

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

L.W., <i>by and through parents and next</i>)	
<i>friends, Samantha Williams and Brian</i>)	
<i>Williams, et al.,</i>)	
)	
Plaintiffs,)	No. 3:23-cv-00376
)	JUDGE RICHARDSON
and)	JUDGE NEWBERN
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
JONATHAN SKRMETTI et al.,)	
)	
Defendants.)	

DEFENDANTS’ RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY

The Plaintiffs’ library of broken records continues to grow—each of them with a scratch right where the discussion of *Dobbs* is supposed to be. The permanent injunction decision in *Brandt v. Rutledge*, 2023 WL 4073727 (E.D. Ark. June 20), does not cite *Dobbs* a single time. Like Plaintiffs in this case, *Brandt* has no cogent rejoinder to the Supreme Court’s instruction that a State’s medical regulation “is not a sex-based classification and is thus not subject to the ‘heightened scrutiny’ that applies to such classifications” even if the regulated procedure is one “that only one sex can undergo.” *Dobbs*, 142 S.Ct. at 2245-46 (citing *Geduldig v. Aiello*, 417 U.S. 484, 496 (1974)). *Brandt* simply plays on repeat its pre-*Dobbs* Equal Protection analysis.

Brandt’s silence about *Dobbs* is all the more deafening because half of the non-recused judges of the en banc Eighth Circuit have already cited *Dobbs* to explain their skepticism that *Bostock*’s Title VII reasoning applies to the Equal Protection Clause, which “predates Title VII by

nearly a century.” *Brandt v. Rutledge*, 2022 WL 16957734, at *1 n.1 (8th Cir. Nov. 16) (Stras, J., joined by Gruender, Erickson, Grasz, Kobes, JJ., dissental) (quoting *Dobbs*, 142 S.Ct. at 2245-46, for the principle that “[t]he regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny”).

The Act challenged here equally protects Tennessee minors of both sexes. Rational-basis review applies, just as it governs “other health and safety measures.” *Dobbs*, 142 S.Ct. at 2246. This standard is “highly deferential” and “designed to respect the constitutional prerogatives of democratically accountable legislatures” rather than to “second-guess a state’s medical and scientific judgments,” as Plaintiffs mistakenly ask the Court to do for this medical regulation. *Bristol Reg’l Women’s Ctr., P.C. v. Slatery*, 7 F.4th 478, 483 (6th Cir. 2021) (en banc) (reversing decision of this Court permanently enjoining enforcement of Tennessee abortion regulation).

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2023, the undersigned filed the foregoing document via this Court’s electronic filing system, which sent notice of such filing to the following counsel of record:

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