

# WHOSE CHILDREN?

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## ABSTRACT

*Recent debates surrounding transgender children and the rights of their parents reveal a troubling development. When addressing state restrictions on vital medical care for transgender children, several courts have used possessive determiners, such as “its children” or “their children,” to describe the state’s relationship to these children. This language conveys subtle claims of state authority and control over children and a corresponding right of intervention in the parent-child relationship. This is neither syntactic phrasing nor grammatical framing; it is more. When courts allow states to act in support of “their children,” they blur the boundary between the state and parents.*

*This development is not unique to transgender children. Through restrictions on abortion and claims of fetal personhood, states have sought to assert authority and control over unborn children, with a corresponding decrease in the rights of women. In the most intimate realm of procreation and family life, the state is arrogating power at the expense of the individual.*

*While the use of pronouns to describe gender identity has been studied, other grammatical categories merit critical reflection in debates over transgender rights. Discussions about possessive determiners may seem pedantic, but these words convey perceptions about identity, authority, and control over self and family. This Essay translates the coded meaning in the language used to restrict medical care for transgender children and its implications for their parents. Possessive determiners assert a subtle power. Through them, the parents of transgender children are marginalized, and their children are purged from society. In contrast, favored families are celebrated, and their children are protected.*

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## INTRODUCTION

In recent years, the use of personal pronouns has generated significant controversy.<sup>1</sup> Whether referring to themselves as she, he, or they, many people announce their personal pronouns to both clarify their own gender identity and signal their solidarity with those individuals whose gender identity challenges extant orthodoxy.<sup>2</sup> These efforts have been met with disdain by those who see such efforts as performative at best or heretical at worst.<sup>3</sup> Regardless of one's position on the appropriate use of pronouns, this controversy reveals the power of language and grammar to influence public discourse and convey legal rights.<sup>4</sup>

1. Colin Wright, Opinion, *When Asked 'What Are Your Pronouns,' Don't Answer*, WALL ST. J. (Feb. 4, 2024, 2:32 PM), <https://www.wsj.com/articles/asked-your-pronouns-dont-answer-lgbtqia-sogie-gender-identity-nonbinary-transgender-trans-rights-sexism-misogyny-feminism-11643992762> [<https://perma.cc/4ERU-FR59>]; Kimberly Wehle, *He, She, They: The Pronoun Debate Will Likely Land at the Supreme Court*, POLITICO (Oct. 1, 2023, 7:00 AM), <https://www.politico.com/news/magazine/2023/10/01/pronouns-schools-supreme-court-00118832> [<https://perma.cc/53VA-F3Y5>]; John McWhorter, Opinion, *Up in Arms over a Pronoun*, N.Y. TIMES (Oct. 5, 2021), <https://www.nytimes.com/2021/10/05/opinion/gender-pronoun-they.html> [<https://perma.cc/JH8V-N2C3>]; see also JOHN MCWHORTER, PRONOUN TROUBLE: THE STORY OF US IN SEVEN LITTLE WORDS (2025) (offering a detailed study of how language and pronoun use has evolved in the English language).

2. BRAXTON PHOENIX STOCK, UNDERSTANDING GENDER IDENTITY: EXPLORE THE TRUE MEANING OF PRONOUNS AND GENDER DYSPHORIA, AND LEARN TO BE A MORE AUTHENTIC YOU (2023); STUART GETTY, HOW TO THEY/THEM: A VISUAL GUIDE TO NONBINARY PRONOUNS AND THE WORLD OF GENDER FLUIDITY (2020); Jessica A. Clarke, *They, Them, and Theirs*, 132 HARV. L. REV. 894 (2019). Other pronouns are also used, including ze, xe, ey, hir, and hen. See DENNIS BARON, WHAT'S YOUR PRONOUN? BEYOND HE & SHE (2020); Jessica Bennett, *She? Ze? They? What's in a Gender Pronoun*, N.Y. TIMES (Jan. 30, 2016), <https://www.nytimes.com/2016/01/31/fashion/pronoun-confusion-sexual-fluidity.html> [<https://perma.cc/9QYQ-C5B4>].

3. John McWhorter, Opinion, *The Tiniest Words Generate the Biggest Uproar*, N.Y. TIMES (June 27, 2024), <https://www.nytimes.com/2024/06/27/opinion/gender-neutral-pronouns-them.html> [<https://perma.cc/4RFF-B3W4>].

4. See generally Heidi K. Brown, *Get with the Pronoun*, 17 LEGAL COMM'N & RHETORIC 61 (2020); Patrick Barry, *The Infinite Power of Grammar*, 67 J. LEGAL EDUC. 853 (2018).

Debates surrounding transgender children and the rights of their parents have generated a less-recognized grammatical development.<sup>5</sup> When addressing state restrictions on vital medical care for transgender children, several courts have used possessive determiners, such as “*its* children” or “*their* children,” to describe the state’s relationship to these children.<sup>6</sup> Pronouns and possessive determiners are grammatical cousins. A possessive determiner expresses a personal relationship or connection to someone or something.<sup>7</sup> Like pronouns, they assert a subtle power that implies authority and control.<sup>8</sup> Consequently, in cases involving the rights of transgender children and their parents, the use of possessive determiners is not merely syntactic phrasing or grammatical framing; it is more. When courts allow states to act in support of “*their* children,” they blur the boundary between parental rights and state authority, extending the concept of *parens patriae* far beyond its historic role.<sup>9</sup> This grammatical development is not confined to transgender children. Through restrictions on abortion and claims of fetal personhood, states have sought to assert authority and control over unborn

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5. There is a complicated relationship between children’s rights, parental rights, and states’ rights. Clare Ryan, *Are Children’s Rights Enough?*, 72 AM. U. L. REV. 2075, 2083 (2023) (discussing the ongoing debate over the interaction between child, parental, and state rights); Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1456 (2018) (analyzing how courts and legislatures evolved in their treatment of children and their relationship to parental figures and the law); Pamela Laufer-Ukeles, *The Relational Rights of Children*, 48 CONN. L. REV. 741, 743–44 (2016) (addressing the tensions and intersections between children’s rights, parental rights, and the rights of the state). This complicated relationship extends to transgender children and their parents. See, e.g., Roy Abernathy, Note, *Seeking Remedies for LGBTQ Children from Destructive Parental Authority in the Era of Religious Freedom*, 26 WASH. & LEE J. CIV. RTS. & SOC. JUST. 625 (2020) (exploring the intersection of parental rights, children’s rights, and state’s rights in the context of religious freedom); Sonja Shield, *The Doctor Won’t See You Now: Rights of Transgender Adolescents to Sex Reassignment Treatment*, 31 N.Y.U. REV. L. & SOC. CHANGE 361 (2007) (addressing the tension between the rights of transgender children and informed consent laws).

6. See *infra* Part II.

7. JOHN EASTWOOD, OXFORD GUIDE TO ENGLISH GRAMMAR 213 (1994). Possessive determiners are also referred to as possessive adjectives. See generally C. Marshall Thatcher, *What Is “Eet”? A Proposal to Add a Series of Referent-Inclusive Third Person Singular Pronouns and Possessive Adjectives to the English Language for Use in Legal Drafting*, 59 S.D. L. REV. 79 (2014).

8. JAMES W. PENNEBAKER, THE SECRET LIFE OF PRONOUNS: WHAT OUR WORDS SAY ABOUT US, at ix (2011) (“Pronouns, articles, prepositions, and a handful of other small, stealthy words reveal parts of your personality, thinking style, emotional state, and connections with others. These words, typically called function words, account for less than one-tenth of 1 percent of your vocabulary but make up almost 60 percent of the words you use. Your brain is not wired to notice them but if you pay close attention, you will start to see their subtle power.” (footnote omitted)).

9. The concept of *parens patriae* (Latin for “parent of the state”) views the state as a parental figure with the responsibility to protect individuals that have limited capacity to care for themselves, including children. See *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600 (1982) (“*Parens patriae* means literally ‘parent of the country.’”). See generally Judith Areen, *Intervention Between Parent and Child: A Reappraisal of the State’s Role in Child Neglect and Abuse Cases*, 63 GEO. L.J. 887, 893–94 (1975).

children, with a corresponding decrease in the rights of women.<sup>10</sup> In the most intimate realm of procreation and family life, the state is arrogating power at the expense of the individual.<sup>11</sup>

While the use of pronouns to describe gender identity has been studied extensively, other grammatical categories merit critical reflection in debates over transgender rights.<sup>12</sup> Discussions about possessive determiners may seem pedantic, but these words reaffirm how language frames and informs legal arguments.<sup>13</sup> This Essay translates the coded language used to restrict medical care for transgender children and its implications for their parents.<sup>14</sup>

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10. Joshua J. Craddock, *Personhood After Dobbs*, 74 CATH. U. L. REV. 536 (2025); Sarah Corning, Note, *Recentering Pregnancy: A Response to Fetal Personhood*, 35 STAN. L. & POL'Y REV. 322, 323–24 (2024); Michele Goodwin, *If Embryos and Fetuses Have Rights*, 11 LAW & ETHICS HUM. RTS. 189, 190 (2017).

11. There is a clear connection between restrictions on abortion and transgender rights. See, e.g., Noa Ben-Asher & Margot J. Pollans, *Gender Regrets: Banning Abortion and Gender-Affirming Care*, 2024 UTAH L. REV. 763; Sabrina Talukder & Caleb Smith, *5 Connections Between Attacks on Abortion Care and Transgender Medical Care in Idaho Court Cases*, CTR. AM. PROG. (Apr. 17, 2024), <https://www.americanprogress.org/article/5-connections-between-attacks-on-abortion-care-and-transgender-medical-care-in-idaho-court-cases/> [<https://perma.cc/MAV9-C3L9>]; Rose Mackenzie & Arli Christian, *The Intertwined Future of Attacks on Abortion and Gender-Affirming Care*, ACLU (Jan. 18, 2023), <https://www.aclu.org/news/reproductive-freedom/the-future-attacks-abortion-gender-affirming-care-lgbtq-rights> [<https://perma.cc/X2R2-N4SK>]; Naomi Cahn, *The Political Language of Parental Rights: Abortion, Gender-Affirming Care, and Critical Race Theory*, 53 SETON HALL L. REV. 1443 (2023) (arguing how the rhetoric of parental rights has been used to override minor's access to abortion, gender-affirming care, and education on racism and gender identity).

12. See Ezra Graham Lintner, *To Each Their Own: Using Nonbinary Pronouns to Break Silence in the Legal Field*, 27 UCLA WOMEN'S L.J. 213 (2020).

13. Language and grammar are essential to the law as word and grammatical choices shape the framing of legal issues and arguments. See Janet Ainsworth, *Law and the Grammar of Judgment*, in MEANING AND POWER IN THE LANGUAGE OF LAW 259 (Janny H.C. Leung & Alan Durant eds., 2018); Robert C. Farrell, *Why Grammar Matters: Conjugating Verbs in Modern Legal Opinions*, 40 LOY. U. CHI. L.J. 1 (2008); see, e.g., Paula Abrams, *The Scarlet Letter: The Supreme Court and the Language of Abortion Stigma*, 19 MICH. J. GENDER & L. 293, 293–94 (2013) (“Why does the Supreme Court refer to the woman who is seeking an abortion as ‘mother’? Surely the definition has not escaped the attention of a Court that frequently relies on the dictionary to define important terms or principles. And why does the Court choose to describe the fetus as a child? What message does this language send about abortion and the woman who seeks an abortion?”).

14. In areas of social conflict, coded language is often used to support partisan positions. See, e.g., IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM & WRECKED THE MIDDLE CLASS* (2014) (addressing the use of coded language in racial politics). This phenomenon has long been found in debates surrounding the LGBTQ community. See, e.g., Amy Harmon, *How Trump Uses Language to Attack the Idea of Transgender Identity*, N.Y. TIMES (Feb. 11, 2025), <https://www.nytimes.com/2025/02/11/us/transgender-trump-executive-orders.html> [<https://perma.cc/4DFL-WLU7>] (describing how the Trump administration uses language to devalue and marginalize transgender people); Anthony Niedwiecki, *Save Our Children: Overcoming the Narrative That Gays and Lesbians Are Harmful to Children*, 21 DUKE J. GENDER L. & POL'Y 125 (2013) (discussing how critics of the LGBTQ community have long used coded language to challenge gay rights).

It also reveals a stark hypocrisy.<sup>15</sup> Through grammar, the parents of transgender children—their most powerful allies and advocates—are marginalized, and their children are purged from society.<sup>16</sup> Yet other family relationships—those that do not challenge tradition and the established order—are not subject to the same treatment.<sup>17</sup>

To assert that transgender children will be purged from society is a powerful statement.<sup>18</sup> Yet, it is an accurate description. Words of forced exclusion, including purge, erasure, ostracism, and segregation, are regularly used to describe the treatment and plight of transgender people, and with good cause.<sup>19</sup> Denying gender-affirming care to transgender children denies them essential healthcare.<sup>20</sup> It prevents them from fully

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15. Hila Keren, *Alito and Thomas Have Already Taken the Most-Contradictory Positions of the Supreme Court Term*, SLATE (Dec. 16, 2024, 5:40 AM), <https://slate.com/news-and-politics/2024/12/alito-thomas-supreme-court-term-hypocrisy.html> [<https://perma.cc/8SAZ-4MQK>]; Janelle Bouie, Opinion, *The Republican Party Says It Wants to Protect Children, but Not All Children*, N.Y. TIMES (Mar. 31, 2023), <https://www.nytimes.com/2023/03/31/opinion/protecting-children-republicans.html> [<https://perma.cc/U7V6-GFD3>].

16. See generally MARIE-AMÉLIE GEORGE, FAMILY MATTERS: QUEER HOUSEHOLDS AND THE HALF-CENTURY STRUGGLE FOR LEGAL RECOGNITION (2024) (describing the struggles of LGBTQ families to gain recognition and rights and the powerful role that parents played in the search for equality).

17. Scholars have described how “othering” often occurs in the realm of parental rights. See, e.g., Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. REV. 939, 941–47 (2023) (book review) (describing how parental rights “don’t exist for these parents”).

18. Strategic language choice has always been a key feature in battles over family life and procreation. L.H. LARUE, CONSTITUTIONAL LAW AS FICTION: NARRATIVE IN THE RHETORIC OF AUTHORITY 6, 11 (1995); CELESTE MICHELLE CONDIT, DECODING ABORTION RHETORIC: COMMUNICATING SOCIAL CHANGE 4, 14 (1990); see also Grace Segers, *The Language of Abortion Is Going Through a Seismic Overhaul*, NEW REPUBLIC (Sept. 25, 2023), <https://newrepublic.com/article/175712/language-abortion-going-seismic-overhaul> [<https://perma.cc/28TX-BHLK>] (describing how both sides of the abortion debate are changing their language on abortion).

19. See, e.g., Scott Skinner-Thompson, *Transgender Disenfranchisement*, 102 WASH. U. L. REV. 1999 (2025); Danieli Evans, *Institutionalized Ostracism*, 29 MICH. J. RACE & L. 155 (2025); C.Q. Quinan, *From Criminalization to Erasure: Project 2025 and Anti-Trans Legislation in the US*, CRIME, MEDIA, CULTURE (Jan. 9, 2025), <https://journals.sagepub.com/doi/10.1177/17416590241312149> [<https://perma.cc/TAT7-9RQW>]; Zee Scout, *Trans Erasure, Intersex Manipulation: The First Amendment and Other Reflections from Women in Struggle v. Bain*, 47 HARV. J.L. & GENDER 111 (2024); Alex Verman & Sean Rehaag, *Transgender Erasure: Barriers Facing Transgender Refugees in Canada*, 69 MCGILL L.J. 49 (2024); Federica Coppola, *Gender Identity in the Era of Mass Incarceration: The Cruel and Unusual Segregation of Trans People in the United States*, 21 INT’L J. CONST. L. 649 (2023). The use of such terminology is not surprising. Individuals who do not conform to traditional gender and sexuality norms have long been subject to marginalization and persecution in the United States. See MARGOT CANADAY, THE STRAIGHT STATE: SEXUALITY AND CITIZENSHIP IN TWENTIETH-CENTURY AMERICA (2009); DAVID K. JOHNSON, THE LAVENDER SCARE: THE COLD WAR PERSECUTION OF GAYS AND LESBIANS IN THE FEDERAL GOVERNMENT (2004).

20. Transgender children are consistently treated differently than other children, even those who also require gender-affirming care. Ido Katri & Maayan Sudai, *Intersex, Trans, and the Irrationality of Gender-Affirming-Care Bans*, 134 YALE L.J. 1521 (2025) (describing how intersex children who receive gender-affirming care are treated differently from transgender children). Such disparate treatment has existed for many years. See, e.g., Jordan Blair Woods, *Bigotry, Civil Rights, and LGBTQ Child Welfare*,

transitioning.<sup>21</sup> These actions are reinforced by efforts to end recognition of transgender people, thereby ending their existence and removing them from society.<sup>22</sup>

Part I of this Essay introduces parental rights through the lens of *Meyer v. Nebraska*, a landmark Supreme Court decision on the right of parents to control the upbringing of their children and the corresponding rejection of the state's purported authority to override this right.<sup>23</sup> *Meyer* is widely regarded as the foundation of substantive due process.<sup>24</sup> Its approach to liberty and personhood has been used to recognize and protect a multitude of unenumerated rights, including the right to keep families together, the right to have children, the right to contraception and, for a moment in time,

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120 MICH. L. REV. 1011 (2022) (book review) (describing the disparate treatment of LGBTQ families in family courts); Sonia K. Katyal & Ilona M. Turner, *Transparenthood*, 117 MICH. L. REV. 1593, 1630 (2019) (addressing the disparate treatment of transgender parents in family law). Marginalized communities have long been subject to disparate treatment with respect to family relationships. See S. Lisa Washington, Essay, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097 (2022) (describing how marginalized communities are consistently treated differently in the family welfare system).

21. The right to transition includes the right to detransition. Kinnon R. MacKinnon, Opinion, *The Truth About Detransitioning*, N.Y. TIMES (Aug. 10, 2025), <https://www.nytimes.com/2025/08/10/opinion/trans-health-care-detransitioning.html> [<https://perma.cc/4ZLC-N8GD>].

22. Jennifer Finney Boylan, Opinion, *I'm a Transgender Woman. This Is Not the Metamorphosis I Was Expecting*, N.Y. TIMES (Feb. 12, 2025), <https://www.nytimes.com/2025/02/12/opinion/transgender-trump-america.html> [<https://perma.cc/F6M3-SXBR>] (“The point, it seems, is to make transgender people’s lives as difficult as possible. The point is to isolate our small, vulnerable, maligned community and mock us for our difference. The point is to erase us from the public sphere.”); see also Mariah Timms & Laura Kusisto, *Trump’s Lightning-Speed Rollback of Transgender Rights Sparks Lawsuits*, WALL ST. J. (Feb. 5, 2025, 5:11 PM), <https://www.wsj.com/us-news/law/trumps-lightning-speed-rollback-of-transgender-rights-sparks-lawsuits-53f116a5> [<https://perma.cc/6YVF-5NSG>]; Nathaniel Frank, Opinion, *What the Science Says About ‘Don’t Say Gay’ and Young People*, N.Y. TIMES (Apr. 20, 2023), <https://www.nytimes.com/2023/04/20/opinion/dont-say-gay-bill-florida.html> [<https://perma.cc/36UZ-EFSA>]; Adam Nagourney & Jeremy W. Peters, *How a Campaign Against Transgender Rights Mobilized Conservatives*, N.Y. TIMES (Apr. 17, 2023), <https://www.nytimes.com/2023/04/16/us/politics/transgender-conservative-campaign.html> [<https://perma.cc/HR3V-F65A>]; Allison Durkee, *Texas Gov. Abbott’s Campaign Calls Transgender ‘Child Abuse’ Rule a Political ‘Winner’*, FORBES (Mar. 4, 2022, 5:05 AM), <https://www.forbes.com/sites/alisondurkee/2022/03/02/texas-gov-abbotts-campaign-calls-transgender-child-abuse-rule-a-political-winner/> [<https://perma.cc/4SGU-RBBA>]; Erica L. Green, Katie Benner & Robert Pear, *‘Transgender’ Could Be Defined Out of Existence Under Trump Administration*, N.Y. TIMES (Oct. 21, 2018), <https://www.nytimes.com/2018/10/21/us/politics/transgender-trump-administration-sex-definition.html> [<https://perma.cc/NH3J-9HQA>].

23. *Meyer v. Nebraska*, 262 U.S. 390 (1923). As framed by *Meyer*, parental rights have played an integral role in debates surrounding gender-affirming care for transgender children. See Amy Vedder, *Not a Mere Creature of the State: Protecting Parental Rights in the Era of Anti-Trans Legislation*, 19 HARV. L. & POL’Y REV. 279 (2024). But see Elizabeth Bartholet, *The Mixed Blessing/Curse of the Meyer-Pierce Legacy*, 26 J. CONTEMP. LEGAL ISSUES 99 (2025) (describing *Meyer*’s mixed legacy); Barbara Bennet Woodhouse, “*Who Owns the Child?*”: *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995 (1992) (offering a critical discussion of *Meyer*’s approach to the parental-child relationship).

24. WILLIAM D. ARAIZA, UNDERSTANDING CONSTITUTIONAL LAW 270 (6th ed. 2025); ERWIN CHERMERINSKY, CONSTITUTIONAL LAW 827–29 (7th ed. 2024).

the right to abortion.<sup>25</sup> Part II then examines the rise of the parental state through the treatment of transgender children in both state legislation and federal litigation.<sup>26</sup> When addressing state restrictions on medical care for transgender children, several courts have used possessive determiners, such as “*its* children” or “*their* children,” to address the state’s relationship with transgender children.<sup>27</sup> Politicians make similar arguments about protecting “*our* children.”<sup>28</sup> This language conveys subtle claims of state authority and control over these children as well as a corresponding right of intervention in the parent-child relationship.<sup>29</sup> The Supreme Court’s recent decision in *United States v. Skrmetti* further marginalizes transgender children and their families.<sup>30</sup> Part III offers a troubling comparison—the alternate vision of the state and the parent-child relationship that the Supreme Court considered and rejected in *Meyer*, that of Plato’s *Republic*.<sup>31</sup> In describing the ideal commonwealth, Plato proposed a community where the parent-child

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25. See, e.g., *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 883 (1992); *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (right to keep a family unit together); *Stanley v. Illinois*, 405 U.S. 645 (1972) (right of parents to custody of their children); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942) (right to have children). Some of these fundamental rights have been recognized and protected under the Due Process Clause or the Equal Protection Clause.

26. Fear seems to motivate state bans on gender-affirming care for transgender children. See generally Anthony Michael Kreis, *Patterns of Panic*, 68 ST. LOUIS U. L.J. 905 (2024); Maggie Crain, Note, *Fear and Loathing in Animus: Moral Panic, the Contextualizing Tool for Challenging Gender-Affirming Care Bans*, 39 WISC. J.L. GENDER & SOC’Y 21 (2024); Sohum Pal, Note, *Countering a Phobic Frame: Understanding and Addressing Gender-Affirming Care Bans*, 124 COLUM. L. REV. 2371 (2024); S. Lisa Washington, *Weaponizing Fear*, 132 YALE L.J.F. 163 (2022); Clifford J. Rosky, *Fear of the Queer Child*, 61 BUFF. L. REV. 607 (2013).

27. See *infra* Part II.

28. Alex Seitz-Wald & Jo Yurcaba, *Trump Vows to ‘Stop’ Gender-Affirming Care for Minors if Re-Elected President*, NBC NEWS (Jan. 31, 2023, 2:27 PM), <https://www.nbcnews.com/politics/2024-election/trump-vows-stop-gender-affirming-care-minors-re-elected-president-rcna68461> [https://perma.cc/3ULR-7REJ] (“The left-wing gender insanity being pushed at *our children* is an act of child abuse.” (emphasis added)). There is a long history of using the protection of children as a rhetorical device against the LGBTQ community. See Nagourney & Peters, *supra* note 22. In response, the LGBTQ community has developed its own campaign to target these efforts. See GLAAD, *Protect This Kid*, YOUTUBE (Apr. 24, 2024), <https://www.youtube.com/watch?v=3uV50clsSDY> [https://perma.cc/3CA7-URBD].

29. Possessive determiners have been the subject of extensive analysis by linguists. See Johan Rooryck, *Reconsidering Inalienable Possession with Definite Determiners in French*, 8 ISOGLOSS: OPEN J. ROMANCE LING., issue no. 1, 2022, art. no. 5, <https://doi.org/10.5565/rev/isogloss.233> [https://perma.cc/9Z4Z-RYKU] (examining the use of determiners in French); Stanley Peters & Dag Westerstahl, *The Semantics of Possessives*, 89 LANGUAGE 713 (2013) (discussing how possessive determiners operate within language).

30. 145 S. Ct. 1816 (2025).

31. See *infra* Part III. *Meyer*’s significance to these modern debates has been recognized by several scholars. See, e.g., Maimon Schwarzschild, Introduction, *Educational Choice: The Legacy of Meyer v. Nebraska and Pierce v. Society of Sisters*, 26 J. CONTEMP. LEGAL ISSUES 1 (2025) (describing symposium devoted to addressing the modern legacy of *Meyer* and its implications on current debates surrounding education and parental rights).

relationship is severed, and children are a shared responsibility.<sup>32</sup> In this community, all citizens would refer to children as “mine,” and no one would claim a relationship with *their* child.<sup>33</sup> Even the ancients recognized the power of grammar to control human behavior.<sup>34</sup> To highlight the disparate ways in which modern families are now treated, Part IV examines *Mahmoud v. Taylor*, a case that was decided only days after *Skrmetti*.<sup>35</sup> While *Skrmetti* ignores parents and families, *Mahmoud* celebrates them. This disparate treatment cannot be explained solely by the nature of the affected constitutional rights.

Finally, Part V of this Essay argues that Plato’s vision of the ideal commonwealth is now rising on the battlefields of the culture wars.<sup>36</sup> Nationally, transgender children and their families are under siege by a Supreme Court that is skeptical of substantive due process and the corresponding rights it has protected.<sup>37</sup> Locally, they are threatened by states claiming greater authority and control over transgender children and the right to intervene in the parent-child relationship.<sup>38</sup> The language used in the culture wars and their legal battlefields reflects conflicting perceptions about identity, authority, and control over self and family.<sup>39</sup>

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32. PLATO, *THE REPUBLIC AND OTHER WORKS* 147, 151 (Benjamin Jowett trans., Doubleday 1989) (1871).

33. *Id.* at 153.

34. Scholars have identified how Plato’s writings inform current debates on the role of education in the modern state. See AMY GUTMANN, *DEMOCRATIC EDUCATION* 25–26 (1987) (describing Plato’s vision of education). Building on Gutman’s work, Professor Kristine Bowman examined the growing parental rights movement in education. Kristine L. Bowman, *The New Parents’ Rights Movement, Education, and Equality*, 91 U. CHI. L. REV. 399, 403–04 (2024); see also Anne C. Dailey & Laura A. Rosenbury, *The New Parental Rights*, 71 DUKE L.J. 75 (2021).

35. 145 S. Ct. 2323 (2025).

36. See, e.g., Ira C. Lupu, *The Centennial of Meyer and Pierce: Parents’ Rights, Gender-Affirming Care, and Issues in Education*, 26 J. CONTEMP. LEGAL ISSUES 147, 238 (2025); Suzanne E. Eckes & Maggie L. Piano, *Recent Legal Challenges Involving a Child’s Gender Identity in School: An Exploration of the “Fundamental” Rights of Parents*, 38 WISC. J.L. GENDER & SOC’Y 36, 40 (2023).

37. See generally Erwin Chemerinsky, *The Future of Substantive Due Process: What Are the Stakes?*, 76 SMU L. REV. 427 (2023); Reva B. Siegel, *The History of History and Tradition: The Roots of Dobbs’s Method (and Originalism) in the Defense of Segregation*, 133 YALE L.J.F. 99 (2023).

38. The parent-child relationship is addressed and defended by advocates who both support and oppose state restrictions on access to abortion, gender-affirming care, and even school curriculums. See *infra* notes 63–67.

39. Adam Liptak, *Supreme Court Returns to a Culture War Battleground: Transgender Rights*, N.Y. TIMES (Dec. 3, 2024), <https://www.nytimes.com/2024/12/03/us/supreme-court-transgender-rights-hearing.html> [<https://perma.cc/73FE-VEKK>]; Hannah Natanson & Moriah Balingit, *Caught in the Culture Wars, Teachers Are Being Forced from Their Jobs*, WASH. POST (June 16, 2022), <https://www.washingtonpost.com/education/2022/06/16/teacher-resignations-firings-culture-wars/> [<https://perma.cc/H7Q8-ME5E>].

## I. MEYER V. NEBRASKA AS LIBERAL PAST

It was soon after the Great War ended that nativist legislation regulating education and foreign language instruction began appearing throughout the United States.<sup>40</sup> In response to the defeat of Germany and the other Central Powers, many states began adopting legislation to limit the purported threat of foreign influences in their territory, including foreign language instruction.<sup>41</sup> On April 9, 1919, the Nebraska legislature approved “An Act Relating to the Teaching of Foreign Languages in the State of Nebraska.”<sup>42</sup> Pursuant to the Act, “[n]o person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language then [sic] the English language.”<sup>43</sup> The prohibition remained in effect until “a pupil shall have attained and successfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.”<sup>44</sup> Individuals who violated the Act would be subject to fines between \$25 and \$100 or confinement “in the county jail for any period not exceeding thirty days for each offense.”<sup>45</sup> Similar legislation was passed in over twenty states.<sup>46</sup>

The Nebraska law was soon applied to prosecute Robert T. Meyer, a teacher at a Lutheran parochial school who was charged with teaching German to children.<sup>47</sup> Meyer was convicted and fined \$25. His conviction was upheld by the Nebraska Supreme Court, which found the statute to be a valid exercise of the state’s police power.<sup>48</sup> According to the court, the state legislature “had seen the baneful effects of permitting foreigners, who had taken residence in this country, to rear and educate their children in the

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40. Michael Bindas, *The Once and Future Promise of Religious Schools for Poor and Minority Students*, 132 YALE L.J.F. 529, 544 (2022); William G. Ross, *A Judicial Janus: Meyer v. Nebraska in Historical Perspective*, 57 U. CIN. L. REV. 125, 126–27 (1988).

41. William G. Ross, *A Century of Meyer v. Nebraska: The SCOTUS Case That Defined Personal Liberties*, JURISTNEWS (June 2, 2023, 9:08 AM), <https://www.jurist.org/commentary/2023/06/meyer-v-nebraska/> [<https://perma.cc/G7ZY-9BUF>]; Ross Benes, *From a Small Rural Schoolhouse, One Teacher Challenged Nativist Attacks Against Immigration*, SMITHSONIAN MAG. (Jan. 14, 2021), <https://www.smithsonianmag.com/history/small-rural-schoolhouse-one-teacher-challenged-nativist-attacks-against-immigration-180976757/> [<https://perma.cc/B4E7-THVY>].

42. 1919 Neb. Laws, ch. 249.

43. *Id.* § 1.

44. *Id.* § 2.

45. *Id.* § 3.

46. Frederick C. Luebke, *Legal Restrictions on Foreign Languages in the Great Plains States, 1917–1923*, in LANGUAGES IN CONFLICT: LINGUISTIC ACCULTURATION ON THE GREAT PLAINS 1, 11 (Paul Schach ed., 1980).

47. See generally Comment, *Constitutional Law: Personal Liberty: Includes the Right to Teach Foreign Languages in Private Schools*, 12 CALIF. L. REV. 136 (1924).

48. Meyer v. State, 187 N.W. 100, 102 (Neb. 1922).

language of their native land.”<sup>49</sup> Teaching children in “the language of the country of their parents . . . would educate them so that they must always think in that language, and, as a consequence, [parents would] naturally inculcate in them the ideas and sentiments foreign to the best interests of this country.”<sup>50</sup>

In *Meyer v. Nebraska*, the U.S. Supreme Court reversed the state court’s decision and struck down Meyer’s conviction.<sup>51</sup> Writing for the majority, Justice James McReynolds offered one of the first applications of substantive due process emanating from the Due Process Clause of the Fourteenth Amendment.<sup>52</sup> The protections of due process, according to Justice McReynolds, extend beyond “freedom from bodily restraint” and include:

the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.<sup>53</sup>

Relying on this expansive view of the Due Process Clause, the Court found that the “acquisition of knowledge” and education were “matters of supreme importance which should be diligently promoted.”<sup>54</sup> While states had a right to “improve the quality” of their citizens, “the individual has certain fundamental rights which must be respected.”<sup>55</sup> Therefore, the right of parents to determine the educational journey of their children and the right of teachers to provide such an education is “within the liberty of the [Fourteenth] Amendment.”<sup>56</sup>

The principles established in *Meyer* were immediately affirmed by the Supreme Court in *Bartels v. Iowa*, a consolidated case involving similar

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49. *Id.*

50. *Id.*

51. *Meyer v. Nebraska*, 262 U.S. 390 (1923). Justices Holmes and Sutherland dissented without providing an explanation for their decision. However, their reasons for dissenting were explained in *Bartels v. Iowa*, which was decided in the same term. *See infra* note 57.

52. In support of the Court’s interpretation of the Due Process Clause, Justice McReynolds cited to numerous decisions, from the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873) to *Lochner v. New York*, 198 U.S. 45 (1905). *Meyer*, 262 U.S. at 399.

53. *Meyer*, 262 U.S. at 399.

54. *Id.* at 400.

55. *Id.* at 401.

56. *Id.* at 400.

state laws restricting foreign language instruction in Iowa and Ohio.<sup>57</sup> Relying on its decision in *Meyer*, the Court struck down state court convictions in both cases.<sup>58</sup> The following year, the Court again reaffirmed *Meyer* in *Pierce v. Society of Sisters*, which involved an Oregon statute that required all children to attend public schools despite their parents' preferences.<sup>59</sup> In *Pierce*, the Court reiterated that the Due Process Clause limits the ability of states to unreasonably interfere "with the liberty of parents and guardians to direct the upbringing and education of children under their control."<sup>60</sup> According to the Court, "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."<sup>61</sup>

*Meyer* and *Pierce* serve as the foundation for substantive due process.<sup>62</sup> These cases established the constitutional right of parents to control the upbringing of their children. While states have long recognized their unique role and responsibility in protecting vulnerable individuals, this constitutional principle of due process remained unchallenged for a century.

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57. *Bartels v. Iowa*, 262 U.S. 404 (1923). In *Bartels*, the Court also considered and rejected a revised version of the Nebraska state law that was found unconstitutional in *Meyer v. Nebraska*. Justices Holmes and Sutherland dissented from the Court's opinion. In explaining his dissent, Justice Holmes argued that the legislation was not unreasonable and, therefore, states could adopt such laws without violating the Constitution. *Id.* at 412 (Holmes, J., dissenting).

58. *Id.* at 409 (majority opinion).

59. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). Reflecting its nativist and exclusionary origins, the law was adopted with the strong support of the Ku Klux Klan. Paula Abrams, *The Little Red Schoolhouse: Pierce, State Monopoly of Education and the Politics of Intolerance*, 20 CONST. COMMENT. 61, 66–70 (2003).

60. *Pierce*, 268 U.S. at 534–35.

61. *Id.*; see also *Farrington v. Tokushige*, 273 U.S. 284 (1927) (holding that a statute prohibiting the teaching of foreign languages without a permit violated the Due Process Clause).

62. See generally Michael Bindas, *Meyer, Pierce, and Everything After*, 26 J. CONTEMP. LEGAL ISSUES 281 (2025) (describing the approach courts have taken regarding substantive due process in the wake of *Meyer* and *Pierce*). While *Meyer* and *Pierce* have been distinguished on several occasions, they have never been overruled. See, e.g., *Santosky v. Kramer*, 455 U.S. 745 (1982) (due process requires that a state must support allegations of child neglect by clear and convincing evidence before it can terminate parental rights); *Parham v. J.R.*, 442 U.S. 584 (1979) (due process requires that a parent's decision to admit a child for treatment to a state mental hospital requires an inquiry before a neutral factfinder); *Quilloin v. Walcott*, 434 U.S. 246 (1978) (due process is not violated by application of the "best interests of the child standard"); *Prince v. Massachusetts*, 321 U.S. 158 (1944) (rights of parenthood are not beyond limitation).

## II. THE CURRENT FIGHT OVER TRANSGENDER CHILDREN

In debates over transgender rights, parents have relied upon constitutional law in different ways.<sup>63</sup> Some parents argue that the Constitution protects their right to reject gender-affirming care for their children or even recognition of their children's preferred gender designation.<sup>64</sup> Other parents assert that the Constitution protects their right to provide gender-affirming care for their children.<sup>65</sup> While both groups of parents seek to protect their children, those who seek gender-affirming care for their transgender children are treated differently.<sup>66</sup> Even when the interests of these children and their parents align, the courts still do not recognize their rights.<sup>67</sup> Their voices are ignored.<sup>68</sup>

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63. See generally Katie Eyer, *Anti-Transgender Constitutional Law*, 77 VAND. L. REV. 1113 (2024); Scott Skinner-Thompson, *Trans Animus*, 65 B.C. L. REV. 965 (2024). Some scholars argue that parental rights should not be the focal point in cases involving children's rights. See, e.g., Catherine E. Smith, Keynote Speech, "Children's Equality Law" in the Age of Parents' Rights, 71 U. KAN. L. REV. 533 (2023); Alicia Ouellette, *Shaping Parental Authority over Children's Bodies*, 85 IND. L.J. 955 (2010).

64. Eyer, *supra* note 63, at 1152–54; see also Skinner-Thompson, *supra* note 63, at 992–93, 1003–04; cf. *Doe v. Manchester Sch. Dist.*, 324 A.3d 921 (N.H. 2024) (New Hampshire Supreme Court ruling that school policy prohibiting teachers from disclosing a student's transgender status to their parent did not violate a fundamental right under state law).

65. Megan Medlicott, Note, *A Parent's Right to Obtain Puberty Blockers for Their Child*, 56 CONN. L. REV. 301, 323–25 (2023); Note, *Outlawing Trans Youth: State Legislatures and the Battle over Gender-Affirming Healthcare for Minors*, 134 HARV. L. REV. 2163, 2183–85 (2021).

66. Apart from the Due Process and Equal Protection Clauses, challenges to laws that prohibit gender-affirming care can also be made under the Free Exercise Clause of the First Amendment. See generally Mary Borchers, Note, *The Free Exercise Clause in Transition: Examining Religious Challenges to State Bans on Gender-Affirming Care*, 112 GEO. L.J. 639 (2024).

67. Lois A. Weithorn, *The Intrusive State: Restrictions on Gender-Affirming Healthcare for Minors, Exceptions to the Doctrine of Parental Consent, and Reliance on Science and Medical Expertise*, 75 U.C. L.J. 713, 758 (2024) (arguing that *parens patriae* authority is inapposite when parents and their children share the same interests). See generally Stephanie L. Tang, *Best Interests of the Child and the Expanding Family*, 14 U.C. IRVINE L. REV. 263 (2024); Elizabeth S. Scott & Robert E. Emery, *Gender Politics and Child Custody: The Puzzling Persistence of the Best-Interests*, 77 LAW & CONTEMP. PROBS. 69 (2014); cf. David Alan Perkiss, *Boy or Girl: Who Gets to Decide? Gender-Nonconforming Children in Child Custody Cases*, 25 HASTINGS WOMEN'S L.J. 57 (2014).

68. For these reasons, the arguments presented in this Essay do not apply with full force in cases where the interests of parent and child are not aligned. This dynamic is evident in cases involving "conversion therapy," where parents seek to change the sexual orientation or gender expression of their children, often without their consent. See generally Jennifer Levi & Kevin Barry, "Made to Feel Broken": *Ending Conversion Practices and Saving Transgender Lives*, 136 HARV. L. REV. 1112 (2023) (reviewing FLORENCE ASHLEY, *BANNING TRANSGENDER CONVERSION PRACTICES: A LEGAL AND POLICY ANALYSIS* (2022)); Marie-Amélie George, *Expressive Ends: Understanding Conversion Therapy Bans*, 68 ALA. L. REV. 793 (2017). Several states have banned conversion therapy, although these bans have been subject to constitutional challenges. See Cameron J. Rachford, Note, *Botched Bans: Analyzing Conversion Therapy Bans After a Decade of Legal Challenges*, 99 IND. L.J. 1403 (2024); Jordan Hutt, Note, *Anything but Proudful: Free Speech and Conversion Therapy Bans, State-Federal Action Plans, and Rooting Out Medical Fraud*, 92 FORDHAM L. REV. 225 (2023).

### A. State Legislation and Federal Litigation

Arkansas was the first state to adopt legislation limiting gender-affirming care for transgender children.<sup>69</sup> Enacted in 2021, the law prohibited several forms of medical care, including hormone-replacement therapy and puberty blockers.<sup>70</sup> While the Arkansas legislature indicated it had a compelling interest in protecting vulnerable children, the word “parent” is not mentioned in the legislative findings.<sup>71</sup> Subsequently, twenty-five other states enacted similar restrictions on gender-affirming care for transgender children.<sup>72</sup>

In 2023, Tennessee enacted a law regulating gender-affirming care for children with gender dysphoria.<sup>73</sup> The statute banned certain medical procedures, including the prescription of puberty blockers and hormone therapy, for minors seeking to alter their appearance or validate their gender identity if it was inconsistent with their biological sex.<sup>74</sup> The law indicated that its purpose was to “encourag[e] minors to appreciate their sex” and to ban treatments “that might encourage minors to become disdainful of their sex.”<sup>75</sup> Despite indicating it was taking action “to protect the health and welfare of minors,” the Tennessee legislature made no reference to parents in its legislative findings justifying the law.<sup>76</sup>

Soon after the law was adopted, several groups of transgender minors and their parents filed federal lawsuits challenging the constitutionality of

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69. ARK. CODE ANN. §§ 20-9-1501 to 20-9-1504 (West 2025).

70. *Id.* §§ 20-9-1501 to 20-9-1502.

71. An Act to Create the Arkansas Save Adolescents from Experimentation (Safe) Act; and For Other Purposes § 2, H.B. 1570, 93d Gen. Assemb., Reg. Sess. (Ark. 2021).

72. Lindsay Dawson & Laurie Sobel, *What to Know Ahead of the Supreme Court Case on Youth Access to Gender Affirming Care*, KFF (Nov. 26, 2024), <https://www.kff.org/other/issue-brief/what-to-know-ahead-of-the-supreme-court-case-on-youth-access-to-gender-affirming-care/#> [<https://perma.cc/6XFM-Q8QG>]; Lindsey Dawson & Anna Rouw, *Half of All U.S. States Limit or Prohibit Youth Access to Gender Affirming Care*, KFF (May 29, 2024), <https://www.kff.org/other/issue-brief/half-of-all-u-s-states-limit-or-prohibit-youth-access-to-gender-affirming-care/> [<https://perma.cc/ZU8H-B67B>]; see also Lewis A. Grossman, *Criminalizing Transgender Care*, 110 IOWA L. REV. 281, 283–84 (2024) (describing how several states have adopted legislation limiting gender-affirming care for transgender children).

73. TENN. CODE ANN. §§ 68-33-101 to 68-33-110 (West 2025). Gender dysphoria is a medical condition caused by the physical and mental incongruence between an individual’s biological sex and their gender identity. AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 513 (5th ed., text rev. 2022). It can cause significant emotional harm and can lead to depression and suicide.

74. *Id.* §§ 68-33-103 to 68-33-104.

75. *Id.* § 68-33-101(m).

76. *Id.* § 68-33-101(a). There is, however, a notable exception in the law. While the interests of parents who seek to support their children through gender-affirming care are not protected, the interests of parents who oppose such care are recognized. Tennessee established a cause of action for parents against a healthcare provider or any other person who provides gender-affirming care in violation of Tennessee law. *Id.* § 68-33-105. By its terms, the statute appears to allow one parent to sue another parent if they disagree about their child’s care.

the law on due process and equal protection grounds.<sup>77</sup> The district court granted a preliminary injunction to suspend the law's implementation.<sup>78</sup> However, the Sixth Circuit issued an emergency stay of the district court's injunction pending the appeal.<sup>79</sup> In describing the right of Tennessee to impose such restrictions, the Sixth Circuit explained that "[t]he State plainly has authority, in truth a responsibility, to look after the health and safety of *its children*."<sup>80</sup> To be clear, the Sixth Circuit's language was referring to the affected children as *Tennessee's* children. The Sixth Circuit reiterated this framing when it indicated that transgender medical care was an "area of unfolding medical and policy debate."<sup>81</sup> Accordingly, "Tennessee could rationally take the side of caution before permitting irreversible medical treatments of *its children*."<sup>82</sup>

Later in the opinion, the Sixth Circuit again used this phrasing in rejecting the request for a preliminary injunction during the pendency of the appeal: "If the injunction remains in place during the appeal, Tennessee will suffer irreparable harm from its inability to enforce the will of its legislature, to further the public-health considerations undergirding the law, and to avoid irreversible health risks to *its children*."<sup>83</sup> And finally, the Sixth Circuit explained that its ruling was in the public interest: "Tennessee's interests in applying the law to its residents and in being permitted to protect *its children* from health risks weigh heavily in favor of the State at this juncture."<sup>84</sup>

Two months later, the Sixth Circuit affirmed its decision in a consolidated case involving similar statutes passed by Tennessee and Kentucky.<sup>85</sup> In a 2-1 ruling, the majority concluded that the plaintiffs were unlikely to establish a due process violation because "[t]here is a long tradition of permitting state governments to regulate medical treatments for adults and children" and "parents do not have a constitutional right to obtain reasonably banned treatments for their children."<sup>86</sup> While the majority reviewed several cases on substantive due process, it never cited *Meyer* or

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77. Press Release, American Civil Liberties Union, LGBTQ Advocates Sue Tennessee to Block Dangerous Transgender Healthcare Ban (Apr. 20, 2023), <https://www.aclu.org/press-releases/lgbtq-advocates-sue-tennessee-to-block-dangerous-transgender-healthcare-ban> [<https://perma.cc/E39T-3R32>].

78. L.W. *ex rel.* Williams v. Skrametti, 679 F. Supp. 3d 668 (M.D. Tenn. 2023).

79. L.W. *ex rel.* Williams v. Skrametti (*Skrametti I*), 73 F.4th 408 (6th Cir. 2023). Similar issues were raised in a separate case arising out of Kentucky. Doe 1 v. Thornbury, 75 F.4th 655 (6th Cir. 2023) (*per curiam*).

80. *Skrametti I*, 73 F.4th at 419 (emphasis added).

81. *Id.*

82. *Id.* (emphasis added).

83. *Id.* at 421 (emphasis added).

84. *Id.* at 421–22 (emphasis added).

85. L.W. *ex rel.* Williams v. Skrametti (*Skrametti II*), 83 F.4th 460 (6th Cir. 2023).

86. *Id.* at 474–75. The Sixth Circuit also dismissed an equal protection challenge. *Id.* at 479.

*Pierce* in its analysis.<sup>87</sup> It simply ignored these landmark cases.<sup>88</sup> The majority found that preventing the laws from entering into effect would harm state interests and the public interest. “If the injunction remain[ed] in place,” the court noted, “Tennessee and Kentucky will suffer harm from their inability to enforce the will of their legislatures, to further the public-health considerations undergirding the laws, and to avoid health risks to *their children*.”<sup>89</sup> Similarly, the public interest also weighed in favor of allowing the states “to protect *their children* from health risks . . . .”<sup>90</sup> Thus, the court reversed the preliminary injunctions, thereby allowing the laws to be enforced.<sup>91</sup>

The Sixth Circuit’s approach to transgender children and the parent-child relationship is not unique. *Doe v. Surgeon General* concerned Florida legislation prohibiting “sex-reassignment prescriptions and procedures for patients younger than 18 years of age.”<sup>92</sup> While a federal district court enjoined the state from enforcing the statute, the Eleventh Circuit stayed the enforcement of the injunction pending a full hearing on the merits of the lawsuit.<sup>93</sup> In assessing whether injunctive relief was warranted, the Eleventh Circuit found that the state had a significant interest in applying the statute to protect children. Quoting from *Skrmetti I*, the court indicated that “Florida ‘will suffer irreparable harm from its inability to enforce the will of its legislature, to further the public-health considerations undergirding the law, and to avoid irreversible health risks to *its children*.’”<sup>94</sup> The Eleventh Circuit also found that the public interest supported staying the district court’s order. Again quoting from *Skrmetti I*, the court indicated that “Florida’s ‘interests in applying the law to its residents and in being permitted to protect *its children* from health risks weigh heavily in favor of the State at this juncture.’”<sup>95</sup> Similar statements have appeared in other cases

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87. *Id.* at 472–79 (citing *Washington v. Glucksberg*, 521 U.S. 702 (1997)). Some of the cases cited by the majority support the right of parents to make difficult medical decisions on behalf of their children, and that such decisions are upheld unless rebutted by a finding that parents have abused or neglected their authority. *See, e.g., Parham v. J.R.*, 442 U.S. 584, 601–07 (1979) (addressing the right of parents to place children in mental health facilities).

88. In contrast, Judge White’s dissent addressed both *Meyer* and *Pierce*. *Skrmetti II*, 83 F.4th at 511 (White, J., dissenting).

89. *Id.* at 491 (majority opinion) (emphasis added).

90. *Id.* (emphasis added).

91. *Id.*

92. FLA. STAT. ANN. § 456.52(1) (West 2025).

93. *Doe v. Surgeon General*, No. 24-11996, 2024 WL 4132455 (11th Cir. Aug. 26, 2024).

94. *Id.* at \*3 (quoting *Skrmetti I*, 73 F.4th at 421) (emphasis added).

95. *Id.* (quoting *Skrmetti I*, 73 F.4th at 421–22) (emphasis added).

involving the right of transgender children to seek gender-affirming medical care.<sup>96</sup>

### B. *The Supreme Court Responds*

When the Supreme Court granted certiorari in *Skrmetti*, it only agreed to consider whether the Tennessee statute violated the Equal Protection Clause.<sup>97</sup> It did not grant certiorari on the substantive due process claim involving parental rights. Attesting to the case's legal, political, and social significance, dozens of amicus briefs were submitted to the Court.<sup>98</sup> During oral argument, the core issue involved the appropriate level of scrutiny to apply under the Equal Protection Clause when a state seeks to regulate medical care.<sup>99</sup> It was evident that the Court considered the substantive due process claims of parents to be a distinct issue that could be addressed in future litigation.<sup>100</sup> Following oral argument, the Tennessee Attorney General, Jonathan Skrmetti, issued a public statement asserting that the state would not “allow ideology to override medical evidence at the expense of our right to self-government and our duty to protect *our children*.”<sup>101</sup>

96. See, e.g., *Poe v. Drummond*, 697 F. Supp. 3d 1238, 1265 (N.D. Okla. 2023) (“This an area in which medical and policy debate is unfolding and the Oklahoma Legislature can rationally take the side of caution before permitting irreversible medical treatments of *its* children.” (emphasis added)).

97. Question Presented, *United States v. Skrmetti*, 145 S. Ct. 1816 (2025) (No. 23–477), <https://www.supremecourt.gov/docket/docketfiles/html/qp/23-00477qp.pdf> [<https://perma.cc/9XDL-FJYV>] (“Whether Tennessee Senate Bill 1 (SB1), which prohibits all medical treatments intended to allow ‘a minor to identify with, or live as, a purported identity inconsistent with the minor’s sex’ or to treat ‘purported discomfort or distress from a discordance between the minor’s sex and asserted identity,’ Tenn. Code Ann. § 68-33-103(a)(1), violates the Equal Protection Clause of the Fourteenth Amendment.”). See generally Katie Eyer, *Transgender Equality: An Inflection Point for Equal Protection?*, 93 U. CIN. L. REV. 948 (2025).

98. Proceedings and Orders, *United States, Petitioner v. Jonathan Skrmetti, Attorney General and Reporter for Tennessee, et al.*, No. 23-477, SUP. CT. OF THE U.S., <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-477.html> [<https://perma.cc/KZ2L-EYRJ>].

99. Adam Liptak & Emily Bazelon, *Supreme Court Seems Inclined to Uphold Tennessee Law on Transgender Care*, N.Y. TIMES (May 12, 2025), <https://www.nytimes.com/live/2024/12/04/us/supreme-court-transgender-care> [<https://perma.cc/DSD3-AYLD>].

100. At oral argument, Justice Barrett and Solicitor General Prelogar concurred on this point. JUSTICE BARRETT: But this isn’t—I guess my point is, even if we decided that this wasn’t a sex-based classification that triggered intermediate scrutiny, that would not prevent parents from still asserting the substantive due process right.

GENERAL PRELOGAR: Yes, yes, of course. I agree with that. I do think that the sex-based classification under [the] Equal Protection Clause is the most straightforward way to think about what’s going on here, though.

Transcript of Oral Argument at 65, *United States v. Skrmetti*, 145 S. Ct. 1816 (2025) (No. 23–477).

101. Kiara Alfonseca, *Protests Outside of Supreme Court Capture Growing Fears for Transgender Americans*, ABC NEWS (Dec. 5, 2024, 3:53 PM), <https://abcnews.go.com/Politics/protests-supreme-court-capture-growing-fears-transgender-americans/story?id=116492000#> [<https://perma.cc/SPA4-RNVG>] (emphasis added).

In June 2025, the Supreme Court ruled in *Skrmetti*.<sup>102</sup> Written by Chief Justice Roberts, the 6-3 decision affirmed the Sixth Circuit and held that Tennessee’s restrictions on gender-affirming care were constitutional and did not violate the Equal Protection Clause.<sup>103</sup> The Court held that the state statute did not discriminate on any grounds that justified heightened scrutiny.<sup>104</sup> It rejected that the statute discriminated on the basis of sex, finding that it applied equally to both genders.<sup>105</sup> It also rejected that the statute discriminated on the basis of transgender status, noting that it did not exclude individuals from medical treatment based on such status.<sup>106</sup> Since heightened scrutiny was not warranted, the Court applied rational basis review to the statute.<sup>107</sup> Reviewing the legislative record, the Court found ample evidence that “plausible reasons” existed for the restrictions on gender-affirming care.<sup>108</sup> These included the legislative findings that treatment for gender dysphoria can have adverse consequences for children, and that children lack the maturity to understand these consequences.<sup>109</sup>

The word “family” is conspicuously absent from the Court’s opinion. The word “parent” only appears in the factual background of the case.<sup>110</sup> It does not appear in any other part of the opinion. These omissions had a significant impact on the Court’s analysis. If a child’s lack of maturity in understanding the medical consequences of their medical treatment is a relevant consideration, certainly the views of their parents should be considered. Ignoring parents allowed the Court to treat these children as isolated and alone. Thus, the state became their sole guardian, capable of speaking on their behalf.<sup>111</sup> In the Court’s analysis, the parents and families of transgender children did not exist.

There is a striking moment in Justice Thomas’s concurrence that highlights the consequences of the Court’s willful ignorance of parents.

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102. Ann E. Marimow, Nicole Asbury & Laura Meckler, *Supreme Court Sides with Religious Parents Seeking to Opt Out of LGBTQ Storybooks*, WASH. POST (June 27, 2025), <https://www.washingtonpost.com/politics/2025/06/27/supreme-court-lgbtq-books-religious-parents> [https://perma.cc/LDP3-R2RJ]; Adam Liptak, *Supreme Court Upholds Tennessee Ban on Transgender Care for Minors*, N.Y. TIMES (June 18, 2025), <https://www.nytimes.com/2025/06/18/us/politics/supreme-court-trans-children.html> [https://perma.cc/7WPC-NZRY].

103. *United States v. Skrmetti*, 145 S. Ct. 1816 (2025). See generally Nicholas Confessore, *How the Transgender Rights Movement Bet on the Supreme Court and Lost*, N.Y. TIMES MAG. (June 19, 2025), <https://www.nytimes.com/2025/06/19/magazine/scotus-transgender-care-tennessee-skrmetti.html> [https://perma.cc/7WPC-NZRY].

104. *Skrmetti*, 145 S. Ct. at 1829.

105. *Id.* at 1830–31.

106. *Id.* at 1833.

107. *Id.* at 1835.

108. *Id.*

109. *Id.* at 1835–36 (citing TENN. CODE ANN. § 68-33-101(b), (h) (2025)).

110. *Id.* at 1820, 1827.

111. *Id.* at 1835–37.

Justice Thomas notes that a child's ability to make fully informed decisions is incomplete, which limits their capacity to offer informed consent to medical treatment.<sup>112</sup> To support his argument, Justice Thomas then offers a single reference to the parental role, noting that “as any parent knows, children's comprehension is limited.”<sup>113</sup> While acknowledging that parents know their children, he ignores every other facet of the parental role. Justice Thomas never acknowledges that parents talk with their children about their physical and emotional well-being. He never considers that parents routinely make medical decisions for their children. He never acknowledges that parents are a child's natural guardians. To Justice Thomas, the state has assumed this role for transgender children.

*Skrmetti* reflects a vision of heightened state power over selected children and a corresponding diminution of parental rights. Its reasoning hearkens back to an ominous passage in *Meyer v. Nebraska*.

### III. PLATO'S REPUBLIC AS DYSTOPIAN FUTURE

In *Meyer*, the Supreme Court recognized the importance of the parent-child relationship and expressed deep concern about state intrusion into the family relationship. These views were conveyed by Justice McReynolds, when he offered a chilling example of state intervention in the parent-child relationship.<sup>114</sup> He quoted at length from Plato's *Republic* and an exchange between Socrates and Glaucon as they discussed how to build an ideal commonwealth.<sup>115</sup>

[T]hat the wives of our guardians are to be common, and their children are to be common, and no parent is to know his own child, nor any child his parent. . . . The proper officers will take the offspring of the good parents to the pen or fold, and there they will deposit them with certain nurses who dwell in a separate quarter; but the offspring

112. *Id.* at 1847 (Thomas, J., concurring).

113. *Id.* (quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

114. Justice McReynolds left a complicated legacy. His decision in *Meyer* was powerful and certainly correct. Yet, he was one of the most polarizing figures on the Supreme Court. By all accounts, he was deeply racist, anti-Semitic, and misogynistic. See Todd C. Peppers, *Cancelling Justice? The Case of James Clark McReynolds*, 24 RICH. PUB. INT. L. REV. 59, 65 (2021); Albert Lawrence, *Biased Justice: James C. McReynolds of the Supreme Court of the United States*, 30 J. SUP. CT. HIST. 244, 248 (2005).

115. *Meyer*, 262 U.S. at 401–02. In *The Republic*, Socrates engages in conversations with several philosophers, including Plato's brother, Glaucon. For an incisive and modern critique of Socrates, see AGNES CALLARD, *OPEN SOCRATES: THE CASE FOR A PHILOSOPHICAL LIFE* (2025).

of the inferior, or of the better when they chance to be deformed, will be put away in some mysterious, unknown place, as they should be.<sup>116</sup>

Justice McReynolds noted that Plato's proposal to transfer the custody of children to official guardians was presumed necessary "[i]n order to submerge the individual and develop ideal citizens . . . ."<sup>117</sup> While such actions might have been offered "by men of great genius" to build the ideal commonwealth, Justice McReynolds expressed grave concerns with the proposal because "their ideas touching the relation between individual and State were wholly different from those upon which our institutions rest . . . ."<sup>118</sup> For a liberal democracy, he noted, "it hardly will be affirmed that any legislature could impose such restrictions upon the people of a State without doing violence to both [the] letter and spirit of the Constitution."<sup>119</sup>

In subsequent portions of his Socratic dialogue, Plato explained why children and their parents should be separated and why the family should be reconfigured. Plato believed that "differences commonly originate in disagreement about the use of the terms 'mine' and 'not mine,' 'his' and 'not his.'" <sup>120</sup> Thus, "the best-ordered State," he argued, is that "in which the greatest number of persons apply the terms 'mine' and 'not mine' in the same way to the same thing."<sup>121</sup> This extends to families and children. Accordingly, when women give birth, they "bear children to the State."<sup>122</sup>

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116. PLATO, *supra* note 32, at 147, 151. In Allan Bloom's translation of *The Republic*, he offers a slightly different phrasing for this passage: "So, I think they will take the offspring of the good and bring them into the pen, to certain nurses who live apart in a certain section of the city. And those of the worse, and any of the others born deformed, they will hide away in an unspeakable and unseen place, as is seemly." ALLAN BLOOM, *THE REPUBLIC OF PLATO* 139 (2d. ed. 1968).

117. *Meyer*, 262 U.S. at 402.

118. *Id.*

119. *Id.* References to Plato subsequently appeared in the briefing submitted to the Supreme Court in *Pierce*. Perhaps recalling Justice McReynold's reference to Plato in *Meyer*, the plaintiffs in *Pierce* offered a powerful reminder to the Court in their briefing.

In this day and under our civilization, the child of man is his parent's child and not the state's. Gone would be the most potent reason for women to be chaste and men to be continent, if it were otherwise. It was entirely logical for Plato, in his scheme for an "ideal commonwealth," to make women common; if their children were to be taken from them, and brought up away from them by the state for its own ends and purposes, personal morality was, after all, a secondary matter. The state-bred monster could then mean little to his parents; and such a creature could readily be turned to whatever use a tyrannical government might conceive to be in its own interest. In such a society there would soon be neither personal nor social liberty.

Brief of Appellee, *Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925) (No. 583), in *OREGON SCHOOL CASES: COMPLETE RECORD* 223, 275 (1925); see also Jeffrey Shulman, *Meyer, Pierce, and the History of the Entire Human Race: Barbarism, Social Progress, and the Fall and Rise of Parental Rights*, 43 *HASTINGS CONST. L.Q.* 337 (2016) (describing the *Pierce* litigation and the connection between the references to Plato's *Republic* and communism).

120. PLATO, *supra* note 32, at 153. The words "mine" and "yours" are considered possessive pronouns, which are closely related to possessive determiners. EASTWOOD, *supra* note 7, at 213.

121. PLATO, *supra* note 32, at 153.

122. *Id.* at 151.

These children are then separated from their parents and become common to the State and its collective citizens.<sup>123</sup> Indeed, “the [common] community of wives and children among our citizens is clearly the source of the greatest good to the State.”<sup>124</sup> Through this common community, disagreements would end, consensus would emerge, and the State would prosper. To Plato, communal grammar represented “the language of harmony and concord.”<sup>125</sup>

Not all ancient philosophers shared this view.<sup>126</sup> While Plato believed in the value of communal control over children, Aristotle rejected it.<sup>127</sup> He did not believe that Plato’s class-based and communitarian system, with its common children, rejection of family, and collective use of the words “mine” and “not mine,” would generate “perfect unity in a state.”<sup>128</sup> Instead, the separation of families and the placement of children under the authority and control of the collective would result in the abandonment of these children because “everybody is more inclined to neglect the duty which he expects another to fulfill . . . .”<sup>129</sup> Aristotle’s criticism was premised on human nature as expressed through the tragedy of the commons—“[f]or that which is common to the greatest number has the least care bestowed upon it.”<sup>130</sup> According to Aristotle, this dynamic was plainly evident in families.<sup>131</sup> Thus, he rejected Plato’s preference for the collective use of “mine” and “not mine,” finding such views impractical and inconducive to harmony.<sup>132</sup>

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123. *Id.*

124. *Id.* at 155. Plato’s views on women are inconsistent. While women can serve in leadership roles in the ideal commonwealth and are often addressed as equal to men, Plato also asserts that women and children are chattel and should be common to the leaders. *Id.* at 147. See generally Susan Moller Okin, *Philosopher Queens and Private Wives: Plato on Women and the Family*, 6 PHIL. & PUB. AFFS. 345, 349 (1977).

125. PLATO, *supra* note 32, at 155.

126. Some modern scholars offer a different interpretation of Plato’s *Republic*. They argue that Plato’s work is suffused with irony and that he was proposing the vision of a state that was unrealistic and contrary to human nature. BLOOM, *supra* note 116, at 411; LEO STRAUSS, *THE CITY AND MAN* 115–17 (1964). But see Dale Hall, *The Republic and the “Limits of Politics,”* 5 POL. THEORY 293 (1977) (challenging Strauss and Bloom’s interpretation of Plato’s *Republic*).

127. ARISTOTLE, *POLITICS BOOK II* (Benjamin Jowett, trans.) in *THE POCKET ARISTOTLE* 282, 284–87 (Justin D. Kaplan & W.D. Ross eds., 1958).

128. *Id.* at 284.

129. *Id.* at 285.

130. *Id.*; see ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 2* (1990).

131. ARISTOTLE, *supra* note 127, at 285.

132. *Id.* at 284–85; see Darrell Dobbs, *Aristotle’s Anticommunism*, 29 AM. J. POL. SCI. 29, 36–37 (1985) (describing Aristotle’s critique of Plato’s approach for building the ideal state). Of course, Aristotle is not without his own critics. See, e.g., Agnes Callard, Opinion, *Should We Cancel Aristotle?*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/opinion/should-we-cancel-aristotle.html> [<https://perma.cc/GTJ9-EHPB>]. (“As I read him, Aristotle not only did not believe in the conception of intrinsic human dignity that grounds our modern commitment to human rights, he has a philosophy that cannot be squared with it.”)

## IV. PROTECTING FAVORED FAMILIES AND THEIR CHILDREN

The Supreme Court's 2024–25 term provides an opportunity to compare the treatment of transgender children and their families with other families. The disparate treatment is striking.

In *Mahmoud v. Taylor*, several parents opposed their school district's educational programs involving gender identity and sought to remove their children from classes where these issues were discussed.<sup>133</sup> When the school district refused their opt-out request, the parents filed a lawsuit alleging a violation of several constitutional provisions, including the Free Exercise Clause of the First Amendment.<sup>134</sup> The parents alleged that the refusal to provide an opt-out infringed upon their religious beliefs because they had a right to control the religious upbringing of their children. Both the district court and the Fourth Circuit rejected the parents' request for a preliminary injunction.<sup>135</sup> The parents then appealed to the Supreme Court, which agreed to consider whether "public schools burden parents' religious exercise when they compel elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out."<sup>136</sup>

The Supreme Court issued its opinion in *Mahmoud* nine days after *Skrametti*. If parents and families are absent in *Skrametti*, they are both seen and heard in *Mahmoud*. Written by Justice Alito, this 6-3 decision reversed the Fourth Circuit and held that parents have a First Amendment right under the Free Exercise Clause to remove their children from school lessons that substantially infringe upon their religious beliefs.<sup>137</sup> Parental rights appear throughout the opinion. "[F]or many people of faith[.]" wrote Justice Alito, "there are few religious acts more important than the religious education of their children."<sup>138</sup> The values of inclusion and acceptance contained in the LGBTQ storybooks are "directly contrary to the religious principles that the parents in this case wish to instill in their children."<sup>139</sup> To prevent parents from removing their children from classroom instruction involving these

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133. *Mahmoud v. McKnight*, 688 F. Supp. 3d 265, 285 (D. Md. 2023). The case was originally captioned *Mahmoud v. McKnight*. At the Supreme Court, the case caption was updated to *Mahmoud v. Taylor*.

134. *Mahmoud v. McKnight*, 102 F.4th 191 (4th Cir. 2024), *rev'd sub nom.* *Mahmoud v. Taylor*, 145 S. Ct. 2323 (2025).

135. *Id.* at 197.

136. Question Presented, *Mahmoud v. Taylor*, 145 S. Ct. 2323 (2025) (No. 24-297), <https://www.supremecourt.gov/docket/docketfiles/html/qp/24-00297qp.pdf> [<https://perma.cc/VQU9-5S64>].

137. *Mahmoud v. Taylor*, 145 S. Ct. 2323 (2025).

138. *Id.* at 2351.

139. *Id.* at 2354.

storybooks constituted a substantial infringement of their religious beliefs.<sup>140</sup>

Because the Court found that the school district’s policy constituted a substantial burden, it determined that strict scrutiny applied. To overcome this rigorous level of judicial review, the Court indicated that the “government must demonstrate that its policy ‘advances ‘interests of the highest order’ and is narrowly tailored to achieve those interests.”<sup>141</sup> Because it “continues to permit opt outs in a variety of other circumstances,” the Court determined that the school district could not establish that its policy was narrowly tailored.<sup>142</sup> Moreover, the school district’s desire to protect some students from “social stigma and isolation” could not “be achieved through hostility toward the religious beliefs of other students and their parents.”<sup>143</sup> Accordingly, the Court ruled in favor of the parents and held they were entitled to injunctive relief.<sup>144</sup>

When the *Skrmetti* and *Mahmoud* decisions were issued by the Court, they were met with a multitude of possessive determiners. To supporters of *Skrmetti*, the Court’s decision allows politicians to protect “our children.”<sup>145</sup> To supporters of *Mahmoud*, the Court’s decision allows parents to protect “our children.”<sup>146</sup> In contrast, transgender children and their parents remain

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140. *Id.* at 2353.

141. *Id.* at 2361 (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021)).

142. *Id.* at 2362.

143. *Id.* at 2362–63.

144. *Id.* at 2363.

145. Press Release, Congressman Robert Aderholt’s Statement on Supreme Court Ruling Upholding Tennessee’s Child Protection Law (June 24, 2025), <https://aderholt.house.gov/media-center/press-releases/congressman-robert-aderholts-statement-supreme-court-ruling-upholding> [<https://perma.cc/47BB-XEUE>] (“I applaud the Supreme Court’s decision to uphold Tennessee’s law safeguarding our most vulnerable, *our children*, from irreversible and unnecessary medical treatments that carry dangerous risks . . . .” (emphasis added)); Jim Campbell, Opinion, *Supreme Court’s Skrmetti Decision Bolsters Legacy of Protecting Children’s Health*, THE HILL (June 18, 2025, 3:32 PM), <https://thehill.com/opinion/healthcare/5357653-supreme-court-backs-gender-clinic-shutdown/> [<https://perma.cc/6HA2-5LWA>] (“Headlines come and go, but the courageous people who defend *our children*—and the politicians and professionals who offer them real care—leave a lifetime legacy worth applauding.” (emphasis added)).

146. Grace Morrison, Opinion, *Parental Rights Restored: Mahmoud Case Is a Victory for Families and Faith*, THE HILL (July 11, 2025, 7:00 AM), <https://thehill.com/opinion/judiciary/5394341-parental-rights-restored-mahmoud-case-is-a-victory-for-families-and-faith/> [<https://perma.cc/BS6P-UH6D>] (“For me, this fight was never about convenience or personal gain. It was about protecting the sanctuary of our home and the spiritual foundation we strive to install in *our children*. Sacrifice is at the core of parenthood, and sometimes, that sacrifice leads you to places where you never expected—like a courtroom.” (emphasis added)); Press Release, VAT Chairman Aderholt Applauds Supreme Court Ruling in *Mahmoud v. Taylor* (June 27, 2025), <https://aderholt.house.gov/media-center/press-releases/vat-chairman-aderholt-applauds-supreme-court-ruling-mahmoud-v-taylor> [<https://perma.cc/WJS7-2HBT>] (“Children are not wards of the state, and families, not government officials, should decide how curriculum related to human sexuality is introduced to *their children*. This is a clear victory for the rights of families and parents.” (emphasis added)).

isolated and ignored.<sup>147</sup> These cases highlight the disparate ways in which the Supreme Court treats modern families. While acknowledging some families, the Court simply ignores others.<sup>148</sup>

## V. WHOSE CHILDREN?

Like the ancient debate between Plato and Aristotle, the modern discourse over transgender children and the rights of their parents reveals how grammar is used strategically to prioritize state interests and marginalize selected parental rights.<sup>149</sup> This is evident in the *Skrmetti* litigation. The Tennessee legislature that imposed the restrictions on transgender care focused on the state's purported interests and made no reference to parents in its legislative findings justifying the law.<sup>150</sup> In considering whether to enjoin the state's restrictions limiting vital medical care to transgender children, the Sixth Circuit asserted that the public interest weighed in favor of allowing states "to protect *their children* from health risks."<sup>151</sup> In addition, it found that states would also suffer harm from being unable to enforce restrictions that would "avoid health risks to *their*

147. See Kevin Jennings, Opinion, *Why We Aren't Going 'Too Fast' on Trans Rights*, WASH. POST (July 7, 2025), <https://www.washingtonpost.com/opinions/2025/07/07/supreme-court-transgender-advocacy-skrmetti/> [<https://perma.cc/6CZX-BCKQ>]; M. Gessen, Opinion, *The Supreme Court's Blindness to Transgender Reality*, N.Y. TIMES (June 19, 2025), <https://www.nytimes.com/2025/06/19/opinion/the-supreme-court-fails-to-see-transgender-teens.html> [<https://perma.cc/E2DG-ACFX>].

148. Alison Gash, *The Dangerous Trans-Rights Decision from the Supreme Court*, WASH. MONTHLY (July 1, 2025), <https://washingtonmonthly.com/2025/07/01/skrmetti-trans-decision-fallout/> [<https://perma.cc/9WUC-9PSP>] ("[A]s with many wrong-headed Supreme Court decisions, *Skrmetti*'s consequences will be felt beyond this case."); Grace Byron, *The Grim State of Trans Health Care*, NEW YORKER (June 29, 2025), <https://www.newyorker.com/news/the-lede/the-grim-state-of-trans-health-care#> [<https://perma.cc/9FW7-TDFV>] (describing how state protections for transgender children and adults are being dismantled); Martin Padgett, *SCOTUS' Blow to Trans Rights Is History Repeating Itself*, TIME (June 18, 2025, 3:40 PM), <https://time.com/7295805/scotus-skrmetti-lgbtq-history-essay/> [<https://perma.cc/E42B-X5J8>] ("*Skrmetti* will further erode the rights to privacy and liberty already weakened by the decision three years ago to overturn *Roe v. Wade*. It bodes ill for the very ideas we hold to be fundamental.").

149. Sixty years after *Meyer*, Justice Brennan discussed both Plato and Aristotle in his dissenting opinion in *Bowen v. Gilliard*, 483 U.S. 587 (1987). In this case, the Court considered whether eligibility criteria for indigent families receiving federal aid violated the due process and equal protection provisions of the Fifth Amendment. In dissenting from the Court's decision to reject the constitutional claims, Justice Brennan argued that the statute intruded into the private life of the family and undermined the parent-child relationship. *Id.* at 610 (Brennan, J., dissenting). The government's intrusion into the parent-child relationship, Justice Brennan asserted, recalled Plato's "vision of a unified society, where the needs of children are met not by parents but by the government, and where no intermediate forms of association stand between the individual and the state." *Id.* at 632. Justice Brennan noted that this vision had been rejected in *Meyer* because it is a vision of a state that is not our own: "If we are far removed from the Platonic Republic, it is because our commitment to diversity and decentralized human relationships has made us attentive to the danger of Government intrusion on private life." *Id.* at 632-33.

150. TENN. CODE ANN. § 68-33-101(a)-(n) (West 2025).

151. See *Skrmetti II*, 83 F.4th 460, 491 (6th Cir. 2023) (emphasis added).

*children.*”<sup>152</sup> Neither the Sixth Circuit nor the Supreme Court in *Skrmetti* acknowledged the significance of family relationships or the role of parents in protecting their children. Even advocates seeking to restrict medical care for transgender children argue that parental rights are “just a distraction” and that these cases are about states’ rights.<sup>153</sup>

It is striking to compare the treatment of transgender children and the rights of their parents with other examples of state regulation of the family relationship.<sup>154</sup> When children and their parents do not challenge extant orthodoxy, favored identities are respected, and their relationships are protected.<sup>155</sup> For example, several courts have found a substantive due process right of parents to prevent their children from being exposed to topics relating to gender identity.<sup>156</sup> In these cases, possessive determiners are consistently used to describe the parent-child relationship.<sup>157</sup> Even when courts rule against the parents of favored families, the significance of the parent-child relationship is not questioned.<sup>158</sup>

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152. *Id.* (emphasis added).

153. See, e.g., Jim Campbell, *Parental Rights Just a Distraction from Real Issues in Skrmetti*, BLOOMBERG LAW (Dec. 16, 2024, 3:30 AM), <https://news.bloomberglaw.com/business-and-practice/parental-rights-just-a-distraction-from-real-issues-in-skrmetti> [<https://perma.cc/RPB3-3HHD>].

154. In the debate surrounding transgender rights, political ideology often explains whether a state will protect or challenge parental rights. Blue states are more likely to protect transgender rights and the corresponding rights of their children. Red states are less likely to protect such rights. However, partisan beliefs and political ideology do not always correspond to a reduction in parental rights. In fact, the discourse surrounding parental rights generates unusual arguments and alliances. See Cynthia Godsoe, *Racing and Erasing Parental Rights*, 104 B.U. L. REV. 2061 (2024) (describing how the protection of parental rights does not always align with anticipated partisan beliefs).

155. Jamelle Bouie, Opinion, *What the Republican Push for ‘Parents Rights’ Is Really About*, N.Y. TIMES (Mar. 28, 2023), <https://www.nytimes.com/2023/03/28/opinion/parents-rights-republicans-florida.html> [<https://perma.cc/AJB8-N3KR>].

156. See, e.g., *Tatel v. Mt. Lebanon Sch. Dist.*, 752 F. Supp. 3d 512 (W.D. Pa. 2024) (holding that school instruction on gender identity violated parents’ substantive due process right to control the upbringing of their children); *Willey v. Sweetwater Cnty. Sch. Dist. No. 1 Bd. of Trs.*, 680 F. Supp. 3d 1250, 1291 (D. Wyo. 2023) (recognizing parents’ substantive due process right to direct upbringing of their children). *But see* *Parents Defending Educ. v. Linn Mar Cmty. Sch. Dist.*, 83 F.4th 658 (8th Cir. 2023) (declining to find a substantive due process claim on mootness grounds but concluding that parental group was likely to succeed on the merits of its First Amendment challenge to school board’s policy on transgender students).

157. *Tatel*, 752 F. Supp. 3d at 550 (“Parents have a fundamental right to control the upbringing of their children.” (emphasis added)); *Willey*, 680 F. Supp. 3d at 1273 (“Both the Supreme Court and Tenth Circuit have recognized the Due Process Clause provides some level of protection for parental decisions regarding their children’s medical care.” (emphasis added)).

158. *Parents Protecting Our Children v. Eau Claire Area Sch. Dist.*, 95 F.4th 501 (7th Cir. 2024) (dismissing parents’ lawsuit against a school district that had adopted a gender support plan for lack of standing); *John & Jane Parents 1 v. Montgomery Cnty. Bd. Of Educ.*, 78 F.4th 622 (4th Cir. 2023) (same). Even in these cases, possessive determiners are only used to describe the parent-child relationship. See also *Denial of Certiorari, Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14 (2024) (No. 23-1280) (Alito, J., dissenting) (repeatedly referring to the right of parents to protect their children).

At the center of the Platonic state, the parent-child relationship is severed in cases of disfavored rights and replaced by the state-child relationship so that states can protect “their children.”<sup>159</sup> But as Aristotle foretold, “that which is common to the greatest number has the least care bestowed upon it.”<sup>160</sup> Through the denial of gender-affirming care, the government is able to ignore and then purge transgender children from society.<sup>161</sup> The connection between Plato’s vision and eugenics is unavoidable.<sup>162</sup> Transgender children are deprived of the most basic right to define their humanity.<sup>163</sup> Their very existence is rejected. By denying this most basic right, states force transgender children to struggle with and suffer through gender dysphoria, thereby subjecting them to a heightened risk of personal harm and suicide.<sup>164</sup> These developments evoke Plato’s assertion that undesired children—whether “the offspring of the inferior, or of the better when they chance to be deformed”—should be removed from the state and

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159. For example, the Texas Attorney General referred to “the State’s duty to protect *its* children” when it determined that the provision of gender-affirming care could constitute child abuse. 2022 Tex. Op. Att’y Gen. No. KP-0401, at 5 (Feb. 18, 2022) (emphasis added); see Brandon Calton, *The Battle over Gender-Affirming Healthcare for Transgender Minors: Analyzing Anti-Transgender Healthcare Bills in Arkansas and Texas*, 29 ROGER WILLIAMS U. L. REV. 480, 498 (2024).

160. ARISTOTLE, *supra* note 127, at 284.

161. See, e.g., M. Gessen, Opinion, *The Hidden Motive Behind Trump’s Attack on Trans People*, N.Y. TIMES (Mar. 17, 2025), <https://www.nytimes.com/2025/03/17/opinion/trump-trans-denationalizing.html> [<https://perma.cc/7WQM-CNBZ>] (describing the Trump administration’s denationalization project targeting transgender people).

162. See Catherine Gardner, *The Remnants of the Family: The Role of Women and Eugenics in Republic V*, 17 HIST. PHIL. Q. 217 (2000); Robert S. Brumbaugh, *Plato’s Genetic Theory*, 45 J. HEREDITY 191 (1954).

163. Jessica Feinberg, *The Identity Factor*, 96 U. COLO. L. REV. 955 (2025) (addressing the importance of identity development in childhood and its unique significance for transgender children). See generally Kenneth L. Dion, *Names, Identity, and Self*, 31 NAMES 245 (1983) (explaining how names, identity, and self are closely related); THE POWER OF NAMES IN IDENTITY AND OPPRESSION: NARRATIVES FOR EQUITY IN HIGHER EDUCATION AND STUDENT AFFAIRS (Robin Phelps-Ward & Wonjae Phillip Kim eds., 2023) (describes how the study of names facilitates understandings about power and privilege in education).

164. See Russell B. Toomey, Amy K. Syvertsen & Maura Shramko, *Transgender Adolescent Suicide Behavior*, 142 PEDIATRICS, issue no. 4, Oct. 2018, art. no. e20174218, <https://doi.org/10.1542/peds.2017-4218> [<https://perma.cc/6KGS-5YN7>] (describing research which shows that transgender children suffer disproportionately higher suicide attempt rates than cisgender children); Wilson Y. Lee et al., *State-Level Anti-Transgender Laws Increase Past-Year Suicide Attempts Among Transgender and Non-Binary Young People in the USA*, 8 NATURE HUM. BEH. 2096 (2024) (describing research which shows that suicide attempts by transgender children increased following the adoption of state laws restricting access to gender-affirming care). But see David Smolin, *Suicide, Suicidality, and Pediatric Medical Transition in United States v. Skrmetti and Beyond*, 2025 HARV. J.L. & PUB. POL’Y: PER CURIAM, Spring 2025, art. no. 5, <https://journals.law.harvard.edu/jlpp/suicide-suicidality-and-pediatric-medical-transition-in-united-states-v-skrmetti-and-beyond/> [<https://perma.cc/LTH4-5NZD>] (arguing there is a lack of evidence of suicide among transgender children); Azeen Ghorayshi & Amy Harmon, *Federal Report Denounces Gender Treatments for Adolescents*, N.Y. TIMES (May 1, 2025), <https://www.nytimes.com/2025/05/01/health/federal-report-denounces-gender-treatments-for-adolescents.html> [<https://perma.cc/9P6E-KXGE>] (describing federal report that questions the value of gender-affirming care for children).

“put away in some mysterious, unknown place.”<sup>165</sup> Plato’s vision of social ordering and the ideal commonwealth is overtaking *Meyer’s* vision of the American state.<sup>166</sup>

As a result, transgender children and their families face escalating threats.<sup>167</sup> On the first day of his second administration, President Trump issued an executive order ending federal recognition of transgender rights.<sup>168</sup> In subsequent orders, he has sought to end federal aid for gender-affirming care for children.<sup>169</sup> Throughout these efforts, political leaders proclaim that they are acting to protect “*our* children” and the American

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165. PLATO, *supra* note 32, at 151. Platonic scholars would argue that placement in the “mysterious, unknown place” means death. STANLEY ROSEN, *PLATO’S REPUBLIC: A STUDY* 190 (2005); JACOB HOWLAND, *THE REPUBLIC: THE ODYSSEY OF PHILOSOPHY* 114–15 (2004). In the ancient Greek world, there was a recognized practice of abandoning children who were unwanted by their parents. This could often lead to death. See John Eastburn Boswell, *Expositio and Oblatio: The Abandonment of Children and the Ancient and Medieval Family*, 89 *AM. HIST. REV.* 10 (1984) (describing the practice in ancient Greek, Roman, and medieval societies of abandoning children through the relinquishment of control by their parents); G. van N. Viljoen, *Plato and Aristotle on the Exposure of Infants at Athens*, 2 *ACTA CLASSICA* 58 (1959) (examining how Greek philosophers addressed the rejection of children, including through infanticide or exposure).

166. While Plato wrote at length about the model citizen and the ideal commonwealth, ascribing his views on transgender rights would be speculative. Yet, Plato’s views on gender suggest a willingness to look beyond the binary. ARLENE W. SAXONHOUSE, *FEAR OF DIVERSITY: THE BIRTH OF POLITICAL SCIENCE IN ANCIENT GREEK THOUGHT* 153 (1992); JEAN BETHKE ELSHTAIN, *PUBLIC MAN, PRIVATE WOMAN: WOMEN IN SOCIAL AND POLITICAL THOUGHT* 37 (1981). See generally Steven Forde, *Gender and Justice in Plato*, 92 *AM. POL. SCI. REV.* 657 (1997); Christine Garside Allen, *Plato on Women*, 2 *FEMINIST STUD.* 131 (1975). In addition, Plato’s belief in reason as the highest virtue, and his assertion that individuals should perform the roles best suited to their abilities could certainly translate into respect and tolerance for transgender individuals. PLATO, *supra* note 32, at 122–23; see Mark A. Johnstone, *Plato on the Enslavement of Reason*, 50 *CAN. J. PHIL.* 382 (2020).

167. See Anne Alstott, Melisa Olgun, Henry Robinson & Meredith McNamara, “*Demons and Imps*”: *Misinformation and Religious Pseudoscience in State Anti-Transgender Laws*, 35 *YALE J.L. & FEMINISM* 223 (2024) (examining how misinformation is used to marginalize and demonize the transgender community); Sarah Steadman, *Then They Came for Us: Access to Justice Harm and Opportunity for Our Transgender and Nonbinary Youth*, 26 *THE SCHOLAR: ST. MARY’S L. REV. ON RACE & JUST.* 1 (2024) (describing the escalating threats faced by transgender children).

168. Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025); see Erica L. Green & Zach Montague, *Trump Signs Two Orders to Dismantle Equity Policies*, *N.Y. TIMES* (Jan. 20, 2025), <https://www.nytimes.com/2025/01/20/us/politics/trump-transgender-race-education.html> [<https://perma.cc/LSC2-XPQY>]. Hostility to transgender rights was also present during the first Trump administration. Robin Fretwell Wilson, *Being Transgender in the Era of Trump: Compassion Should Pick Up Where Science Leaves Off*, 8 *U.C. IRVINE L. REV.* 583 (2018).

169. See, e.g., Exec. Order No. 14187, 90 Fed. Reg. 8771 (Jan. 28, 2025); see Zach Montague, *Trump Signs Order Restricting Gender-Affirming Treatments for Minors*, *N.Y. TIMES* (Jan. 28, 2025), <https://www.nytimes.com/2025/01/28/us/politics/trump-trans-gender-affirming-care.html> [<https://perma.cc/FM9S-TLLR>]; Selena Simmons-Duffin, *Trump Issues Order to Ban Transgender Troops from Serving Openly in the Military*, *NPR* (Jan. 28, 2025, 6:14 PM), <https://www.npr.org/sections/health-news/2025/01/28/nx-s1-5277106/trump-executive-order-transgender-military> [<https://perma.cc/V68Y-22L8>].

family.<sup>170</sup> In the modern Platonic state, traditional families are elevated and celebrated. Transgender families are denigrated and decimated.<sup>171</sup>

The allure of Plato's vision will intensify as demographic developments, cultural trends, and political movements influence perceptions about the ideal child, the perfect family, and the model citizen. In recent years, partisan rhetoric has devalued individuals without children, derogatorily referring to some women as "childless cat ladies," and demanding heightened electoral power for families with children.<sup>172</sup> Calls are issued for Americans to have more children.<sup>173</sup> Politicians demand protections for "our unborn children."<sup>174</sup> By ending a constitutional right to abortion, states may

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170. See, e.g., Sen. Marsha Blackburn (@MarshaBlackburn), X (TWITTER) (Jan. 29, 2025, 6:54 AM), <https://x.com/MarshaBlackburn/status/1884616143207366710> [<https://perma.cc/5YCE-SZH8>] ("Thank you, President Trump, for protecting *our children* and for putting biology over ideology." (emphasis added)); Sen. Josh Hawley (@HawleyMO), X (TWITTER) (Jan. 28, 2025, 6:32 PM), <https://x.com/HawleyMO/status/1884429282920878237> [<https://perma.cc/Z6WR-H9SN>] ("Hugely important—President Trump sounding the death knell for the gender mutilation industry that has been targeting *our children*["] (emphasis added)); Coach Tommy Tuberville (@SenTuberville), X (Twitter), (Jan. 28, 2025, 4:25 PM), <https://x.com/SenTuberville/status/1884397534128320716> [<https://perma.cc/3QGT-XVCS>] ("Under President Trump, America will LEAD THE WAY in protecting our most valuable commodity: *our kids*." (emphasis added)).

171. There is something troubling and yet familiar with the proposition that states can override a person's familial rights because of concerns that their children may be "socially inadequate" and "unfit." See *Buck v. Bell*, 274 U.S. 200, 207–08 (1927). See generally ADAM COHEN, *IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK* (2016); PAUL A. LOMBARDO, *THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT, AND BUCK V. BELL* (2008).

172. Lydia DePillis, *They Want More Babies. Now They Have Friends in the White House*, N.Y. TIMES (Mar. 30, 2025), <https://www.nytimes.com/2025/03/30/business/economy/birthrate-politics-vance-musk.html> [<https://perma.cc/3GLA-VLLU>]; Zack Beauchamp, *Where J.D. Vance's Weirdest Idea Actually Comes From*, VOX (July 30, 2024, 5:30 AM), <https://www.vox.com/politics/363473/jd-vance-weird-voting-parents-demeny-postliberalism> [<https://perma.cc/MX8Z-TCW7>]; Moira Donegan, Opinion, *The Republican Party's Obsession with Families Has Taken a Fanatical Turn*, THE GUARDIAN (July 29, 2024, 6:09 AM), <https://www.theguardian.com/commentisfree/article/2024/jul/29/the-republican-party-s-obsession-with-families-has-taken-a-fanatical-turn> [<https://perma.cc/7LHF-X6DJ>].

173. Michelle Goldbert, Opinion, *MAGA Nationalism Is Doomed to Fail*, N.Y. TIMES (Apr. 21, 2025), <https://www.nytimes.com/2025/04/21/opinion/trump-fertility-birthrate-sexism.html> [<https://perma.cc/W5U7-7U6J>]; Leonard Lopoo, Opinion, *How to Make American Babies Again*, WALL ST. J. (Apr. 29, 2025, 3:28 PM), <https://www.wsj.com/opinion/how-to-make-american-babies-again-pronatal-policy-41e88053> [<https://perma.cc/EG9D-WLZP>]; Caroline Kitchener, *White House Assesses Ways to Persuade Women to Have More Children*, N.Y. TIMES (Apr. 23, 2025), <https://www.nytimes.com/2025/04/21/us/politics/trump-birthrate-proposals.html> [<https://perma.cc/J7ZE-HBY2>]. A significant portion of the natalist movement involves white nationalism. Elizabeth Bruenig, *The Pro-Baby Coalition of the Far Right*, THE ATLANTIC (Apr. 11, 2025), <https://www.theatlantic.com/ideas/archive/2025/04/natal-conference-austin/682398/> [<https://perma.cc/DC3S-RWQL>]; Gaby Del Valle, *The Far Right's Campaign to Explode the Population*, POLITICO (Apr. 28, 2024, 7:00 AM), <https://www.politico.com/news/magazine/2024/04/28/natalism-conference-austin-00150338> [<https://perma.cc/FLZ5-BVCD>].

174. See, e.g., Team Tony (Rep. Tony Gonzales), FACEBOOK (Jan. 28, 2025, 10:20 AM), <https://www.facebook.com/TonyGonzalesForCongress/posts/1129300015655907> [<https://perma.cc/KY87-892P>] ("Last week, I was proud to vote for the 'Born Alive' bill, which will provide stronger protections for *our unborn children* and hold doctors accountable for practicing late stage abortions." (emphasis added)); Rebecca Downs, *Steve Daines Introduces His Own Pro-Life Bills in the Senate*,

now force women to carry and give birth to a child against their will.<sup>175</sup> These developments recall Plato’s explication that women “bear children to the State.”<sup>176</sup>

In 2025, ancient values have returned and subsumed the vision of the individual and the family that was first conveyed in *Meyer* and then confirmed in countless cases.<sup>177</sup> These ancient values—of family separation and the subordination of the individual to the state—are “wholly different from those upon which our institutions rest” and would cause “violence to both [the] letter and spirit of the Constitution.”<sup>178</sup> The use of possessive determiners to justify state restrictions on vital medical care for transgender children is intentional. It is strategic. And, it is cruel.

#### CONCLUSION

Grammar does not create rights, but it can communicate subtle, yet powerful messages.<sup>179</sup> Personal pronouns—*she, her, hers, he, his, him, and they*—express agency and identity. Possessive determiners—*its, their, my,*

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TOWNHALL (Jan. 23, 2025, 1:00 PM), <https://townhall.com/tipsheet/rebeccadowns/2025/01/23/steve-daines-introduces-his-own-pro-life-bills-in-the-senate-n2651029> [<https://perma.cc/CZ5H-VWAH>] (“This year, as we celebrate the 52nd anniversary of the annual March for Life, I’m proud to introduce legislation that will protect the most vulnerable in our society: *our unborn children*.” (emphasis added)); 171 CONG. REC. S291 (Jan. 22, 2025) (statement of Sen. Cindy Hyde-Smith) (“The National March for Life always reminds us of why we continue to fight for stronger protections for *our unborn children* and for their mothers.” (emphasis added)). In *Dobbs v. Jackson Women’s Health Organization*, a coalition of 228 Members of Congress filed an amicus brief with the Supreme Court urging it “to protect the lives of *our unborn children*.” Press Release, Sen. Deb Fischer, Miss. Delegation, Pro-Life Caucus File Amicus Brief Urging Supreme Court to Uphold Mississippi Pro-Life Law (July 29, 2021), <https://www.fischer.senate.gov/public/index.cfm/2021/7/miss-delegation-pro-life-caucus-file-amicus-brief-urging-supreme-court-to-uphold-mississippi-pro-life-law> [<https://perma.cc/77NY-GRMM>] (emphasis added).

175. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). The adverse consequences of this decision on women, transgender individuals, and non-binary persons have been profound. See, e.g., William J. Aceves, *Abortion Costs and the Language of Torture*, 72 UCLA L. REV. DISC. 96 (2024); David S. Cohen, Greer Donley & Rachel Rebouché, *The New Abortion Battleground*, 123 COLUM. L. REV. 1 (2023). Abortion bans have disproportionately affected women of color as well as unmarried women and those without a college degree. Claire Cain Miller & Margot Sanger-Katz, *The Women Most Affected by Abortion Bans*, N.Y. TIMES (Mar. 17, 2025), <https://www.nytimes.com/2025/03/17/upshot/abortion-bans-births-study.html> [<https://perma.cc/GGS6-T2S8>].

176. PLATO, *supra* note 32, at 151.

177. If Strauss and Bloom are correct that Plato’s *Republic* was, in fact, a critique of the ideal commonwealth, it simply reinforces the comedic and corrupt vision conveyed in those pages. By forcing parents to sacrifice their dearest convictions and interests, it deprives them “of everything which they might love more than the city.” BLOOM, *supra* note 116, at 310, 385. Thus, both parents and children are forced to act contrary to human nature “in order to insure the possibility of this city.” *Id.* at 385.

178. *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923).

179. This Essay’s focus on grammar, including possessive determiners, is part of a broader conversation about the many ways in which principles of equality are communicated. See MICHAEL J. SHAPIRO, *AESTHETICS OF EQUALITY* 1 (2023); Benjamin Eidelson, *The Etiquette of Equality*, 51 PHIL. & PUB. AFFS. 97, 99 (2023).

*our*, and *your*—convey relationship and responsibility. Both of these grammatical categories are contested in debates surrounding transgender rights and the parent-child relationship. They reflect the confrontation between liberalism and the old order and the struggle between tolerance and orthodoxy.

To counter the rise of the Platonic state, this Essay offers a simple admonition: States have citizens; they do not have children.<sup>180</sup> Only parents have children.<sup>181</sup> And all children matter.

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180. States are not the only entities claiming the attributes of personhood. See ADAM WINKLER, *WE THE CORPORATIONS: HOW AMERICAN BUSINESSES WON THEIR CIVIL RIGHTS* (2018) (describing how corporations gained fundamental rights in American law); KENT GREENFIELD, *CORPORATIONS ARE PEOPLE TOO: (AND THEY SHOULD ACT LIKE IT)* (2018) (chronicling the rise of corporate constitutional rights).

181. Despite focusing on parental rights, this Essay does not suggest that children do not have their own rights. There are important reasons for acknowledging and protecting the independent rights of children. See, e.g., Nila Bala, *Policing Children's Data*, 103 WASH. U. L. REV. 249 (2025); Smith, *supra* note 63, at 545–50; Shanta Trivedi, *My Family Belongs to Me: A Child's Constitutional Right to Family Integrity*, 56 HARV. C.R.-C.L. L. REV. 267 (2021); Cheryl Bratt, *Top-Down or from the Ground?: A Practical Perspective on Reforming the Field of Children and the Law*, 127 YALE L.J.F. 917 (2018); Martha Albertson Fineman, *What Place for Family Privacy?*, 67 GEO. WASH. L. REV. 1207 (1999). Apart from legal reasons to recognize the independent rights of children, there are profound philosophical reasons. The poet, Kahlil Gibran, offers an elegant and thoughtful explanation of this perspective. KAHLIL GIBRAN, *THE PROPHET* 17 (Alfred A. Knopf 2020) (1923) (“And a woman who held a babe against her bosom said, Speak to us of Children. And he said: Your children are not your children. They are the sons and daughters of Life’s longing for itself. They come through you but not from you, And though they are with you yet they belong not to you.”).

## POSTSCRIPT

*A state has never felt sheer joy at a child's birth.*

*A state has never suffered the agony of a child's death.*

*A state has never sensed wonderment at a child's first step.*

*Parents do.*

*A state has never held a child in the throes of illness.*

*A state has never comforted a child in the dead of night.*

*A state has never wiped tears of sadness from a child's face.*

*Parents have.*

*A state has never hoped for a child.*

*A state has never prayed with a child.*

*A state has never laughed with a child.*

*Parents will.*

*A state lacks the human capacity to love and be loved.*

*Parents do. Parents have. Parents will.*