caretaker);<sup>10</sup> Kiara Alfonseca, *'Genocidal': Transgender People Begin to Flee States with Anti-LGBTQ Laws,* ABC News (June 11, 2023) (highlighting a family who had to decide whether to spend nearly all of its savings to move).<sup>11</sup>

Military parents, meanwhile, often have no control over where they live while they serve. Many parents stationed in states with gender-affirming care bans are thus forced to choose between seeking medically necessary care for their children and serving their

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<sup>9</sup> <https://www.texasmonthly.com/news-politics/trans-families-leaving-texas/>.

<sup>10</sup> <https://www.usatoday.com/story/news/nation/2022/10/29/transgender-children-families-flee-states-restricting-rights/10547110002/>.

<sup>11</sup> <https://abcnews.go.com/US/genocidal-transgender-people-begin-flee-states-anti-lgbtq/story?id=99909913>.

country. As MVA’s experience shows, some parents who would otherwise continue to serve are considering making the difficult decision to resign or not reenlist so they can live in a state where they can access gender-affirming medical care for their children.

For many other families—military and civilian—moving is just not a viable option. Some simply lack the ability to relocate for “a litany of reasons including family obligations, job security, or the high cost of an out-of-state move.” *See* Carlisle, *supra*. “Then you have the economy—a lot of people are struggling with housing and don’t have the resources to pick up and move.” Ramirez, *supra*. Others are legally prohibited from moving with their children due to custody arrangements. *See* von Oldershausen, *supra*.

### **III. THE IMPACT OF GENDER-AFFIRMING MEDICAL CARE BANS HAS BEEN FELT EVEN IN STATES THAT HAVE NOT PASSED THEM**

The harms inflicted by gender-affirming medical care bans are not cabined to the states that have passed them. Families across the country have been impacted, even in states that affirmatively protect access to such care.

Providers in states where gender-affirming care is still available have experienced an influx of patients as families unable to obtain treatment in states with bans have chosen to relocate. *See* Bram Sable-Smith, et al., *Why Some People Are Choosing to Move to States That Protect Gender-Affirming Health Care*,

CNN Health (June 23, 2023).<sup>12</sup> The increased demand for services in states where gender-affirming care remains available has led to waitlists for initial appointments that sometimes stretch to a year or longer. Deidre McPhillips, *State Restrictions on Gender-Affirming Care for Children Have Doubled the Average Travel Time to a Provider in the US, Study Shows*, CNN Health (July 25, 2023).<sup>13</sup> This backlog in turn makes it more difficult for all patients to obtain the care they need, whether they have recently relocated to states where care is available or are long-time residents. *See, e.g.*, Pranav Gupta, et al., *Exploring the Impact of Legislation Aiming to Ban Gender-Affirming Care on Pediatric Endocrine Providers: A Mixed-Methods Analysis*, 7 *J. Endocr. Soc'y* 1, 5 (2023) (finding that “legislation aiming to ban [gender-affirming medical care] may result in a shortage of medical providers providing not only medical care to [transgender and gender diverse] youth but also general pediatric endocrinologic care, resulting in an increased number of ‘care deserts’”); Sable-Smith, *supra* (noting that California providers are reporting an influx of calls from patients seeking to relocate to California and that existing infrastructure may not be able to accommodate increased number of patients); *see also* Megan Messerly, *Health Care Access for Trans Youth is Crumbling—And Not Just in Red*

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<sup>12</sup> <https://www.cnn.com/2023/06/23/health/families-moving-for-transgender-health-care/index.html>.

<sup>13</sup> <https://www.cnn.com/2023/07/25/health/gender-affirming-care-adolescents-travel-time/index.html>.

*States*, Politico (Apr. 23, 2023).<sup>14</sup> As the director of a Seattle, Washington, children’s clinic that provides gender-affirming care recently put it, bans in other states “make [her] worried about how [in-state providers] can adequately meet the needs of patients and families both here in Washington who have been on our waiting list for many months, but also so many patients and families that are uprooting their lives to be able to continue care.” *Id.* (cleaned up).

Making matters worse, the proliferation of gender-affirming care bans has pushed some providers away from providing care despite their continued conviction in its medical necessity and effectiveness. Many healthcare providers are afraid that they will inadvertently run afoul of other states’ bans even when providing gender-affirming care in states where it is legal. See Jim Salter & Geoff Mulvihill, *Some Providers are Halting Gender-Affirming Care for Minors, Even Where it Remains Legal*, PBS News Hour (Sept. 22, 2023);<sup>15</sup> see also, e.g., Messerly, *supra* (“Even in states without bans,” the contentious climate surrounding gender-affirming care has “created a chilling effect that undermines [providers’] ability to provide care.”). Others have been forced to stop providing gender-affirming care as malpractice premiums—which cover treatments for this care—rise with the risk of litigation amidst a hostile legislative

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<sup>14</sup> <https://www.politico.com/news/2023/04/23/docs-who-treat-trans-youth-under-attack-00093322>.

<sup>15</sup> <https://www.pbs.org/newshour/nation/some-providers-are-halting-gender-affirming-care-for-minors-even-where-it-remains-legal>.

landscape. Cecilia Nowell, *Rising Malpractice Premiums Push Small Clinics Away From Gender-Affirming Care for Minors*, PBS News (Jan. 20, 2024).<sup>16</sup>

This chilling effect has been felt on the institutional level, too. Between hostile state attorneys general targeting out-of-state healthcare providers under the auspices of enforcing their laws, and litigation-averse medical centers, access to care is dwindling for children who need it. *See, e.g.*, Sophie Putka, *Scripts for Puberty-Blocking Drugs Fell After State Bans*, MedPage Today (May 17, 2024) (quoting the executive director of the Mount Sinai Center for Transgender Medicine and Surgery in New York City who noted that “some medical institutions have pushed providers to limit treatment of transgender youth even in states without restrictions”);<sup>17</sup> Cayla Harris, *Texas AG Seeking Out-of-State Patient Records for Trans Youth, Seattle Hospital Lawsuit Says*, San Antonio Express-News (Dec. 22, 2023) (reporting that Texas Attorney General Ken Paxton subpoenaed Seattle Children’s Hospital seeking medical records of Texas children who may have received gender-affirming medical care out of state).<sup>18</sup>

TransParent’s members have deeply felt the challenges created by these dynamics. As more and more families with children in need of gender-affirming

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<sup>16</sup> <https://www.pbs.org/newshour/health/rising-malpractice-premiums-push-small-clinics-away-from-gender-affirming-care-for-minors>.

<sup>17</sup> <https://www.medpagetoday.com/special-reports/exclusives/110120>.

<sup>18</sup> <https://www.expressnews.com/politics/article/paxton-seattle-trans-youth-18570625.php>.

care seek out providers in states where it is available, TransParent members are struggling to obtain appointments for their children, all while the increasing legal risks to providers chill the provision of care. The harm for families without the financial or other resources needed to access care in the face of these challenges is enormous.

#### **IV. LAWS LIKE SB1 DEPRIVE TRANSGENDER ADOLESCENTS ALONE OF SAFE, EFFECTIVE, AND MEDICALLY NECESSARY CARE**

*Amici's* members and their families acutely understand that gender-affirming medical care bans are exclusively targeted at transgender youth and preclude access to safe, effective, medically necessary care only when that care would be provided to transgender youth. Gender-affirming medical care bans do not prohibit the use of puberty blockers and hormone therapy for cisgender and intersex minors to treat a variety of conditions when medically necessary. They prohibit only the use of puberty blockers and hormone therapy *for the purpose of* living in accordance with the patient's true gender identity—a purpose that is unique to transgender kids.

The fact that these laws uniquely target transgender youth is unmistakable in practice. As a general matter, parents are broadly empowered to pursue safe, effective, medically necessary care for their children. When their children have a medical issue, parents can take them to an experienced medical provider. The provider, parents, and patient can weigh the pros and cons of various treatments and

choose a treatment path tailored to the patient’s individual needs. And parents derive comfort from the knowledge that modern medicine has afforded them the choice to give their children a chance to live a healthier and happier life.

But in many states in this country, parents of transgender children cannot take the same course of action. Instead, as many of *amici*’s members have experienced, parents of transgender children are told by the state that they are legally barred from pursuing the safe, medically necessary care their doctors advise will alleviate their children’s suffering. As a result of these bans, parents of transgender children must grapple with difficult questions that most other parents do not have to face in these times—whether they can afford to uproot their lives, leave family and friends behind, or quit a secure job to move hundreds of miles away, all for the possibility of obtaining for their child the medical care that they need.

The adolescents who are deprived of necessary medical care under laws like SB1 are intensely aware that those laws single them out specifically because they are transgender. Every day, transgender children in states with gender-affirming care bans must endure legal obstacles to medical care that their cisgender siblings and peers do not have to contemplate. They wonder why they cannot see a doctor to alleviate their pain in the same way that their siblings, friends, classmates, and neighbors can. *See New Poll Emphasizes Negative Impacts of Anti-LGBTQ Policies on LGBTQ Youth*, The Trevor Project (Jan. 19, 2023) (reporting survey findings showing that 86% of transgender and nonbinary youth say that state laws

restricting the rights of LGBTQ+ young people, including gender-affirming medical care bans, have negatively impacted their mental health).<sup>19</sup> If they are lucky enough to be able to relocate for care, doing so will come at the cost of leaving behind their friends, schools, and other family members, and starting over in unfamiliar states and communities.

At bottom, bans like SB1 uniquely target transgender children—and that is not an incidental side effect. These laws serve as a perpetual reminder that the elected leaders of the states these children call home have chosen to single out them, and them alone, for discriminatory treatment. The constitution does not tolerate that result.

### CONCLUSION

For the foregoing reasons and those stated in the briefs filed by petitioners and respondents in support of petitioner, the decision below should be reversed.

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<sup>19</sup> <https://www.thetrevorproject.org/blog/new-poll-emphasizes-negative-impacts-of-anti-lgbtq-policies-on-lgbtq-youth/>.

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September 3, 2024