UCLA School of Law
Center on Reproductive Health, Law, and Policy

***United States v. Skrmetti*: Turning Back the Clock on Gender Equality**

Diana Kasdan
CRHLP Legal & Policy Director
July 2025

The Supreme Court's recent decision in *United States v. Skrmetti*, is devastating for transgender people's lives and health, but also for equal protection law and for women, pregnant people, and LGBT people who are most vulnerable to demands to conform their bodies, families, and lives to gender stereotypes.

In *Skrmetti,* the Court reaffirmed that heightened scrutiny is still the standard for reviewing sex discrimination challenges under the Equal Protection Clause, but it refused to apply that test and upheld Tennessee's ban on certain medical treatments for transgender youth. To reach that result, it resurrected and breathed new life into a long-discredited case to essentially insulate laws related to pregnancy, sexuality, gender identity, motherhood and fatherhood, or other presumed "biological differences" from heightened scrutiny. It is a massive blow to sex equality law and, like *Dobbs v. Jackson Women's Health Organization*, it is a decision that intentionally turns back the clock on constitutional rights and gender equality.

Skrmetti came to the Court as a case about transgender rights, sex discrimination, and equal protection, while *Dobbs* came to the Court as a case about reproductive rights, abortion restrictions, and liberty and autonomy. But both involved a person's right to define their own identity and life's course in ways that do not conform to historic, and persistent, stereotypes about the proper or "natural" roles and capacities of women and men. And both challenged state efforts to deny people access to the healthcare they need to effectuate those life choices. Sadly, with little regard to the real lives at stake in both cases, the Court granted states broad power to ban, even criminalize, medical care necessary to exercising these rights, subject to only the most minimal prospect of judicial review.

Contrary to decades of its own sex discrimination precedent, in *Skrmetti* the Court side-stepped heightened scrutiny – a test that asks if a law differentiating based on sex is substantially related to the achievement of important governmental objectives – in two ways. First, despite the explicit purpose and operative language in Tennessee's law, the

Court held it did not "turn on sex" or "mask sex-based classifications." But Tennessee's ban plainly states, and the Court acknowledged, it is intended to "encourage[e] minors to appreciate" and not "become disdainful of their sex" by prohibiting hormone treatment for the purpose of enabling a minor to "identify with, or live as, a purported identity inconsistent" with their sex. It is hard to imagine a more sex-based law. Nonetheless, according to the Court, this is a ban on hormone treatments that turns on age and "certain medical uses," nothing more. Yet, a law that bans a particular medical procedure for people of a certain age can also differentiate based on sex or trade on gender stereotypes. All can be true, and in this case, as the dissenting opinion correctly explains, they were.

Second, the Court rejected plaintiffs' alternative argument that the law discriminated against transgender people as a class. Again eliding the explicit purpose and text of the law, as well as its own reasoning in *Bostock v. Clayton County* – where it said "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex" – here the Court rejected the argument that, the law "enforces a government preference that people conform to expectations about their sex" or "operates to force conformity with sex."

In support of this inscrutable logic, the Court cited a long-abandoned 50-year-old decision, *Geduldig v. Aiello*. In that case, California's disability compensation fund excluded coverage for any conditions or recovery from a pregnancy. In a feat of extreme mental gymnastics, the Court concluded that pregnancy discrimination was not sex discrimination. The Court found that because not all women become pregnant and all female employees were eligible for all non-excluded disability benefits under the plan, the program did not discriminate against women. In a footnote responding to the dissenters, the Court said the program "merely removes one physical condition – pregnancy – from the list of compensable disabilities" and because "pregnancy is an objectively identifiable physical condition with unique characteristics," not every classification concerning pregnancy is sex-based.

Not surprisingly, over the next 50 years, the Supreme Court never relied on *Geduldig* in an equal protection decision. Indeed, the Court's leading decision on the constitutional framework for sex discrimination cases, *United States v. Virginia* (and the case the Majority cites for that standard), does not even mention *Geduldig*. To the contrary, it establishes that a key function of heightened scrutiny is to root out government policies based on real or perceived "inherent differences" between men and women that may reflect or reimpose outmoded gender stereotypes and biases. As Professor Cary Franklin has shown in her work, the Court's embrace of this "anti-stereotyping principle" in *Virginia* and other cases means "the salient question in equal protection law is not whether men and women are

biologically different, but whether the state is acting in ways that translate such differences into social inequalities and gender differentiated sex and family roles."

Ignoring all of this, in *Skrmetti*, the Court relies on *Geduldig* as precedent for a new rule that "a State does not trigger heightened constitutional scrutiny by regulating a medical procedure that only one sex can undergo unless the regulation is a mere pretext for invidious sex discrimination." Of course, *Geduldig* held no such thing. Nothing in its holding, nor its long-rejected reasoning, addresses the question of a state's authority to restrict, let alone ban or criminalize, specific medical procedures that only one sex may need. *Dobbs,* on the other hand, boldy – and wrongly – suggested *Geduldig* said exactly that.

In *Dobbs,* the plaintiffs did not present the Court with an equal protection claim. Nonetheless, writing for the Majority, Justice Alito stated that a sex discrimination challenge to abortion bans would be "squarely foreclosed" under the Court's precedent. Further, he cited the *Geduldig* footnote in support of the view that "regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a 'mere pretex[t]' designed to effect an invidious discrimination against members of one sex or the other.'" As Professor Courtney Cahill has written, this (mis)characterization of the footnote is wholly unsupported by *Geduldig's* own text, the briefing in *Geduldig*, or any pre-*Dobbs* judicial interpretation of *Geduldig*. But now, with *Skrmetti* restating it in an equal protection decision, the Court cements this "manufactured" precedent.

The revision and reanimation of *Geduldig,* imagined in *Dobbs* and adopted in *Skrmetti,* is a judicial approach that rolls back gender equality and constitutional rights for women, pregnant people, and LGBT people alike. State laws, constitutions, and courts offer promising paths for building an alternative jurisprudence. But the Supreme Court's turn back to *Geduldig* – and its "biological differences" exceptionalism – will remain profoundly damaging for gender equality and reproductive rights until it, *Dobbs,* and *Skrmetti* are firmly overruled.