No. SC100933

IN THE SUPREME COURT OF MISSOURI

E.N., INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, N.N., et al.,

Plaintiffs-Appellants,

vs.

MIKE KEHOE, et al.,

Defendants-Appellees.

BRIEF OF PROMO MISSOURI AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

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INTEREST OF AMICUS CURIAE

PROMO Missouri is Missouri's statewide policy and advocacy organization fighting for the rights of LGBTQ+ people. PROMO is committed to confronting systemic inequities facing the LGBTQ+ community and working towards a vision of Missouri where LGBTQ+ people are valued and thriving in our state. Founded in 1986, for nearly 40 years, PROMO has led legislative and community advocacy, along with education initiatives, across Missouri.

PROMO was and remains deeply involved in advocacy against anti-transgender legislation in Missouri, including the so-called 2023 Missouri Save Adolescents from Experimentation Act ("the Act"), RSMo § 191.1720. In 2023, PROMO organized families and individuals potentially affected by the Act to testify at legislative hearings, attend sit-ins and protests, and speak with legislators. PROMO's interest in the outcome of this case stems from the effects of the Act on its members and other LGBTQ+ communities and families across Missouri.[1]

[1] No party or party's counsel authored this brief in whole or in part and no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief. No person other than Amicus, its members, or its counsel made a monetary contribution to its preparation or submission. Amicus and the Washington University

STATEMENT OF CONSENT

This brief is being filed with the consent of all parties.

JURISDICTIONAL STATEMENT

Amicus adopts the jurisdictional statement as set forth in Appellants' brief.

STATEMENT OF FACTS

Amicus adopts the statement of facts as set forth in Appellants' brief.

ARGUMENT

This Court should reverse the judgment below. This brief presents the experiences of real Missouri families and individuals and highlights the ways the Act has directly impacted their lives. Their stories underscore the reality that this Court must not ignore—that the Act is the product of anti-transgender motivations that violate Missouri's constitutional guarantee of equal protection. Missourians, including the families and individuals featured in this brief, deserve better. This Court should therefore reverse.

School of Law's Appellate Clinic do not represent or act on behalf of the University. Furthermore, the University was not involved in the decision to submit this amicus brief, nor was it involved in the preparation of this brief.

I. The Act prohibits the very healthcare that had enabled Missouri transgender youth, adults, and their families to live productive and healthy lives.

The stories that follow are from seven Missouri families and individuals within Missouri's LGBTQ+ communities that PROMO serves. In interviews with the undersigned counsel, these Missourians shared their experiences of how the Act has unduly harmed their lives.

Their stories, while unique, all share a common theme: the gender-affirming care the Act now bans helped them and their children live healthy, authentic lives. And as a result of the Act, they now must go to great lengths to secure the healthcare they need—if they are able to access it at all. As a content warning, some of the stories shared below touch on suicidal ideation, self-harm, and emotional distress.

A. Heidi, Greg, and G. Nuckolls

Heidi, Greg, and their daughter, G.,[2] have lived in Missouri for 18 years. While Heidi and Greg still live in Missouri today, G. has since gone to college in another state to study electrical engineering.

[2] All statements attributed to Heidi, Greg, and G. Nuckolls throughout this brief come from an April 1, 2025, interview with the Appellate Clinic. G. is identified by an initial to protect her privacy.

Before G. came out, her parents Heidi and Greg noticed that she always "liked her hair buzzed" whenever it was time to get a haircut, and G. later told them that she "chose the most boyish glasses" possible as a way to cover her true gender identity. Although G. came to realize as a child that she was transgender, she did not immediately come out or know what it meant to live authentically as a transgender person:

> I knew [I was transgender] around like when I was 12 to 13. Just like having mental turmoil, not really knowing what being trans was. . . . Going into middle school, . . . eventually it came to a point where I knew I was trans because there was someone in my middle school class that had come out and I was like, "Wait, this is a thing you can do?" I was like, "I want to do that."

Heidi and Greg noticed that once G. came out, she was happier, more confident, and showed a "sense of relief." They observed that coming out allowed their daughter to have "more choices in life than she ever had." Now, G. could pick out suitable clothes, let her hair grow out, and choose glasses that she wanted to wear and that felt like *her*.

The Nuckolls family worked with licensed providers in Missouri, supporting G.'s transition, including via a "slow," "methodical," years-long course of healthcare:

> I pretty much just did it by the book. I had been seeing a therapist for at least a year and a half talking about this, and

> eventually when we decided that [transitioning] was a thing for me, we went to WashU and we went to the Pediatric Transgender [Center] and went through their whole process. . . . [The process] was always by the book. It was slow. It was hard. I was stuck on [puberty] blockers for nine months and then I finally got very low doses of hormones and then slightly higher doses as I grew into an adult. But it was very slow, very methodical, not at all quick, not at all rushed. . . . I was fine with slow because it was basically just trying to go through a normal puberty.

G. credits the gender-affirming healthcare she received with improving her confidence and self-image, especially when she was able to access her prescribed puberty blockers and hormone-replacement therapy (HRT):

> It made me . . . a way more confident person, because, like, part of that is knowing who I am, but also, like, the fact that I was able to get the intervention at such a young age makes me blend in with a lot of people, and I'm very lucky for that. But it also it gives me a lot of confidence to just be me, because I'm not, like, the "weird" person who looks kind of *off*. It's just like, I'm just *me*. And I've always been me.

G. loves St. Louis and her home state. While she is attending college out of state, she misses the trees in Forest Park, the St. Louis Cardinals, and her family. But she felt compelled to choose an out-of-state college because "bills like [the Act], the effect has made me not trust the Missouri government enough [for me] to really set down roots there."

In the Act's aftermath, Heidi notices that her daughter worries constantly about whether she'll be able to access her necessary medication. It's even beginning to affect her college grades. G. is unsure whether she will ever return to Missouri after graduating, even though she wants to come back to her home state.

B. M.W., C.W., and their daughter Samantha

Like the Nuckolls family, M.W., C.W.,[3] and their two children (including their daughter Samantha) have lived in Missouri for 18 years. M.W. and C.W. have built successful careers in music performance and education. M.W. and C.W. proudly sent their daughter, Samantha, off to college last year, where (like G. above, coincidentally) she studies electrical engineering. Following in her parents' footsteps, Samantha is a musician. She plays the trumpet, cello, and piano.

When Samantha was a young child, she expressed discomfort in the gender commonly associated with her sex assigned at birth. M.W. said that when Samantha was in the third grade, she "figured out that she

[3] All statements attributed to M.W. and C.W. throughout this brief come from a March 26, 2025, interview with the Appellate Clinic. All statements attributed to their daughter, Samantha, come from an April 16, 2025, interview with the Appellate Clinic. M.W. and C.W. are identified by their initials for privacy.

was going to have to be a boy. And that was the first time she considered suicide."

Samantha remembers struggling with her gender identity throughout her childhood:

> I've sort of always known I was different in some way. Like, I knew that I was a girl, and that I wanted to hang out with other girls. . . . [But] I just like pushed that all aside. . . . I kind of repressed that. . . . and I wasn't going to let myself be who I was.

When Samantha was a freshman in high school, a wellness checkup with her pediatrician made clear that she was depressed and self-harming.

Eventually, Samantha came out as transgender, which she described as "my path to happiness." At that point, C.W. and M.W. were able to support their daughter with access to gender-affirming healthcare.

Receiving that healthcare at the Washington University Pediatric Transgender Center (the "Center") was a careful, deliberative process in which Samantha and her parents were all deeply involved. In Samantha's words:

> The first meeting with a nurse practitioner is basically just a barrage of information. . . . not just on hormone therapy, but

> other resources like voice therapy. It was, "learn the information, go home, do your homework, and come back." And that's what I did. I looked into things, I read all the resources. And I was starting to see that these are all changes that I wanted to see in my body. So I think it was at this point that I needed a letter from my therapist. . . . I came back for another appointment. They were like, "Okay, we are going to draw some labs. We are going to do bone scans for bone density. . . ." They were really very cautious. They wanted to make sure that this was the right decision for me, both from a mental perspective, and also that this wouldn't cause me harm from a physical perspective. They were really very careful, and I do appreciate that.

The course of healthcare Samantha received had a monumentally positive impact on her mental health. When Samantha began receiving HRT in her late teenage years, her mother C.W. recognized an instant shift in Samantha's health and happiness. Samantha was finally "free and able to live authentically as herself."

Samantha reports that the care she received was lifesaving:

> Coming out . . . meant that I was free to pursue hormone therapy, and, you know, start to make myself feel more at home in my body. It meant that I was free to start wearing the clothing I liked. It meant that I made better friends who I cared about more, because they knew the real me, so it meant I could know the real them. I didn't feel as closed off, you know. It really saved my life. Honestly.

Then the legislature passed the Act, upending the gender-affirming care Samantha and her family had been relying upon. Even though

Samantha fell under the Act's "grandfather clause," which purported to allow patients like her to continue with preexisting gender-affirming care, the Act's sweeping liability caused the Center to close, so Samantha had to stop her treatment with her doctors. To C.W., the Act's disruption of the carefully crafted course of healthcare Samantha, her parents, and her doctors had developed made it feel like "the legislature [was] practicing medicine without a license."

Like G. above, Samantha left Missouri to attend college. But C.W. still sees her daughter living "in perpetual stress" because "we live with this poison gas in the air all the time because of these politicians." M.W. and C.W. are considering leaving Missouri themselves. Even though M.W. has worked his "dream job" for nearly two decades, he would "give that up to provide a safe haven for our daughter."

Despite loving her life and family in Missouri, Samantha does not think she can safely return to her home state after college:

> It's not an easy decision to make. . . . But I don't want to do something reckless that will get myself hurt, and I feel like going back to Missouri would be reckless. And you know, that really breaks my heart to say, because it's all I've ever known. . . . I have so many great memories of being there, and spending time with the people I love in the places I love. . . . It's woven into the fabric of who I am.

C. Alison Maclean and her son C.

Alison Maclean[4] and her family moved to Missouri in 2019. At the time, her two children were nine and twelve years old. Before their move, Alison's youngest child, C., was a "bright light." He was optimistic, witty, empathetic, creative, and endlessly curious. But shortly after their arrival in Missouri, Alison noticed a change in C.: it was as if the "light" had left him. Alison soon realized that the change was because C. was struggling with his gender identity. C. came out as transgender in late 2020, and "the moment [his family] called him 'C.'—the moment they said 'okay, here's our son'—the light came back."

But then came the Act. As Alison explained:

> Throughout that legislative session, from January through May 2023, C. experienced substantially declining mental health. We kept reiterating, "you are safe, we have you, we have got this," but to have his right to exist []inhibited by the government and to have the legitimacy of his existence actively debated and to have whether or not he wanted short hair or to use he/him pronouns as a political debate, it was just mind-boggling, the effect that had on him. . . . There was definitely a period of time during that legislative session where I literally steeled myself every time I went to his bedroom door. It felt like there was a very good chance that

[4] All statements attributed to Alison Maclean throughout this brief come from an April 1, 2025, interview with the Appellate Clinic. Alison is identified by a pseudonym, while C. is identified by an initial, to protect their privacy.

> he would be dead on the other side . . . and even having the most loving, supportive parents didn't insulate him from that.

As a result of the Act, C. lost sight of his bright future. Alison summarized C.'s perspective: "I have always been concerned for my future. But in this moment, I don't even see a future for myself. When the entire government of the country in which I live does not think that I should exist as I am, what is my future?"

So to keep C.'s "light shining," Alison is now preparing for yet another move with her son, to Minnesota. As they see it, the family refuses to live in, and keep contributing to, the economy of a state that actively denies and attacks C.'s identity. Alison sees no alternative but to leave Missouri to protect C. from the Act and the discrimination that propelled it.

D. Lisa S. and her son J.

Lisa S.[5] moved to Missouri 13 years ago and she works for a university. Lisa has raised her two teenagers in Missouri their whole lives. Her son J. is a teenager in middle school, where he is a straight-A

[5] All statements attributed to Lisa S. throughout this brief come from an April 4, 2025, interview with the Appellate Clinic. Lisa S.'s name is abbreviated and J. is identified by an initial for their privacy.

student and dedicated athlete (he just started playing flag football). J. is also a budding entrepreneur and artist who sells his art at local fairs.

When J. was six years old, he struggled with outbursts of anger in school and at home. Lisa worried for her son's mental health. As she explained:

> He would talk about dying as a young person. He didn't want to grow up. That seemed odd. . . . [His classmates] couldn't figure him out. The boys didn't want to play with him on the playground. The girls didn't want to play with him on the playground. He sat by himself. . . . He was being disruptive. He was angry. . . . His art teacher wanted him to color with a pink crayon. He didn't want to color with a pink crayon. . . . I was getting calls every day from school.

Lisa came to realize J. was struggling with his gender identity, especially around first or second grade. J. started to say things like "if I were a boy, that would be my name," and would ask his teacher "what if I want to get in the boy line?" So Lisa encouraged J. to express himself authentically. J. cut his hair short and picked clothes from the boys' section of stores. When J. was seven, he told Lisa that he is a boy and that his name is "J."

Lisa explains her reaction when J. eventually came out to her as transgender: "I was filled with two emotions. The first was relief that he finally said something that I thought was meaningful for him, that

hopefully released something in him. But the second was pure fear and dread for how the world might treat him."

A key step towards improving J.'s mental and physical health was going to the Center. After multiple visits over a course of years, J. was eventually prescribed a puberty blocker in accordance with medical guidelines. Lisa was thrilled to watch J. flourish as a physically and emotionally healthy preteen boy.

Then the Act upended his access to essential healthcare. J. fell within the Act's "grandfather clause" because he was already being treated with a puberty blocker, but the Act purportedly stopped J.'s Missouri doctors from prescribing HRT. So Lisa had to find out-of-state healthcare for J.:

> I used to take J. ten minutes away to his appointments and pay a very reasonable copay. Now I take two days off work with sick time. We travel to Chicago, Illinois. We have two to four appointments per visit because we try to stack them together. . . . The cost went up from $400. . . . [to] over $2,500. J. has to take time off school, two days off school. It's a nightmare. But even then, I'm grateful for it, because. . . . we know that [it] could be worse.

Once J. turns 18, Lisa plans to move out of Missouri. As she says, she never wants to pay taxes to the state again. But until then, Lisa will continue to do what it takes to get J. the healthcare he needs.

E. JJ and her son T.

JJ,[6] her husband, and their three children, including her son T., have lived in the St. Louis area for 19 years. JJ runs a small business and her husband works for a local nonprofit. JJ and her husband are proud that T. is attending community college, with plans to matriculate to a state university in the fall. His dream is to become a theater teacher at the high school he attended.

As a preteen, T. struggled with his mental health. JJ remembers that when T. started therapy at ten or eleven years old, those sessions quickly revealed that T. was experiencing gender dysphoria.

T. came out as nonbinary at twelve years old, and later he would settle into his identity as a transgender boy. After T. came out, he went to the Center, where he started off by receiving only counseling and gradually began to discuss physical changes with his mother and doctors.

At 16 years old, T. began receiving additional gender-affirming healthcare, beyond talk therapy, from Planned Parenthood. Around that same time, T. had begun using he/him pronouns and was asking to be

[6] All statements attributed to JJ throughout this brief come from a March 31, 2025, interview with the Appellate Clinic. JJ is identified by only her first name, while T. is identified by an initial, to protect their privacy.

referred to as a boy. JJ then began to see T. come into his own: T. chopped off his hair and bought new clothes. After that, T. was prescribed HRT. This allowed him to "physically identify as male and look more male." And that's when, according to JJ, T. truly "blossomed":

> He was happier and able to live authentically and be seen authentically as a boy. He became a happier person. And it really showcased his true self that wasn't as apparent to us on the outside and probably was apparent to him on the inside for a year or two or even longer. . . . I think once the outside aligned more and once people saw him more as a boy, then his level of joy and being authentic, and figuring out what it's like to be a teenage boy. . . . He was able to really become more joyful.

Thanks to the gender-affirming care T. received, he was able to have a "normal," positive high-school experience.

Now, under the Act, T. has to go outside the state for his physician-prescribed HRT. JJ is frustrated that the Act not only affects T.'s ability to access the healthcare he needs, but also that the Act treats transgender adolescents and their families as unequal to other Missourians. "The amount of worry [the Act has caused] is limitless; it's unlimited. It's profound: the heartbreak, the heartache, and the hurt. Probably even more so for [T.] than me, since it directly affects him." JJ wants Missouri decisionmakers to understand:

> We're regular working folks who just want to have our kids survive and thrive. The families that these bills impact and harm are so small but important. I mean, we want to encourage a diverse and welcome world, and when we show our kids that they're hated and loathed and unwanted, it just is absolutely heartbreaking and devastating. I wish [this Court] would just understand that we're not asking for anything special and anything beyond a basic human right. We're asking them to see us and accept us and accept our families and let us live our lives. We don't want a special paycheck. We just want to be able to take our kids to the doctor and get the care they need and feel like the world wants them here. It's no different than anything else.

F. D.M., J.T., and their son M.

D.M.[7] is originally from St. Louis and moved back to the city with her son, M., 16 years ago to be close to her large family. Like D.M., J.T.'s family has roots in Missouri and he has lived in the state for 20 years. M. just graduated high school and looks forward to attending college in Missouri next year to study elementary education.

M. came out as transgender in sixth grade. But M. had been communicating his gender identity to his mother long before that, as D.M. explained:

> His very first sentence, the first time he ever put six words together, he said "I don't feel like a girl.". . . He was maybe 20,

[7] All statements attributed to D.M. and J.T. throughout this brief come from a March 25, 2025, interview with the Appellate Clinic. D.M., J.T., and their son M. are identified by their initials for privacy.

> 21 months old. . . . I just assumed he meant "I [am] a tomboy," like I was. So that's what I said: "Oh, you are a tomboy, just like mom."

But D.M. could tell that something deeper was going on when M. began struggling in elementary school:

> M. had to do kindergarten twice because they thought he had dyslexia. . . . But as we look back on it now, you think "Oh. That's when they start dividing kids up by gender." Or when he refused to go to the bathroom at school, starting in second grade. . . . Every parent-teacher conference sucked, starting in second grade. . . . You could see his test scores going down, down, down, rapidly.

When M. came out as transgender in sixth grade, D.M. and J.T. began working with the Center to secure the healthcare M. needed. Almost immediately, this healthcare changed M.'s life for the better. His test scores improved practically overnight, and D.M. and J.T. saw a "noticeable change in M. and his wellbeing" just seven weeks after he started receiving puberty blockers.

D.M. reports feeling nothing but happiness watching M. flourish because of gender-affirming healthcare. Her only regret is not getting M. the care he needed even sooner. "If I could have gotten [M.] a puberty blocker earlier. . . . I would have paused [female puberty]. . . . I wish I could have done it sooner." M. is also grateful he had access to puberty

blockers, and later HRT, because "I've got to experience high school as just a normal guy."

Even though M. falls under the Act's "grandfather clause," the Act has complicated M.'s access to healthcare. Now M. reports that his doctor "can't make any comment on my testosterone levels" during routine blood tests unless the results indicate "dangerous" levels. The family attributes the change to the risk of liability imposed on doctors by the Act. M. is frustrated that the Act interferes with his patient-physician relationship. "From the legislature, it's extremely irresponsible. . . . It's irresponsible to not have your doctor be able to talk to you about test results."

As D.M. and J.T. explain, the Act's attacks on transgender youth and adults make them reluctant to keep living in Missouri, even as they are surrounded by the community they love:

> All we want to do is be near our families and be in our communities. That's it. . . . And we don't want our kids to kill themselves. . . . My whole family is here. [M.'s] whole life is here. . . . He loves [St. Louis] and does not want to leave this city. . . . We should not have to even consider it, and we know so many people who have left Missouri because of all this.

G. Nichole Price

Originally from Texas, Nichole Price[8] moved to Columbia, Missouri at 18 years old. Nichole had just come out as a transgender woman and fled the resulting family violence she experienced, into "the open arms of friends in Columbia," who took her in. Nichole has lived there since 2019, working and studying as a part-time student at the University of Missouri. Nichole studies biology and philosophy. She dreams of attending graduate school or law school after finishing her undergraduate degree.

For Nichole, coming out as transgender allowed her to move away from "static" gender expectations in favor of a "fluidity" that better reflects her identity:

> I didn't agree with how I saw myself for a long time. I was raised Catholic, I was the first-born male, so there were all these societal expectations I was viscerally aware of. . . . When I first accepted myself as trans, I wasn't living in a loving environment. . . . There was a lot of dehumanization. . . . When I declared myself as a trans woman, I declared myself as existing—as being myself. As not being tied to these conceptions that did not define me.

[8] All statements attributed to Nichole Price throughout this brief come from an April 18, 2025, interview with the Appellate Clinic.

Nichole first accessed gender-affirming healthcare through Missouri Medicaid with Planned Parenthood. After experiencing forced conversion therapy[9] as a child, Nichole says that having a network of doctors and therapists provide her the gender-affirming healthcare she needed "made me feel appreciated for living." Nichole received HRT and started discussing surgical options with her physician.

Then, the Missouri Attorney General promulgated an emergency regulation in April 2023 that made gender-affirming healthcare unlawful for minors and adults alike. Nichole immediately felt the effects of the Emergency Order:

> I contacted my therapist about it, because. . . . I was experiencing a panic attack. I contacted my primary care physician. . . . and they had no response for me. . . . He had no idea what was going to happen. That was kind of earth-

[9] Conversion therapy is a discredited and dangerous practice of attempting to change a person's gender identity or sexual orientation. *See* Human Rights Campaign Foundation, *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy. The city of Columbia, Missouri has banned conversion therapy for youth since 2019, the year Nichole moved there. *See* Hiroaki Kono, *Council Votes to Ban Conversion Therapy for Minors in Columbia*, Columbia Missourian (Oct. 7, 2019), https://www.columbiamissourian.com/news/local/council-votes-to-ban-conversion-therapy-for-minors-in-columbia/article_98aa746e-e964-11e9-819f-eb1fce9674d0.html.

> shattering. . . . I never had a law this explicitly targeting my lived experience with anxiety and as a trans person before.

The emotional effects of the emergency regulation and the Act caused Nichole to take a semester off school. "I've been having to deal with the stress of that, on top of [Complex Post-Traumatic Stress Disorder]. It made my community, the people who look like me and act like me, become hyper-visible. . . . and that's whenever my stress really took over."

Nichole is an adult. But once the Act went into effect, she lost all coverage for her gender-affirming care, except talk therapy, because of the Act's Medicaid ban:

> The main problem with [the Act] that affected me was the state Medicaid [provision]. . . . The state healthcare provided a lot of opportunities for healing. . . . Unfortunately, it's become difficult to navigate not only healthcare within the state, but also navigating myself as a trans person in the state.

Nichole believes the Act and other anti-trans legislation is a "blockade on trans people having fulfilling lives." Despite being surrounded by friends in Columbia and enjoying her college studies, Nichole is constantly "gauging: How long can I take it here?"

II. The Act flunks even rational basis review because it is based on a bare desire to disadvantage a politically unpopular group.

As the experiences of Missourians highlighted above illustrate, the Act falls woefully short of the guarantee under the Missouri Constitution's Equal Protection Clause that "all persons are created equal and are entitled to equal rights and opportunity under the law." Mo. Const. art. I, § 2.[10] This is because the Act is based on a "bare desire to harm a politically unpopular group," namely: transgender Missourians. *Romer v. Evans*, 517 U.S. 620, 634 (1996). Such a discriminatory purpose "cannot constitute a legitimate government interest" that survives even rational basis review. *Id.*[11]

The Act bears the same hallmarks that required the U.S. Supreme Court to strike down the anti-LGBTQ+ state law at issue in *Romer v.*

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[10] The Missouri Constitution's Equal Protection Clause is coextensive with that of the federal constitution, and thus this Court has recognized that its analysis of Missouri's constitutional equal protection is guided by federal law. *Glossip v. Mo. Dep't of Transp. & Highway Patrol Emps. Ret. Sys.*, 411 S.W.3d 796, 805 (Mo. banc 2013); *State v. Young*, 362 S.W.3d 386, 396 (Mo. banc 2012).

[11] Amicus agrees with Appellants' arguments below that the Act discriminates based on sex and transgender status and is thus subject to heightened scrutiny under the Equal Protection Clause. Amicus offers this argument as yet another basis by which the Act is unconstitutional.

Evans. In *Romer*, the Court concluded that a state law prohibiting local governments from enacting public-accommodations protections based on sexual orientation "seem[ed] inexplicable by anything but animus toward the class it affects," in violation of the Equal Protection Clause. *Id.* at 632. The Court explained that the state law "imposes a special disability upon those persons alone," leaving the targeted group with no political resource except "by enlisting the citizenry of Colorado to amend the State Constitution or perhaps . . . by trying to pass helpful laws of general applicability. This is so no matter how local or discrete the harm, no matter how public and widespread the injury." *Id.* at 631.

The Court rejected the state's assertion that the challenged law's purpose was to promote "respect for other citizens' freedom of association, and in particular the liberties of landlords or employers who have personal or religious objections to homosexuality," as well as its interest in "conserving resources to fight discrimination against other groups." *Id.* 635–36. Even assuming those were legitimate state interests, the state's "status-based enactment" was so "divorced from any factual context" that the Court inferred that the law's real purpose was to make LGBTQ+

people "unequal to everyone else," which the Equal Protection Clause does not permit. *Id.* at 636.

So too here. Like the state law at issue in *Romer,* the Act (1) imposes an unusual legal disability on transgender people, (2) is rife with evidence of animus against (or moral disapproval of) transgender people, and (3) took advantage of transgender people's minority and concomitant lack of political clout in Missouri.[12] This Court should therefore hold that the Act violates Missouri's guarantee of equal protection because it "identifies persons by a single trait" and makes them "unequal to everyone else." *Romer*, 517 U.S. at 635.

A. The Act's unusual, class-based mistreatment of transgender people is strong evidence of impermissible animus.

The Act's class-based mistreatment of transgender people is an affront to equal protection. Under the U.S. Supreme Court's reasoning, the Act is unusual and contrary to the American constitutional tradition in the way it "singl[es] out a certain class of citizens for disfavored legal

[12] *See Romer Has It*, 136 Harv. L. Rev. 1936, 1947 (2023) (summarizing the U.S. Supreme Court's *Romer* jurisprudence and distilling three elements: "(1) political-process dysfunction, (2) animus inferred from moral disapproval, and (3) discrimination of an unusual character").

status." *Romer*, 517 U.S. at 633. A law like the Act that "identifies persons by a single trait" and imposes a legal disability on them is constitutionally suspect. *Id.*; *see also United States v. Windsor*, 570 U.S. 744, 770 (2013) ("In determining whether a law is motivated by an improper animus or purpose, discriminations of an unusual character especially require careful consideration." (cleaned up)).

The Act singularly impacts transgender Missourians. Its text provides: "A healthcare provider shall not knowingly prescribe or administer cross-sex hormones or puberty-blocking drugs for the purpose of a gender transition for any individual under eighteen years of age." RSMo § 191.1720.4. The Act defines "gender transition," in turn, as "the process in which an individual transitions from identifying with and living as a gender that corresponds to his or her biological sex to identifying with and living as a gender different from his or her biological sex, and may involve social, legal, or physical changes." *Id.* § 191.1720.2(4). The Act also prohibits Missouri Medicaid coverage—including for adults—for "gender transition surgeries, cross-sex hormones, or puberty-blocking drugs . . . for the purpose of a gender transition." *Id.* § 208.152.15.

Accordingly, although the Act avoids using the term "transgender," its effect is undeniably class based. As Justice Scalia reasoned, "[s]ome activities may be such an irrational object of disfavor that, if they are targeted, and if they also happen to be engaged in exclusively or predominantly by a particular class of people, an intent to disfavor that class can readily be presumed. A tax on wearing yarmulkes is a tax on Jews." *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993); *see also Romer*, 517 U.S. at 631 (rejecting the argument that the challenged state law merely put LGBTQ+ people on equal footing with non-LGBTQ+ people, explaining that "[t]hese are protections taken for granted by most people either because they already have them or do not need them."); *Doe v. Horne*, 115 F.4th 1083, 1105 (9th Cir. 2024) (affirming preliminary injunction against Save Women's Sports Act and holding that, as a matter of "common sense," "a transgender sports ban discriminates based on transgender status").

The U.S. Supreme Court's recent decision in *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), does not alter this reality. Unlike here, the plaintiffs in *Skrmetti* "have not argued that SB1's prohibitions are mere pretexts designed to effect an invidious discrimination against

transgender individuals." 145 S. Ct. at 1833; *id.* at 1832 (noting that no argument that the law "was motivated by an invidious discriminatory purpose" had been made); *see also San Francisco A.I.D.S. Found. v. Trump*, No. 4:25-cv-1824, 2025 WL 1621636, at *15 (N.D. Cal. June 9, 2025) (partially enjoining January 2025 executive orders when defendants offered no response to plaintiffs' arguments that they were "transparently motivated by a bare desire to harm transgender people" under *Romer* (cleaned up)). As the U.S. Supreme Court has repeatedly demonstrated, a *Romer*-type animus analysis does not turn on whether a law classifies based on categories that receive heightened scrutiny. *See, e.g.*, *Romer*, 517 U.S. at 630–32 (holding that the challenged law violated the Equal Protection Clause without applying tiers of scrutiny or protected-class analysis); *Windsor*, 570 U.S. at 769–74 (same).

Indeed, federal appellate courts have uniformly recognized that laws that singularly affect transgender people render class-based treatment even when their text (like the Act's) does not speak in terms of "transgender" identity. *See, e.g.*, *Doe*, 115 F.4th at 1103–04 (holding that an Arizona law banning "students of the male sex" from female sports team "affects *only* transgender female students," including because

cisgender females could continue to play on male sports teams under Arizona law); *Fowler v. Stitt*, 104 F. 4th 770, 786 (10th Cir. 2024) (finding plausible allegations that an Oklahoma law banning birth-certificate-gender-marker amendments intentionally discriminated against transgender people even though it purports to apply to everyone, because it "affects transgender people but not cisgender people," as "cisgender people do not need sex-designation amendments"), *vacated on other grounds*, No. 24-801, 2025 WL 1787695 (U.S. June 30, 2025);[13] *see also Orr v. Trump*, No. 1:25-cv-10313, 2025 WL 1145271, at *13 (D. Mass. Aril

[13] *Fowler* held that the plaintiffs had stated a claim that the state law they challenged amounted to intentional discrimination against transgender individuals. 104 F.4th at 786–88. Similarly, the en banc Fourth Circuit held that state-law exclusions for Medicaid coverage of gender-dysphoria treatment amounted to discrimination by proxy against transgender people. *Kadel v. Folwell*, 100 F.4th 122, 149 (4th Cir. 2024) (en banc) ("[G]ender dysphoria, a diagnosis inextricable from transgender status, is a proxy for transgender identity"), *vacated on other grounds*, No. 24-99, 2025 WL 1787687 (U.S. June 30, 2025). While the U.S. Supreme Court vacated and remanded *Fowler* and *Kadel* for further consideration in light of *Skrmetti*, *Skrmetti* expressly disclaimed making any determination about whether the challenged law there "was motivated by an invidious discriminatory purpose," or "mere pretext[] designed to effect an invidious discrimination against transgender individuals," 145 S. Ct. at 1832, 1833. Accordingly, although *Fowler* and *Kadel* have been vacated, their reasoning on the issues *Skrmetti* never reached remain persuasive and applicable to the questions before this Court.

18, 2025) ("Transgender Americans—individuals who, by definition, have a gender identity different from their sex assigned at birth—are uniquely affected by this policy, even though the Executive Order does not in so many words identify them as the targeted group."). Accordingly, there is no principled basis for defendants to deny that the Act amounts to class-based discrimination against transgender identity.

The Act does not stop at "singling out a certain class of citizens." *Romer*, 517 U.S. at 633. It also burdens that class with a "disfavored legal status." *Id.* As explained above and by the plaintiffs before the circuit court, the Act permits certain medical procedures for cisgender people, but purports to prohibit those same procedures if they are undertaken for the purpose of "gender transition," which by definition, affects only transgender people. This kind of categorical difference in treatment squarely undermines equal protection. *See Windsor*, 570 U.S. at 772 (recognizing that Congress cannot establish two separate regimes of marriage: one for opposite-sex couples and one for same-sex couples).

The Act's prohibition on medical care that Missouri families and their doctors can find to be medically necessary is especially unusual given Missouri's general policy of affording families discretion to make

the medical choices that are best for them. *See, e.g.*, RSMo § 210.003.2(2)(b) (allowing Missouri parents to object to immunization requirements for their children); *id.* § 459.055.1 ("Each person has the primary right to request or refuse medical treatment subject to the state's interest in protecting innocent third parties, preventing homicide and suicide and preserving good ethical standards in the medical profession."); *id.* § 569.055.4 (expressly encouraging "[c]communication regarding treatment decisions among patients, the families and physicians"). Departures from the norm like these are "strong evidence of a law having the purpose and effect of disapproval" of a disfavored class. *Windsor*, 570 U.S. at 770.

B. The Act was enacted within the context of political opportunism against transgender people, and comments and actions by Missouri legislators suggest the Act is an expression of moral disapproval of transgender people.

"If the constitutional conception of equal protection of the laws means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) (holding that amendment to Food Stamp Act bore no rational relationship to a legitimate government interest and, rather,

was motivated by moral disapproval of "hippies"); *accord Romer*, 517 U.S. at 634; *Windsor*, 570 U.S. at 774 (explaining that a law is unconstitutional when its "principal purpose and necessary effect" is to "demean" a politically unpopular group).

The Act was passed for such a purpose. Sadly, targeting transgender people, a small minority with scant political power, as explained below (*see infra* Argument II.C), has become an easy way for politicians to score points in the culture wars. The Act was enacted at the height of such political attacks across the country. And contemporaneous statements by Missouri legislators provide compelling evidence that the Act's supporters wished to express their moral disapproval of transgender people. The Act's effect of stigmatizing transgender people is, therefore, unsurprising, undeniable, and additional proof of the impermissible animus underlying its enactment. Nor can defendants cure the Act's constitutionally impermissible motivations by pointing to any legitimate governmental interests, especially when they are far removed from the Act's operative effects in the real world.

1. The Act was enacted during a widespread wave of antitransgender state legislation.

The Act was one of many examples of anti-transgender legislation that suddenly and simultaneously took hold in various state legislatures, suggesting a larger context of targeting transgender people for political gain. Just since 2021, at least 27 states have passed legislation prohibiting transgender people from accessing gender-affirming healthcare.[14] Nineteen of those 27 states enacted their healthcare bans before Missouri passed the Act.[15]

Three sitting U.S. Supreme Court Justices have suggested that such a wave of anti-transgender legislation may reflect an opportunistic targeting of a politically unpopular class, in violation of equal protection. *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 638 (2023) (Sotomayor, J.,

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[14] Movement Advancement Project, *Bans on Best Practice Medical Care for Transgender Youth*, MAP, https://www.lgbtmap.org/equality-maps/healthcare/youth_medical_care_bans; Elliot Davis Jr., *States That Have Restricted Gender-Affirming Care for Trans Youth*, US News (May 15, 2025), https://www.usnews.com/news/best-states/articles/2023-03-30/what-is-gender-affirming-care-and-which-states-have-restricted-it-in-2023.

[15] These states include Alabama, Alaska, Arizona, Florida, Idaho, Indiana, Iowa, Kentucky, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Tennessee, Utah, and West Virginia. *Id.*

dissenting, joined by Kagan, J. and Jackson, J.) ("A slew of anti-LGBT laws have been passed in some parts of the country, raising the specter of a bare desire to harm a politically unpopular group." (cleaned up)); *see also Romer Has It*, *supra*, at 1940–41 (explaining the historical context of the wave of anti-transgender legislation that proliferated after a 2021 gubernatorial campaign in which the candidate who campaigned on an anti-LGBTQ+ platform unexpectedly won); *Orr*, 2025 WL 1145271, at *14 (holding that an executive order issued within "a constellation of close-in-time executive actions directed at transgender Americans that contained powerfully demeaning language" was additional evidence of animus). Unfortunately, targeting transgender people has become politically popular—additional context supporting an inference that the Act was motivated by impermissible animus.

2. Missouri legislators' contemporaneous public comments and actions provide compelling evidence of anti-transgender animus.

The Act's legislative history, and particularly the contemporaneous comments and conduct of Missouri legislators, all but confirm that "interference with the equal dignity of" transgender people "was more than an incidental effect" of the Act. *Windsor*, 570 U.S. at 770. Such

legislative history is relevant to whether impermissible class-based animus motivated a law's enactment. *See id.* at 770–71; *see also Romer*, 517 U.S. at 632–36.

The Act's legislative history is replete with inflammatory (and false) rhetoric, including public shaming of transgender youth and their families. Missouri elected officials' public comments during the Act's pendency reveal that the Act expressed their moral disapproval of transgender people and their medical care.

For example, Missouri Senator Mike Moon, one of the Act's co-sponsors, brazenly claimed on the Senate floor that parents of transgender Missourians were trying "to mutilate, to butcher their children and to inject them or have them injected with poisons."[16] His comments did not account for the fact that, even before the Act, minors were not eligible for gender-transition surgeries in Missouri,[17] and that

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[16] *Missouri Sen. Mike Moon Talks About SB 49*, MOSENCOM (Mar. 24, 2023), https://www.youtube.com/watch?v=_3ZeDtoV7GE .

[17] Justina Coronel, *Missouri Bill Would Punish Providers for Medical Treatment on Transgender Children*, KDSK (Apr. 21, 2023), https://www.ksdk.com/article/news/local/missouri-bill-transgender-children-medical-treatment/63-618a105e-1bca-4213-8b66-7c146451287c (noting testimony from Missouri doctors that gender-transition surgeries were not provided to minors before the Act).

we he called "poisons" are natural hormones that continue to be available even after the Act for treatment of conditions in cisgender youth, such as in cases of precocious puberty.[18]

Similarly, then-Missouri Senator Denny Hoskins characterized the very kind of treatment that (as described above) was literally lifesaving for Missouri families as "woke," "mutilation," and "castration thru hormone treatment," (and his comments remain on his X page now that he is Missouri's Secretary of State):[19]

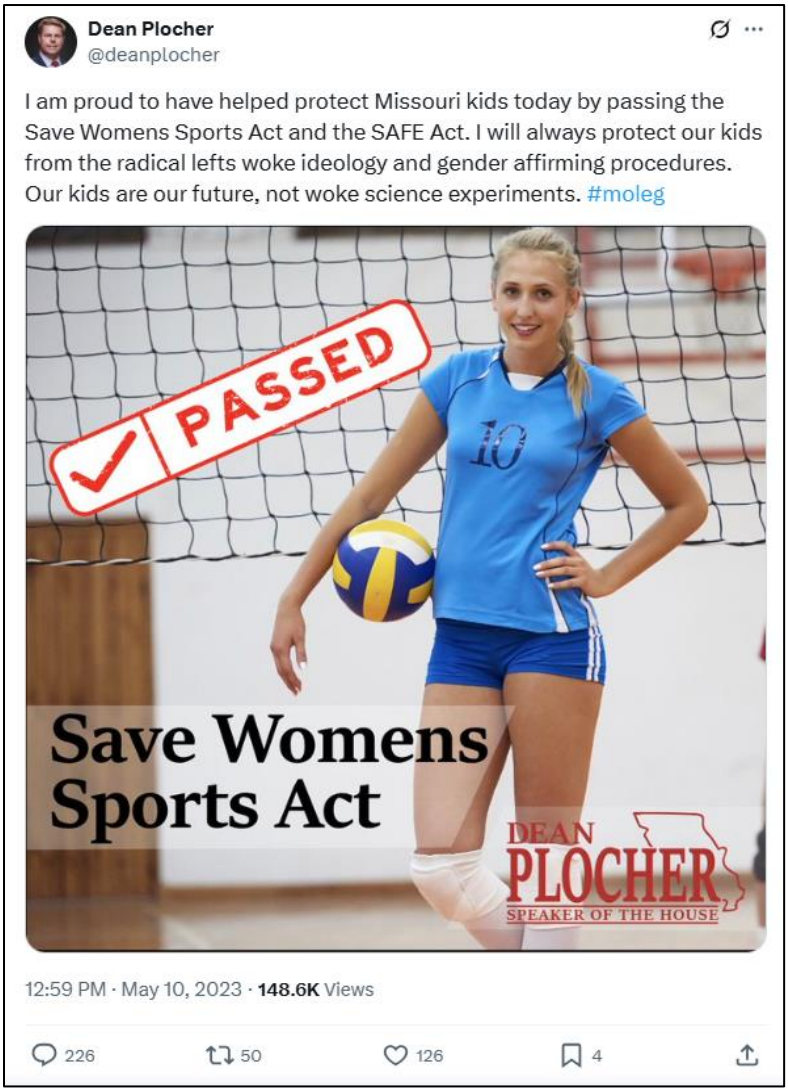
[18] Tekla Taylor and Sinead Murano-Kinney, *Get the Facts: The Truth About Transition-Related Care for Transgender Youth*, Advocates for Trans Equality (Feb. 28, 2023), https://trans equality.org/news/get-facts-truth-about-transition-related-care-transgender-youth.

[19] Denny Hoskins (@DLHoskins), X (Mar. 8, 2023, 1:18 PM), https://x.com/DLHoskins/status/1633547823194214402.

Joining the trend, once the Act passed the Senate, Representative Ben Baker tweeted:[20]

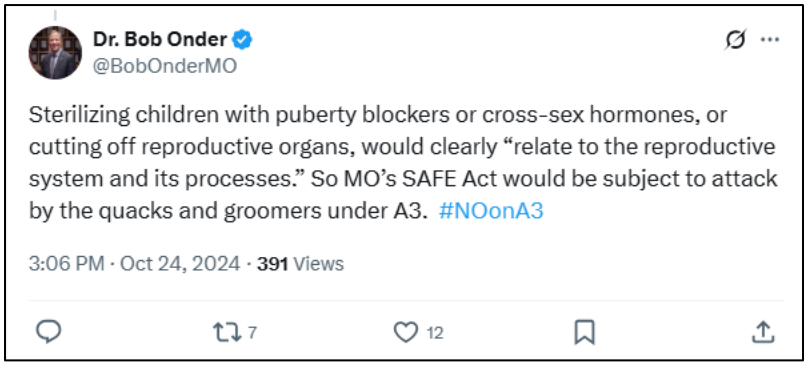
[20] Ben Baker (@Ben BakerMO), X, (Mar. 21, 2023, 9:36 AM), https://x.com/BenBakerMO/status/1638187817359622147.

After the Act's enactment, House Speaker Dean Plocher described the Act as protection against "the radical left[']s woke ideology" and referred to the healthcare that saved his constituents' lives as "woke science experiments":[21]



[21] Dean Plocher (@deanplocher), X (May 10, 2023, 12:59 PM), https://x.com/deanplocher/status/1656358316639940629.

And more recently, during his (successful) campaign for U.S. Congress, former-state-legislator Bob Onder took the opportunity to call the Act's opponents "quacks and groomers" in his tweet against Amendment 3's ballot initiative about abortion access:[22]



Unfortunately, Missouri legislators' disrespectful comments and actions did not confine themselves to social media. The slights persisted even in public legislative hearings. For context, in the legislative session the year before the Act was pending, a Missouri Senator infamously asked a minor child about their genitals—in a public hearing.[23] This kind of conduct was unfortunately typical of Missouri legislators when

[22] Bob Onder (@BobOnderMO), X (Oct. 24, 2024, 3:06 PM), https://x.com/BobOnderMO/status/1849543075439485376;

[23] Thea Glassman, *A Missouri Senator Decided to Ask a 14-Year-Old Trans Student About Their Genitals*, Yahoo (March 18, 2022), https://www.yahoo.com/lifestyle/missouri-senator-decided-ask-14-185532816.html.

opponents of anti-transgender legislation like the Act were testifying—that is, if the lawmakers stayed in the room to listen at all.

Every single Missouri family featured in this brief who testified at hearings in Jefferson City reported that Missouri legislators got up and left the hearings when opponents of the Act would testify. For instance, during M.W.'s two-and-a-half-minute Senate-committee testimony against the Act, three of the seven members of the committee simply got up and left. M.W. said that even the bills' sponsors "usually get up and leave." Similarly, Greg and Heidi report seeing Missouri Senators get up and leave during opposition testimony "all the time." From their perspective, the Missouri Senators supporting the Act lacked decorum and had no legitimate purpose for leaving the hearings during the Act's opponents' testimony. And House hearings often went "well past midnight," when legislators supporting the Act were "nowhere to be found," according to Lisa S. D.M. and J.T. similarly witnessed members of the Missouri House of Representatives such as Chuck Basye and Suzie Pollock abruptly leave during testimony by opponents of the Act.

Missouri's elected officials' disrespectful conduct went beyond social-media posts and public hearings: The Act's proponents also

verbally attacked transgender youth and their families to their faces, in private. For example, Alison Maclean reports that she was in the hallway of the Missouri State Capitol to meet with legislators about the ways the Act and other anti-transgender legislation would impact her family when Senator Mike Moon approached her to tell her that she was doing "the devil's work," and called her a "child abuser."

3. Defendants cannot cure the unconstitutional animus by pointing to a legitimate state interest.

Even assuming defendants' asserted governmental interests in "saving adolescents from experimentation" are legitimate, the Act's "breadth . . . is so far removed from these particular justifications" that it is "impossible to credit them." *Romer*, 417 U.S. at 635. In other words, there is such a poor fit between the asserted justifications and what the Act actually does that the only reasonable conclusion is that the Act "seems inexplicable by anything but animus toward the class it affects." *Id.* at 632–33

First, while the Act purports the goal of protecting children, the Act in practice prohibits many Missouri *adults* from receiving gender-affirming care as well, as Nichole Price's experience illustrates. The Act excludes gender-affirming care from coverage under Missouri's Medicaid

program. RSMo § 208.152.15. Defendants have not articulated a justification for this provision and restriction on adults. The Act's "operation in practice" virtually confirms that its real purpose is to tell transgender people, "and all the world, that their otherwise valid" healthcare decisions "are unworthy" of Medicaid coverage. *See Windsor*, 570 U.S. at 771–72.

The Act's operation also broadly exceeds its purported purpose because it restricts access to ongoing treatment even for those minors who were supposed to be exempted from the ban through the "grandfather clause." RSMo § 191.1720.4(2). For example, while M. should fall under the Act's grandfather clause because he had begun a course of treatment before the Act's passage, D.M. and J.T. report that the Act has "silenced" M's doctors, who now believe they cannot even tell the family the results of many necessary tests that M. undergoes in his treatment. Similarly, even though Samantha fell under the grandfather clause, the Act caused the Center where she had been receiving care to shut down, forcing her to cobble together care from outside the state. As yet another example, even though J. should be grandfathered into care, his Missouri provider has refused to prescribe HRT out of liability

concerns under the Act, forcing Lisa S. and J. to take multiple trips to Chicago for medically necessary care.

The Act's effect of restricting care for *all* minors, along with its incorporation of a provision restricting care for many adults, makes the law overly broad and "far removed" from its presentation as a bill for protecting children. *Romer*, 517 U.S. at 635. The Act's overbreadth demonstrates its motivating animus towards all transgender people and moral disapproval of the necessary healthcare that allows transgender youth and adults to thrive.

The incongruence between the Act's justifications and operation raises "the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected." *Romer*, 517 U.S. at 634; *see also Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring) ("Moral disapproval of this group, like a bare desire to harm the group, is an interest that is insufficient to satisfy rational basis review under the Equal Protection Clause.").

C. The Act is the result of political-process dysfunction, including transgender Missourians' relative lack of political clout.

As explained above, the Act singles out transgender people for disfavored treatment, takes advantage of political opportunism to express anti-transgender sentiment, and mismatches its purported purposes. On top of all that, the Act was also born out of political-process dysfunction, including because of transgender Missourians' numerical minority. The U.S. Supreme Court has considered procedural irregularity or dysfunction when assessing whether government action was the result of impermissible animus. *See, e.g.*, *Romer*, 517 U.S. at 630–31; *Trump v. Hawaii*, 586 U.S. 667, 707 (2018).

Here, the people most impacted by the Act are also uniquely limited in their political ability to challenge it. This is because transgender youth and adults constitute a small minority of Americans and Missourians and face hurdles that have undermined their ability to challenge the Act.

The UCLA School of Law's Williams Institute estimates that in the United States, only about 0.5% of adults and 1.4% of youth between the

ages of 13 and 17 identify as transgender.[24] The Midwest in particular has the lowest percentage of residents ages 13 to 17 who identify as transgender, at 1.2%.[25] And even within the Midwest, Missouri in particular has the lowest percentage of adults who identify as transgender: only 0.2%.[26] When the Act was passed, no sitting member of the Missouri General Assembly was openly transgender or nonbinary.[27]

Because transgender people comprise such a small minority of people in the United States, the Midwest, and specifically Missouri, they

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[24] UCLA Sch. of L. Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?*, (June 2022), https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/. This study uses data from the CDC's 2017 and 2019 Youth Risk Behavior Surveys and the CDC's 2017–2020 Behavior Risk Factor Surveillance System to compile "population estimates of the number of adults and youth who identify as transgender" in the United States. *Id.*

[25] *Id.*

[26] *Id.*

[27] Today, one member of the Missouri General Assembly, Representative Wick Thomas, identifies as non-binary. *See* Kacen Bayless and Matthew Kelly, *Transgender KC Residents Fear Attacks from Both Sides of State Line: 'Where Do We Go Now?'*, Kansas City Star (Feb. 6, 2025), https://www.kansascity.com/news/politics-government/article299797364.html.

faced an uphill battle in drawing support to challenge the disability that the Act imposes on them. And as explained above, their minority has unfortunately made transgender Missourians an easy political target.

For one thing, the logistics associated with traveling to Jefferson City to testify against the Act and other anti-transgender legislation is disproportionately burdensome on this small population of Missourians. To illustrate, Lisa S. described that the Missouri Senate provided only 26 hours' notice of a public hearing on the Act,[28] during which limited time constituents would have to make arrangements to "take off work" and "get childcare lined up" in order to fight for their children's lives.

The trips to testify in Jefferson City can also take an immense emotional toll. For instance, after every trip to Jefferson City from St. Louis, J.T. would "vomit for days afterwards" because of the stress of confronting hostile and indifferent legislators, causing him to take multiple days off work. J.T. and D.M. report spending "well over 100 hours" and "thousands of dollars" preparing testimony for hearings and

[28] This barely clears the minimum period of notice required under Missouri law. *See* RSMo § 610.020.2 (requiring public notice of "at least twenty-four hours" "prior to the commencement of any meeting of a governmental body").

attending therapy with M. Similarly, JJ has experienced "unlimited worrying," "profound heartbreak," and "emotional damage" in advocating for T at the state capitol and elsewhere. And Greg and Heidi estimate that they have spent over 2,000 hours researching and attending hearings and almost $5,000 out of pocket for therapy to help them cope with the experience. Greg and Heidi have been willing to spend that time and money, however, because there are "countless days that go by" when they worry about G.'s future, including because of the Act.

Yet another way the Act resulted from procedural dysfunction is that it rests on falsified evidence and discredited talking points from organizations recognized as hate groups. As the U.S. Supreme Court noted in *Lawrence*, laws imposing restrictions based on LGBTQ+ status or conduct are unconstitutional when they rely on false historical or factual narratives. 539 U.S. at 568–70. One false narrative Missouri legislators uplifted in passing the Act was the affidavit of former Center employee Jamie Reed.[29] The circuit court below relied on Reed's

[29] *See* Jo Yurcaba, *Raising a Trans Kid in Missouri Has Become a 'Dystopian Nightmare' for Families*, NBC News (Apr. 27, 2023) https://www.nbcnews.com/nbc-out/out-news/raising-trans-kid-missouri-

testimony as well.[30] But this reliance is misplaced, as Reed's affidavit and testimony have been critically challenged and debunked by dozens of former patients.[31] And an internal investigation revealed no basis for her allegations of substandard care.[32]

Heidi and Greg Nuckolls have proven that Reed's affidavit contained misrepresentations about their daughter G.'s experience at the

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become-dystopian-nightmare-families-rcna75768 (noting that state Sen. Mike Moon cited Reed's affidavit when introducing SB 49).

[30] The circuit court below extensively cited Reed's testimony and her affidavit, despite her not being an expert witness. *See Noe v. Parson*, No. 23AC-CC04530, Judgment and Findings of Fact and Conclusions of Law, slip op. at 13, 28, 29, 31, 45 (Mo. Cir. Nov. 25, 2024). The circuit court failed to consider the false statements by Reed in evaluating her credibility, incorrectly calling her testimony "unrebutted." *See id.* at 30.

[31] *See, e.g.*, Annelise Hanshaw, *Families Dispute Whistleblower's Allegations Against St. Louis Transgender Center*, Missouri Independent (March 1, 2023) https://missouriindependent.com/2023/03/01/transgender-st-louis-whistleblower/ (describing how many patients, parents, and former employees of the Center came forward to debunk the claims in Reed's affidavit).

[32] *Washington University Transgender Center Internal Review: Summary of Conclusions*, Washington University Medical Center (April 21, 2023) https://source.washu.edu/app/uploads/2023/04/Washington-University-Summary-of-Conclusions.pdf (finding that "physicians and staff at the Center follow appropriate policies and procedures and treat patients according to the currently accepted standard of care").

Center.[33] The Nuckolls proved that Reed misrepresented that G. suffered liver toxicity from a puberty blocker, when in reality, the liver toxicity came from a medication G. was on because she is immunocompromised, wholly unrelated to her gender-affirming care.[34] And while Reed also suggested Heidi was considering suing the Center, Heidi reports that that was blatantly false; indeed, below, even the defendants moved to strike that paragraph from Reed's affidavit at trial.[35]

Heidi and Greg could not believe that the circuit court would rely on a witness like Reed, who betrayed their family's medical privacy and had been caught making misrepresentations that seemed opportunistic.

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[33]Azeen Ghorayshi, *How a Small Gender Clinic Landed in a Political Storm*, The New York Times (Aug. 29, 2023) https://www.nytimes.com/2023/08/23/health/transgender-youth-st-louis-jamie-reed.html (describing how Jamie misappropriated G.'s private healthcare information and misrepresented statements by Heidi in the affidavit); *see also* Evan Urquhart, *'You betrayed us, Azeen'*, Assigned Media (Sept. 3, 2023) https://www.assignedmedia.org/breaking-news/you-betrayed-us-azeen-parents-of-trans-youth-reeling-after-speaking-to-the-nyt (explaining how reporter Azeen Ghorayshi portrayed the Center in an unfairly negative light, contrary to the express statements of Heidi's gratitude for the life-saving care G. received there).

[34] *See* Urquhart, *supra* note 33.

[35] The circuit court ultimately declined to admit the entire affidavit into evidence. *Noe v. Parson* Trial Transcript, Vol. 6, 1697–98 (Sept. 30, 2024).

As parents, they felt "angry, helpless, and alone"—because they still do not know who else has G.'s private medical information.

The Missouri General Assembly also relied on misrepresented and discredited science (including from organizations recognized as hate groups) to justify the Act, further cementing that animus was the driving force behind the law. For example, the American College of Pediatricians (ACP) purports to be an organization of health advocates, but it has been recognized as an anti-LGBTQ+ hate group by the Southern Poverty Law Center.[36] That did not stop legislators from citing the ACP in support of the Act, including in public hearings.[37]

It appears that the circuit court below relied on the same misrepresentations promoted by the ACP, reciting statistics without support or sources. For example, the circuit court asserted, without citation, that "credible evidence shows that 80-95% of child patients diagnosed with gender dysphoria will have symptoms abate with adolescence." *Noe v. Parson*, No. 23AC-CC04530, Judgment and Findings

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[36] Southern Poverty Law Center, *American College of Pediatricians*, https://www.splcenter.org/resources/extremist-files/american-college-pediatricians/.

[37] *See, e.g.*, *Missouri Sen. Mike Moon Talks About SB 49*, *supra* note 16.

of Fact and Conclusions of Law, slip op. at 61 (Mo. Cir. Nov. 25, 2024). The ACP has promulgated this exact statistic. *See Gender Dysphoria in Children*, American College of Pediatrics (Nov. 2018) https://acpeds.org/position-statements/gender-dysphoria-in-children. But the 2008 scientific article this statistic appears to stem from in fact *supports* gender-affirming care for youth, given "the harmfulness of nonintervention." *See* Peggy T. Cohen-Kettenis et al., *The Treatment of Adolescent Transsexuals: Changing Insights*, J. Sex. Med. 1892 (Jul. 30, 2008).

Relying on such debunked sources is yet another indicator that the true force behind the Act is unconstitutional animus. *See Romer Has It*, *supra*, at 1956 ("[A]n inference of animus or moral disapproval might be supported by a law's lack of support from legitimate medical or pedagogical sources. Antitransgender healthcare bans, for example, are at odds with the medical consensus that has been forcefully affirmed by the country's leading medical organizations, from the American Medical Association to the American Psychiatric Association to the American Academy of Pediatrics." (cleaned up)).

* * *

All in all, the Act bears the same hallmarks that prompted the U.S. Supreme Court to find impermissible animus behind the anti-LGBTQ+ state law at issue in *Romer*. The Act is contrary to the constitutional order in the way it singles out transgender people for disfavored treatment. Multiple sources of evidence show that it was passed out of political opportunism to take pot shots at transgender people for political gain. And political-process dysfunction, including because of transgender Missourians' minority, the difficulties associated with opposing legislation like the Act, and the invocation of debunked and discredited information all but confirm that the Act undermines Missourians' right to equal protection.

III. The Act amounts to intentional discrimination, violating equal protection under *Arlington Heights*.

For many of the same reasons the Act betrays impermissible animus under the *Romer* line of cases, it also flunks equal protection under an *Arlington Heights* framework. In that case, the U.S. Supreme Court articulated various factors to guide the determination of "whether invidious discriminatory purpose was a motivating factor" behind government action, in violation of the Equal Protection Clause. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977).

Accordingly, courts may consider whether a law has a disparate impact on a particular group (which is relevant but not dispositive in itself), the "historical background of the decision," including the "events leading up to the challenged decision," "[d]epartures from the normal procedural sequence," and "legislative or administrative history," "especially where there are contemporary statements by members of the decisionmaking body." *Id.* at 267–68. Under *Arlington Heights*, a challenger need not "prove that the challenged action rested solely on . . . discriminatory purposes," or even that discrimination was "the dominant or primary" purpose. *Id.* at 265 (cleaned up). So long as "a discriminatory purpose has been a motivating factor in the decision," "judicial deference" to the political branch "is no longer justified." *Id.* at 265–66.

Applying these factors, multiple federal courts have held that laws (like the Act) that target transgender people amount to intentional discrimination, in violation of equal protection. *See, e.g.*, *Doe*, 115 F.4th at 1102–03 (applying *Arlington Heights* and affirming that an Arizona statute "was adopted for the purpose of excluding transgender girls from playing on girls' sports teams," amounting to an equal-protection violation); *see also Fowler*, 104 F.4th at 784–86 (applying *Arlington*

Heights and holding that plaintiffs plausibly alleged Oklahoma's birth-certificate-amendment ban was purposeful discrimination against transgender people); *Orr*, 2025 WL 1145271, at *12–14. A similar result is warranted here. *Skrmetti* expressly disclaimed addressing this issue. 145 S. Ct. at 1832.

First, it goes without saying that the Act disproportionately impacts transgender people. In fact, for the reasons explained above, *see supra* Argument II.A, the Act directly affects *only* transgender people. While this is not itself dispositive, it is salient evidence of discriminatory intent. *See Doe*, 115 F.4th at 1103–04, 1107.

Second, the "events leading up to" the Act, including its legislative history "and contemporary statements by members of the decisionmaking body," *Arlington Heights* 429 U.S. at 267–68, lend even more compelling support to the conclusion that the Act intentionally discriminates against transgender people. As explained above, Missouri legislators styled the Act as a response to "groomers" and 'quacks," "butcher[ing]" and "poison[ing]" children out of a "woke" desire for experimentation. *See supra* Argument II.B.2. Vitriolic comments like these—from Missouri's elected representatives—betray a purpose to

discriminate, according to *Arlington Heights*. *See Doe*, 115 F.4th at 1104 n.10 (summarizing the district court's finding of discriminatory purpose based in part on state legislators' contemporaneous comments, including about "allow[ing] transgenders [sic] to take over female sports"); *Fowler*, 104 F.4th at 787–88 (holding that allegations about the governor's statements, contemporaneous with the birth-certificate-amendment ban, supported an inference of discriminatory intent).

Given this evidence of discriminatory intent, this Court should not defer to the General Assembly or its assertion that the Act is necessary for the reasons defendants assert. *See Arlington Heights*, 429 U.S. at 265–66 (explaining that "judicial deference is no longer justified" whenever there is evidence that a discriminatory purpose was "a motivating factor in the decision").

This is especially true given the incongruity between defendants' purported justifications and the way the Act operates in the real world. *See supra* Argument II.B.3; *cf. Doe*, 115 F.4th at 1103 (rejecting the state's assertion of "competitive fairness" to support a transgender sports ban because of the poor fit between that asserted goal and the law's operation).

At bottom, the Act violates the Equal Protection Clause because it appears to have been enacted for the sole purpose of imposing a legal disability out of moral disapproval of transgender people. But even if the government also had more legitimate motivations for the Act, the relevant evidence also shows that purposeful discrimination was at least a substantial motivating factor in the Act's enactment, which renders the Act unconstitutional.

CONCLUSION

Transgender Missourians simply "ask for equal dignity in the eyes of the law. The Constitution grants them that right." *Obergefell v. Hodges*, 576 U.S. 664, 681 (2015). But for multiple reasons, the Act falls woefully short of Missouri's constitutional guarantee of equal protection. Missourians, including the families and individuals featured in this brief, deserve better. This Court should therefore reverse.

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Respectfully submitted,

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CERTIFCATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the limitations contained in Rule 84.06(b). Relying on the word count of Microsoft Word, the undersigned certifies that this brief contains a total of 12,060 words, excluding the cover, certificates required by Rule 84.06(c), and signature block.

/s/ Steven J. Alagna

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 8, 2025, I electronically filed the foregoing Brief of PROMO Missouri as Amicus Curiae in Support of Appellants with the Clerk of the Court using the Court's electronic filing system, which will send a notice of electronic filing to all counsel of record.

/s/ Steven J. Alagna