SUPREME COURT OF MISSOURI
en banc

E.N., individually and as next friend and on behalf of her minor child, N.N., et al.,	)	***Opinion issued January 13, 2026***
Appellants,	)	
v.	)	No. SC100933
MIKE KEHOE, in his official capacity as GOVERNOR for the STATE OF MISSOURI, et al.,	)	
Respondents.	)	

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY
The Honorable R. Craig Carter, Judge

E.N., on behalf of her minor child N.N., along with interested medical professionals, organizations, and other similarly situated minors (collectively, "Challengers"), appeal the circuit court's judgment upholding the constitutional validity of section 191.1720, known as the "Missouri Save Adolescents from Experimentation Act," (the "SAFE Act"), and subsection 15 of section 208.152 (the "Medicaid ban").[1] On appeal, Challengers contest the Medicaid ban; allege the SAFE Act violates due process, equal protection, and the gains of industry clause; and challenge the facts presented at trial.

[1] All statutory references are to RSMo Supp. 2024, unless otherwise specified.

Because Challengers fail to demonstrate the SAFE Act and Medicaid ban contravene the constitution, the circuit court's judgment is affirmed.

Factual and Procedural Background

The Missouri General Assembly enacted the SAFE Act and the Medicaid ban effective August 28, 2023. The SAFE Act generally prohibits health care providers from performing gender transition surgeries on, or prescribing or administering cross-sex hormones or puberty-blocking drugs for the purpose of assisting gender transitions to, minors.[2] Section 191.1720.3-.4.[3] The Medicaid ban precludes MO HealthNet payments "for gender transition surgeries, cross-sex hormones, or puberty-blocking drugs, as such terms are defined in [the SAFE Act], for the purpose of a gender transition." Section 208.152.15.

Challengers brought several pre-enforcement constitutional claims. The claims relevant to this appeal include allegations the SAFE Act and Medicaid ban violate equal protection, due process, and the gains of industry clause. Following a two-week bench

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[2] The SAFE Act provides various exemptions from the prohibition, including for minors prescribed or administered the hormones or drugs prior to the SAFE Act's enactment, "individuals born with a medically-verifiable disorder of sex development," and individuals without "normal sex chromosome structure, sex steroid hormone production, or sex steroid hormone action," individuals requiring treatment of "any infection, injury disease, or disorder that has been caused by or exacerbated by the performance of gender transition surgery or the prescription or administration of cross-sex hormones or puberty-blocking drugs," and individuals suffering "from a physical disorder, physical injury, or physical illness that would, as certified by a physician, place the individual in imminent danger of death or impairment of a major bodily function unless surgery is performed." Section 191.1720.4(2), .8.

[3] Section 191.1720.4, prohibiting the prescription and administration of cross-sex hormones or puberty-blocking drugs, includes a sunset provision expiring effective August 28, 2027.

trial, the circuit court entered a 74-page judgment, with findings of fact and conclusions of law, in the State's favor on all counts. Challengers appealed, raising 10 points of error.

Jurisdiction and Standard of Review

This Court has exclusive appellate jurisdiction over cases concerning the validity of a state statute. Mo. Const. art. V, sec. 3. This Court reviews the circuit court's determination of a statute's constitutional validity *de novo*. *State v. Wooden*, 388 S.W.3d 522, 525 (Mo. banc 2013). This Court presumes statutes constitutional and will find otherwise only if the statute "clearly contravene[s] a constitutional provision." *Id.* The burden of proof is on the party challenging the statute's constitutional validity. *St. Louis Cnty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 712 (Mo. banc 2011).

Analysis

Challengers contest the SAFE Act and Medicaid ban primarily based on alleged violations of the equal protection and due process clauses of the Missouri Constitution. Challengers additionally allege the circuit court erred in relying on improper evidence. The Court addresses each argument in turn.

The SAFE Act

The Supreme Court of the United States and the United States Court of Appeals for the Eighth Circuit have recently addressed similar legislation enacted in Tennessee and Arkansas. *See United States v. Skrmetti*, 605 U.S. 495 (2025) (upholding Tennessee's version of the SAFE Act under rational-basis review); *Brandt ex rel. Brandt v. Griffin*, 147

F.4th 867 (8th Cir. 2025) (upholding Arkansas's version of the SAFE Act under rational basis review). These cases are persuasive and aid this Court's analysis.[4]

Facial vs. As-applied Challenges

Challengers first argue the circuit court erred in finding Challengers raised only facial challenges to the SAFE Act. When bringing a facial challenge, "the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *Donaldson v. Mo. State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo.

[4] Challengers attempt to distinguish *Skrmetti* on the bases that the legislation in that case prohibits medical treatment on the basis of diagnosis, rather than transgender status, and that *Skrmetti* does not consider discriminatory purpose as the motivation for the legislation. The Eighth Circuit decided *Brandt* after Challengers filed their initial brief and before they filed their reply brief. In their reply brief, Challengers repeat their argument that *Skrmetti* is distinguishable and include reference to *Brandt*. Challengers did not separately discuss or attempt to distinguish *Brandt*. Challengers also argue the Missouri Constitution is intended to offer greater protections than the United States Constitution. These arguments are not persuasive. As discussed later, the SAFE Act classifies based on medical use and age, the same as the legislation discussed in *Skrmetti* and *Brandt*. *See infra* p. 7. The variation in the language does not change this classification. Further, the fact that animus motivation was not raised in *Skrmetti* and *Brandt* does not render those opinions useless. The discriminatory purpose argument is merely an additional argument this Court must address. *See infra* pp. 7-8. Finally, Challengers fail to provide relevant support for the argument that the Missouri Constitution is intended to provide greater protections than the United States Constitution. Although this Court has recognized "[p]rovisions of our state constitution ***may be*** construed to provide more expansive protections than comparable federal constitutional provisions," *State v. Rushing*, 935 S.W.2d 30, 34 (Mo. banc 1996) (emphasis added), Challengers' only example of the Court doing so is in a voting rights case, *see Weinschenk v. State*, 203 S.W.3d 201, 212 (Mo. banc 2006) ("Due to the more expansive and concrete protections of the right to vote under the Missouri Constitution, voting rights are an area where our state constitution provides greater protection than its federal counterpart."). Missouri's equal protection and due process clauses may "provide more protection than the United States Constitution where United States Supreme Court precedent 'dilute[s] these important rights.'" *Id.* (quoting *State ex rel. J.D.S. v. Edwards*, 574 S.W.2d 405, 409 (Mo. banc 1978)). Challengers, however, fail to demonstrate United States Supreme Court precedent has diluted these rights.

banc 2020) (alteration in original). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully[.]" *State v. Perry*, 275 S.W.3d 237, 243 (Mo. banc 2009) (internal quotation omitted). In contrast, "[a]n as-applied challenge requires [Challengers] ***to show*** the statute was unconstitutionally applied ***to their individual circumstances***." *F.S. v. Mo. Dep't of Corr., Div. of Prob. & Parole*, 709 S.W.3d 321, 326 (Mo. banc 2025) (emphasis in original) (internal quotation omitted). In determining whether a party is raising a facial or as-applied challenge, courts consider the nature of the claim, the remedy sought, and the analysis required to evaluate the challenge. *See id.*; *State v. Collins*, 648 S.W.3d 711, 715 (Mo. banc 2022). The result of a successful facial challenge would invalidate a law in its entirety. *See Collins*, 648 S.W.3d at 715. In contrast, the result of a successful as-applied challenge would prohibit enforcement of the law only against the specific plaintiff. *See F.S.*, 709 S.W.3d at 327.

Here, Challengers mount only facial challenges. The only remedies requested seek to invalidate and prevent the enforcement of the SAFE Act and the Medicaid ban in their entireties. Further, Challengers' allegations of constitutional violation apply broadly, outside of the individual Challengers' experiences. The circuit court correctly determined Challengers raised only facial challenges to the SAFE Act and Medicaid ban and, therefore, must demonstrate there is "no set of circumstances . . . under which the [statutes] would be valid." *Donaldson*, 615 S.W.3d at 66 (alteration in original). Challengers have not satisfied this burden.

Equal Protection

Missouri's equal protection clause states "all persons are created equal and are entitled to equal rights and opportunity under the law." Mo. Const. art. I, sec. 2. "Missouri's equal protection clause provides the same protections as the United States Constitution." *State v. Young*, 362 S.W.3d 386, 396 (Mo. banc 2012).

Equal protection analyses include two steps. The first is to determine what level of scrutiny should apply. *Id.* at 397. Strict scrutiny, in which the statute will be upheld only if the classification is necessary to accomplish a compelling state interest, applies when the challenged statute distinguishes individuals based on a suspect classification, truncates a fundamental right, or is based on an invidious discriminatory intent. *Labrayere v. Bohr Farms, LLC*, 458 S.W.3d 319, 331 (Mo. banc 2015); *Skrmetti*, 605 U.S. at 516. Intermediate scrutiny, in which the state has the burden to prove the challenged statute "serves important government interests and is substantially related to achieving those interests," applies if a challenged law makes a gender-based classification. *Glossip v. Mo. Dep't of Transp. & Highway Patrol Emp. Retirement Sys.*, 411 S.W.3d 796, 802 (Mo. banc 2013). A law may also be subject to heightened scrutiny when "a law's classifications are neither covertly nor overtly based on sex … [if] it was motivated by an invidious discriminatory purpose." *Skrmetti*, 605 U.S. at 516 (internal citation omitted). Otherwise, rational-basis review applies. *Amick v. Dir. of Revenue*, 428 S.W.3d 638, 640 (Mo. banc 2014). Under rational-basis review, a challenged statute will be upheld as long as the statute "is rationally related to some legitimate end." *Id.* After determining the

appropriate level of scrutiny, the second step of the analysis is to apply "the appropriate level of scrutiny to the challenged statute." *Id.*

Challengers argue heightened scrutiny should apply, alleging the SAFE Act classifies based on protected classes: transgender status and sex. The SAFE Act, however, classifies only on age and medical use. Similar to the legislation discussed by the Eighth Circuit in *Brandt* and the Supreme Court in *Skrmetti*, the SAFE Act prohibits the performance of gender transition surgery on, and prescription or administration of cross-sex hormones or puberty-blocking drugs for, "any individual under eighteen years of age." Section 191.1720.3-.4; *Brandt*, 147 F.4th at 878 (citing Ark. Code Ann. sec. 20-9-1501); *Skrmetti*, 605 U.S. at 505 (citing Tenn. Code Ann. sec. 68-33-12(6)). Also similar to *Brandt* and *Skrmetti*, the SAFE Act classifies based on medical use in that healthcare providers may prescribe or administer cross-sex hormones or puberty-blocking drugs to treat certain medical concerns but not others. *See* section 191.1720.8 (providing exemptions from the prohibition for certain medical concerns); *Brandt*, 147 F.4th at 878-79; *Skrmetti*, 605 U.S. at 511.[5]

Challengers also argue heightened scrutiny applies because the SAFE Act "was motivated by an invidious discriminatory purpose[.]" *Skrmetti*, 605 U.S. at 516. To support this argument, Challengers argue the SAFE Act, on its face, classifies based on sex

[5] In finding the SAFE Act classifies based only on age and medical concern, this Court necessarily finds the SAFE Act does not classify based on sex. Similar to the statutes discussed in *Brandt* and *Skrmetti*, under the SAFE Act, "***no*** minor may be administered puberty blockers or hormones as gender transition procedures, but minors of ***any*** sex may be administered puberty blockers or hormones for other purposes." *Brandt*, 147 F.4th at 879 (emphasis in original) (quoting *Skrmetti*, 605 U.S. at 515) (internal quotation omitted).

and transgender status and, therefore, discriminatory purpose "can readily be presumed[,]" *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993), because the SAFE Act prohibits medical care only for the purpose of "gender transition." As discussed, the SAFE Act classifies only based on medical use and age, not sex or transgender status. The Supreme Court in *Skrmetti* supports this finding and "decline[d] to find that [the Act]'s prohibitions on the use of puberty blockers and hormones exclude any individuals on the basis of transgender status." *Skrmetti*, 605 U.S. at 519. The Supreme Court reasoned:

> [The Act] does not exclude any individual from medical treatments on the basis of transgender status but rather removes one set of diagnoses … from the range of treatable conditions. [The Act] divides minors into two groups: those who might seek puberty blockers or hormones to treat the excluded diagnoses, and those who might seek puberty blockers or hormones to treat other conditions. Because only transgender individuals seek puberty blockers and hormones for the excluded diagnoses, the first group includes only transgender individuals; the second group, in contrast, encompasses both transgender and nontransgender individuals. Thus, although only transgender individuals seek treatment for gender dysphoria, gender identity disorder, and gender incongruence … there is a "lack of identity" between transgender status and the excluded medical diagnoses.

Id. at 518-19. The same is true of the SAFE Act. The SAFE Act removes one medical purpose – gender transition – from the range of approved medical purposes for the performance of certain surgeries and prescribing of certain drugs.[6] The SAFE Act, therefore, divides minors into two groups: those who might seek the care for the excluded purpose and those who might seek the care for the non-excluded purposes. The first includes only transgender individuals but, because the second group includes both

[6] *See supra* note 2 (discussing the approved medical uses for the otherwise prohibited care).

transgender and nontransgender individuals, there is a "lack of identity" between transgender status and the excluded medical purposes. Because the SAFE Act does not classify based on sex or protected class,[7] rational basis review is appropriate.

When conducting rational-basis review, the Court presumes the statute has a rational basis. *Amick*, 428 S.W.3d at 640. "Rational-basis review does not question the wisdom, social desirability or economic policy underlying a statute, and a law will be upheld if it is justified by any set of facts." *Id.* (internal quotation omitted). The Court "employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one." *Skrmetti*, 605 U.S. at 522 (internal quotation omitted). "Where there exist 'plausible reasons' for the relevant government action, 'our inquiry is at an end.'" *Id.* (internal quotation omitted). The challenging party has the burden of overcoming the presumption the statute has a rational basis "by a clear showing of arbitrariness and irrationality." *Amick*, 428 S.W.3d at 640 (internal quotation omitted). Challengers have not met this burden.

Although the General Assembly did not include a stated purpose like Arkansas's and Tennessee's respective statutes, "[a] statute will withstand rational basis review, if any set of facts can be reasonably conceived to justify it." *Doe v. Olson*, 696 S.W.3d 320, 328 (Mo. banc 2024) (internal quotation omitted); *see* Tenn. Code Ann. sec. 68-33-101;

[7] The Court need not determine whether transgender status is a quasi-suspect class because the SAFE Act classifies only based on age and medical use, not on the basis of transgender status.

Arkansas Act 626, § 2(1), 93rd *882 Gen. Assemb., Reg. Sess. (Ark. 2021). States clearly have a legitimate interest in "'safeguarding the physical and psychological well-being of a minor.'" *Brandt*, 147 F.4th at 882 (quoting *New York v. Ferber*, 458 U.S. 747, 756-57 (1982)).[8] The SAFE Act is rationally related to serving this interest. The state has demonstrated the ongoing debate among medical and ethical experts regarding the risks and benefits associated with the treatments at issue. The SAFE Act's "ban on such treatments responds directly to that uncertainty." *Skrmetti*, 605 U.S. at 523. The SAFE Act, therefore, satisfies rational basis review.

Due Process

The Missouri Constitution provides "That no person shall be deprived of life, liberty or property without due process of law." Mo. Const. art. I, sec. 10.

> To establish a violation of an individual's substantive due process rights, the plaintiff must demonstrate that the state's conduct was conscience-shocking and violated one or more fundamental rights that are deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.

[8] Amici supporting Challengers argue there is no compelling state interest because the SAFE Act is based on a discriminatory purpose and a "bare desire to harm a politically unpopular group." *Romer v. Evans*, 517 U.S. 620, 634 (1996) (alteration omitted). The Supreme Court, in *Romer*, found an amendment prohibiting any legislative, executive, or judicial action designed to protect individuals based on their sexual orientation failed rational-basis review because the amendment was "inexplicable by anything but animus toward the class it affects." *Id.* at 632. "[A] *Romer*-type analysis only applies where there is no other legitimate state interest for the legislation that survives scrutiny." *Gallagher v. City of Clayton*, 699 F.3d 1013, 1021 (8th Cir. 2012). This is not the case here. As described above, there is a legitimate interest in safeguarding children, especially in circumstances fraught with medical uncertainty. *See Brandt*, 147 F.4th at 884; *Skrmetti*, 605 U.S. at 524.

Garozzo v. Mo. Dep't of Ins., Fin. Insts. & Pro. Registration, Div. of Fin., 389 S.W.3d 660, 667 (Mo. banc 2013) (internal quotation omitted). If legislation restricts a fundamental right, it will be upheld only if it satisfies strict scrutiny, *i.e.*, if the government action is necessary to accomplish a compelling state interest. *See Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 490 (Mo. banc 2009). Otherwise, rational-basis review applies. *See Brandt*, 147 F.4th at 887; *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997).

Challengers argue the SAFE Act violates parents' fundamental right to decide the appropriate medical care for their children and children's fundamental right to healthcare autonomy. This Court disagrees.

Although parents have a right "to make decisions concerning the care, custody, and control of their children[,]" *Troxel v. Granville*, 530 U.S. 57, 66 (2000), there is no fundamental "right of a parent to obtain for his or her child a medical treatment that, although the child desires it and a doctor approves, the state legislature deems inappropriate for minors," *Brandt*, 147 F.4th at 887. Challengers also argue minors have a fundamental right to autonomy in healthcare decisions.[9] *See Cruzan by Cruzan v. Harmon*, 760 S.W.2d 408, 416 (Mo. banc 1988) ("The common law recognizes the right of individual autonomy over decisions relating to one's health and welfare."). This right, however, has not been applied to minors seeking treatments prohibited by the legislature. *See Brandt*, 147 F.4th at 887; *Cruzan*, 760 S.W.2d at 410 (discussing the right to autonomy

[9] Challengers also attempt to apply this argument to adults affected by the Medicaid ban. Because the Medicaid ban does not prevent adults from seeking the care prohibited for minors – it merely precludes Mo HealthNet from paying for such care – there is no infringement on an adult's right to make healthcare decisions.

in deciding whether to seek or refuse legal medical treatment). Therefore, there is no fundamental right to seek care the legislature has prohibited. Because the SAFE Act does not infringe on a fundamental right, rational-basis review is appropriate.

Under rational-basis review, the SAFE Act is constitutional if it is "rationally related to legitimate government interests." *Brandt*, 147 F.th at 887-88 (internal quotation omitted). "A rational basis that survives equal protection scrutiny also satisfies substantive due process analysis." *Danker v. City of Council Bluffs*, 53 F.4th 420, 425 (8th Cir. 2022) (internal quotation omitted). For the same reasons described in the proceeding section, the SAFE Act passes rational-basis review under the due process clause.

The Gains of Industry Clause

Challengers also argue the SAFE Act violates the Missouri Constitution's gains of industry clause. The gains of industry clause provides "that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry[.]" Mo. Const. art. I, sec. 2. The gains of industry clause usually refers to workplace slavery and has been invoked only once "when the state prevented individuals from selling a lawful product." *Fisher v. State Highway Comm'n of Mo.*, 948 S.W.2d 607, 610 (Mo. banc 1997).

Challengers argue the Medicaid ban violates the gains of industry clause by forbidding medical providers from providing otherwise lawful medical care. In upholding the SAFE Act, however, the medical care at issue is unlawful, and the gains of industry clause does not apply. To the extent this argument refers to the Medicaid ban, the Medicaid ban neither prohibits medical care nor requires providers to perform services

without payment. It merely precludes MO HealthNet from paying for such care. *See* section 208.152.15.

The Medicaid Ban

Challengers argue the circuit court erred in rejecting their claims that the Medicaid ban violates equal protection and infringes on individuals' due process rights. Challengers' arguments on appeal, however, focus primarily on the circuit court's findings that Challengers failed to properly plead their claims related to the Medicaid ban and that heightened scrutiny does not apply.

But just as with the SAFE Act, the Medicaid ban classifies based only on medical use. *See* section 208.152.15 ("There shall be no payments made under this section for gender transition surgeries, cross-sex hormones, or puberty-blocking drugs, as such terms are defined in section 191.1720, *for the purpose of a gender transition*." (emphasis added)). Because the Medicaid ban does not categorize based on a protected class or infringe on a fundamental right, the Medicaid ban need satisfy only rational-basis review. *Hooper v. Bernalillo Cnty. Assessor*, 472 U.S. 612, 618 (1985).

Challengers' brief provides little, if any, analysis as to how the Medicaid ban fails to satisfy rational-basis review. Rather, Challengers summarily argue the Medicaid ban would prohibit individuals from receiving medically necessary care. Although state Medicaid plans must provide treatments "deemed 'medically necessary' in order to comport with the objectives of the [Medicaid] Act," *Weaver v. Reagen*, 886 F.2d 194, 198 (8th Cir. 1989), the Medicaid Act "confers broad discretion on the States to adopt standards for determining the extent of medical assistance[.]" *Smith v. Rasmussen*, 249

F.3d 755, 759 (8th Cir. 2001) (internal quotation omitted). As previously discussed, this area of medicine is an "area[] fraught with medical and scientific uncertainties" and demonstrates a lack of accepted standards of practice. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 274 (2022). Further, the state has a legitimate interest in ensuring limited public funds are used efficiently.[10] *Maher v. Roe*, 432 U.S. 464, 479-80 (1977). "The decision whether to expend state funds for [gender-affirming care] is fraught with judgments of policy and value over which opinions are sharply divided." *Id.* at 480. "Indeed, when an issue involves policy choices as sensitive as those implicated by public funding of [gender-affirming care], the appropriate forum for their resolution in a democracy is the legislature." *Id.* The Medicaid ban is rationally related to that interest and, therefore, survives rational-basis review.

Factual Findings

Along with the constitutional violations raised, Challengers also bring two allegations of error concerning the evidence adduced at trial. First, Challengers argue the circuit court erroneously permitted two expert witnesses to testify about the nature of gender dysphoria as a diagnosis, arguing the experts are not qualified to render opinions about the topics discussed. Second, Challengers argue the circuit court's judgment is based on factual findings that are not supported by the record. But as previously

[10] States may restrict Medicaid coverage as a matter of fiscal necessity as long as the restrictions do not interfere with the purpose of offering the medical services in the first instance. *McNeil-Terry v. Roling*, 142 S.W.3d 828, 834 (Mo. App. 2004) (citing *Cushion v. Dep't of PATH*, 807 A.2d 425, 429 (Vt. 2002); *Curtis v. Taylor*, 625 F.2d 645, 653 (5th Cir. 1980)). Fiscal concern, however, is an appropriate interest when the excluded services are not medically necessary. *Id.*

discussed, "this Court will uphold a statute if it finds a reasonably conceivable state of facts that provide a rational basis for the classifications." *Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361 S.W.3d 364, 378 (Mo. banc 2012) (alterations and internal quotations omitted). "Rational basis review is 'highly deferential,' and courts do not question the wisdom, social desirability or economic policy underlying a statute." *Id.* (internal quotation omitted). "Instead, all that is required is that this Court find a plausible reason for the classifications in question." *Id.* (alterations and internal quotations omitted). Because the Court has already determined a rational basis exists on the record before this Court to uphold the SAFE Act and Medicaid ban, Challengers' factual arguments do not alter this Court's analysis.

Conclusion

The circuit court's judgment, upholding the constitutional validity of the SAFE Act and Medicaid ban, is affirmed. Given the Court's ruling in this matter, Challengers' motion to strike portions of Respondents' exhibit list and corresponding exhibits is overruled as moot.

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KELLY C. BRONIEC, JUDGE

All concur.