

# How the Transgender Rights Movement Bet on the Supreme Court and Lost

The inside story of the case that could set the movement back a generation.

By Nicholas Confessore

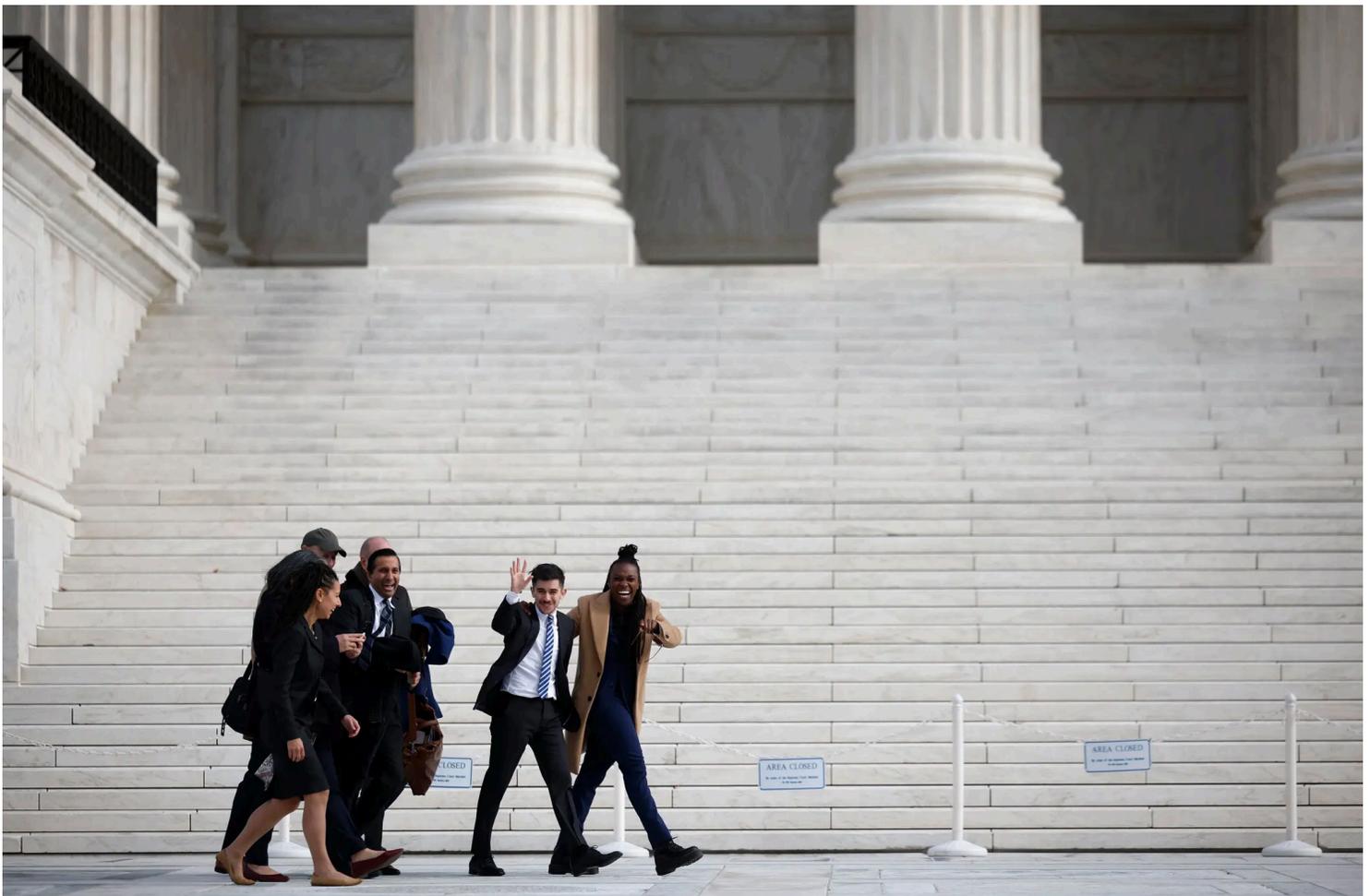
Nicholas Confessore is an investigative reporter for The Times and a staff writer for the magazine. For this article, he reviewed thousands of pages of court documents and interviewed former Biden administration officials, lawyers at L.G.B.T.Q. advocacy groups and the A.C.L.U. and dozens of civil rights experts and current and former L.G.B.T.Q. activists.

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**One day** last December, a clutch of dark-suited lawyers descended the steps of the Supreme Court to a hero's welcome. The lawyers, from the American Civil Liberties Union, had that morning joined counterparts from the Biden administration in asking the court to block a Tennessee law that bars doctors from providing puberty blockers, cross-sex hormones and surgery to young people who feel that their bodies are the wrong sex. In the plaza outside the court, L.G.B.T.Q. advocacy groups had turned out hundreds of supporters, who hugged, cheered and waved rainbow and pink-and-blue flags. Club music filled the air, clashing against the country songs blasted by a smaller group of counterprotesters. Photographers roamed, capturing images and videos that would later populate the A.C.L.U.'s social media feeds.

Later, in a private briefing for the group's top donors, an A.C.L.U. official declared victory. "We set out to deliver a clear message to the Supreme Court that law, science and the court of public opinion are absolutely on our side," she said. "And I have to tell you: Boy did we demonstrate that yesterday." Another A.C.L.U. executive, posting on Instagram, declared that "HISTORY WAS MADE, Y'ALL!!"—referring not to the case, exactly, but to a different milestone: Chase

Strangio, an A.C.L.U. lawyer and burgeoning celebrity of the cultural left, had just become the first openly transgender lawyer to argue before the court. When Strangio himself addressed the crowd that day, the particulars of the case, known as *United States v. Skrametti*, receded even further. What mattered more, he suggested, was that after generations at the margin of American life, transgender people had forced the court to reckon with their existence. “Regardless of the outcome in June, trans and nonbinary people have always been here,” Strangio said. “We are in it together. Our power only grows.”



Chase Strangio of the A.C.L.U. (second from right) became the first openly transgender lawyer to argue before the Supreme Court in *United States v. Skrametti* in December. Kevin Dietsch/Getty Images

By most other measures, however, the movement for transgender rights was approaching its nadir. Weeks earlier, Donald J. Trump had swept to re-election, buoyed by tens of millions of dollars in attack ads asserting that his opponent, Kamala Harris, was for “they/them,” not “you.” Post-election polling showed that

even most Democrats believed that doctors should not prescribe puberty blockers and hormones to minors — the treatments at the heart of the Skrametti case. While Joe Biden framed transgender equality as “the civil rights issue of our time” and fought for a broad expansion of transgender rights, Trump set out to eradicate them.

Since taking office, he has sought to strip trans people of the right to choose the sex marker on their passports and bar them from the military, arguing that they inherently lack the integrity and moral fitness to serve — that their very identity is a dishonorable lie. He has threatened to withhold federal funding from health care providers that continue to offer blockers, cross-sex hormones or transition surgery to minors. “It is the policy of the United States to recognize two sexes, male and female,” one executive order asserted. “These sexes are not changeable and are grounded in fundamental and incontrovertible reality.”

On Wednesday, the Supreme Court delivered a new, crushing blow, upholding Tennessee’s ban in a 6-to-3 decision. In allowing Tennessee to outlaw blockers and hormones, the court not only shielded similar laws on the books in some two dozen states. It effectively closed the door on extending new constitutional protections to trans people. Some advocates fear that Skrametti could open the door to banning medical transition for adults and perhaps other health care that some conservatives oppose, like birth control or in vitro fertilization — even vaccines. The fate of a once-obscure medical treatment could have profound consequences for American law.

What makes the defeat all the more striking is the remarkable string of victories the broader L.G.B.T.Q. movement was winning until a few years ago. Tailoring its message to reach skeptical audiences, careful to ride near the crest of shifting public sentiment, it pursued incremental legal and regulatory wins that, ultimately, sparked deep social change. Beginning in the 2010s, gay people won the right to marry and, along with trans people, serve openly in the military. The movement defeated “bathroom bills” aimed at trans people in states like North Carolina and Texas, persuading even some Republicans that such measures were unnecessary and cruel. Just five years ago, the Supreme Court ruled that employees could not

be fired for being gay or transgender. But with Skrametti, the movement bet its future on a far more fraught question: whether children have a constitutional right to treatments that halt and redirect their physical adolescence.

Not long ago, the idea that a major Supreme Court case would turn on medical care for transgender children might have seemed far-fetched. But during the last decade, as L.G.B.T.Q. groups were notching victory after victory, the number of adolescents identifying as transgender roughly doubled; it is now estimated to encompass roughly 3 percent of American high schoolers. A small but growing portion of those young people sought medical treatment for gender dysphoria, the diagnostic term for the distress people experience when their physical bodies do not align with their own sense of self. To many clinicians and L.G.B.T.Q. activists, these treatments were not only uncontroversial but transformative, an innovation that could set more young trans people on the road to happiness. Yet by 2021, when Arkansas became the first state to ban pediatric gender treatments, something had begun to shift. Not for the first time in the long arc toward L.G.B.T.Q. equality, the breaking point of wider acceptance was children.

Within two years, nearly a dozen other states, including Tennessee, followed with bans of their own. In challenging these laws, L.G.B.T.Q. groups and the Biden administration hoped not only to expand transgender rights, but to protect medical treatments that many trans people view as lifesaving. Yet in conversations this year with dozens of legal experts, activists, and other veterans of the fight for L.G.B.T.Q. equality, I encountered deep apprehension that taking Tennessee to the nation's highest court had been a strategic error — one symptomatic of broader problems.

In private meetings of L.G.B.T.Q. legal-advocacy groups, many lawyers expected a loss almost from the moment the court agreed to hear the case, according to one person briefed on the conversations. On the outside, I heard rising criticism of the strategic and political judgments animating the A.C.L.U.'s litigation — muted by fear that voicing those criticisms more openly, amid the depredations of Trump's second term, would only give the right more ammunition. "There are a lot of

conversations happening right now,” said Dana Beyer, a physician and longtime trans activist in Maryland. “People know the movement is stuck. They know we’ve gone too far. They know we’ve lost the thread.”

For other trans activists and their allies, Skrmetti is the culmination of a powerful Trump-era backlash against the entire progressive project of expanded rights and consciousness around gender identity, artfully stoked by right-wing politicians and abetted by biased media coverage. “I didn’t pick this fight around trans rights,” Anthony Romero, the A.C.L.U.’s executive director, told me in an interview not long before the decision. “The right-wing conservatives of the MAGA G.O.P. have made this one of their cause célèbre issues as a way to kind of scapegoat individuals, as a way to score cheap political points.”



Anthony Romero, the A.C.L.U.'s executive director, called *United States v. Skrametti* "the best case in the transgender rights docket." Kendrick Brinson for The New York Times

Romero cast the lawsuits over pediatric gender medicine as the logical next step in his organization's much longer battle to defend personal freedom. "We're not a think tank," he said. "We are responding to demands for justice of people who walk into our front door." Since 2021, he noted, more than 1,500 bills affecting trans people had been introduced in Congress and state legislatures, addressing pronoun usage, school sports, bathrooms and much more. Skrametti, Romero argued, was "literally a life-or-death matter" — a case not only worth taking to the Supreme Court, but "the best case in the transgender rights docket."

Others, however, saw the Skrametti case as a tragic gamble built on flawed politics and uncertain science. Over the last decade, they told me, the movement was consumed by theories of sex and gender that most voters didn't grasp or support, radicalizing its politics just as the culture wars reignited and the Supreme Court began moving further right. And as Skrametti and other lawsuits made their way through federal courts, some of the central medical claims girding the legal case for pediatric gender treatments — that decades of thorough study had found them to be safe and effective — began to unravel amid growing scrutiny by other doctors and experts.

Last summer, thousands of emails and other documents released in a case challenging Alabama's ban raised further questions about medical standards at the heart of the A.C.L.U.'s lawsuit against Tennessee. "This case exposes a lot of ethical problems in the practice of medicine," a law professor with expertise in sex-discrimination law told me, speaking on the condition of anonymity for fear of blowback from students and colleagues. "For Skrametti to be the next step in a progress narrative — an incrementalist would say, This is way far from where we ought to be."

Along the road to Skrametti, some believe, the L.G.B.T.Q. movement drove itself toward a cliff — and took the Democratic Party with it, chaining the Biden administration to one of the most divisive issues in American politics at a moment of shifting medical consensus and fierce polarization. "It's one of the biggest mistakes in the history of trans activism," said Brianna Wu, a trans woman who

serves on the board of Rebellion PAC, a Democratic political-action committee. Strangio and other advocates for trans rights have cast Skrmetti as the case they had to bring. It may also have set their movement back a generation.



Attorney General Jonathan Skrmetti of Tennessee at the Supreme Court for the oral argument on his state's restrictions on pediatric gender medicine, a ban that was challenged by young plaintiffs and their families. Maansi Srivastava for The New York Times

**A few rows back** from the lawyers arguing in court in December, wearing a new black suit and a lavender tie, sat one of the plaintiffs, a teenager from Nashville known in court documents as L.W. From a very young age, L.W. struggled to feel comfortable as a boy. By fourth grade, the distress had grown worse; L.W. avoided changing in front of others and began wearing baggy clothes. “I felt like I was trapped in the wrong body,” L.W. recounted in a declaration filed in court in Tennessee. “My guy friends at school were talking about wanting to grow

mustaches and beards. I remember thinking that was something I did not want to happen to me.” When a cousin came out as transgender the following year, L.W. felt a sense of recognition.

At around 12, L.W. began using “she” and “her” pronouns. She grew her hair long, changed her name and began wearing girls’ clothes more often. In December 2020, L.W. began to see a therapist, who made a diagnosis of gender dysphoria. She asked her parents to explore medical treatment, and the following August, after turning 13 and feeling “terrified about going through male puberty,” she was prescribed blockers by a doctor at Vanderbilt children’s hospital. Over months of careful consultation with L.W. and her parents, according to the declaration, her doctor described the potential risks and side effects of medical transition. After another year, L.W. began taking estrogen, to ensure that her body would “go through the changes that other girls’ bodies go through during puberty.” Her family, teachers and classmates were supportive. As the treatment progressed, her dysphoria mostly went away.

The course of treatment provided to L.W. was pioneered by gender clinicians in the Netherlands. As a group, trans adults attempt suicide at extraordinarily high rates; the Dutch researchers theorized that the stigma and depression they observed in their older patients might have been avoided if they began to transition much earlier, before puberty shaped their bodies. Boys who take estrogen can begin to grow breasts; girls taking testosterone can develop deeper voices and coarser, darker facial and body hair. In the early 2010s, the researchers published studies demonstrating, for the first time, that medical intervention could improve the well-being of some adolescents with dysphoria. Drugs that blocked puberty, they argued, could give dysphoric young people time to think while exploring the possibility of what was then called “sex reassignment” with cross-sex hormones and, eventually, surgery.

As late as 2008, the researchers had suppressed puberty in fewer than 120 children. But elements of what became known as “the Dutch protocol” were already spreading widely in other Western countries. In 2012, the World Professional Association for Transgender Health (WPATH) incorporated the Dutch protocol

into its standards of care, best-practice guidelines meant to serve as a reference for physicians, insurers and others. WPATH recommended an “extensive exploration of psychological, family and social issues” before any medical interventions in adolescents and the delay of genital surgeries — such as the creation of a penis or a vagina — until legal adulthood. Over the next decade, medical associations around the world would issue their own, often similar guidelines.

It was right as this new consensus was emerging that gender clinicians began to see a sharp rise in adolescent patients, most of them female at birth. Most had not reported gender distress until their early teens, after beginning to develop physical signs of puberty. A disproportionate number had other mental-health conditions, such as autism or depression.

How the profession responded to this surge was guided, in part, by changed understandings of sex and gender. Psychiatrists who helped formulate the idea of “gender identity” originally argued that if sex was biological, gender identity was psychological and subjective — “the sense of knowing to which sex one belongs,” as one early paper put it. For decades, “trans” usually referred to people of one sex who sought medical treatment to help them pass as someone of the opposite sex. Within activist circles, though, that idea began to give way to a concept called self-ID, rooting gender identity in bodily autonomy. Activists argued that all people had the right to determine their own gender, regardless of how they dressed or whether they opted for medical transition. Your self-identified gender — not your physical body — should determine what appeared on your driver’s license and which bathrooms you could access.

In the wider culture, concepts of gender were becoming dizzyingly capacious, even confused. Challenging the idea of a rigid male-female binary, academic theorists detached gender from sex entirely, then reimagined it as an infinite spectrum. By the mid-2010s, when Time magazine declared that America had reached a “transgender tipping point,” a trans person might identify as male, female or neither. The gender of a “gender fluid” person might shift from month to month, or day to day. The phrase “sex assigned at birth” — originally devised to classify

babies born with ambiguous genitalia or other rare congenital disorders — was now employed to suggest that biological sex was arbitrary, even a kind of fiction. Gender, not sex, was the inherent quality.

This new understanding of gender fueled rising calls to change how doctors approached medical transition. Critics inside and outside the medical establishment argued that overzealous “gate-keeping,” like extended psychological assessments, stigmatized trans people and slowed their access to hormones or surgery. In 2013, the American Psychiatric Association eliminated the formal diagnosis of “gender identity disorder,” with its suggestion of pathology, and replaced it with gender dysphoria, a diagnosis with looser criteria. A few years later, WPATH issued a position statement that treatments for dysphoria were a “medical necessity,” the term used by insurers to categorize care they will cover.

In the relatively small community of pediatric gender medicine, physicians increasingly advocated a “gender-affirming” approach, in which clinicians should generally defer to a child’s self-declared identity. Some doctors, citing the risk of suicidal thoughts and behavior among trans youths, argued that failing to affirm a child’s expressed gender would put their life in danger. “We often ask parents, ‘Would you rather have a dead son than a live daughter?’” Johanna Olson-Kennedy, one of the country’s leading gender physicians, told ABC News. In 2018, the gender-affirming model was endorsed by the American Academy of Pediatrics, one of the country’s most influential medical groups.

By then, practitioners like Olson-Kennedy were arguing that trans-identifying children — even those whose dysphoria might be entwined with other mental-health problems — didn’t need extended psychological assessments any more than trans adults did. (“I don’t send someone to a therapist when I’m going to start them on insulin,” she told *The Atlantic* in 2018.) Some doctors and activists went further. In a 2019 journal article, the trans bioethicist Florence Ashley argued that trans people, including “older teenagers,” should not require a formal diagnosis of dysphoria before gaining access to cross-sex hormones. Rather than relieving

supposed distress, Ashley wrote, patients might be seeking “gender euphoria” or “creative transfiguration,” which “sees the body as a gendered art piece that can be made ours through transition-related interventions.”

When Tennessee passed S.B. 1 in 2023, joining a legislative chorus of Republican-controlled states across the country, it was not simply banning gender-affirming care. The state was, in a sense, taking aim at an entire way of understanding — and describing — human identity. Asserting that Tennessee had an interest in “encouraging minors to appreciate their sex,” the law prohibited health care intended to allow a minor to live as a “purported identity” inconsistent with their birth sex or to treat the “purported discomfort” caused by dysphoria. Lawmakers framed the growing availability of gender-affirming care as a crisis, darkly linking it to child abuse. L.W.’s treatments were now illegal in Tennessee. Her parents scrambled to find out-of-state doctors; they even considered moving. Instead, they sued.



Demonstrators gathered outside the Supreme Court when oral arguments were heard in Skrametti in December. Rhiannon Adam for The New York Times

In court papers filed that April on behalf of L.W. and two other children, a legal team led by the A.C.L.U. and Lambda Legal, an L.G.B.T.Q. litigation group, argued that Tennessee's ban violated the Constitution. Tennessee would be represented by the state's attorney general, Jonathan Skrametti.

"L.W. is a 15-year-old girl," her lawyers wrote, someone who at birth was "designated as male" — a phrase, they advised the court, that was "more precise than the term 'biological sex.'" Because the law would allow L.W. to take blockers or hormones for reasons other than her desire to live as a girl — such as treating an unrelated condition like precocious puberty — it discriminated against her on the basis of her sex, violating the Constitution's equal-protection clause. The state's discrimination could not survive constitutional scrutiny, the lawyers argued, in part because L.W.'s care was "medically necessary" treatment guided by "widely accepted guidelines" like WPATH's standards of care. "Decades of clinical experience and research," they wrote, "have shown that gender-affirming health care is safe, effective and improves the health and well-being of adolescents with gender dysphoria."

Six days later, Biden's Department of Justice filed paperwork to join the ACLU's case.

**That partnership** was the culmination of a profound generational and political transformation within the L.G.B.T.Q. movement. In the 2010s, as a favorable Supreme Court decision on same-sex marriage became increasingly likely, movement leaders faced pressure to shift their focus to trans people, long the coalition's junior partners. Like their gay allies, trans activists wanted laws against hate crimes and the right to serve openly in the military. But trans rights also encompassed novel issues. For those who medically transitioned, for example, simply living as a trans person could require lifelong treatment; widening access to care meant lobbying the government to put more pressure on doctors and insurers.

For Chase Strangio, the stakes were both personal and political. He joined the A.C.L.U. in 2013, a few years after undergoing top surgery, or a mastectomy, a procedure that “saved my life,” as he later wrote. “When you spend your life hiding from yourself, experiencing embodiment is nourishing, exhilarating,” Strangio wrote. “It is survival.” He vowed to work “to create social, political and legal conditions so that others could experience the same possibility.”

Like Strangio, the younger people going to work at L.G.B.T.Q. groups leaned further left than their older colleagues. Often identifying as queer — a label that could connote radical politics as much as any sexual or gender identity — they resented the incremental, assimilationist politics that had won the right to same-sex marriage. They sought to deconstruct assumptions about what was normal — to dismantle bourgeois institutions, not seek inclusion in them. Strangio wrestled with how to achieve justice for trans and other marginalized people through a system he believed was designed to subjugate them. In interviews and on social media, he has described himself as “a constitutional lawyer who fundamentally doesn’t believe in the Constitution,” an L.G.B.T.Q. activist who felt his movement was overly devoted to gay white men with “social power and capital and political power” and to the “fundamentally violent institution of civil marriage.” The turn to trans rights would ultimately reopen an old fissure in the L.G.B.T.Q. movement: whether to seek civic equality — or liberation.



Strangio has described himself as “a constitutional lawyer who fundamentally doesn’t believe in the Constitution.” Jose Luis Magana/Associated Press

In 2016, North Carolina passed legislation requiring people to use bathrooms and locker rooms reserved for their “biological sex,” setting off the country’s first major clash over transgender rights. When a coalition of L.G.B.T.Q. groups began planning an ad campaign, message testing showed that most people were unfamiliar with the movement’s terminology and the physical realities of being trans; the phrase “assigned male at birth” left audiences confused and skeptical. To win them over, the coalition created ads featuring a trans woman with long hair and conventionally feminine clothing. In a spot that first aired on Fox News, the woman is barred from a restaurant bathroom by an angry manager, who backs down after two other women — messaging “validators” the audience could relate to — intercede. “I was born with a male body,” the trans woman says in a voice-over. “But inside, I always knew I was female.”

More than 20 L.G.B.T.Q. rights groups signed on to the messaging plan. The A.C.L.U. did not. Strangio, working on an A.C.L.U. team suing North Carolina, objected to the framing. According to two people present for the discussion, Strangio disputed that a trans woman could be “born with a male body” or “born male”; in his view, a trans woman was born a woman just like any other woman. There was no such thing as a “male body,” Strangio told his colleagues: “A penis is not a male body part. It’s just an unusual body part for a woman.” Before the advertisement aired, Strangio elaborated on his critique in an article in Slate. “Many advocates defend the use of the ‘born male’ or ‘born with a male body’ narrative as being easier for nontransgender people to understand,” Strangio wrote. “Of course it is easier to understand, since it reinforces deeply entrenched views about what makes a man and what makes a woman. But it is precisely these views that we must change.”

Though North Carolina lawmakers eventually repealed the bathroom bill, it was Strangio’s style of politics that began to prevail within the movement. Activists on the left believed that achieving trans rights required a more fundamental social reimagining of sex and gender. There was less and less room for competing views. One person involved in the North Carolina campaign described increasingly tense conversations around the doctrine of self-ID and single-sex spaces. Some argued that women had no right to feel uncomfortable sharing a prison cell or a locker room with a trans woman: Such concerns only validated the trope that trans women were threatening.

Online and off, trans activists attacked journalists and academics who explored whether the sudden rise in dysphoria among teenagers was linked to social media and peer influence or reported on “detransitioners” — people who abandoned a trans identity and sometimes regretted undergoing medical transition. When the journalist Abigail Shrier published her 2020 book “Irreversible Damage: The Transgender Craze Seducing Our Daughters” — casting the rise in dysphoria among teenage girls as a form of social contagion — Strangio tweeted that “stopping the circulation of this book and these ideas is 100% a hill I will die on.”

Yet even as it became more doctrinaire, the movement for trans rights was gaining ground. During Trump's first term, groups like the A.C.L.U. and Lambda Legal were pulling in record donations, turbocharged by the spirit of anti-Trump resistance. Conservative groups struggled to find purchase in the transgender rights battles, even on geographic and political turf they controlled: In 2020, L.G.B.T.Q. advocates won a surprise victory at the Supreme Court, in *Bostock v. Clayton County*.

The A.C.L.U. represented the only trans plaintiff in the case, a Detroit funeral director named Aimee Stephens, who was fired after telling her employer that she planned to begin living and working openly as a woman. Her case was consolidated with those of two gay men, and the plaintiffs' lawyers asked the court to rule that Title VII of the Civil Rights Act of 1964, which outlawed job discrimination on the basis of characteristics like race and sex, also protected trans and gay people, as lower courts across the country had ruled. Writing for the 6-to-3 majority, Justice Neil Gorsuch proclaimed it "impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."



With a victory in *Bostock v. Clayton County*, which affirmed that Title VII protected trans and gay people, including the plaintiff Aimee Stephens (seated), Strangio and other civil rights lawyers believed that they had successfully maneuvered the Supreme Court into setting a far-reaching judicial precedent. Anna Moneymaker/The New York Times

For all of Gorsuch's sweeping language, *Bostock* was, in many respects, a narrow ruling. As it applied only to Title VII, it set no constitutional precedent. It explicitly disavowed judgment on other statutes or issues, like who had the right to use which bathrooms. Instead, the justice presented *Bostock* as a straightforward, common-sense reading of an old law.

Indeed, as Strangio recounted in an interview later that year, the lawyers had spent months workshopping just such a path to victory, ultimately landing on a simple argument: All the justices needed to accept was that Stephens would not have been fired for asking to wear women's clothing at work if her sex was female.

“So, fine,” Strangio explained. “Say it’s assigned sex at birth, say it’s whatever you want — but it’s because of sex.” At oral argument, another A.C.L.U. lawyer reassured Gorsuch, who was considered the key vote, that protecting trans people would not lead to social upheaval — assurances that Strangio privately chafed at but that he recognized as tactically effective. “We wanted them to apply the law,” Strangio said. “And we wanted them, particularly Gorsuch, to believe that it wasn’t a big deal.”

Yet in practice, Strangio and other civil rights lawyers believed that *Bostock* was a very big deal. In their view, they had successfully maneuvered the Supreme Court — a “vile institution,” as Strangio put it — into setting a far-reaching judicial precedent. At the time, other pathways to expand rights for L.G.B.T.Q. people were narrowing. Despite progress in left-leaning states, legislation to enshrine housing, workplace and other protections at the federal level had stalled in Congress, in part because L.G.B.T.Q. groups refused to consider carve-outs — demanded by otherwise sympathetic Republicans — to protect religious institutions. *Bostock* seemed to offer a way to attain those rights without the compromise and horse-trading of legislation.

Dilan Esper, a California litigator who worked for the A.C.L.U. early in his career, told me he believed that his former colleagues had misread the court. “*Bostock* built up the confidence of the trans rights legal movement that they could still win major cases even as Trump appointments were shifting the federal judiciary to the right,” Esper said. “But it was always a strategy that carried significant risks, and we’re seeing that play out now.”

Strangio’s confidence, though, was shared by veteran Democratic policymakers preparing to join the incoming Biden administration. Biden had been among the first Democratic politicians of his generation to embrace trans rights. His commitment was rooted in personal relationships — Sarah McBride, now the first openly transgender member of Congress, is a longtime family friend — and in campaign-trail conversations with trans people and their families, former aides told me. For Biden and many of his aides, protecting this vulnerable group was the natural next step toward full civil rights for all Americans.



Joe Biden was among the first Democratic politicians of his generation to embrace trans rights. His commitment was rooted in personal relationships, including a longtime family friendship with Sarah McBride, now the first openly transgender member of Congress. Alyssa Schukar for The New York Times

In January 2021, the new administration initiated an aggressive new phase of L.G.B.T.Q. advocacy, one that would employ many of the same tools as Trump’s searing counterattack four years later: executive orders, arcane federal rules and legal threats. On his first day in office, Biden signed an order mandating that executive agencies interpret the word “sex” in all federal antidiscrimination laws to include “gender identity” — a term that Gorsuch’s reasoning had carefully avoided.

A slew of other orders and proposed rules would follow, instructing prisons, schools, the State Department and other institutions to recognize a person's gender identity without condition — even a child's. More or less by fiat, the administration had deemed self-ID the law of the land.

**But a powerful counterattack** was already taking shape. When conservative operatives tested messages around gender issues, they found a deep undercurrent of public unease around children. Many voters who had no problem with gay marriage, or with trans people using the bathroom of their choice, were more sensitive to the question of biology and physical advantage in school sports. By 2021, dozens of states were moving to bar trans athletes from competing in girls' and women's sports. At around the same time, Republican lawmakers began taking aim at pediatric gender medicine. "There wasn't much of a difference in where people were on sports than where they were on sex changes for minors," said Terry Schilling, the president of the American Principles Project, a conservative advocacy group. "But we couldn't get politicians to talk about sex changes for kids until the fight around sports got started."

In the Arkansas General Assembly, one legislator read aloud a Bible passage indicating that women who wore men's clothing were an "abomination." Within months of Biden's inauguration, bills to ban gender-affirming care had been introduced in 18 other states. While some on the academic left had cast biological sex as illusory, the Republican-drafted bills sometimes suggested that gender identity was imaginary and dysphoria a medical fiction. The lawmakers asserted that they were acting to protect children. Alabama's ban, passed in 2022, also deemed gender-affirming care "unproven" and "poorly studied," citing potential long-term risks around diminished bone density and fertility.

The A.C.L.U. and L.G.B.T.Q. groups began challenging the bans in court. "I think they genuinely want to take away rights for trans people and kill trans people," Strangio said in a round-table discussion with other advocates. Challenging Arkansas' law, A.C.L.U. lawyers wrote that the state had banned "safe and

effective” care supported by a “well-established medical consensus.” Whatever long-term risks blockers or hormones might carry, they argued, ought to be weighed by children and their parents — not politicians.

But even as the A.C.L.U. and its allies were digging in, several European countries were backing away. In 2020, citing “limited” research data, Finland’s health agency removed surgery from the treatment protocol for minors with dysphoria and restricted the use of blockers and hormones. In February 2021, an effort to replicate the Dutch studies at Britain’s Tavistock gender clinic failed, finding that puberty blockers had little effect on adolescents’ dysphoria or thoughts of self-harm.

The following month, the British National Institute for Health and Care Excellence issued a pair of systematic reviews — studies that pool the literature on a treatment and grade the quality of the collected evidence. A pillar of the discipline known as evidence-based medicine, systematic reviews are meant to ensure that doctors’ recommendations are based on objective evidence, not “habit or misguided expert advice,” according to Gordon Guyatt, a professor of health sciences at McMaster University in Canada and a formative figure in the field.

But research on gender-affirming care, NICE’s analysis showed, provided only “very low certainty” evidence that puberty blockers or hormone treatments actually improved patients’ dysphoria. The consensus repeatedly cited by L.G.B.T.Q. advocacy groups in the United States relied heavily on small-scale observational studies, patient surveys and the professional experience of gender clinicians themselves — a category that evidence-based medicine ranks as least reliable. Many studies were designed in ways that made it difficult to tease out confounding effects, the reviews found, like whether a patient’s mental health had improved because of taking blockers and hormones or because of some other factor. Even the landmark Dutch studies suffered from “high risk of bias.”

Reviews in other countries were yielding similar conclusions. In February 2022, Sweden followed Finland, sharply limiting access to gender-related care for young people. British officials moved to shut down Tavistock and replace it with new

regional centers, after a preliminary review by one of the country's leading pediatricians, Hilary Cass, found that its overwhelmed staff was delivering inconsistent care, under an affirming model for which evidence was "inconclusive both nationally and internationally."

The shift reflected a growing worry on both sides of the Atlantic that doctors were approving medical intervention for some dysphoric adolescents without the comprehensive assessments meant to ensure that they would benefit from it. Later that year, a Reuters investigation of 18 pediatric gender clinics across the United States would find that not one practiced the kind of lengthy intake assessments called for by the Dutch and incorporated into WPATH's standards. No countries banned blockers and hormones outright, as Republican-led states were setting out to do. Rather, they sought to channel young patients into more carefully controlled research settings, where questions about the risks and benefits of affirming treatments could be better answered.

But in the face of growing medical debate and political backlash, gender clinicians and their movement allies closed ranks. In October 2021, two prominent WPATH members — Marci Bowers, a surgeon and WPATH's president-elect, and Erica Anderson, a psychologist and former president of WPATH's U.S. affiliate, both of them trans women — went public with concerns about the rigor of pediatric gender care and the potential impact of puberty blockers on later sexual function. Soon after, the two groups released a letter to their members opposing "the use of the lay press" as "a forum for the scientific debate of these issues."

The following year, WPATH released a new version of its standards of care. Known as SOC-8, this eighth version of the organization's standards was the first to have a stand-alone chapter on adolescent care. Acknowledging the debates happening in public view, the chapter noted that "a key challenge" was "the quality of evidence evaluating the effectiveness" of treatments for young people. "The number of studies is still low," the authors wrote, "and there are few outcome studies that follow youth into adulthood." Much like earlier standards, SOC-8 strongly recommended that adolescents undergo a "comprehensive assessment" before any medical intervention.

Yet despite the growing restrictions in Europe, WPATH continued to endorse a course of blockers and hormones for adolescents at the beginning of puberty, as had become standard practice at many American clinics. Indeed, the new standards at first explicitly allowed for gender-affirming treatments at earlier ages than in the original Dutch protocol. Teenagers with parental consent could begin taking cross-sex hormones at 14 or even younger, rather than 16. They could also undergo mastectomy by age 15 and most genital surgeries at 17.



Before becoming president of WPATH, Marci Bowers, a surgeon, was met with internal backlash after going public with concerns about the rigor of pediatric gender medicine and possible risks to sexual function. Ryan Young for The New York Times

Then, shortly after SOC-8 was published online in September 2022, the age minimums were deleted. A notice stated that an incorrect version of the standards had been “published in error.” In an interview with The New York Times some days

later, Bowers alluded to a behind-the-scenes dispute over the lowered ages, and to the battles now flaring around gender medicine, saying, “I just think we need more strength for our argument and a better political climate, frankly.”

**As the Biden administration** grappled with the new bans, several former aides and officials told me, officials there usually deferred to the L.G.B.T.Q. advocacy groups and the medical associations about the scientific questions around gender-affirming care. The administration’s top concern, according to two former aides, was that the bans were so broad that they might limit dysphoric children from even getting therapy. “The internal conversations were entirely about getting kids access to mental health care, and maybe puberty blockers,” one official said. “That is where the president’s head was on these issues: The Republicans are using the power of the state to stop kids who feel gross about their bodies from seeing a therapist.”

Among the administration’s most prominent public voices on gender-affirming care was Rachel Levine, the assistant secretary for health at the Department of Health and Human Services. Levine, a pediatrician and one of Biden’s two highest-ranking openly trans appointees, adopted a maximalist defense. In March 2022, as Alabama’s ban was winding through the Legislature, Levine’s office issued a fact sheet asserting that the treatments had proven clinical benefits for children and adolescents. That April, in a speech urging doctors to fight the bans, Levine seemed to go further, claiming that gender-affirming care broadly was “suicide-prevention care. It improves quality of life, and it saves lives. It is based on decades of study. It is a well-established medical practice.”



Rachel Levine, Biden's assistant secretary for health at the Department of Health and Human Services, pressured WPATH to drop age minimums for pediatric transition medicine in its guidelines for providers and insurers. Chip Somodevilla/Getty Images

At the Justice Department, officials were weighing how and when to deploy the legal might of the federal government. In May, the department joined a lawsuit challenging Alabama's ban, in effect turning the Biden administration into a co-plaintiff — a significant escalation. Some legal experts outside the administration told me that they were surprised at the decision to intervene; when the Justice Department involves itself in civil rights cases filed by private plaintiffs, it typically opts to file what is known as a statement of interest, signaling the government's position on a legal question without committing it fully to the plaintiff's case.

But Biden officials felt increasing urgency to act — pressure that only grew the following year, as a slew of new bans became law, producing a corresponding flurry of lawsuits. “Every day, we would open the news clips, and there'd be another state getting in the queue,” a former senior Justice Department official said. “It just felt

like if the Justice Department didn't add its weight to this issue, the wave would become a tsunami." Officials there were confident that at least one of the lawsuits would reach the Supreme Court. When it did, they felt, the Justice Department needed to be involved, not only to signal the administration's political support but to shape whatever arguments ultimately went before the court.

When Tennessee's ban passed in February 2023, lawyers in the department's civil rights division lobbied to move aggressively. The attorney general, Merrick Garland, was at first skeptical. In conversations, Garland and his advisers weighed whether the case was strong enough to merit the time and resources it would consume if the civil rights division were to intervene. Eventually, though, Garland signed off. Most of his team viewed the case as a straightforward matter of civil rights enforcement, built on a legal argument about gender and sex discrimination that administration lawyers — emboldened by Bostock — were already advancing in other kinds of cases around the country. Tennessee was a part of the Court of Appeals for the Sixth Circuit, where the department believed there were favorable precedents to overturn a state ban.

By then, Strangio and his colleagues were helping litigate legal challenges around the country. The A.C.L.U.'s clout and vast financial resources made it, in effect, the movement's command center. The cases at first went well. Lawyers for the A.C.L.U. and allied L.G.B.T.Q. groups fighting the bans tended to arrive in court with a phalanx of highly credentialed expert witnesses, backed by amicus briefs from major medical associations. Judges were often dismissive of the physicians mustered by state officials to criticize gender-affirming care.

In ruling to block most of Alabama's law, a district court reminded state officials of "the uncontradicted record evidence" that "at least 22 major medical associations in the United States endorse transitioning medications" to treat gender dysphoria in minors. In June 2023, a federal judge blocked parts of Tennessee's law, too, finding that the state had banned medical procedures whose benefits were "well-established." By that summer, federal judges in a half-dozen states had enjoined

bans in whole or part. Strangio was jubilant. “It has been a clear and unanimous rejection of these laws,” he said in an appearance on MSNBC that July. But within weeks, the legal ground began to shake.



Photo illustration by Cristiana Couceiro

**In August, a panel** of the 11th Circuit lifted the district court’s injunction against Alabama’s law. The next month, a panel of the Sixth Circuit followed suit in Tennessee, in a 2-to-1 opinion written by the circuit’s chief judge, Jeffrey Sutton.

An influential conservative jurist, Sutton appeared profoundly skeptical of the legal and medical arguments advanced by government lawyers and the A.C.L.U. Citing the shifts in Europe, Sutton wrote that medical intervention for trans minors was still a fairly young field — “experimental,” in his view. The scientific uncertainty around blockers and hormones, he argued, made regulating their use

presumptively constitutional. “At bottom, the challengers simply disagree with the states’ assessment of the risks and the right response to those risks,” Sutton said. “That does not suffice to invalidate a democratically enacted law.”

He rejected the idea that trans identity should get special constitutional protection, like race or sex. Then he took aim at the left’s expansive reading of *Bostock*: The Supreme Court’s three-year-old decision on employment rights, Sutton found, had no bearing on the question of gender-affirming care for minors. “A concern about potentially irreversible medical procedures for a child,” Sutton wrote, “is not a form of stereotyping.” More challenges were arriving in circuits across the country, with the potential to tilt the legal landscape even more drastically. Both separately and together, the Biden administration and the A.C.L.U. had to decide how to respond.

Some civil rights experts I spoke with think it was a mistake to take *Skrmetti* to the Supreme Court. In their view, it was highly unlikely that the court, now with an even larger conservative majority than when it decided *Bostock*, was prepared to expand constitutional civil rights protections to a new class of Americans — let alone on the grounds of medical transition for minors. “If you get a bad ruling on this, it could be really problematic,” Michael Ulrich, a professor of health law and human rights at Boston University, told me this spring. “If you can’t win a challenge to strike down a gender-affirming care ban, it’s going to be hard to win other cases around trans rights.”

L.G.B.T.Q. groups and the A.C.L.U. might have looked to state courts, seeking incremental wins without the risk of a binding Supreme Court precedent, as the movement had done for years in fighting anti-sodomy laws. They could also have waited for a case on more politically favorable ground, such as restrictions on military service or medical care for trans adults. The A.C.L.U. saw it differently. A few weeks after Sutton’s ruling, the organization petitioned the Supreme Court to review *Skrmetti*.

In recent months, Strangio and other trans activists have pleaded for broader public solidarity with their cause, arguing that the defense of gender-affirming care is closely intertwined with the defense of reproductive freedom and bodily

autonomy for women. But when I asked Romero if the A.C.L.U. had consulted with women's rights groups before bringing Skrametti — with its high-stakes claims about sex-discrimination protections — before the Supreme Court, he seemed impatient. “I don't play ‘Mother May I?’ with a group of sister organizations,” Romero said. “I don't run a peer-review journal. I make the best decisions for this organization on its own.”

Strangio declined to be interviewed unless I agreed to first discuss the case with him off the record; instead, he answered questions by email. In his view, a Supreme Court case over trans rights — whether medical transition, sports or bathrooms — was inevitable by fall 2023. “The only questions were which case, on what issue and in which term,” he wrote.

Strangio emphasized what he saw as the broader damage that would result if adolescents were barred from medical transition — a perspective I also heard from trans people at other advocacy groups. “Forcing adolescents to undergo physical pubertal changes inconsistent with their gender that may out them as transgender in a world of discrimination and violence, and increase their pain and distress, is both cruel and harmful,” he wrote. For trans people, Strangio seemed to suggest, the choice between accepting these harms and gambling on the Supreme Court was no choice at all.

That still left the question of what the Biden administration — now a party in both cases — would do. In theory, Tennessee was the less developed case. Sutton had issued his ruling off the lower court's preliminary injunction, on a relatively limited factual record. The Alabama case, by contrast, was a year further along, deep into court-ordered discovery. But the plaintiffs, represented by the National Center for Lesbian Rights and GLAD Law, had asked the full 11th Circuit to review its appellate ruling.

The former senior Justice Department official argued that the Alabama case — awaiting further appellate review and mired in arguments about discovery — wasn't “a viable vehicle” for Supreme Court review. And once the A.C.L.U. went ahead in Tennessee, this official told me, the Biden administration had to follow.

Steering clear of Skrmetti “would have telegraphed loudly to the court that the department didn’t have the courage of its convictions,” the official said. Not long after the A.C.L.U. asked the Supreme Court to hear the Tennessee case, the department filed its own petition.

The solicitor general, Elizabeth Prelogar, who would argue the case before the court, was a friend and ally of Strangio’s. In 2020, as a lawyer in private practice, she worked closely with Strangio on a lawsuit challenging Idaho’s ban on trans athletes — the country’s first. Now, in petitioning the court, Prelogar and her colleagues made claims for gender-affirming care that even WPATH had not. “Overwhelming evidence establishes that appropriate gender-affirming treatment with puberty blockers and hormones directly and substantially improves the physical and psychological well-being of transgender adolescents with gender dysphoria,” they wrote.

Like the A.C.L.U., Prelogar and her colleagues argued that transgender people should be recognized as a protected class under the Constitution, like women or racial minorities. But even if the justices wouldn’t go that far, the lawyers argued, they should find that Tennessee’s ban discriminated against trans people on the basis of their sex, violating the Constitution’s equal-protection clause, which the court has long interpreted as requiring heightened scrutiny of government policies that treat people differently based on sex. The logic of *Bostock* and other lower-court decisions around gender, they argued, could be found in the Constitution, too.

In some respects, the department’s choice to seek Supreme Court review was simple. Sutton’s ruling had laid out a sweeping rationale that, if accepted, could allow states to ban “any kind of health care if there’s any kind of doubt or uncertainty” about the treatments, Ulrich told me. In the government’s view, Sutton had also proposed to weaken existing constitutional precedents that limit the government from discriminating on the basis of sex — a serious worry for any Democratic administration.

Yet taking Tennessee to the Supreme Court was also risky. The court has not recognized a new protected class in decades. And unlike the civil rights law in Bostock, the Constitution does not contain language about sex discrimination that a conservative judge like Gorsuch could extend to trans people.

Alabama's lawyers had a different theory of the Justice Department's choices. In the weeks after Sutton's ruling for Tennessee, WPATH was in the final stages of turning over thousands of internal emails and other documents to Alabama — documents that remained sealed, but to which Justice Department lawyers would have had access. The case was set for trial that spring, offering opponents an opportunity to more fully air the growing scientific debate around gender-affirming care.

In an amicus brief filed later with the Supreme Court in *Skrmetti*, Alabama argued that the Justice Department had “strategically” sought Supreme Court review in Tennessee. Even before the court had begun to consider that request, the state pointed out, the department had asked the judge in Alabama to shut down further discovery and pause the case. Lawyers for the state believed that the Biden administration, fearful of what court-ordered discovery was unearthing in Alabama, was trying to make sure Tennessee got to the Supreme Court first.

The Biden administration was not just trying to defend gender-affirming care, Alabama contended. It was trying to hide evidence that showed how flawed WPATH's standards really were — and hide the administration's secret role in their creation.

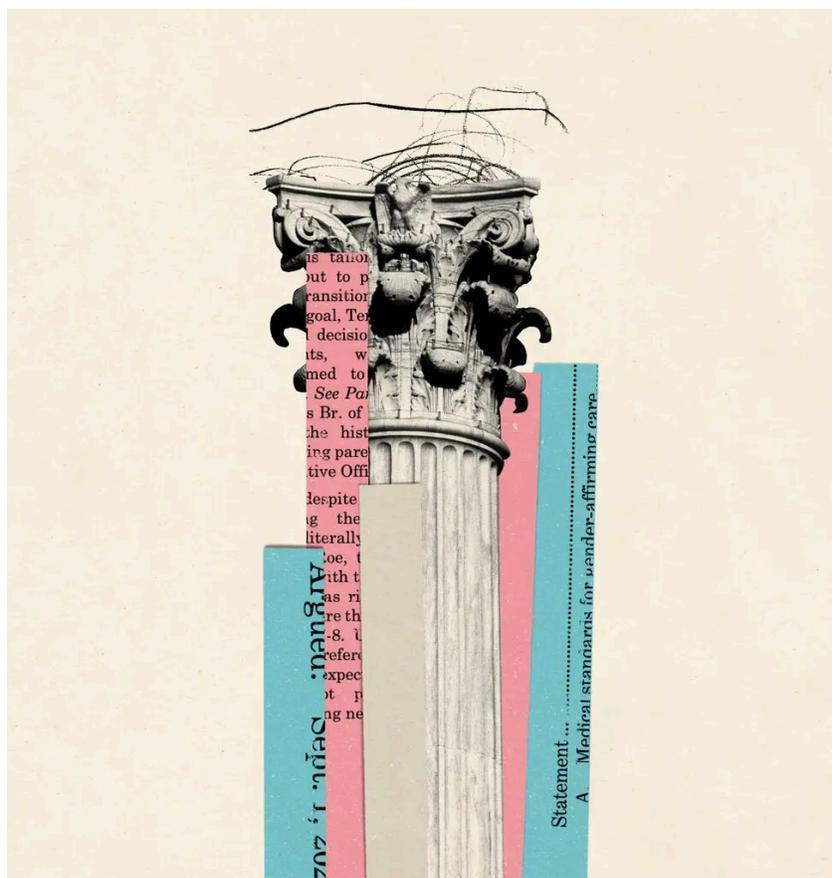


Photo illustration by Cristiana Couceiro

**That material began** emerging into view last summer, after lawyers for Alabama moved for summary judgment in favor of its ban — and in the process began to make public thousands of internal emails and other documents revealing how WPATH’s standards were drafted in the first place. What doctors and lawyers around the country presented as a set of meticulous scientific guidelines, the lawyers for Alabama argued, were drafted and contorted to win the very political and legal disputes in which it was now being brandished.

“While we value clinical expertise, the battle for legitimacy is being fought in controlled studies,” Eli Coleman, chairman of the SOC-8 team and a psychologist, wrote to colleagues in 2023 as Tennessee and other states were preparing to approve their bans. “All of us are painfully aware that there are many gaps in research to back up our recommendations.”

SOC-8 had asserted that “a systematic review regarding outcomes of treatment in adolescents is not possible.” Alabama’s legal filings, though, claimed that WPATH had tried to squelch some of its own findings on the question, fearing that they could be wielded against the expansion of transition care.

The group had contracted with Karen Robinson, an epidemiologist and evidence-based medicine expert at Johns Hopkins School of Medicine, to conduct systematic reviews for SOC-8’s authors. By August 2020, Robinson was preparing to submit to medical journals three manuscripts based on her reviews of hormone therapy for adolescents and adults. Within days, WPATH’s board approved a new policy mandating that it approve any study based on its data. In a subsequent email, Robinson told an official at the Department of Health and Human Services that her team’s research had produced “little to no evidence about children and adolescents” and complained that WPATH had been “trying to restrict our ability to publish” the reports.

WPATH officials circulated the new policy in an email that fell to Robinson and SOC-8 authors, stating that any manuscripts based on her reports would now be “scrutinized and reviewed to ensure that publication does not negatively affect the provision of transgender health care.” At least one manuscript Robinson sought to publish never saw the light of day.

Citing legal battles over gender medicine, other documents showed, clinicians working on SOC-8 urged colleagues to avoid phrases like “insufficient evidence” and “limited data,” and to emphasize terms that would assume totemic importance in courts across the country, like “medical necessity” and “evidence based.” As SOC-8 authors discussed stating that gender-affirming care for adolescents was a “medical necessity,” one noted how such statements could be “a tool for our attorneys to use in defending access to care.” The entire SOC-8 draft, Alabama later pointed out in a court filing, had been reviewed by a lawyer for GLAD Law, one of the L.G.B.T.Q. groups now suing the state.

Over email this spring, WPATH told me that Alabama had presented a misleading portrait of the group's work. In stating that systematic reviews of adolescent treatment were "not possible," a representative said, the adolescent chapter was intended to refer to assessment practices, not blockers and hormone therapy. The publication policy enacted in 2020 was meant only to ensure that research emerging from SOC-8 met "the highest standards of scientific integrity and is presented with appropriate clinical context." Nor had it blocked Robinson from publishing any of her reviews in medical journals, the representative said. "We do not know why other reviews were not published," the representative told me. (Robinson did not respond to multiple requests for comment.)

Critics of gender-affirming care, WPATH told me, were holding it to "a harmful double standard." The collective experience of gender clinicians who had seen young people benefit from adolescent transition, in WPATH's view, was a valid basis for its recommendations. "Other clinical fields are permitted to use expert consensus and real-world evidence to fill gaps in the research base," the representative wrote. "Gender care should not be held to a higher or politicized threshold of evidence simply because of who it serves."

In fending off attacks on gender-affirming care, however, WPATH had itself allowed politics to dictate some of its recommendations. Levine, the Biden Health and Human Services Department official, had been instrumental in WPATH's mysterious last-minute deletion of the age minimums in SOC-8, documents uncovered by Alabama showed.

After seeing an early copy of SOC-8, Levine and her staff began pressuring WPATH to drop the new age minimums, arguing that "specific listings of ages, under 18, will result in devastating legislation for trans care," as the group's president relayed to colleagues in July 2022. That September, the American Academy of Pediatrics — which had also been provided a preview — followed suit, threatening to publicly oppose SOC-8 if the age minimums were not deleted.

The demands set off a furious debate within WPATH. Conservative politicians might attack WPATH for recommending medical intervention at younger ages than before. But Bowers, the group's president-elect, pointed out that without specific age requirements, "insurers may not grant authorization" for pediatric care. Others worried about capitulating to political pressures in what WPATH intended to present as an "evidence-based" document.

Just as WPATH's internal emails began trickling into public view, the Supreme Court announced that it would hear Skrametti. Not long after, Levine's requests to WPATH were reported by The Times. White House officials were blindsided, several told me. Though Levine would later tell Biden aides that she had been trying to protect the president, the West Wing saw it differently: Her request could suggest that the administration thought there should be no minimum ages at all. "Everyone was like, holy cow — did Rachel Levine really go out and lobby for 9-year-olds to get surgery?" one former Biden aide told me. (Levine's spokesman says she based "all policy recommendations on the best available science.")

Though still rare, transition surgery for minors was politically toxic. On the campaign trail, Trump had claimed that children were getting sex-change operations at school. Biden was fighting for re-election and scheduled to debate Trump later that week. The scientific debate around gender-affirming care had already been upended once that spring, after Hilary Cass, in a final report submitted to British health officials, declared pediatric gender medicine "an area of remarkably weak evidence." Gender-affirming treatments were not being singled out for lack of rigor, Cass said in interviews, but rather stood out for their weak clinical basis even compared with other areas of pediatric medicine.

Cass's report sent shock waves across the Atlantic. There was "no evidence" that gender-affirming treatments reduced the risk that trans teenagers would die by suicide, her review found. SOC-8's adolescent chapter lacked "developmental rigor." And the much-cited consensus of medical associations was a mirage. Few of the groups endorsing gender-affirming care had actually conducted their own in-

depth evidence reviews, her team found; instead, nearly all had relied on older Endocrine Society and WPATH guidelines as the basis for their own recommendations.

There was now a dawning awareness within the administration, another Biden aide told me, that its allies in the L.G.B.T.Q. movement had overstated the medical case for pediatric gender-affirming care. Unwilling to abandon the broader cause of trans rights, and wary of arbitrating a contentious medical debate, aides drafted statements clarifying that Levine didn't speak for the administration. "We believe these surgeries should be limited to adults," the White House told one outlet.

Tennessee's ban on surgery was not before the justices in *Skrmetti*. (That provision of Tennessee's law had remained intact in 2023, after the trial judge ruled that L.W. and other plaintiffs did not have standing to challenge it.) But the Biden administration had now put itself on both sides of a different question before the Supreme Court. As a matter of policy, the White House was now on record opposing part of WPATH's new standards of care. But in court, Justice Department lawyers had held up WPATH's recommendations, and those of other medical associations, as reliable guidelines for care. If the federal government could pick and choose from among WPATH's recommendations, Alabama's attorney general later argued in a blistering amicus brief in *Skrmetti*, why couldn't states? The White House understood its dilemma, two of the aides told me, but concluded that it was more important to prevent Trump from being re-elected.

There was also growing tension between the A.C.L.U. and the Justice Department, three former government officials told me. (The A.C.L.U. and a spokeswoman for Prelogar denied this account.) In later briefs to the court, the administration would brush off the Alabama revelations as "out-of-context excerpts" from "a different case." In private, though, some administration lawyers worried that their allies had pushed them onto thin scientific ice.

Beginning in August, the government's briefs underwent a subtle shift. They now made less sweeping claims about the proven medical benefits of gender-affirming care. At the same time, Prelogar and her team wrote that — in the view of the

government, lower-court judges and some expert witnesses — the evidence behind pediatric gender medicine was no less robust than the research backing other kinds of pediatric care.

At that point, though, Biden had dropped out of the race, doomed by his calamitous debate against Trump. His successor, Harris, was already on the record supporting taxpayer-funded transition surgery for prison inmates, thanks to a five-year-old A.C.L.U. candidate questionnaire. “By then the ads were running,” the former Biden aide said. “And there was nothing to say.”

**When Strangio appeared** before the court alongside Prelogar in December, there was little trace of the firebrand. He had spent months preparing for the task, he told news outlets beforehand, and was determined to separate his job as a lawyer from his place in the community he hoped to represent.

In most respects, the movement’s day in court felt like a retreat. Over more than two hours of interrogation, the conservative justices asked questions about gender identity and pediatric gender medicine that many L.G.B.T.Q. activists prefer to consider settled. Pressed on the longstanding claim that gender-affirming care prevented dysphoric teenagers from killing themselves, Strangio conceded the point. “There is no evidence,” he told the court, “that this treatment reduces completed suicide,” adding that “completed suicide, thankfully and admittedly, is rare.” Engaging with the conservative Justice Clarence Thomas, Strangio even uttered the phrase he considered anathema: “born male.” When Prelogar was asked whether the Biden administration had overstated the scientific evidence in its original petition to the court, she, too, retreated to more cautious terms. Gender-affirming treatments, she said, “can be” necessary for “some adolescents.”

The next day, Strangio addressed A.C.L.U. supporters in a private discussion over Zoom. “It was always going to be an uphill battle,” he told them.

After Trump took office in January, the government switched sides in Skrametti, joining Tennessee in asking the court to uphold the state’s ban. In an executive order, Trump accused doctors of “maiming and sterilizing a growing number of impressionable children” and ordered the Department of Health and Human

Services to review the scientific literature around pediatric gender medicine. The report — whose authors have remained anonymous — followed a few months later, taking a more restrained tone but arriving at similar conclusions. Reversing the agency's Biden-era support of gender-affirming care, the unnamed authors asserted that psychotherapy offered a safer approach for dysphoric adolescents than medical intervention, with fewer inherent risks.

In May, the department issued an open letter to health care providers and state medical boards that warned against relying on WPATH's standards and urged them to protect children from "these harmful interventions." The Trump administration, however, has not merely sought to stop doctors from providing gender-affirming care to minors. It has also canceled research intended to help settle the scientific questions that are the ostensible justification for banning it.

Guyatt, the evidence-based medicine expert, told me he thought WPATH's guidelines were flawed. The group made what are known as "strong" recommendations for gender-affirming care — indicating that the benefits of the treatments clearly outweighed the risks — without enough evidence to back them up. "When you have low-certainty evidence," he told me, "you should never be making strong recommendations." This year, he and several colleagues published yet another set of systematic reviews that found no high-certainty evidence that blockers and hormones delivered clinical benefits to dysphoric youth. "The jury is still out," Guyatt said.

The reviews were commissioned by the Society for Evidence-Based Gender Medicine, a group of doctors and scientists that has called for more government regulation of pediatric gender medicine. Guyatt, though, opposes bans like Tennessee's — as do gender clinicians who are otherwise critical of what they consider lax standards in their profession. "Evidence-based approaches value people's autonomy," Guyatt explained. In the face of uncertainty, he said, a patient's personal preferences mattered more, not less. Someone — a teenager in Tennessee with persistent gender dysphoria, for example — might be willing to try a

treatment if there was a chance it would help alleviate her suffering. “Or they might say: ‘You’re not sure it’s going to work? Why would anybody want to do it if you’re not sure about it?’ And those attitudes are both legitimate attitudes.”

These questions — how doctors should balance medical evidence against a patient’s wishes — become trickier, Guyatt acknowledged, when it comes to children. Cass has stressed her belief that some dysphoric young people will most likely benefit from transitioning before adulthood — the problem is that doctors cannot yet reliably identify which ones. An unquestioning approach to gender-affirming care, Cass has argued, is precisely the wrong way to handle young people with a more flexible view of gender than earlier generations. “It only becomes a challenge if we’re medicalizing it, giving an irreversible treatment, for what might be just a normal range of gender expression,” she told *The Times* last spring. Some young people once prescribed blockers, hormones or transition surgery have sued their former doctors, claiming that the physicians misled them about “the lack of adequate clinical research supporting this treatment,” as a lawsuit brought by a former patient of Olson-Kennedy asserted.

In ruling for Tennessee, the court declared that elected officials can decide these questions for everyone: doctors, parents, children. In a few years, L.W. will be 18, and in theory beyond the reach of Tennessee’s ban. But many L.G.B.T.Q. advocates expect that states like Tennessee will now target gender medicine more broadly.

That possibility has left some trans people wondering if it is time to build a new, less dogmatic politics to defend their rights. A movement that could grapple more honestly with scientific uncertainty and the real-world complications of self-ID, they believe, might be more capable of defending their health care and a legal path to transition.



Supporters of restricting pediatric gender medicine rallied at the Supreme Court in December. Post-election polling showed that even most Democrats believed that doctors should not prescribe puberty blockers and hormones to minors. Kevin Dietsch/Getty Images

“You help trans people by telling the truth,” Brianna Wu told me. “You help trans people by making sure the health care they get has solid science behind it.” Like many older trans people, Wu told me, she transitioned after puberty, a continuing journey of hormones and grueling surgeries. In fighting to save future generations of trans adults from the same pain, Wu argued, the L.G.B.T.Q. movement failed to confront the complexities around pediatric care. “We’ve built a medical system that is really uninterested in turning people away or saying no,” Wu said. “When you do that, the response is not going to be subtle, either.”

In March, McBride, the Democratic congresswoman, called for the party to “create more space in our tent” for different views on trans rights, especially around issues like sports. (One prominent trans activist promptly denounced McBride on Bluesky as a collaborator.) In public, though, those conversations are unfolding

largely outside of the professional advocacy world, on social media platforms and podcasts. “What we didn’t have was a middle voice,” said Laura Targownik, a Canadian physician who hosts a biweekly discussion online called TransNormal with her friend Jo Ellis, who serves as a helicopter pilot in the Virginia Army National Guard.

Like some others I spoke with, the two are dismissive of the younger, more left-wing world of trans activists — “a lot of unhealthy people screaming about what they think is good for people,” as Ellis put it to me. Ellis, who would be barred from Guard service if Trump’s military ban survives court challenges, recently posted a short essay on X working through her thoughts on how society should accommodate people who transition. It began with a statement that many trans activists view as heresy. “There are two sexes: male and female,” Ellis wrote.

Over the phone and by email this spring, Romero told me he believed they could win the case. “So-called experts have said some of our cases were dead on arrival,” Romero wrote. “But we filed them for our clients. We filed them to lay down a marker and make a record for the history books.” I asked Romero whether, if the Supreme Court upheld Tennessee’s ban, the case would still have advanced the cause of trans rights. He urged me to think of the A.C.L.U.’s clients — like L.W. — and about the value of making the justices consider their lives and happiness. A loss in Skrametti, Romero suggested, might just be the beginning of the fight. “One thing I’m certain of is that this organization stays on an issue like water on stone,” he told me. “We don’t win this in a couple of weeks,” he added, “I’m sure my organization is going to be on it for the next 10, 20, 30, 40, 50 years.”

*Julie Tate contributed research.*

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