

**In the Supreme Court of the United States**

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UNITED STATES,  
*Petitioner,*

v.

JONATHAN SKRMETTI, ATTORNEY GENERAL AND  
REPORTER FOR TENNESSEE, *et al.*,  
*Respondents.*

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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 Governor Henry Dargan McMaster  
and Nine Additional Governors as  
*Amici Curiae* in Support of  
Respondents**

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## INTERESTS OF *AMICI CURIAE*

Henry Dargan McMaster is Governor of the State of South Carolina.\* He has sworn to “preserve, protect, and defend” both the South Carolina Constitution and the United States Constitution. S.C. Const. art. VI, § 5. This oath gives Governor McMaster a duty to stand up for the constitutional principles on which our Republic is founded.

Like many other Governors across the country, Governor McMaster recently signed a bill to protect children from harmful gender-transition procedures. *See* 2024 S.C. Acts No. 203. This legislation is, in many ways, similar to Tennessee’s law at the center of this case. As just one example, South Carolina’s law also prohibits physicians performing or providing gender-reassignment surgeries, puberty-blocking drugs, and cross-sex hormones to minors. *See* S.C. Code Ann. § 44-42-320(A).

Other Governors have taken similar oaths, *see, e.g.*, Ark. Const. art. XIX, § 20; Okla. Const. art. VI, § 8, and signed similar laws, *see, e.g.*, S.B. 613, 2023 O.S.L. 150; 2023 H.B. 1080 (S.D. 2023).

## SUMMARY OF ARGUMENT

“Cruel.” “Disgusting.” “Transphobic.”

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\* Under Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief, in whole or in part, and that no entity or person, aside from *amici curiae* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

That’s how transgender advocates mischaracterize Governors’ decisions to sign into law bills that protect children from scientifically unsupported medical treatments with life-altering consequences. They essentially accuse Governors of acting with malice.

In reality, Governors have signed these prohibitions on experimental gender-transition procedures into law because they—and the citizens of their States—want to protect children. As Governor McMaster called South Carolina’s legislation, it’s a “Help Not Harm Bill.” Press Release, *Governor Henry McMaster Signs Two Landmark Child Safety Bills Into Law*, Gov. Henry McMaster (May 29, 2024), <https://tinyurl.com/yxsuh8ha>. The goal is to keep children from making life-changing decisions that they may later regret.

That’s not some radical position. States prohibit children from making certain decisions all the time. For instance, some States prohibit a person under 18 from getting a tattoo. *See, e.g.*, S.C. Code Ann. § 44-34-100(A); Me. Rev. Stat. Ann. tit. 32, § 4203. Some States require a person to be at least 18 to get married. *See, e.g.*, N.J. Stat. Ann. § 37:1-6; 23 Pa. Cons. Stat. Ann. § 1304(b)(1). Some States mandate that someone be at least 18 to buy a lottery ticket. *See, e.g.*, Ky. Rev. Stat. Ann. § 154A.990(1)(a); N.Y. Tax Law § 1610(a). And some States preclude people under 18 from purchasing a handgun. *See, e.g.*, Or. Rev. Stat. Ann. § 166.470(1)(a); Va. Code Ann. § 18.2-309(b).

In other words, Governors signing laws that protect minors is nothing new. Just as Governors sought to protect children by keeping them from buying handguns or getting tattoos, so too did the Governors who

signed the Help Not Harm bills. As the Court delves into the legal questions here, it should do so knowing this fact, rather than believing the overheated, misleading rhetoric of transgender activists.

## ARGUMENT

States play “a significant role . . . in regulating the medical profession.” *Gonzales v. Carhart*, 550 U.S. 124, 157 (2007). Medical uncertainty does not limit this role. *See id.* at 163–64. The Help Not Harm laws that many States have enacted represent a classic exercise of the States’ sovereign power to regulate the practice of medicine.

As more States employed this authority to protect children from life-altering gender-transition procedures, a familiar pattern has emerged. A Governor signs the bill into law, and then transgender activists accuse the Governor—usually in dramatic language—of committing a cruel attack on children. These predictable and inevitable accusations that a Governor acted with animus could not be further from the truth.

### **I. Governors sign into law prohibitions on gender-transition procedures to help, not harm, children.**

#### **A. Transgender activists accuse Governors of horrible things for signing these bills.**

Governor McMaster is an example of this pattern. When he signed South Carolina’s law, the ACLU claimed that trans-identifying children were “under attack by [their] own government” and that the State

was “tramp[ing] on the liberties of trans South Carolinians.” *No Matter What the Governor Says, Trans Youth Belong Here*, ACLU (May 21, 2024), <https://tinyurl.com/2v2fwpvh>. Taking a similar approach, the director of gender justice at the Campaign for Southern Equality called the “oppressive” law an “attack” on trans-identifying children. Adam Polaski, *South Carolina Governor Signs Anti-Trans Healthcare Bill into Law*, Campaign for Southern Equality (May 21, 2024), <https://tinyurl.com/4pvwzffc>. Another group called the Governor’s decision “cruel[]” and “an egregious attack,” suggesting that “transphobic misinformation and bias” motivated the new law. Kelli R. Parker, *Governor Signs Gender-Affirming Care Bill into Law*, Women’s Rights & Empowerment Network (May 22, 2024), <https://tinyurl.com/4xmet9kn>.

Governor McMaster is not alone as the target of such statements. The Human Rights Campaign called Governor Kemp’s decision to sign Georgia’s bill “a disgusting and indefensible act,” representing “politics at its worst.” Delphine Luneau, *A Vicious Attack on Innocent Youth*, Human Rights Campaign (Mar. 23, 2023), <https://tinyurl.com/58kcsfxm>. In Florida, Lambda Legal accused Governor DeSantis of “demonstrating an intentional, callous disregard for LGBTQ+ Floridians” and “facilitating homophobia and transphobia.” *Lambda Legal Responds After Florida Gov. DeSantis Signs Four Anti-LGBTQ Bills Into Law*, Lambda Legal (May 17, 2023), <https://tinyurl.com/4w4wh6b8>. Supporters of gender-transition procedures for children called Governor Abbott’s decision to sign Texas’s law “cruel.” Alex Nguyen & William Melhado, *Gov. Greg Abbott Signs Legislation Barring Trans Youth from Accessing Transition-*

*Related Care*, Texas Tribune (June 3, 2023), <https://tinyurl.com/bduj2hst>. In Mississippi, the ACLU accused Governor Reeves of “fail[ing] trans youth” due to his “fear and ignorance.” *Mississippi Bans Gender-Affirming Health Care for Transgender Youth*, ACLU (Feb. 28, 2023), <https://tinyurl.com/3amzpfsp>. Governor Stitt of Oklahoma was attacked for signing legislation that was “discriminatory, stigmatizing, and dangerous.” HRC Staff, *Human Rights Campaign Condemns Oklahoma Governor Stitt for Signing Gender Affirming-Care Ban into Law*, Human Rights Campaign (May 2, 2023), <https://tinyurl.com/3mzptx46>. And in Iowa, Governor Reynolds was accused of “jeopardiz[ing]” children’s health in an “unconscionable” way. HRC Staff, *ICYMI: Governor Kim Reynolds Signs Gender Affirming Care Ban into Law*, Human Rights Campaign (Mar. 22, 2023), <https://tinyurl.com/2vv9sfzn>.

Meanwhile, in Alabama (where litigation over its Help Not Harm law has uncovered just how unsupported WPATH’s guidelines are), the Human Rights Campaign cast “shame” on Governor Ivey for being “a political coward” who signed “the most anti-transgender legislative package ever passed.” Delphine Luneau, *Human Rights Campaign Condemns Alabama Gov. Kay Ivey for Enacting Nation’s First Bill to Impose Criminal Penalties on Providers of Age-Appropriate, Medically Necessary Gender-Affirming Care for Transgender Youth*, Human Rights Campaign (Apr. 8, 2022), <https://tinyurl.com/yr2kcdfr>.

All these Governors are just like Governor Lee of Tennessee. After he signed his State’s Help Not Harm

law, the Human Rights Campaign called him “responsible” for the “discriminatory” law that “doubl[ed] down on efforts to attack . . . transgender youth.” HRC Staff, *Human Rights Campaign Slams Governor Lee for Signing Anti-Drag Bill and Gender Affirming Care Ban into Law; TN Becomes First State to Criminalize Drag*, Human Rights Campaign (Mar. 2, 2023), <https://tinyurl.com/mrwrr8pw>.

**B. Governors actually sign these bills into law to protect children.**

Far from being motivated by animus, Governors have signed these bills stopping gender-transition procedures on children out of a deep concern for those children.

Governor McMaster explained that he signed South Carolina’s bill because of his “commitment to ensuring the health and well-being of all our state’s children from damaging influences.” Press Release, *Governor Henry McMaster Signs Two Landmark Child Safety Bills Into Law*, Gov. Henry McMaster. He observed that “[p]rotecting the innocence of our state’s children is our shared responsibility.” *Id.*

Such sentiments are common among Governors. Governor Kemp explained that signing Georgia’s new law was “an important step” to “ensure we protect the health and wellbeing of Georgia’s children.” @Gov-Kemp, X (Mar. 23, 2023 3:02 PM), <https://tinyurl.com/2fkf5ubp>. Governor DeSantis said that Florida was “standing up for our children,” as the State “represent[ed] a refuge of sanity and a citadel of normalcy.” News Release, *Governor Ron DeSantis Signs Sweeping Legislation to Protect the Innocence of*

*Florida's Children*, Gov. Ron DeSantis (May 17, 2023), <https://tinyurl.com/ax63w595>. Governor Reeves expressed the desire to “protect[]” children from a “dangerous movement” led by “radical activists, social media, and online influencers” that “threatens our children’s innocence” and “health” and to ensure that children are not “guinea pigs” for new medical procedures. Tate Reeves, *Governor Tate Reeves Signs Legislation to Ban Gender Reassignment Procedures for Children*, Facebook (Feb. 28, 2023), <https://tinyurl.com/bvvd6de9>. Governor Ivey, in signing Alabama’s law, said, “We should especially protect our children from these radical, life-altering drugs and surgeries when they are at such a vulnerable stage in life.” Associated Press & Jo Yurcaba, *Alabama Governor Signs Bill Criminalizing Transgender Health Care for Minors*, NBC News (Apr. 8, 2022), <https://tinyurl.com/59yft7rs>. Governor Stitt in Oklahoma noted that the ban protected children from “life-altering transition surgeries.” Newsroom, *Governor Stitt Bans Gender Transition Surgeries and Hormone Therapies for Minors in Oklahoma*, Gov. Kevin Stitt (May 1, 2023), <https://tinyurl.com/y6wnbjwf>. Governor Pillen signed Nebraska’s law because he believed his State’s children “deserve the opportunity to grow up and develop to their full, God-given potential” and should be “protect[ed] . . . from making potentially irreversible and regrettable decisions.” Press Release, *Gov. Pillen Approves LB 574 Regulations on Nonsurgical, Gender Altering Treatments*, Gov. Jim Pillen (Mar. 12, 2024), <https://tinyurl.com/38mjw8nt>. Governor Noem expressed the same sentiment of protecting children when she stated that, “[w]ith this legislation, we are protecting kids from harmful, permanent medical procedures. . . . I will always stand up for the next

generation of South Dakotans.” Press Release, *Gov. Noem Signs “Help Not Harm” Bill*, Gov. Kristi Noem, (Feb. 13, 2023), <https://tinyurl.com/yd7hd6x2>. As Governor Sanders of Arkansas summed it up, Governors have “step[ped] up” to sign these laws because these laws “protect[] kids” and “ban[] some of these permanent, life-altering surgeries.” Fox News, *Sarah Sanders Responds to Karine-Jean Pierre Remarks on Sex Change Surgeries for Minors* (Apr. 6, 2023), <https://tinyurl.com/ydt8rs57>.

The Court should take these Governors at their word. They are chief executives, speaking on official acts, without any evidence of doing so dishonestly. Indeed, it would flout this Court’s traditional treatment of public officials not to grant the Governors a presumption of good faith. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557, 671 n.7 (2006) (Scalia, J., dissenting) (“In reviewing the constitutionality of legislation, we generally presume that the Executive will implement its provisions in good faith.”); *Sunday Lake Iron Co. v. Wakefield Twp.*, 247 U.S. 350, 353 (1918) (“The good faith of such officers and the validity of their actions are presumed”); *cf. Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1235 (2024) (emphasizing the presumption of legislative good faith).

To be sure, opponents of Help Not Harm laws have a right to express their opinions. *E.g., R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992). But they cannot constitutionalize their view of the issue. Adopting constitutional rules on debated medical questions has been an ill-advised path. Rather than taking the issue away from the People, it should “be resolved like most important questions in our democracy: by



citizens trying to persuade one another and then voting.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 979 (1992) (Scalia, J., concurring in part and dissenting in part).

## **II. Governors’ decisions to sign these bills into law fall squarely within the States’ long-recognized police power.**

“The States traditionally have had great latitude under their police powers to legislate as ‘to the protection of the lives, limbs, health, comfort, and quiet of all persons.’” *Metro. Life Ins. v. Massachusetts*, 471 U.S. 724, 756 (1985) (quoting *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 62 (1873)). Accordingly, this Court has recognized that “it is clear the State has a significant role to play in regulating the medical profession.” *Carhart*, 550 U.S. at 157.

South Carolina history illustrates this longstanding rule. The State’s current board of medical examiners dates to the early twentieth century. See 1904 S.C. Acts No. 292, 1904 Acts & Joint Resolutions, at 512. But the State was already licensing physicians almost a century earlier. See 1817 S.C. Acts No. 2139, 6 *Statutes at Large of South Carolina* 63 (David J. McCord ed. 1839). And it has been legislating on public health since colonial times. See, e.g., 1759 S.C. Acts No. 881, 4 *Statutes at Large of South Carolina* 78 (Thomas Cooper ed. 1838) (imposing requirements for detecting and limiting the spread of diseases on incoming ships).

This broad authority to legislate on public health does not shrink just because an issue is debated or uncertain. If anything, it expands. “Medical uncertainty

does not foreclose the exercise of legislative power in the abortion context any more than it does in other contexts.” *Carhart*, 550 U.S. at 164. Indeed, legislatures enjoy “wide discretion to pass legislation in areas where there is medical and scientific uncertainty.” *Id.* at 163; *see also id.* at 161 (upholding Congress’s decision to ban partial-birth abortions when “both sides ha[d] medical support for their position”).

Granting the political branches this discretion makes sense. As Justice Scalia once observed, “[g]iven the nuances of scientific methodology and conflicting views, courts—which can only consider the limited evidence on the record before them—are ill equipped to determine which view of science is the right one.” *Roper v. Simmons*, 543 U.S. 551, 618 (2005) (Scalia, J., dissenting). “[C]ourts should be cautious” therefore “not to rewrite legislation” when faced with a law that regulates an “in area[] fraught with medical and scientific uncertainties.” *Marshall v. United States*, 414 U.S. 417, 427 (1974). And courts should be wary of so-called “experts” trying to constitutionalize their views, as their professional views do not “shed light on the meaning of the Constitution.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 273 (2022).

As just three examples of the States’ well-established practice of legislating on contentious medical questions, consider medical marijuana, vaccination, and abortion. All those topics draw strong opinions and split experts. And all those topics have seen States take divergent approaches.

On medical marijuana, the States have addressed the topic in conflicting ways. Some States have legalized medical marijuana. *See, e.g.*, Ark.

Const. amend. XCVIII, § 1, *et seq.* (“Arkansas Medical Marijuana Amendment of 2016”). A different group of States now allows people to possess marijuana for any reason, *see, e.g.*, Va. Code Ann. § 2.2-2499.5 (creating Cannabis Equity Reinvestment Board), despite the Controlled Substances Act, *see* 21 U.S.C. § 844(a). Meanwhile other States continue to prohibit any use of marijuana. *See, e.g.*, Ind. Code Ann. § 35-48-4-11.

Turning to vaccination, States take wildly different approaches on a topic that became hotly contested during COVID. Vaccine policies vary by age and setting, but as one example, States have treated exemptions for school differently. California and New York permit exemptions to vaccine mandates for medical reasons only. *See* Cal. Health & Safety Code § 120372; N.Y. Comp. Codes R. & Regs. tit. 10, § 66-1.3(c). Other States have both religious and medical exemptions. *See, e.g.*, Mont. Code Ann. § 20-5-405; N.H. Rev. Stat. Ann. § 141-C:20-c. Still other States take an even broader view, granting exemptions for personal reasons. *See* La. Stat. Ann. § 17:170(E) (exemption if “a written dissent from the student or his parent or guardian”); Minn. Stat. Ann. § 121A.15(3)(d) (exemption if not vaccinated “because of the conscientiously held beliefs of the parent or guardian of the minor child”).

Finally, on abortion, now that the issue has been “return[ed] . . . to the people and their elected representatives,” *Dobbs*, 597 U.S. at 302, States again have enacted very different policies. Some States prohibit abortion at any stage of pregnancy, unless necessary to save the mother’s life. *See, e.g.*, Ala. Code § 26-23H-4. Other States protect unborn life from the detection

of a fetal heartbeat (typically around six weeks). *See, e.g.*, S.C. Code Ann. § 44-41-630(b). Different States draw the line at 12 weeks. *See, e.g.*, Neb. Rev. Stat. Ann. § 71-6915(2). Still more States use viability as the point to protect unborn children. *See, e.g.*, 23 R.I. Gen. Laws Ann. § 23-4.13-2(d). And other States do not limit abortion at any stage of pregnancy. *See, e.g.*, Vt. Stat. Ann. tit. 18, § 9494(a).

On each of these issues, States have exercised their broad discretion to regulate public health. But on none of these issues has the States reached a national consensus. And that's fine. This Court has "long recognized the role of the States as laboratories for devising solutions to difficult legal problems." *Oregon v. Ice*, 555 U.S. 160, 171 (2009) (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

It's this same well-established, broad authority that Governors were exercising when they signed Help Not Harm bills into law. *Cf. Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (signing legislation into law is an "integral step[] in the legislative process"). Just as States have the flexibility to regulate on medical marijuana, vaccines, and abortion, they may choose how to approach transgender medical procedures for children.

## CONCLUSION

For these reasons, the Court should affirm the judgment of the Sixth Circuit.

Respectfully submitted,

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## **APPENDIX**

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**APPENDIX A**

**THOSE JOINING IN THE  
*AMICI CURIAE* BRIEF**

These Governors join Governor McMaster in this *amici curiae* brief:

Governor Kay Ivey of Alabama  
*William G. Parker, Jr., General Counsel*

Governor Sarah Huckabee Sanders of Arkansas  
*Cortney Kennedy, Chief Legal Counsel*

Governor Ron DeSantis of Florida  
*Ryan D. Newman, General Counsel*

Governor Brian P. Kemp of Georgia  
*Kristyn Long, Executive Counsel*

Governor Jeff Landry of Louisiana  
*Angelique Freel, Executive Counsel*

Governor Tate Reeves of Mississippi  
*David Friederich Maron, Chief Legal Counsel*

Governor J. Kevin Stitt of Oklahoma  
*Trever S. Pemberton, General Counsel*

Governor Kristi Noem of South Dakota  
*Katie Hruska, General Counsel*

Governor Spencer J. Cox of Utah  
*Daniel O'Bannon, General Counsel*