



U.S. Department of Justice
Office of the Solicitor General

Washington, D.C. 20530

February 7, 2025

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: United States v. Jonathan Skrmetti, Attorney General and
Reporter for Tennessee, et al., No. 23-477

Dear Mr. Harris:

This case concerns the constitutionality of Tennessee Senate Bill 1 (SB1), which prohibits healthcare providers from “[p]rescribing, administering, or dispensing any puberty blocker or hormone” if that treatment is provided “for the purpose” of “[e]nabling a minor to identify with, or live as, a purported identity inconsistent with the minor’s sex” or “[t]reating purported discomfort or distress from a discordance between the minor’s sex and asserted identity.” Tenn. Code Ann. §§ 68-33-102(5)(B), 68-33-103(a)(1). Last year, the United States filed briefs contending that SB1 violates the Equal Protection Clause of the Fourteenth Amendment. The United States advanced the same position at oral argument. Following the change in Administration, the Department of Justice has reconsidered the United States’ position in this case. The purpose of this letter is to notify the Court that the government’s previously stated views no longer represent the United States’ position.

This case began as a suit by private plaintiffs challenging the constitutionality of SB1. After the private plaintiffs filed suit, the United States intervened under 42 U.S.C. 2000h-2 and filed its own complaint challenging the constitutionality of SB1. Section 2000h-2 authorizes intervention by the United States in an action “seeking relief from the denial of equal protection * * * on account of * * * sex * * * if the Attorney General certifies that the case is of general public importance.” 42 U.S.C. 2000h-2. The Department has now determined that SB1 does not deny equal protection on account of sex or any other characteristic. Accordingly, the new Administration would not have intervened to challenge SB1—let alone sought this Court’s review of the court of appeals’ decision reversing the preliminary injunction against SB1.

Nevertheless, the United States believes that the confluence of several factors counsels against seeking to dismiss its case in this Court. The Court’s prompt resolution of the question presented will bear on many cases pending in the lower courts. Since granting certiorari last June, the Court has received full briefing and heard oral argument, including from the private plaintiffs, who have participated in this Court as respondents supporting the United States at the merits stage and who remain adverse to the state respondents in a dispute that has not become moot. Accordingly, the Court may resolve the question presented without either granting the private plaintiffs’ pending petition for a writ of certiorari, see *L.W. v. Skrmetti*, No. 23-466 (filed Nov. 1, 2023), or

requesting further, likely duplicative briefing from the same parties about the same court of appeals judgment in the underlying suit between the private plaintiffs and the state respondents. See Sup. Ct. R. 12.6; see also, *e.g.*, *Director v. Perini North River Assocs.*, 459 U.S. 297, 305 (1983) (noting that, even if the government petitioner lacked standing, the presence of an injured employee “as a party respondent [in this Court] * * * assure[d] that an admittedly justiciable controversy” with his employer, another respondent, remained “before the Court”).

I would appreciate it if you would circulate this letter to the Members of the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis E. Gannon", with a long horizontal flourish extending to the right.

Curtis E. Gannon
Deputy Solicitor General*

cc: See Attached Service List

* The Acting Solicitor General is recused in this case.

23-0477

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